

SEALING, ANIMAL WELFARE AND TRADE LAW: A SUMMARY

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Introduction

As of 1 April 2017, trade in commercial seal products will be banned in Switzerland, making it the 35th country to put restrictions of this nature in place.² This article looks at the animal welfare concerns related to seal hunting, outlines the various legal measures which have been taken to restrict the trade in seal products in different countries, and, finally, considers how commercial seal hunting has been affected by these laws.

Seal Hunting and Animal Welfare

Seals are hunted primarily for their fur and, as a result, it is mostly baby seals that are targeted. However, there is also a smaller market for seal meat, seal omega 3 oil, and seal products which are marketed as aphrodisiacs.



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² Fink, Sheryl. 'Switzerland Bans Seal Products'. *IFAW - International Fund for Animal Welfare*. Accessed 18 March 2017. <http://www.ifaw.org/united-kingdom/news/switzerland-bans-seal-products>.

Seals are mammals and it is generally accepted that mammals can feel pain.³ Indeed, in 2012, in *The Cambridge Declaration on Consciousness*, it was stated that all mammals are conscious beings. Therefore, there is no doubt that animal welfare considerations are important when it comes to assessing seal hunting. So, then, what happens on a seal hunt?

Typically, during a seal hunt, pups are either shot from boats, or clubbed with a wooden bat or an iron-tipped pole called a hakapik. Many shot and injured animals are at risk of enduring suffering for several minutes while the hunters manoeuvre their boats close enough to club them unconscious. If the ice is too unstable for the hunters to cross, shot and injured but conscious and reactive seals can be dragged into the boats with long hooked gaffs before being clubbed.⁴ Andy Butterworth, who has acted as an official observer of seal hunts has reported that *“The post mortems that we carried out on the ice indicated that some seals had multiple shooting, clubbing and hooking injuries — and that some had swallowed their own fresh blood — probably indicating that they were alive for a period following the first contact with the hunter. The assessments also described the distressed behaviour of conscious injured animals in response to being recovered from the ice with the gaffs.”*⁵



³ Nolan, Andrea. 'Do Animals Feel Pain like We Do?' *The Conversation*. Accessed 19 March 2017. <http://theconversation.com/do-animals-feel-pain-like-we-do-42508>.

⁴ Butterworth, Andy. 'The Moral Problem with Commercial Seal Hunting'. *Nature News* 509, no. 7498 (1 May 2014): 9. doi:10.1038/509009a.

⁵ Ibid.

It is clear from the above description that at least two of the *Five Freedoms of Animal Welfare*⁶, namely, freedom from pain, injury and disease, and freedom from distress are frequently breached during seal hunts and this is evidenced by the fact that veterinary reports consistently reveal high levels of animal suffering in commercial sealing.⁷ Furthermore, the suffering endured by seals, while they are being killed, would not be permitted under the legislation governing the slaughter of domesticated animals in many developed countries.⁸

Seal Products and the Law

In 1972, the United States of America banned the taking and importation of marine mammals and marine mammal products⁹, other than by way of special permit¹⁰, under the *Marine Mammal Protection Act*.¹¹ This ban was enacted primarily for conservation reasons.¹² In 2006, Mexico prohibited the import and export of marine mammals and marine mammal products¹³. The principal motive for this prohibition was to counteract the rapid growth of the dolphin captivity industry there.¹⁴

However, it was in Europe, that countries began to implement national bans on the trade of seal products, specifically due to public moral concerns about animal

⁶ In 1979, the British Farm Animal Welfare Council codified the Five Freedoms of Animal Welfare which are: Freedom from Hunger and Thirst, Freedom from Discomfort, Freedom from Pain, Injury or Disease, Freedom to Express Normal Behavior, and Freedom from Fear and Distress.

⁷ 'Switzerland bans trade in commercial seal products', Humane Society International, 7 March 2017

⁸ See for example Council Regulation (EC) No 1099/2009

⁹ Section 101 Marine Mammal Protection Act 1972

¹⁰ Ibid.

¹¹ This restriction was relaxed somewhat under the Marine Mammal Protection Act Amendments of 1994 which allowed for limited importation of products for personal or subsistence uses. See Wynne, Kate, "The Marine Mammal Protection Act: An Overview of recent changes", Alaska Marine Resources, September 1995. Accessed at <http://nsgd.gso.uri.edu/aku/akug95003.pdf>

¹² Marine Mammal Protection Act (MMPA) Factsheet, NOAA Fisheries. Accessed at http://www.nmfs.noaa.gov/pr/pdfs/mmpa_factsheet.pdf

¹³ Artículo 55 bis de La Ley General de Vida Silvestre

¹⁴ 'México a La Vanguardia Mundial en La Protección de Mamíferos Marinos :: CCC-Chile'. Accessed 21 March 2017.

http://www.ccc-chile.org/articulo-220-443-310106_mexico_a_la_vanguardia_mundial_en_la_proteccion_de_mamiferos_marinos.html.

welfare aspects of seal hunting.¹⁵ This culminated in the introduction of the *EU seal regime* in 2009¹⁶ which introduced a general ban on the placing of seal products on the EU market for the very same reason. The regime does, however, contain exemptions for products emanating from indigenous community hunts and products obtained by travellers for personal use. This ban is particularly noteworthy as it was the subject of proceedings taken by Canada¹⁷ and Norway¹⁸ before the World Trade Organization (WTO) Dispute Settlement Panel. While the EU was obliged, as a result of these proceedings, to make changes to the indigenous exemption, so that Greenland natives were not favoured over those from other countries, it was held, for the first time, that animal welfare-related trade restrictions may be justified under the General Agreement on Tariffs and Trade, with the objective of protecting public morals.¹⁹ It should be noted that one of the principal reasons why it was considered that restrictions might be justified in this case was the fact there were no internationally agreed standards as to how a seal hunt might be carried out.²⁰

In 2011, the Customs Union of Belarus, Kazakhstan and the Russian Federation banned the import and export of harp seal skins.²¹ This prohibition was also highly significant as Russia had received up to 90% of Canada's exports of seal pelts²²; Canada's annual commercial seal hunt being the largest slaughter of marine mammals on the planet.²³ It would appear that the ban was motivated by animal

¹⁵ 'Ending Trade in Seal Products'. *IFAW - International Fund for Animal Welfare*. Accessed 21 March 2017. <http://www.ifaw.org/united-states/our-work/seals/ending-trade-seal-products>.

¹⁶ Regulation (EC) No 1007/2009 on trade in seal products, as amended, and Commission Implementing Regulation (EU) 2015/1850 laying down detailed rules for the implementation of Regulation (EC) No 1007/2009

¹⁷ WT/DS/400 (Canada-EU)

¹⁸ WT/DS/401 (Norway-EU)

¹⁹ 'The Seal Case', OIE Discussion Paper, p.6. Accessed 31 December 2016.

http://www.oie.int/fileadmin/Home/eng/Media_Center/docs/A_Fur_seals_case_implications_for_the_OIE.pdf

²⁰ *Ibid.*

²¹ Fink, Sheryl. 'Major Victory as Russia Bans Trade in Harp Seal Skins'. *IFAW - International Fund for Animal Welfare*. Accessed 22 March 2017. <http://www.ifaw.org/united-states/news/major-victory-russia-bans-trade-harp-seal-skins>.

²² Government of Canada, Fisheries and Oceans Canada. '2011-2015 Integrated Fisheries Management Plan for Atlantic Seals', 23 February 2011. <http://www.dfo-mpo.gc.ca/fm-gp/seal-phoque/reports-rapports/mgtplan-planges20112015/mgtplan-planges20112015-eng.htm#c3.3>.

²³ 'About the Canadian Seal Hunt: The Humane Society of the United States'. Accessed 22 March 2017. http://www.humanesociety.org/issues/seal_hunt/facts/about_seal_hunt.html.

welfare concerns as Russia had previously banned the hunting of baby harp seals within its own territory in 2009 with prime minister Vladimir Putin reportedly describing it as a “*bloody industry*”.²⁴

More recently, in 2013, Taiwan amended its *Wildlife Conservation Act* to prohibit the import, export and sale of marine mammals and their products without special permits from the governing agency.²⁵ However, it includes an exemption for products derived from aboriginal seal hunting.²⁶ This amendment was enacted due to the fact that Taiwan had become the third largest Asian consumer and the fourth in the world in terms of the consumption volume of marine mammals and their products, as people believed in the special medical or health effects of the products. Taiwanese lawmakers were concerned that this habit had helped cause the rising volume of cruelly slaughtered marine mammals.²⁷

Finally, in Switzerland, a ban on the importation of seal products is due to come into effect on 1st April 2017. This ban will contain exemptions in respect of indigenous hunt seal products

and products obtained by travellers for personal use, similar to those exemptions in the EU seal regime.²⁸ The origin of the ban goes back to 2011, when a petition with almost 100,000 signatures demanding a prohibition on the importation of seal products, was submitted to the Swiss Parliament and a parliamentary motion was subsequently accepted by the National Council in 2012. However, the ban was not

²⁴ Press, Associated. ‘Russia Bans Hunting of Baby Harp Seals’. *The Guardian*, 19 March 2009, sec. Environment. <https://www.theguardian.com/environment/2009/mar/19/seals-hunting-russia-ban>.

²⁵ ‘New Rules Clamp down on Trade of Marine Mammals’. *www.ChinaPost.com.tw*. Accessed 22 March 2017. <http://www.chinapost.com.tw/life/environment/2013/01/09/366764/New-rules.htm>.

²⁶ Fink, Sheryl. ‘2013 off to a Great Start as Taiwan Bans Seal Products’. *IFAW - International Fund for Animal Welfare*. Accessed 23 March 2017. <http://www.ifaw.org/canada/news/2013-great-start-taiwan-bans-seal-products>.

²⁷ ‘New Rules Clamp down on Trade of Marine Mammals’. *www.ChinaPost.com.tw*. Accessed 22 March 2017. <http://www.chinapost.com.tw/life/environment/2013/01/09/366764/New-rules.htm>.

²⁸ Fink, Sheryl. ‘Switzerland Bans Seal Products’. *IFAW - International Fund for Animal Welfare*. Accessed 23 March 2017. <http://www.ifaw.org/united-states/news/switzerland-bans-seal-products>.

approved by the Council of States until after the WTO appellate body had issued its decision in 2014, in respect of the EU Seals Regime dispute. It was finally approved and adopted by the National Council after differences were settled.²⁹ While Swiss imports of seal products were already minimal³⁰, this new law, nevertheless, is bad news for a sealing industry in search of new markets to replace those countries where bans are in place.

What now for seal hunting?

Commercial seal hunts still take place in Canada, Namibia and Greenland. They no longer occur in Norway, a party to the aforementioned WTO dispute; reportedly due to a combination of the effects of global warming, the withdrawal of a government subsidy, and years of environmental opposition.³¹ Meanwhile, from 1st April 2017, a total of 35 countries will have restrictions on the sale of seal products. Have these restrictions affected commercial sealing in any meaningful way?

In Canada, following the introduction of the EU Seals Regime, the number of seals killed in Atlantic Canada fell from 218,000 to 76,000.³² In 2016, and with further countries having imposed restrictions, 66,504 seals were killed by the Canadian hunt.³³

In Namibia it also appears that the number of seals being killed is decreasing. In 2013, 51,464 seal pups were killed, falling well short of the annual quota of 80,000. The government blamed this drop on a lack of up-to-date processing facilities.³⁴ A

²⁹ 'Fondation Franz Weber - Protection of Seals'. Accessed 23 March 2017. http://www.ffw.ch/en/camp_detaille/proteccion-de-las-focas/1/2.

³⁰ 'Switzerland Bans Import of Most Seal Products'. *SWI Swissinfo.ch*. Accessed 23 March 2017. <http://www.swissinfo.ch/eng/society/switzerland-bans-import-of-most-seal-products/43002994>.

³¹ "'Game Over" for Norway's Seal Hunt'. Accessed 23 March 2017. <http://www.newsinenglish.no/2017/01/20/game-over-for-norways-seal-hunt/>.

³² 'Canada's Commercial Seal Hunt: Past, Present, and Future', p.5 IFAW, 2016. Accessed 23 March 2017. <http://www.ifaw.org/sites/default/files/IFAW-2016-Canada's-Commercial-Seal-Hunt-Past-Present-Future-0.pdf>

³³ Fink, Sheryl. 'Switzerland Bans Seal Products'. *IFAW - International Fund for Animal Welfare*. Accessed 24 March 2017. <http://www.ifaw.org/united-states/news/switzerland-bans-seal-products>.

³⁴ 'Seal Cull in Namibia to Be Record Low as Pups Evade Clubs'. *Bloomberg.com*, 12 November 2014. <https://www.bloomberg.com/news/articles/2014-11-12/seal-cull-in-namibia-to-be-record-low-as-pups-evade-clubs>.

spokesperson for the International Fund for Animal welfare, however, stated that the reduction demonstrated the lack of markets and lack of demand for seal products.³⁵ In 2014, approximately 26,000 seal pups were killed in Namibia and a government spokesperson described this decrease as a natural fluctuation due to the fact that seals are wild animals and live close to the water.³⁶ At the end of 2015, however, plans were announced to open a new seal-processing factory³⁷; an indication of a belief amongst some in Namibia that sealing is not in terminal decline.

Seal hunting in Greenland is primarily conducted by the Inuit³⁸ and, as such, the indigenous communities exemption contained in the EU Seals Regime and in the laws of a number of other countries may be availed of. However, Hans Stielstra, head of international environmental issues at the European Commission stated in 2015 that the general ban has destroyed the market in the EU. Since that ban was instituted in 2009, Greenlandic exports of seal pelts have plummeted by 90%.³⁹

It does seem that current restrictions have contributed to a significant reduction in the number of seals being killed by commercial hunts. Is it likely, however, that new markets could be found for seal products? China would appear to be seen by the Canadian government and many involved in the sealing industry as the last hope for the trade in seal products. To this end, since 2013, the Canadian government has invested more than US\$2 million in grants and financing to develop, process and market seal products for sale in China.⁴⁰ However, as of early 2017, the Chinese

³⁵ 'Baby Seal Cull in Namibia Hampered by Bans, IFAW Says'. *Bloomberg.com*, 24 July 2013. <https://www.bloomberg.com/news/articles/2013-07-23/baby-seal-cull-in-namibia-hampered-by-bans-ifaw-says>.

³⁶ 'Seal Cull in Namibia to Be Record Low as Pups Evade Clubs'

³⁷ 'Multimillion-Dollar Seal Factory to Be Built in Lüderitz'. *New Era Newspaper Namibia*, 8 December 2015. <https://www.newera.com.na/2015/12/08/multimillion-dollar-seal-factory-built-luderitz/>.

³⁸ 'Canada's Commercial Seal Hunt: Past, Present, and Future', p.6

³⁹ Brabant, Malcolm. 'Inuit Hunters' Plea to the EU: Lift Ban Seal Cull or Our Lifestyle Will Be Doomed'. *The Guardian*, 16 May 2015, sec. World news. <https://www.theguardian.com/world/2015/may/16/greenland-inuits-urge-eu-reverse-seal-ban-save-way-of-life>.

⁴⁰ 'China Urged to Ban Trade on Commercial Seal Products from Canada'. *Channel NewsAsia*. Accessed 24 March 2017. <http://www.channelnewsasia.com/news/asiapacific/china-urged-to-ban-trade/2361598.html>.

market still remained quite small⁴¹ and there is a growing movement in China pushing the government to introduce a ban on commercial seal products.⁴² Much will depend on how the situation plays out in China; at the end of 2016, the Chinese government announced that it would be banning the trade in ivory⁴³, so it is certainly possible that they would contemplate restricting the trade in seal products.

Other factors could also come into play as regards the continuation of commercial seal hunting. The Canadian government subsidises the seal hunting industry, even though polls have consistently shown that most Canadians oppose commercial seal slaughter and the use of government money to support it.⁴⁴ Furthermore, a poll taken in 2010 showed that half of Newfoundland sealers supported a federal sealing industry buyout.⁴⁵ Such a buyout could feasibly occur, therefore, but it would, of course, depend on certain political factors. In Namibia, meanwhile, a report has suggested that seal watching could generate considerably more revenue and benefit a greater number of Namibians than seal hunting, but that the latter industry could risk the viability of the former.⁴⁶ It remains to be seen whether the Namibian government will ever reject seal hunting in favour of seal watching. Finally, in Greenland, sealing is heavily subsidised by the government there.⁴⁷ Greenland, in turn, is dependant on an annual grant from Denmark. The Greenlandic government is of the view that mineral resource projects are necessary for progressing towards

⁴¹ 'One Man's Quest to Save the Seal Industry'. *Macleans.ca*, 28 January 2017. <http://www.macleans.ca/economy/business/one-mans-quest-to-save-the-seal-industry-2/>.

⁴² *Ibid.*

⁴³ 'China Announces Ban on Ivory Trade by End of 2017'. *BBC News*, 30 December 2016, sec. China. <http://www.bbc.com/news/world-asia-china-38470861>.

⁴⁴ 'Switzerland bans trade in commercial seal products', Humane Society International, 7 March 2017

⁴⁵ *Ibid.*

⁴⁶ Economists at Large, 2011. The economics of seal hunting and seal watching in Namibia, a report for Humane Society International, World Society for the Protection of Animals, Bont Voor Dieren (NL) and Respect for Animals (UK), prepared by Economists at Large, Melbourne, Australia, p.10-11

⁴⁷ 'Where can development come from? Potentials and pitfalls in Greenland's Economic Sectors Towards 2025, p.58, Ramboll Management Consulting, March 2014

a self-sustainable economy. If developments were made in this area, sustaining the sealing industry might become less of a priority for the government.⁴⁸

Conclusion

It is clear that seal hunting can be cruel and cause suffering to seals who are being hunted. Many countries have responded to this cruelty by restricting the trade in seal products within their boundaries. A total of 35 countries now operate such restrictions. There seems little doubt that the sealing industry has been badly hit by these bans. The Chinese market could yet come to the rescue of seal hunters but it also has the potential to deal a severe blow to their activities by banning the trade in seal products. The possibility also remains that commercial seal hunting could be rendered obsolete by other economic factors. Only time will tell - the fate of the industry is not yet sealed.

⁴⁸ 'Greenland: Mining the Future'. *New European Economy*, 5 May 2015. <http://neweuropeaneconomy.com/fdi/greenland-mining-the-future/>.