



Comments on “Regulations Amending the Marine Mammal Regulations” (Canada Gazette Part 1: 3268-3276, December 27, 2008)

The document includes a “Regulatory Impact Analysis Statement”, which is not part of the Regulations, and “Regulations Amending the Marine Mammal Regulations”.

General comments

1. We agree with the Canadian Department of Fisheries and Oceans (DFO) that the current Marine Mammal Regulations “would fail to meet the derogation criteria presented in the proposed European ban on seal products” (p. 3269). This conclusion is welcomed, because it corrects previous claims by former Canadian fisheries minister, the Hon. Loyola Hearn, first that his department had successfully secured exemptions from the proposed ban¹ and, second, that “any ban on a humanely conducted hunt, such as Canada’s, is without cause”.² It also provides a different perspective than the one being portrayed in documents currently being circulated in the European Union (EU) by the Government of Canada.³
2. We also agree with the statement by DFO Director General, Barry Rashotte, that the proposed amendments involve “minor changes” – we would say inconsequential changes – to Canada’s current Marine Mammal Regulations.⁴
3. It is our considered opinion that even with the proposed amendments, Canada’s Marine Mammal Regulations would still “fail to meet the derogation criteria presented in the proposed European ban on seal products”. In addition, the proposed amendments do nothing to improve animal welfare during Canada’s commercial seal hunt.
4. We are disappointed that the proposed amendments essentially confirm the announcement made late last year by Canada’s new Minister of Fisheries, the Hon. Gail

¹ Ministerial Statement, Fisheries and Oceans Canada, 23 July 2007 (Our copy of the original version of this Ministerial Statement is dated 7/23/2008 5:06:50 PM. This version is no longer available on the Internet. It was replaced by a second version, with the same title and date – see footnote 2).

² Ministerial Statement, Fisheries and Oceans Canada, 23 July 2007.

³ See “Canada’s Position on the EU Proposed Regulations on Trade in Seal Products: a well-regulated and enforced seal hunt does not justify a ban” and “Canada’s Preliminary Response to the Requirements listed in Annex II of the proposed EU Regulation on trade in seal products”. Discussion Papers on the European Commission’s Proposal for a Regulation concerning trade in seal products. Ross Hornby, Ambassador.

⁴ Radio interview, CBH-FM, Maritime Noon, Halifax, NS, 12:07, 29 December 2008 (Transcript obtained from CISION Canada).

Shea. On 20 November 2008, she was quoted by *The Canadian Press*, saying, "...we don't expect that there will be any changes...We're going straight ahead for the 2009 hunt. We're proceeding as usual".⁵

Specific comments on the proposed amendments

The three-step process

Canada's Marine Mammal Regulations, with or without the proposed "minor" amendments, do not require sealers to follow modern humane killing practices and, as acknowledged above, do not satisfy the derogation criteria outlined in the proposed European ban on seal products.

Various veterinary and other expert groups (including the Independent Veterinarians' Working Group (IVWG) and the European Food Safety Authority's (EFSA's) Working Group on the Animal Welfare Aspects of Killing and Skinning Seals – both cited in the DFO proposed amendments to the Marine Mammal Regulations – have noted that the humane killing of sentient mammals (including seals) is only assured by means of a three step process, *carried out in rapid succession*, whereby:

1. animals are *stunned* by a blow to the head (administered in the case of sealing by a club, a hakapik, or by a bullet);
2. stunned animals are then *checked for irreversible unconsciousness* (using either a blink reflex test, or palpation of the skull to ensure that the skull and both cerebral hemispheres are crushed.
3. the animals are then *bled out* to ensure "humane slaughter".

This three-step process is a key element in Annex II of the EU Commission's proposed ban on trade in seal skins. As a consequence, much of the current debate centres on whether Canada's Marine Mammal Regulations require sealers to kill animals according to the three-step process. In public discussions, Canadian government officials state or imply that they do.⁶

The truth is, however, that Canada's Marine Mammal Regulations, neither currently nor as amended, require sealers to follow the three-step process.

Specifically, they do not require that stunning, checking for irreversible unconsciousness, and bleeding out occur in rapid succession.

One of the proposed amendments – 2.(2) – would require that "every person who strikes a seal with a club or a hakapik...shall immediately palpate the cranium to confirm that the skull has been crushed". In this instance, there is still no requirement that the third

⁵ *The Canadian Press*. 2008. No changes in seal hunt despite EU threat: new fisheries minister. Last updated November 20, 2008. 5:55 AM ET.

⁶ Jenkins, P. 10 March 2008. Interview with Costas Halavrezos. *Maritime Noon*.

step – bleeding out – be conducted immediately thereafter. This third step is an essential component of the three-step process and is required to ensure “humane slaughter”.⁷

In contrast to seals that are stunned with a club or hakapik, seals that are stunned by shooting continue to be dealt with differently in the proposed amendments. In this instance – see 2. (3) – there is no requirement that animals are checked for irreversible unconsciousness *immediately* after stunning. Instead, sealers are only required to palpate the skull “as soon as possible”. Given the realities of Canada’s commercial seal hunt, this means that it is still permissible to shoot a seal, hook it, drag it along the ice, and hoist it onto a sealing vessel. before checking for irreversible unconsciousness by means of skull palpation. It also leaves open the door for shooting multiple seals in succession prior to recovering animals and palpating the skull “. In both cases, sealers could legitimately argue that the check for irreversible unconsciousness was done “as soon as possible”. As a consequence, the restunning of shot animals – see 2. (4) – that are found (through skull palpation) not to be irreversibly unconscious, may not occur for some time after the initial stunning attempt. As proposed, bleeding could occur at any time thereafter, perhaps hours after stunning, and after the animal has been hooked and dragged back to the boat, and after many other seals have been stunned. Such practices are neither in the interest of ensuring humane slaughter nor, for that matter, in the interest of producing a high quality pelt. Requiring that an animal with a crushed skull is bled out for one minute prior to skinning provides no animal welfare benefit if the animal was stunned and checked hours before.

So, regardless of whether seals are stunned with a club, hakapik, or bullet, there is no requirement that the animals be bled out immediately following the check for irreversible unconsciousness. In fact, no elapsed time is specified between checking and bleeding out. The proposed amendment – 3. Section 29 – simply says that “no person shall skin a seal until the skull has been crushed and at least one minute has elapsed after the two axillary arteries...have been severed.” What goes unsaid here is that several minutes (even hours) may have elapsed since the check for irreversible unconsciousness was made, and the bleeding out process begun. This particular proposed amendment does absolutely nothing to improve the animal welfare standards of Canada’s commercial seal hunt.

Shooting seals in the water

The proposed amendments do not begin to address the issue of shooting seals in the water. A number of veterinary panels have recommended a prohibition on shooting seals in the water. The IVWG, for example, stated that “seals should not be shot in the water due to the high potential for “struck and lost” events, suffering resulting from the inability to confirm irreversible unconsciousness, and potential for the loss of wounded animals.”⁸

⁷ European Food Safety Authority. 2007. Animal Welfare aspects of the killing and skinning of seals. Scientific Opinion of the Panel on Animal Health and Welfare. Adopted on 6 December 2007.

⁸ Smith, B. 2005. Improving Humane Practice in the Canadian Harp Seal Hunt. A Report of the Independent Veterinarians’ Working Group on the Canadian Harp Seal Hunt. BLSmith Groupwork. August 2005. p.21.

Amendment 2. (3) still allows a sealer to shoot (stun) a seal and retrieve it (which usually involves hooking the animal through the jaw, eye, or skin), prior to checking for irreversible unconsciousness “as soon as possible”. Such practice, which is currently legal, results in the hooking and dragging of live seals, something that is observed annually in Canada’s commercial seal hunt. Allowing such practice to continue is not consistent with the three-step process to ensure humane treatment of seals and it is not consistent with the criteria outlined in the proposed EU ban.

Canada’s Marine Mammal Regulations, both currently and as amended, not only continue to allow seals to be shot in the water, but also facilitate the practice during the summer months in waters around the Magdalen Islands and selected coastal regions of Atlantic Canada. Proposed amendment 4, for example, seems to maintain open water areas within Sealing Area 20, which would otherwise be closed to killing seals during the period May – September.⁹

Checking for irreversible unconsciousness

There is widespread agreement that that sealers should check for irreversible unconsciousness after stunning an animal by one means or another. Different expert opinions exist, however, regarding the best method to employ. Some veterinarians (including the IVWG) prefer skull palpation over the blink reflex test. Consistent with the views of the IVWG, the proposed amendments remove the option of performing a blink reflex test to check for irreversible unconsciousness in favour of skull palpation – see amendments 1. (1); 2. (2); . In our view, however, the issue is not the method of checking, but rather whether checking occurs *immediately* after stunning. The problem remains that if sealers do not perform skull palpation (or a blink reflex test) *immediately* after stunning, the likelihood of serious animal welfare issues remains unchanged as a result of the proposed amendments (see above).

Amendment 2 (1.1)

This amendment bans the use of “a club or hakapik to strike a seal *older than one year* unless the seal has been shot with a firearm.” This proposed amendment is clearly a specific response to Criteria 2 of Annex II of the proposed EU regulation concerning trade in seal products. This amendment is of little consequence because it does not apply to the 98 to 99 per cent of seals killed in Canada’s commercial seal hunt, which are recently weaned pups aged about 2 weeks to 3 months.

At the very most, this amendment applies *in theory* to only 1 or 2 percent of all seals killed in Canada’s commercial seal hunt. In practice, however, it would be a very rare sealer indeed who would actually use a club or a hakapik to stun a seal older than one year. As a consequence, this amendment will result in no measureable change in how Canada’s commercial seal hunt is conducted, and no measureable improvement in animal welfare.

⁹ See Marine Mammal Regulations, Section 34; but see Sections 36 and 37; and proposed amendment 4.

Comments on the Regulatory Impact Analysis Statement

Executive Summary

Issue: There is a grammatical error in the first sentence. We also note that the estimated number of active sealing licences used by the Department appears to rise and fall by the thousand, depending on the point being made.

Description: The proposed amendments do NOT provide for a more acceptable humane method for killing seals (see above). We agree that the proposal modifies the three-step process: it modifies it to the extent that it does not constitute the three-step process! The final sentence in the description reflects the DFO's ongoing ignorance of the IVWG recommendations: skull palpation is used to verify irreversible unconsciousness, not death.

Cost-benefit statement: Given the very minor changes being proposed, we are utterly at a loss to see how the implementation of the proposed amendments could possibly cost \$1.8 – 3.6 million. The statement that sealing is “an important economic activity” does not stand up under scrutiny. It must be emphasized that the proposed amendments do NOT align Canada's Marine Mammal Regulations “with the latest veterinary advice and recommendations, the requests of the European Union (EU), and the concerns from animal welfare groups,” including IFAW.¹⁰

Business and consumer impacts: We would like to see evidence that seal furs “compete against products derived from other fur-bearing mammals, especially mink”. Seal fur obtained from beater and older harp seals, and other hair seal species killed in Canada's commercial seal hunt (e.g. grey seals), are very different from mink fur and one cannot easily be substituted for the other. The hair seal furs produced from Canada's commercial seal hunt are very coarse in comparison to luxuriant mink fur.

Nothing in the proposed amendments will improve product quality. For that to happen, bleeding out would have to occur immediately after stunning and checking, i.e. the three-step process, when carried out properly, has implications for improving pelt quality as well as providing obvious animal welfare benefits.

¹⁰ Fink, S. 2008. Letter to Alex Li, 26 May 2008. Input on “how to implement the IVWG recommendations and strengthen humane practices in the seal hunt”; Fink, S. 2008. Letter to Barry Rashotte, 16 December 2008. Comment on proposed Amendments to Sections 2, 28 and 29 of the Marine Mammal Regulations.

Regulatory Impact Analysis Statement

Issue: “The harvesting of seals in Canada is at the centre of a domestic and international debate on animal welfare” *and conservation*.¹¹

It must be noted that the DFO sought veterinary advice from the Independent Veterinarians’ Working Group (IVWG) in 2005. As far as we can determine, the IVWG has not been consulted since, and we have learned that some members of the group have not been following the subsequent discussions. To date, none of the IVWG recommendations has been implemented. If the proposed amendments were adopted, only one of the IVWG’s four “specific recommendations” would be implemented, i.e. skull palpation would become the only acceptable means for checking for irreversible unconsciousness.

It is blatant misrepresentation to claim that “These amendments to the MMR aim to implement the IVWG recommendations presented in their 2005 report.”

It is also ignorant or wishful thinking to claim that, “They aim to meet the derogation criteria presented in the proposed European ban on seal produces”. The amendments do not begin to meet the derogation criteria.

Objectives: As noted above, it is disingenuous to claim “These amendments to the MMR aim at implementing the IVWG recommendations presented in their 2005 report”. They only address one of the four specific recommendations in that report. The Canadian regulatory framework, as it currently exists, and even with the proposed amendments, does not “ensure that it is based on the latest scientific and veterinary advice, particularly the IVWG and the EFSA reports”. Statements such as these are simply part of the Canadian Department of Fisheries and Oceans continued misrepresentation of reality, something that has been on-going over twenty-five years.¹²

It needs to be reiterated that Canada’s subsidized commercial seal hunt provides short term employment for a small number of Canadians living in Atlantic Canada. It is arguably not “a way of life”; no one “depends” on the seal hunt for their entire income and their “food security” is not affected by the proposed amendments to Canada’s Marine Mammal Regulations. Again, we must point out that the amendments make no attempt to bring the killing “process in line with EU requirements”, which the DFO thinks is “essential to maintain access to the European market”.

¹¹ Lavigne, D.M. 2008. Commercial sealing remains an important conservation issues. IFAW Technical Briefing 2008/01. 15 pp.

¹² Lavigne, D.M. 1985. Seals, science, and politics: Reflections on Canada's sealing controversy. Brief submitted to The Royal Commission on Seals and the Sealing Industry in Canada. April 1985. 52 pp. + 6 Annexes.

If “the specific objective of this proposal is to meet or exceed the requirements for derogation/exemption anticipated in the European Parliament’s [sic] proposed legislation to ban the import of seal products”, it falls far short of the mark.

Description: The proposed amendments do NOT implement the three-step process (see comments on the amendments above). In fact, the proposed amendments make no mention of “irreversible unconsciousness” as suggested here.

As noted above, the proposed amendments adopt skull palpation as the method of choice for checking seals after stunning as recommended by *some* veterinarians, e.g. the IVWG. It bears repeating that the question is not whether to use skull palpation or a blink reflex test, but rather to insure that checking is done *on all animals immediately after stunning*. Such practice (an essential part of the three-step process) is NOT required for all seals, either in the current regulations or in the proposed amendments. Similarly, in the three-step process, bleeding out must occur immediately after checking to ensure humane slaughter. But this too is NOT required in Canada’s current Marine Mammal Regulations, or in the proposed amendments.

Regulatory and non-regulatory options considered: If the last 35+ years of seal hunt observation have taught us anything, it is that “voluntary compliance” (in the continued absence of adequate regulations and adequate enforcement) will not achieve animal welfare objectives associated with Canada’s commercial seal hunt.

We have seen no evidence to support DFO’s claim that the annual consultation sessions with sealers “has led to significant education and awareness among sealers regarding the requirements for humane hunting”. Much evidence to the contrary was submitted, for example, to the EFSA Working Group on the Animal Welfare Aspects of Killing and Skinning Seals by IFAW and other seal hunt observers.¹³

Since the 1970s, DFO has maintained that “training will be an important component” for sealers. The reality is that there is likely less training today than there was decades ago, and simply promising to increase training does not guarantee it will happen.

Increased regulatory enforcement would be welcomed. However the statement that “all hunting activities are observed” is blatantly untrue. In addition, the DFO makes it very difficult for “licenced observers” (including IFAW) to view the hunt and the “new surveillance technologies” referred to here are not “new” at all: IFAW and other groups have been using them for over a decade. Further we do not think “an anonymous system for sealers to report offenders” is a realistic, reliable or even an appropriate way forward.

Benefits and costs: It is interesting to see reference here to “numerous unknown cost variables”. Previously, government appointed task forces – including the Eminent

¹³ IFAW. 2007. Selected observations of Canada’s commercial seal hunt, 1996-2007. DVD. International Fund for Animal Welfare, South Yarmouth, MA; HSUS. 2007. Selected observations from Canada’s commercial seal hunt, 2005-2007. Documented and Compiled by the Humane Society of the United States. DVD.

Persons Panel on Sealing¹⁴, and others (including IFAW) – have made the point that it is impossible to get a proper accounting of the costs and benefits arising from Canada’s commercial seal hunt. Now that DFO has acknowledged the same problem, we would recommend that a formal process for obtaining the necessary economic data on Canada’s commercial seal hunt be put in place immediately. Only then can the government and the people of Canada come to understand the costs and benefits of this industry. Such a process would, of course, require that all subsidies associated with keeping the industry going be clearly documented in the public record.

Costs

It seems preposterous to us that the cost of the proposed amendments could be as much as “\$1.8 to \$3.6M in the first year and from \$1.6 to \$2M for every subsequent year”. If this were true, these costs would account for up to some 52% of the current landed value of the seal hunt. Palpating a skull requires no more time or effort than conducting a blink reflex test. The only potential “cost” associated with the amendments is the requirement for at least one minute to elapse before commencing to skin a seal. This may or may not have the effect of slowing down a sealer’s activities. The scientific basis for the one minute time frame is also not obvious to us either.

As noted in the document itself, these expenses do not deal specifically with the proposed amendments, but rather with issues such as “enforcement measures, training and communication” that are not addressed in the proposed amendments.

Benefits – The claim that “sealing can provide as much as 35% of a sealer’s annual income” is highly misleading. All the economic data we have seen suggests that the average sealer (and sealing community) earns far less of their annual income from sealing. If DFO persists in making such a claim, it is incumbent upon it to provide the documentation to support and justify it.

Yes, the implementation of a three-step process would provide not only animal welfare benefits but also benefits to Canada. It is naïve, or simply wrong, however, to claim here that Canada has an “international reputation as a country that sustains a ‘humane hunt’.” Moves by various European countries and the European Union to implement trade bans on seal products are driven by the view that Canada’s commercial seal hunt is inhumane – possibly, inherently inhumane – and morally reprehensible.

As noted throughout this commentary, the proposed amendments are “minor” or inconsequential. They do NOT “prescribe a more humane hunting method which would eliminate unnecessary pain and suffering”.

Consultation: The claim made in the opening paragraph of this section is another remarkable misrepresentation by the DFO. If the intent were “to implement the recommendation [sic] by the IVWG”, the proposed amendments simply would have

¹⁴ Eminent Panel on Seal Management. 2001. Report of the Eminent Panel on Seal Management. Prepared for Fisheries and Oceans Canada. 145 pp.

implemented the 2005 recommendations of the IVWG, instead of proposing to implement one. To date, DFO has implemented none of eleven recommendations made by the IVWG.

IFAW has long participated as a stakeholder in discussions of amendments to Canada's Marine Mammal Regulations. We note that no animal welfare NGO appears to have been invited as a "key stakeholder" at the meetings mentioned in this section. It is our understanding that, in fact, DFO has been soliciting advice on animal welfare practices from representatives of fur processors, an industry that deals neither with living animals, nor whole animals, for that matter. In this regard, the complete inadequacy of the proposed amendments is perhaps not surprising.

Suffice it to say that the proposed amendments do not address our concerns about the inadequacy of Canada's Marine Mammal Regulations. They do not require that sealers follow established practices for humane killing in the 21st Century (e.g. the three-step process). And, even if the proposed amendments were implemented, Canada's revised Marine Mammal Regulations would still fail to meet the derogation criteria presented in the proposed European ban on seal products (p. 3269).

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25 January 2009