

**MARINE MAMMAL MANAGEMENT IN THE NORTH ATLANTIC:
CHALLENGES AND OPPORTUNITIES FOR NAMMCO**

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NAMMCO is a unique institution; there is no direct regional equivalent for comparison. However, a considerable number of organisations address some of the species covered by NAMMCO. The main global body for large cetaceans is the International Whaling Commission (IWC), although a number of other treaties have an application to marine mammal management and consumption: The Bonn Convention on Migratory Species (CMS), Convention on Biodiversity (CBD), Convention on International Trade of Endangered Species (CITES).

Commitments towards marine mammals were established in the UN Convention on the Law of the Sea 1982, and particularly relevant are Articles 64 and 65. Both provisions are rather vague and unclear, and seemingly require states to develop management procedures through multilateral bodies and international cooperation. However, the precise legal obligations within these provisions are subject to considerable debate and controversy.

The Article 64 states:

“The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall cooperate to establish such an organization and participate in its work.”

Broadly speaking, obligations arise for a relatively limited of species, primarily fish, but also apply to an extensive range of cetaceans, including those species that are harvested or prospectively harvested in the NAMMCO area. However, the Article does not apply to pinnipeds.

The Article 65 states:

“Nothing in this Part restricts the right of a coastal State or the competence of an international organization, as appropriate, to prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in this Part. States shall cooperate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate international organizations for their conservation, management and study.”

NAMMCO Annual Report 2012

Article 65 addresses all species of marine mammals, but reserves particular obligations for cetaceans. The obligations are controversial and there is little objective guidance as to their precise meaning. The Article appears to be weighted towards conservation of the species instead of Maximum Sustainable Yield (MSY) principles – although this does not *per se* require a ban on exploitation. Provision also applies to the high seas (Article 120).

The formation and evolution of NAMMCO came about because of the IWC moratorium and the politics of whaling. In addition there was disillusionment among whaling nations with IWC management of whale stocks and application of scientific advice. There was also a need to regulate pinniped stocks in the High North – not then covered. A promotion of regional management and sustainable utilisation of marine living resources was seen as necessary.

Initially politics of whaling ensured that international response to NAMMCO was highly negative. There were concerns over fragmentation of whaling management and proliferation of other bodies. Because of the relatively limited legal literature, most authors initially viewed NAMMCO as not an “appropriate organisation” for whale management, and the role of the agreement in pinniped management was ignored.

In fact there is little guidance provided by international institutions on an “appropriate organisation” – and where guidance is given, there has been little explanation of how and why international bodies qualify as “appropriate”. Even if a body is “appropriate” the wider obligations associated with Article 65 are also unclear. At this time the following organisations were endorsed as “appropriate”:

- IWC.
- UN Food and Agriculture Organisation and the UN Environment Programme (UN Office of Legal Affairs Declaration 1996).
- International Maritime Organization (in respect of ship-strikes).
- *Agenda 21* lists IWC, IATTC and ASCOBANS.
- Likely also to include CMS, CITES, ACCOBAMS and NAMMCO.

The criteria for assessing organisations as “appropriate” are unclear and not objective. Suggested factors may include:

- The engagement of states and entities affected by the decision-making processes within the area of jurisdiction of the organisation in question.
- Technical capacity to generate sufficient and accurate information upon which to inform the decision-making process.

The decision-making process is in fact informed by clear, verifiable and impartial technical findings.

- The decision-making process is transparent, accessible and accountable.
- The institutional framework is capable of engaging with other bodies and organisations that are relevant to the issues under consideration.
- The organisation has sufficient resources to facilitate and sustain the operation of these processes.

Report of the Council

With respect to NAMMCO, the following are offered:

- A designated forum for the discussion of marine mammal management, engaging major stakeholders.
- A body to consolidate and advance scientific knowledge of marine mammal issues in the North Atlantic.
- A body that addresses marine mammals from a sustainable use perspective.
- A body that is close-knit and with similar viewpoints.

The main successes of NAMMCO are to date:

- Establishment of numerous specialist working groups and specialist fora.
- Trans-North Atlantic Sightings Survey (T-NASS) and significant scientific findings.
- Observer and inspection scheme.
- Advancements in killing techniques.
- Seal and walrus forum which provides a rare management forum for under-regulated species.

The key challenges for NAMMCO are now:

- Strategic direction and vision for the next 20 years.
- Scepticism from other bodies and states in anti-hunting regions.
- General ignorance of High North realities and traditions.
- Engagement with other management bodies.
- Financial and budgetary pressures.
- Change management.

There are however, key opportunities which include

- Expansion of the scientific and knowledge base.
- Possibilities to work more closely with the IWC on emerging conservation problems.
- Further and wider recognition of NAMMCO as a meaningful component in the international system.

In conclusion, NAMMCO has quietly overcome a considerable amount of early cynicism about its formation and can be considered “appropriate”. A number of key projects and initiatives has been developed – many of which would struggle to be advanced in alternative bodies. There has been strong and meaningful scientific contribution and advancement of the knowledge base. However, key challenges are financial and in outlining precise goals for NAMMCO in the mid- to long-term future.