CHAPTER 11

On Thin Ice? Arctic Indigenous Communities, the European Union and the Sustainable Use of Marine Mammals

Martin Hennig and Richard Caddell

It’s okay to eat fish, ‘cause they don’t have any feelings’.

Nirvana, Something in the Way

1 Introduction

Since 2008, the strategic policy objectives of the European Union (EU) in the High North have been to protect and preserve the Arctic in unison with its population, to promote the sustainable use of resources and to contribute to enhanced multilateral governance for this region.1 More recently, the EU Arctic Policy statement of April 2016 has entrenched supranational commitments to taking account of the traditional livelihoods of the region’s indigenous inhabitants and the impact of economic development on its fragile environment, so as to ‘contribute to enhancing the economic, social and environmental resilience of societies in the Arctic’, while also promoting these objectives through pertinent international fora.2

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Within this relatively truncated timeframe, however, few issues have arguably straddled these overarching policy priorities less comfortably for the EU institutions than the regulation of marine mammals in this region. For many Arctic peoples, the sustainable use of marine mammals remains fundamental to their traditional ways of life and carries great cultural as well as economic significance. Nevertheless, in many European areas outside the Arctic, the hunting of seals and whales has long been considered highly controversial and frequently generates strong and vociferous concerns over animal welfare. This dichotomy has created significant legislative and policy difficulties for the EU institutions, requiring a delicate balancing act in upholding key human rights commitments towards indigenous peoples, while also promoting animal welfare standards as mandated under the EU Treaty. Moreover, the EU has long opposed the commercial harvesting of marine mammals, advancing a common position against these activities in relevant multilateral organizations and adopting an array of legislation to bar such products from the internal market. While seeking to uphold the long-standing special status of traditional enterprises, significant shortcomings have nevertheless become apparent in the ability of the EU to legislate surgically to protect the economic and social rights of a full range of indigenous Arctic communities, while pursuing measures to inhibit the market presence of commercially-derived marine mammal products. This has proved to be especially true in the context of seal products, where the introduction of a series of flawed restrictions on the sale of such items within the common market has damaged the relationship between the EU institutions and Arctic communities in recent years. Although these measures were purportedly well-intentioned towards the Arctic peoples of Europe, concerns have nonetheless been raised within these communities as

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3 Indeed, early iterations of EU policies towards seals—which, as noted below, sought to address widespread public opprobrium over the bludgeoning of pups for their pelts—have been memorably described by EU officials as ‘the only EC directive which appeared to have universal support among the European public’: see Donald McGillivray, ‘Seal Conservation Legislation in the UK—Past, Present, Future’ (1995) 10 International Journal of Marine and Coastal Law 19, 48. In a similar vein, the hunting of seals continues to raise ‘serious concerns’ among members of the public and governments in EU Member States, as officially stated by Regulation (EC) No. 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products [2009] OJ L 286/36, preambular recital (4). Meanwhile, commercial sealing has been largely banned by many other states outside the EU, including other Arctic jurisdictions, notably in the United States (US) under the Marine Mammal Protection Act 1972, which also applies an import exemption for non-commercial products ‘owned by a Native inhabitant of Russia, Canada, or Greenland’ under section 108.b 2 (B) [16 U.S.C. 1361 et seq.].