

Comparative legal analysis of state bodies activities in Russia and the USA for marine mammals conservation

Vlasova Elena Leonidovna

*cand. of chemical Sc., cand. of law sc., the senior lecturer of chair of customs, administrative
and financial law, faculty of law, Saratov State University,
83 Astrakhanskaya Street, Saratov, 410012
elenavlasova777@rambler.ru*

Ustyantseva Olga Vladimirovna

*cand. of law sc., the senior lecturer of chair of customs, administrative and financial law,
faculty of law, Saratov State University,
83 Astrakhanskaya Street, Saratov, 410012
e-mail: ovust@mail.ru*

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Running title: The analysis of state bodies activities

Abstract

Marine mammals are a part of the oceans. The predatory attitude towards them in a number of countries led to the critical conservation of some of their species population. Preserving the population of marine mammals is a task not only of individual states, but also of the world community as a whole.

The resolution of the International Union for Conservation of Nature (IUCN), signed in Washington in 1973, led to the signing of an international intergovernmental agreement known as the Convention on the International Trade in Endangered Species of Wild Fauna and Flora, SITES. Participation in the Convention is voluntary. To date, most countries, including Russia and the United States, have come together to protect wildlife and now are the parties to the Convention. This Convention also covers some species of marine mammals.

As known, the United States makes a significant contribution to the conservation of marine mammals. The United States has developed very effective experience in managing of natural resources, including marine animals, which can be used by other countries to improve their management structures in this area.

In recent years, in the Russian Federation, public attention has been paid to the issues of cruel and illegal treatment of marine mammals. Therefore, the study of positive foreign experience to eliminate managerial problems in the field of marine mammals handling will help solve the arisen problems more affectively.

The study was conducted using comparative legal and institutional methods.

This work is devoted to a comparative analysis of administrative management in relation to marine mammals in Russia and the USA.

Keywords: *Marine Mammals, SITES Convention, SITES Administrative Authority*

Introduction

One of the most powerful international legal instruments in the field of marine mammals protection, which is effectively implemented in most countries, is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (SITES), signed in Washington in 1973 [1].

The provisions of the SITES Convention are of great importance in the protection of marine mammals due to the fact that some of their populations are on the verge of extinction. The Convention

brought together 180 states to combat the illegal and unsustainable wild animals and plants trade based on a uniform regulatory regime and enhanced coordination on a global scale. International cooperation is critical to the survival of many wildlife species in trade. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (SITES) provides the basis for States to work together to prevent further wildlife populations decline. Each country that acceded to the SITES Convention has its own governing body (SITES administrative body).

The purpose of the study is to conduct a comparative legal analysis of the activities of government bodies that ensure the implementation of the SITES Convention in the Russian Federation and the United States in the field of marine mammal protection.

Materials and methods

To achieve the objectives of the study, the following scientific methods were used:

- the institutional method helps to identify the activities of institutions involved in the conservation and protection of marine mammalian biodiversity;
- the comparative legal method contributes to the study of the experience of marine mammal conservation in foreign countries.

Literature Review

In December 2018, the non-governmental, non-profit public organization Marine Mammal Council (CMM) published on its website the official position of the SMM on issues related to the study, conservation and use of marine mammals. As follows from the document, in present in Russia there is no proper modern level of research and monitoring of the state of marine animal populations. It is indicated that for marine animals held in captivity, there are no reliable methods of control and identification [2].

As known, the protection of marine mammals in the Russian Federation is carried out on the basis of unified laws. However, in a number of foreign countries, legislation on the protection of this group of animals is actively developing, for example, in the USA, a special Law on the Protection of Marine Mammals (1972) is in force.

International acts regulate the preservation of the global environmental law and order and the protection of natural resources, including the conservation of marine mammals. A significant international act is the SITES Convention, and most countries of the world, including Russia and the United States, are its parties.

The state of marine mammals stocks is estimated by experts as stable due to a decrease in cetaceans and pinnipeds commercial species hunting. The challenge remains the use of marine mammals for cultural and educational purposes, the capture and subsequent resale of marine mammals in foreign organizations [3].

The biodiversity of marine mammals is associated with the availability of services that have direct and indirect effects for humans. Supporting services — the ecosystem processes necessary for their conservation and functioning, as well as the production of ecosystem services — have an indirect effect. Direct impact services include the following:

- providing services consisting in human activity to extract marine mammals from natural aquatic ecosystems to meet various needs (traditional nature management, raw materials: food, medicine, veterinary medicine, industry, the development of bionics);
- regulatory services in which the ecosystem acts as a regulator of climate, air and water quality (marine mammals are a significant ecosystem factor and are carbon storage);
- cultural services, expressed in human interaction with marine mammals in natural aquatic ecosystems to meet various spiritual needs (development of cognitive marine tourism, preservation of the traditional lifestyle of indigenous communities, strengthening the culture of animal welfare movements, etc.).

Promotion of marine ecosystem services is based on current national and international legislation. International acts regulate the preservation of the global environmental law and order and the protection of natural resources, including the conservation of marine mammals. The author's concept of environmental services, which contributes to the conservation of water and terrestrial ecosystems and the improvement of the living space of society, can serve as an auxiliary basis for further elaboration of regulatory issues and regional national strategies [4].

The United States, in its turn, is actively using marine mammals to implement various government programs [5].

It's rightly noted by A.N. Vyleglegianin, one of the most developed legal foundations for the conservation and use of marine biological resources has been created in the United States. The United States has made a significant positive contribution to the rationalization of the modern international legal regime for managing marine biological resources. "The United States defends its national interests in the field of marine biological resources management, very efficiently as a rule, making full use of international legal opportunities" [6, p. 15].

The institutional network for marine mammal conservation in the United States is represented by the following structures: Environmental Quality Council, Federal Environmental Agency, Department of Agriculture's Natural Resources Conservation Service, United States Fish and Wildlife Service, National Marine Fisheries Service, US Coast Guard. State bodies effectively cooperate with public organizations in order to preserve and increase the species biodiversity of the diversity of marine mammals.

In Russia, there is currently a fragmentation in the activities of the institutional structure operating in this area. Specialized state authorities responsible for the protection of this group of animals include the Ministry of Natural Resources and Ecology, the Federal Service for the Supervision of Natural Resources, the Federal Agency for Water Resources, the Federal Agency for Fisheries, the Border Service of the Federal Security Service of Russia, and the Interdepartmental Ichthyological Commission. In addition to the above bodies, a number of public organizations operate.

The legal issues of the conservation of marine mammals in the Russian Federation continue to remain unresolved for a long time: there is no special legislative act distinguishing marine mammals from the total mass of "aquatic biological resources" and providing for a comprehensive mechanism (legal, organizational, economic, ideological) for the implementation of the policy for their conservation.

In Russia, the water area is divided into water basins, where the following species of marine animals live: the Volga-Caspian fisheries basin Caspian seal (Caspian Sea); Northern fisheries basin - beluga whale (White Sea, Barents Sea, Kara Sea), harp seal (White Sea, Barents Sea), ringed seal (White Sea, Barents Sea, Kara Sea), sea hare (White Sea, Barents Sea, Kara Sea); Far Eastern fishery basin - beluga whale of the Sea of Okhotsk, ringed seal the Bering Sea, Sea of Okhotsk, killer whale (Sea of Okhotsk), sea seal (Sea of Okhotsk, East Sakhalin, East Kamchatka, Petropavlovsk-Komandorsky p / s), lionfish (Bering Sea) , Sea of Okhotsk, largha (Bering Sea, Sea of Okhotsk), walrus (Bering Sea, Chukchi Sea), sea hare (Bering Sea, Sea of Okhotsk).

The state, being the owner of natural resources (including marine mammals), manages them. The state management of marine mammals is a diverse activity of state bodies to organize the conservation of marine mammals [7, S. 197-214]. In the Russian Federation, state environmental management is carried out by:

- bodies of general competence - state authorities that carry out environmental management in the process of fulfilling their functions and tasks: the President of the Russian Federation, the Government of the Russian Federation; at the regional level: the governments of the republics, regional administrations, presidents of the republics, governors of the regions;

- bodies of special competence - state authorities specially authorized to carry out the functions of environmental management. This group consists of the federal executive authorities and their territorial bodies, the Ministry of Natural Resources and Ecology of the Russian Federation and its subordinate Federal Service for Hydrometeorology and Environmental Monitoring, the Federal Service for the Supervision of Natural Resources, the Federal Agency for Water Resources, the Federal Forestry Agency and the Federal Agency for subsoil use [8]. In the Russian Federation, the Federal Agency for Environmental Management (Rosprirodnadzor) is the administrative body of the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (except for sturgeon species) [9]. With regard to sturgeon species, the Federal Fisheries Agency (Rosrybolovstvo) is the administrative body of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

Rosprirodnadzor is authorized to issue permits for the export from the Russian Federation and the import into the Russian Federation of endangered species of wild fauna and flora, their parts or derivatives subject to the Convention on International Trade in Endangered Species of Wild Fauna, except sturgeon fish species and products thereof, including caviar. The current Regulation establishes

the dates and sequence of administrative procedures (actions) of Rosprirodnadzor for the provision of public services, as well as the procedure for interaction between structural divisions of Rosprirodnadzor, its territorial bodies and officials with each other and with applicants in the provision of public services [10].

The Department of State Supervision and Regulation in the Field of Waste Management and Biodiversity is a structural unit of the central office of the Federal Service for Supervision of Natural Resources and exercises the following powers [11]:

- Carries out the functions of the Administrative Body for the Convention on International Trade in Endangered Species of Wild Fauna and Flora in the Russian Federation, with respect to Endangered Species of Wild Fauna and Flora, except for sturgeon species and fish products, including caviar;
- participates in the preparation of a report sent to the secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, 03.03.1973) annually no later than October 31 of the current year for the previous year;
- considers applications for the issuance of a conclusion (permit) for the export and (or) import of goods in cases provided for by the provisions on the application of restrictions on goods to which bans or restrictions in trade with third countries on import or export by member states of the Customs Union apply within the framework of the Eurasian Economic Community, the following with respect to species of wild fauna and flora, subject to the Convention on International Trade in Endangered Species of Wild Fauna and Flora disappearance of 3 March 1973 (SITES).

In connection with the negative events of the past few years related to illegal prey, trade and ill-treatment of marine mammals [12], some trends have appeared in Russia to improve the situation on this issue.

Studies show that in recent years a number of measures have been taken in Russia in an attempt to suppress the illegal traffic of marine mammals [13, p. 480]. One of these measures is the tightening of responsibility for crimes [14]. In addition, in connection with the appeal of foreign scientists to the head of Rosprirodnadzor, until the end of 2020 the catch of beluga whales is prohibited [15].

Changes in the criminal law have toughened the liability provided for in Articles 256 and 258.1 of the Criminal Code of the Russian Federation (illegal extraction and circulation of animals and aquatic biological resources from the Red Book). Namely, on July 8, 2018, the penalties for these articles were tightened, a new part 1.1 of article 258.1 (illegal purchase and sale through the media or the Internet) appeared. A special responsibility has been introduced under Art. 253 of the Criminal Code when using official position or committing a crime by prior conspiracy or by an organized group. The size of large and especially large damage caused by illegal hunting, etc. [14]. In the course of studying the data of legal statistics and judicial practice for 2017 - 2018, it was found that the proportion of detected crimes under Articles 256 and 258.1 of the Criminal Code of the Russian Federation (illegal extraction and trafficking of animals and aquatic biological resources from the Red Book) of the total number of crimes is extremely small and amounts to about 0.4% and 0.05%, respectively. Moreover, the proportion of prisoners sentenced to imprisonment under Art. 256 and 258.1 of the Criminal Code does not exceed 6.5% and 2% of the total number of convicted persons under these articles [16]. Punishment under this article is assigned mainly in the form of fines, correctional labor, compulsory labor. The proportion of persons sentenced to conditional imprisonment is between 20-25% and 10-17% of the number of crimes under Art. 256 and 258.1 of the Criminal Code, respectively.

To study the distribution of seasonal migrations and the abundance of belugas in the Russian seas, to elucidate the current status of its various populations throughout the Russian range, to study the characteristics of the habitat, nutrition, and the relationship with other species, the state program «Beluga Whale – White Whale» was created [17].

The protection and conservation of marine mammals in the United States is paid considerable attention. US marine mammal law has been established for a long time ago. At present, a very effective mechanism for its implementation can be observed. So, in relation to marine mammals in the United States there is a specialized law Marine Mammals Protection Act of 1972 [18]. Some species of marine mammals are subject to the United States Endangered Species Act of 1973 [19].

The USA ratified the SITES Convention on January 14, 1974. The entry into force of the Convention in the United States took place on July 01, 1975. The Fisheries and Wildlife Services are responsible for implementing and enforcing SITES in the United States of America; research organization; law enforcement organization. The U.S. SITES Administrative Authority that implements

and enforces the provisions of the Convention for marine mammals in the United States includes the U.S. Fish and Wildlife Service. It is a division of the US Department of the Interior.

The US Fish and Wildlife Service is the oldest Federal Conservation Authority (1871). The primary responsibility is managing fisheries and wildlife for American society. Such activities help to ensure a healthy environment for people, enabling them to enjoy the natural heritage.

The United States Fisheries and Wildlife Conservation Services (FMA) program is being implemented by several departments, one of which is the Division of Management Authority (DMA).

The objectives of the DMA in the field of trade in wildlife and their protection are:

- implementation of an international licensing program;
- trade monitoring;
- coordination with law enforcement officials;
- interaction on SITES issues with other parties to the Convention;
- work with state and federal authorities;
- providing technical assistance to other countries;
- United States representation at SITES meetings.

As part of issuing permits, DMA collects, exchanges and uses valuable data to monitor and regulate trade in animals and plants. DMA processes permits in accordance with SITES, US laws for natural objects. With increased workload and increased demand for permissions, DMA continues to seek innovative ways to handle permissions. Attention is paid to establishing contacts with stakeholders and the use of new technologies.

Another division of the U.S. Fish and Wildlife Services is the Office of Law Enforcement. It contributes to the restoration of endangered species of wildlife, the preservation of their natural environment through the effective implementation of federal laws. By analyzing annually published reports, one can imagine the scale of action of the marine mammal protection and protection Service. The table 1 provides data on the number of detected offenses committed against marine mammals from 2012 to 2016 in the field of illegal trade.

Year	Number of offenses
2016	304
2015	369
2014	243
2013	211
2012	245

Table 1. Quantification of Illegal Attacks on Marine Mammals in the United States

DMA works in collaboration with other entities to conserve animal and plant species in the field of trade. Partnerships are essential for resource management. The commercial use of wildlife is challenging traditional approaches to conservation.

The US Fisheries and Wildlife Service is working closely with the National Oceanic and Atmospheric Administration (NOAA FISHERIES) National Marine Fisheries Service. So, these structures are jointly responsible for the implementation of the US Endangered Species Act.

Further in the study, we will analyze the activity of NOAA in relation to marine mammals.

As follows from official sources, NOAA divides marine animals into three groups [20]:

- 1) whales
- 2) dolphins and porpoises;
- 3) walruses and seals.

Consider the set of measures used by NOAA to protect and protect these groups.

NOAA makes a significant contribution to the conservation of marine mammal populations. NOAA's activities are designed to minimize the effects of human activity that are detrimental to the restoration of marine mammal populations. In addition, due to the free movement of whales across international borders, NOAA marine mammal conservation and restoration activities are not limited to US water bodies.

NOAA conducts a range of research work. They allow you to identify the biological, behavioral and environmental aspects of the life of marine mammals in order to better understand their problems. Such studies are especially important for maintaining populations. The results of these studies are used

to make informed management decisions and intensify efforts to restore this critically dangerous species. The scientific activities of NOAA include the following activities:

- assessment of the stock size and trends of marine mammal populations, including using aerial photographs;
- acoustic monitoring;
- tracking of marine mammals from satellites;
- ship surveys, including maintaining and updating the catalog of identification photographs of marine mammals;
- identification of the genetic structure of marine mammal populations;
- cooperation with foreign scientists to track the movements and behavior of marine mammals in the process of their migration across international borders;
- study of the reaction of animals to sound.

For some species of marine mammals, except the above mentioned, additional studies are being conducted. So, when studying killer whales, the following works are carried out:

- collection of prey and feces samples to learn about diet and health;
- measuring the transfer of pollutants from mothers to offspring;
- measurement of energy costs for making sounds.

To study the populations of North Atlantic whales, they additionally examine:

- determination of the place and time of habitat;
- investigation of unusual deaths;
- collect demographic information to estimate the population size;
- Tracking some North Atlantic whale individuals over time to monitor important traits of the population.

NOAA activity reports are on the official website. We single out management measures taken on the basis of scientific developments for the protection and restoration of marine mammals. They include:

- Reducing collisions of marine mammals with commercial fishing equipment;
- measures to reduce the number of serious injuries and deaths of marine mammals;
- minimizing the consequences of the operation of ships, as well as noise and other types of anthropogenic impact;
- consultations with federal agencies to ensure minimization of various anthropogenic impacts on marine mammals (collisions with ships, from noise impacts of ships or other objects);
- educating the public and organizations operating fishing vessels about the threats faced by marine mammals;
- protecting the habitat and identifying critical habitat;
- rescue of stranded marine mammals;
- development of oil spill response plans in case of their occurrence;
- participation in the consideration of projects that may harm marine mammals;
- management of the number of marine mammals;
- monitoring the size and distribution of their population;
- minimizing the pursuit of marine mammals and reducing the impact on the ship;
- cooperation with other bodies to minimize the impact of pollutants on whales;
- rescue of marine mammals entangled in fishing tackle, reduction of injuries and their mortality from fishing gear;
- Reducing the threat of collision of marine mammals with ships.

Findings

1. The administrative body of SITES in the Russian Federation is the Federal Service for Supervision of Natural Resources Management, which is a specially authorized state body appointed by the Government of the Russian Federation in accordance with the requirements of SITES, carrying out functions through its structural units of the Department of State Supervision and Regulation of Waste Management and biodiversity.

2. In the USA, the functions of the SITES administrative body are assigned to the US Fish and Wildlife Service, which, in addition to issuing an international permit program, carries out other

activities related to monitoring, interaction with other government agencies, and provides technical support other countries, etc.

Conclusions

1. The activity of the SITES administrative body in Russia consists in working with permit documentation. For the proper implementation of SITES provisions regarding marine mammals, it is necessary to expand the range of powers of this body.

2. US government agencies, including those that are SITES administrative bodies, work closely together and implement a set of effective measures for the use, protection, and conservation of marine mammals.

3. In Russia, in order to improve state activities in the field of handling marine mammals, there is a need in the development and adoption of the Rules for assistance, rehabilitation and release into the natural habitat of marine mammals affected by anthropogenic factors is necessary; rules of detention in captivity; recommendations for observing marine mammals with a view to developing cognitive tourism; recommendations on the conservation of marine mammals during economic activities (shipping, the operation of wind energy facilities, the extraction of aquatic biological resources, oil and gas).

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