

# Marine Scotland

## Guidance on the Offence of Harassment at Seal Haul-out Sites

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## **The law**

The Marine (Scotland) Act 2010 – Part 6 Conservation of Seals makes it an offence to kill or take any seal at any time except under specific licence or to alleviate suffering. It also introduces in section 117 a new offence of intentional or reckless harassment of seals at haul-out sites designated as such by Order by Scottish Ministers.

Both native seal species (grey seals and common or harbour seals) are listed as protected species under Annex II of the EC Habitats Directive 1992. Species listed on Annex II are those considered to be of community interest whose conservation requires the designation of Special Areas of Conservation (SAC). In relation to such seal SACs, Scottish Natural Heritage should advise other relevant authorities of the conservation objectives and any operations which may cause deterioration of the habitats of the seal species or disturbance of seals of the species for which the site has been designated.

## **What is a seal haul-out?**

Seals spend a large proportion of their time in the open sea, but they must come ashore to rest, to moult and to breed. **A seal haul-out is a location on land that is used by seals for these purposes.** The nature of such sites varies widely and can include rocky islets or shorelines, sandy beaches or sandbanks and occasionally grassy areas on some isolated islands (particularly for breeding grey seals).

## **Where do seals haul out?**

### Grey seals (*Halichoerus grypus*)

Grey seals breed on isolated coasts, sometimes on sand or shingle beaches at the foot of cliffs, in caves and on relatively remote islands. Pregnant females return to traditional breeding colonies each year where they give birth. Mothers with pups may move some distance inland during the breeding season but disperse once the season is over. The pups have a fluffy white coat and usually remain on land for the first three to five weeks of life. Breeding colonies vary considerably in size. Over 6,000 pups are born on the biggest colony in Scotland (Monach Isles) which is the second biggest in the world.

Outside the breeding season grey seal haul-out sites are usually close to the water's edge and are considerably more dispersed around the Scottish coasts than the breeding colonies.

### Common (or harbour) seals (*Phoca vitulina*)

Common or harbour seals typically live in more sheltered waters than grey seals. Haul-out sites are also often used throughout the year, including during breeding and moulting. Females regularly give birth below the high water mark and newborn pups, which have moulted their white coat in the womb, are able to swim with their mothers almost immediately.

### **What is a designated seal haul-out?**

A designated haul-out site is any place, which Scottish Ministers designate as such by Order, after consulting the Natural Environment Research Council (NERC).

The Sea Mammal Research Unit at the University of St Andrews on behalf of NERC developed a standardised method to identify key seal haul-out sites in Scotland.

They used aerial survey data to identify areas of consistent high density (hotspots) for common (or harbour) seals and for grey seals around Scotland. They subsequently established defined boundaries for individual seal haul-out sites based on these hotspots. They finally selected the most important of these individual sites based on their size relative to the species population within the relevant Seal Management Area, in line with criteria agreed upon with Marine Scotland and SNH. This provides the main list of 194 designated sites.

In response to the consultation process, they used grey seal pup production survey data to identify and select the most important grey seal breeding colonies. This provides a list of 45 additional designated sites.

Further information on the method used can be found at :-

<http://www.smru.st-and.ac.uk/documents/1741.pdf>

## **What are the sensitivities in relation to designated seal haul-outs?**

Seals that are hauled out may be sensitive to close approach by humans from the sea or land or air. In practice, much will depend on the situation and location of the individual haul-out site and the degree to which the seals using the site are used to the presence of humans. In time, seals can become accustomed to human presence and learn to recognise particular people or boats or aircraft.

In normal circumstances seals spend most of the time on haul-outs lying prone and moving only a small amount. If disturbed the more alert seals will raise their heads and look towards the source of disturbance. If the disturbance continues, more seals will become alert. The most nervous seals may start to move towards the sea. If alarmed, some seals will rush into the sea and may cause a stampede, even though others may be unaware of the actual cause, or direction, of the disturbance. You should retreat as soon as you see seals becoming alert.

The distance at which seals show such signs of agitation varies tremendously, depending on their location, how they are approached, whether the animals are used to the presence of humans and the time of year; in particular, whether or not they have pups with them.

The sensitivity of seals on haul-outs can be site specific – a relatively close approach may be tolerated at one site while at an adjacent site it might not be tolerated at all. You should always be watching for alertness or stress among seals before they start to move away or to enter the water or are aggressive to each other.

Mothers with young pups are more sensitive than other seals and pups on land can be separated from their mothers. Apart from the stress this will cause, it may reduce nursing times and affect the survival of the pup. Pups are often left alone while their mothers forage out at sea, and a lone seal pup may be distressed by human approach and move to a new location, making it difficult for the mother to find when she returns.

### **Sensitive times**

Common or harbour seals produce their pups in early summer (late May to July) and moult between July and September.

Grey seals produce their pups in autumn (September to December) at traditional breeding colonies and at this time adults and pups will stay ashore for several weeks. Grey seals moult between December and April.

Greater caution is required at such sensitive times. Adult seals may discourage pups from swimming until they have built up a suitable blubber layer during the breeding seasons where adults and pups are hauled-out together. Adult seals may also be reluctant to enter the water during the moult when increased blood supply to the skin can cause more extreme heat loss.

## **Guidance on offences of harassment of a seal at a haul-out site**

Section 117 of the Marine (Scotland) Act 2010 (the Act) introduces the offence of intentionally or recklessly harassing a seal at a haul-out site. It offers no more definition of what kind of action might constitute intentional or reckless harassment of a seal at a haul-out site. It would always be for the criminal courts to determine whether an offence under section 117 has been committed in criminal proceedings brought before them. Marine Scotland offers here some guidance on what might constitute “harassment” in relation to seals on haul-out sites. This guidance may help the relevant authorities and the courts when deciding on appropriate action. The guidance is advisory only and is not binding on the criminal courts.

The following definitions of ‘*intentional*,’ ‘*reckless*’ and ‘*harassment*’ are only the views of Marine Scotland as to what might constitute an offence in a range of situations for different seal species. If you require a legal interpretation of the provision you should seek your own legal advice. Those who are considering activities that may cause harassment of seals should seek their own legal advice before undertaking the activities in question.

### What constitutes intentional action?

There is considerable case law on what constitutes intent and ultimately only a court can judicially determine whether a particular action was carried out with intent. An explanation of intent is as follows:

*“A person should be regarded as intending a particular result of his conduct if, but only if, either he/she actually intends that result or he/she has no substantial doubt that the conduct will have that result.”*

In simple terms, anyone carrying out certain activities which they know will cause or are very likely to cause harassment of seals are likely to commit an offence under the Act.

### What constitutes recklessness?

There is considerable case law on what constitutes recklessness and ultimately only a court can judicially determine whether a particular action was reckless. Recklessness would arise:

*If a person was aware of the likelihood or risk that harassment would result from his/her actions, but proceeded with the action regardless of its consequences.*

### What constitutes harassment?

Whilst there is considerable case law on what constitutes harassment it relates to the harassment of people as opposed to wildlife. Ultimately only a court can judicially determine whether a particular action amounted to harassment or not. *It would involve an activity that pesters, torments, troubles or attacks a seal or seals on a designated haul-out site.* In particular, it would include any action that causes a significant proportion of seals on a haul-out site to leave that site either more than once or repeatedly or, in the worst cases, to abandon it permanently.

## **The kind of activities that might constitute harassment**

The following activities might be considered to constitute intentional or reckless harassment at seal haul-outs:-

- *Intentionally or recklessly seeking temporarily or permanently to remove seals from a designated seal haul-out for any reason or by any means.*
- *Intentionally or recklessly approaching too close to a designated seal haul-out from seaward (particularly in a kayak, jet ski or speed boat) that causes a significant number of seals on a designated haul-out to stampede into the water.*
- *Any other intentional or reckless action that causes a significant number of seals on a designated haul-out to stampede into the water.*
- *Intentionally or recklessly “buzzing” seals on a designated haul-out by repeated overflight in a fixed wing aircraft or helicopter at low level (i.e. less than 1,000 feet).*
- *Intentionally or recklessly approaching or sneaking up on seals on designated haul-outs from the landward side.*
- *Intentionally or recklessly crowding or encircling seals on designated haul-outs.*
- *Intentionally or recklessly attempting to touch or feed seals on designated haul-outs.*
- *Intentionally or recklessly separating pups from mothers on designated haul-outs.*
- *Intentionally or recklessly attempting to approach or pick up lone pups on designated haul-outs.*

It is important to note that the offence of intentional or reckless harassment in the Act relates to actions that affect seals on designated haul-out sites only. It does not apply to seals on land at any other locations or to seals in the water.

## How to behave responsibly around seal haul-outs

Seals have good eyesight, hearing and sense of smell and will usually be aware of your presence. The behaviour of the seals will usually tell you whether or not they are concerned and to what extent.

If seals slip gently into the water one by one, this may be just curiosity – to get a better look at you; but it may be to ensure that they are safe and that you are not threatening. In most cases this is not a problem, although it may become so if seals are **repeatedly** leaving their haul-out sites as a result of your action(s).

If seals start to become concerned, one or more will raise their heads and look directly at you. If they are more concerned they may move closer to the water. If they are alarmed they may stampede into the water.

In order to behave responsibly around seal haul-outs any approach must be visible, sensitive and responsive to the behaviour of the seals. There is no standard distance at which seals may react negatively. It will vary with the particular activity, the location and the time. **The key is to let the animals decide how close is acceptable.** If the seals show signs of stress or alarm then do not approach any closer but retreat.

In some cases, seals have become habituated to the presence of humans and some boats in particular, and relatively close approaches may be possible without undue disturbance. Use your judgment to decide how close to go according to circumstance and experience, and be responsive to the behaviour of the animals.

When one or two heads come up the seals are aware of your presence and you should not approach any closer. If any seals scramble into the water you are too close and should retreat.

- *Do not approach seals directly.* Approach at an oblique angle and stop or pass by at a reasonable distance.
- *Don't creep up silently.* They will be startled when they finally see you.
- *Don't shout or make loud noises.* They may be startled.
- *Don't attempt to touch or feed seals.* Seals can move surprisingly fast even on land, and may bite if they feel threatened.
- *Never separate pups from mothers, and leave lone pups alone.* The mother may only be foraging for food.
- *Don't crowd or encircle seals.* Stay on one side of the animals and leave them an escape route into the sea.
- *Never land or camp near a haul-out site.*
- *Fixed wing aircraft or helicopters should never "buzz" seals.* They should keep a minimum of 1000ft altitude when over colonies or groups of seals.
- *Power boats and jet skis should take care near seal haul-outs.* Seals may be more sensitive to the presence of particularly fast moving or noisy boats close to their haul-outs.



- *Kayakers need to take special care.* Seals on haul-outs appear to be particularly sensitive to kayaks. Kayakers should be aware of seal haul-outs and wherever possible seek to avoid approaching these too closely. If seals appear agitated they should move further out.

## **Exceptions**

There are certain specific scientific or welfare activities, which might occasionally take place on or near designated seal haul-out sites, that require to be carried out in relation to the welfare or conservation of seals. It is unlikely that these activities would be considered harassment provided that they are undertaken responsibly and lawfully.

The main activities (there are others) falling into these categories are:-

### **Scientific Research**

It is necessary from time to time for scientists to take seals from designated haul-outs for a range of scientific purposes related to the conservation of seals. The purposes involved might include capture, sedation, tagging, sampling and release of seals. They might also include the periodic aerial survey of seal numbers on haul-outs, the collection of seal scats, seal carcasses or seal bones from haul-outs for scientific examination, the taking of photographs on haul-outs for photo-identification studies or the observation on haul-outs of natural animal behaviour.

If this is done, where appropriate, under either a licence issued by Marine Scotland under the Act and/or under licence issued by the Home Office and in accordance with the Animals (Scientific Procedures) Act 1986 or otherwise but in a responsible, sensitive and lawful way then it is unlikely that it would be considered harassment.

### **Animal Welfare**

On occasion, it may be necessary to take seals from designated haul-outs either to rescue an injured seal and restore it to health or to alleviate the suffering of an injured seal by humane killing.

If this is done in a responsible, sensitive and lawful manner then it is unlikely that it would be considered harassment.

MPP – Marine Environment  
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