

**RECORD OF DECISION
FINAL ENVIRONMENTAL IMPACT STATEMENT
FOR ISSUING ANNUAL QUOTAS TO THE ALASKA ESKIMO WHALING
COMMISSION FOR A SUBSISTENCE HUNT ON BOWHEAD WHALES FOR
THE YEARS 2008 THROUGH 2012**

National Oceanic and Atmospheric Administration,
National Marine Fisheries Service
Office of International Affairs
Silver Spring, Maryland

This Record of Decision (ROD) documents the decision by the National Marine Fisheries Service (NMFS) to select Alternative 3, identified as the preferred alternative in the Final Environmental Impact Statement (FEIS) for Issuing Annual Quotas to the Alaska Eskimo Whaling Commission (AEWC) for a Subsistence Hunt on Bowhead Whales for the Years 2008 through 2012. Under this alternative, NMFS would (through annual regulations) grant the AEWC an annual strike quota of 67 bowhead whales, subject to a total of 255 landed whales over the five years 2008 through 2012, with no more than 15 unused strikes from the previous year added to the annual strike quota. A 'strike' is defined as hitting a whale with a lance, harpoon or explosive device while 'landing' means bringing a whale or any parts thereof onto the ice or land in the course of a whaling operation (50 CFR 230.2). The term "strike quota" refers to the number of whales that may be struck. The quota for 255 landed whales represents the U.S. portion of the total allocation of 280 landed whales granted by the International Whaling Commission to aboriginal whalers. The actual allocation of the strike quota between Alaska Eskimos and Russian Chukotkan Natives is determined on an annual basis through a bilateral agreement between the U.S. and the Russian Federation.

The purpose and need of this action is twofold: to manage the conservation and subsistence utilization of the Western Arctic stock of bowhead whales (as required under the Marine Mammal Protection Act [MMPA], the Whaling Convention Act (WCA), and other applicable laws) and to fulfill the Federal Government's trust responsibility to recognize the cultural and subsistence needs of Alaska Natives.

This FEIS provides decision makers and the public with an evaluation of the environmental, social, and economic effects of the subsistence hunt and alternatives to that hunt for the upcoming five years. The FEIS evaluated the direct, indirect, and cumulative effects of different hunting policies and the contribution of past, present, and reasonably foreseeable future activities on bowhead whales and the people dependent upon them. This FEIS serves as the central planning document for the Office of International Affairs and the Alaska Regional Grant Program for activities related to management of the bowhead whale subsistence hunt. The FEIS and this ROD address the requirements of the National Environmental Policy Act (NEPA).

ALTERNATIVES CONSIDERED

The following is a brief summary of the four alternatives considered in detail in the FEIS. Further detailed description of the alternatives can be found in Chapter 2 of the FEIS.

Alternative 1 (No Action): Do not grant the AEW C a quota.

Alternative 2: Grant the AEW C an annual strike quota of 67 bowhead whales, not to exceed a total of 255 landed whales over the five years 2008 through 2012, with no unused strikes added to the annual quota.

Alternative 3: Grant the AEW C an annual strike quota of 67 bowhead whales, not to exceed a total of 255 landed whales over the five years 2008 through 2012, with no more than 15 unused strikes from the previous year added to the annual strike quota. This alternative would continue management as in the recent past, and as adopted in action by the IWC in late May 2007. This is the agency's preferred alternative.

Alternative 4: Grant the AEW C an annual strike quota of 67 bowhead whales, not to exceed a total of 255 landed whales over the five years 2008 through 2012, where, for unused strikes, up to 50% of the annual strike limit is added to the strike quota for a subsequent year.

Except for Alternative 1 (No Action), the alternatives analyzed in the FEIS are consistent with the goals of the MMPA, the WCA, and other applicable federal laws.

ALTERNATIVES CONSIDERED AND ELIMINATED FROM DETAILED STUDY

Alternatives considered but discarded included alternatives that both substantially decreased and increased the annual and five-year bowhead whale subsistence quotas for Alaska Eskimos. A substantially decreased quota would not meet Alaska Eskimo-documented need for bowheads. A substantially increased quota may exceed Eskimo subsistence needs and has not been requested. One option under Alternative 1 would be to compensate the AEW C for not exercising its subsistence rights. While it may be appropriate for the AEW C to receive compensation for economic harm due to a prohibition of a commercial activity, in this case the AEW C is requesting a quota for cultural and nutritional subsistence purposes, something that cannot be compensated financially. Such alternatives were rejected because they do not meet the purpose and need of the proposed action, which includes meeting the documented cultural and nutritional needs for bowhead whales by Alaska Eskimos. While the No Action Alternative does not meet this purpose and need, NMFS has included it in accordance with NEPA.

Another alternative considered but not carried forward was to analyze issuance of annual whaling quota over a ten-year period rather than a five-year period. As introduced in the Notice of Intent to prepare this EIS, NMFS indicated that it was going to assess a longer time period. The rationale for this was to avoid preparing another EIS in five years' time

(to coincide with the next IWC decision on bowhead subsistence catch limits) unless significant changes to the environment warranted such an analysis. NEPA does not require that an EA or EIS be renewed in a specified time frame; rather it only requires a new document be prepared or updated when significant changes to the federal action or to the human environment occur. Based on internal discussions, NMFS determined that while pursuing a longer time frame for its NEPA analysis has some merit from an analytical and administrative point-of-view, introducing such a concept now could be confusing to the AEWG and the public because it would be inconsistent with the IWC's five-year catch limits and its current decision-making process

THE ENVIRONMENTALLY PREFERABLE ALTERNATIVE

Section 101 of NEPA requires that an agency identify the environmentally preferable alternative when preparing the ROD for an EIS. The Council on Environmental Quality has advised that such an alternative is to be based only on the physical and biological impacts of the proposed action on the resources in question, and not the social or economic impacts of the action. In this FEIS, Alternative 1 (No Action) would not authorize annual subsistence bowhead whaling by Alaska Eskimos and no bowhead whales would be taken. Therefore, Alternative 1 is identified as the environmentally preferable alternative based on impacts to bowhead whales (See *FEIS Section 4 Environmental Consequences* for a full analysis of predicted impacts of this alternative on the complete human environment).

THE NMFS DECISION AND FACTORS CONSIDERED IN THE DECISION

The Decision

The decision is to select the management policy to implement for administering the annual bowhead whale subsistence hunt for the next five years. NMFS hereby selects Alternative 3 in the FEIS as its choice for management of this resource. The rationale for this decision is discussed below. The rationale is fully supported by the analysis documented in the FEIS.

Rationale for the Decision

The NMFS' decision to select Alternative 3 in the FEIS, and thereby authorize the bowhead whale subsistence hunt for another five years, and enter into a Cooperative Agreement with the AEWG, was reached after a comprehensive review of the relevant environmental, economic, and social consequences of the alternatives. Taking into account the MMPA, the WCA, and other applicable federal laws, it was determined that Alternative 3 best balances the environmental consequences while achieving the agency's national policy requirements, goals, and objectives. Specifically,

- Alternative 3 would provide for continued subsistence for Alaska Eskimos residing in the Arctic. This activity is important to satisfying both the nutritional and cultural needs of Alaska Natives.

- Alternative 3 provides the needed carry-over flexibility so hunters can meet their subsistence needs when faced with uncertain environmental conditions from year to year.
- The harvest level authorized by this alternative will allow the Western Arctic bowhead whale stock to continue to rebuild. Alaska Native subsistence takes represent less than 1% of the bowhead stock each year, and the stock has continued to grow at an average of 3.4% per year since 1978.
- A NOAA-AEWC Cooperative Agreement would be consistent with this alternative and the AEWC Management Plan.

Public Comments

NMFS summarized and responded to the public comments received on the Draft Environmental Impacts Statement (DEIS) in the Comment Analysis Report, which is Appendix 8.6 of the FEIS. The DEIS was released for public review on August 3, 2007, and the public review period ended on October 12, 2007. Where appropriate, NMFS also made changes to the FEIS in response to public comments on the DEIS and these changes were noted in the Comment Analysis Report.

NMFS received one letter of public comment on the FEIS. The FEIS was released on January 25, 2008 and the wait period ended on March 3, 2008. This comment was a joint letter from Audubon Alaska and The Wilderness Society which expressed their support for the agency's preferred alternative based on their review of the analysis contained within the FEIS.

A second letter was received from the AEWC who had received a petition from the Alaska Native Village of Point Lay, for a one strike/one whale allocation during 2008. The village of Pt. Lay lies along the northwest coast of the Chukchi Sea (Fig. 3.5-1, FEIS). While its habitants are traditional subsistence users of bowhead whale, the village has not had a specific quota allocation in the recent past. Under the AEWC Management Plan, the overall quota is to be distributed among villages following consultation of its members. At the February 2008 AEWC meeting, the Commission approved Pt. Lay's request which will result in a redistribution of effort among the remaining villages to remain under the federally-approved strike limit. Future allocations to Pt. Lay will be based on a review of the success of the 2008 hunt.

NMFS has made the decision to Select Alternative 3 after careful review of the public comments on the DEIS issued August 2007.

MITIGATION MEASURES AND MONITORING

The National Oceanic and Atmospheric Administration (NOAA) and the AEWC will enter into a cooperative management agreement annually for purposes of managing the bowhead whale subsistence hunt. (While NOAA is the signatory to the agreements, it has delegated the federal implementation role to NMFS.) Cooperative agreements have been

in place between NOAA and the AEWG since the first agreement was signed in March 1981. The purposes of these agreements are to protect the Western Arctic population of bowhead whale and the Eskimo culture, to promote scientific investigation of the bowhead whale, to mitigate any adverse impacts on the bowhead whale stock, and to effectuate the other purposes of the WCA, the MMPA, and the Endangered Species Act, as these acts relate to the aboriginal subsistence hunts for whales.

The NOAA-AEWG Cooperative Agreement establishes a structure of relationships between the authorities and activities of NOAA and the AEWG. The Cooperative Agreement generally represents a functional delegation of on-the-ground management from NOAA to the AEWG, subject to NOAA oversight. The provisions of the Cooperative Agreement build on the provisions of the AEWG Management Plan (see *FEIS Appendix 8.4*). The authority and responsibilities of the AEWG are contained in and limited by the Cooperative Agreement and Management Plan, as amended, to the extent that the Management Plan is not inconsistent with the Agreement. If AEWG fails to carry out its responsibilities, NOAA may assert its federal management and enforcement authority to regulate the hunt after notifying the AEWG of its intent, and providing an opportunity to the AEWG to discuss the proposed action. The AEWG Management Plan provides that the AEWG is empowered to administer the following regulations: (1) ensure an efficient subsistence harvest of bowhead whales; (2) provide a means within the Alaska Eskimo customs and institution to protect bowhead whale habitat and limit harvest to prevent extinction of the species; and (3) provide for Eskimo regulation of all whaling activities by Eskimo members of the AEWG (see *AEWG Management Plan subsection 100.1*). The AEWG may deny any person who violates these regulations the right to participate in the hunt, make civil assessments, and act as an enforcement agent (subsection 100.11(b)). In addition to administering and enforcing regulations within the Management Plan, the AEWG also provides village education programs including training programs for whaling captains and crews, and initiates research to improve the accuracy and reliability of weapons used to hunt bowhead whales (AEWG Management Plan subsection 100.12).

Reports of each hunt must include the date, place, time of strike, size and type of bowhead whale, reasons if struck and lost, and condition of struck and lost whales (see *AEWG Management Plan subsection 100.23*). Meat and edible products must be used exclusively for consumption and not be sold or offered for sale. Violators, after opportunity for a hearing before the AEWG, are prohibited from hunting or attempting to hunt for a period of not less than one whaling season nor more than five whaling seasons and/or may be subject to a fine not to exceed \$10,000. Should a dispute between NOAA and AEWG occur over any of these matters, and resolution does not occur after consulting with AEWG, the dispute will be referred to an administrative law judge (15 CFR 904.200-904.272).

It is the responsibility of the whaling captains and crew to report to the commissioner of their village on a daily basis when they are whaling. The commissioner then reports to the AEWG central office in Barrow. The AEWG office takes a report which is passed on to the NMFS office in Anchorage. After completion of the whaling season, the AEWG

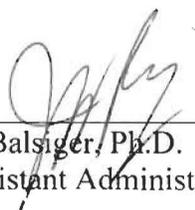
office submits a final report to the U.S. Department of Commerce, NOAA office in Washington, D.C.

CONCLUSIONS

Through the FEIS and as documented in this ROD, NMFS has considered the objectives of the proposed action and has analyzed a reasonable range of alternatives that adequately address the objectives of the proposed action. Furthermore, NMFS has analyzed the associated environmental consequences and impacts of the alternatives, and identified mitigation measures and monitoring requirements to address, to the extent practicable, those consequences and impacts. NMFS has also considered public and agency comments received during the EIS review periods. Consequently, NMFS concludes that Alternative 3 provides reasonable, practical means to avoid, minimize, or compensate for environmental harm from the action.

CONTACT PERSON

Further information concerning this ROD may be obtained by contacting Steven K. Davis, or Bradley K. Smith, NOAA/NMFS Alaska Region, 222 West 7th Ave., #517, Anchorage, AK, 99513, (907) 271-5006.

Signed:  _____
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