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 2013 THROUGH 2018

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 3B, identified as the preferred alternative in the Final Environmental Impact Statement (FEIS) for *Issuing Annual Quotas to the Alaska Eskimo Whaling Commission for a Subsistence Hunt on Bowhead Whales for the Years 2013 through 2018*. Under this alternative, NMFS would grant the Alaska Eskimo Whaling Commission (AEWC) an annual strike quota[1] of 67 bowhead whales, not to exceed a total of 306 landed whales over the six years 2013 through 2018, with unused strikes from previous years carried forward, subject to limits, and added to the annual strike quota of subsequent years, provided no more than 15 unused strikes are added to the annual strike quota for any one year. This alternative would maintain the *status quo* for six years with respect to management of the hunt.

A detailed description of the legal framework underlying this ROD, including federal trust responsibility, governance of aboriginal subsistence whaling catch limits under the International Convention for the Regulation of Whaling (ICRW) and the Whaling Convention Act (WCA), species protection and conservation under the Marine Mammal Protection Act (MMPA) and Endangered Species Act (ESA), and environmental review under the National Environmental Policy Act (NEPA), can be found in Chapter 1 of the FEIS.

Under the ICRW, the International Whaling Commission (IWC) has adopted, through the Schedule that is an integral part of the ICRW, management principles governing aboriginal subsistence whaling, including a formula for setting catch limits, and has further established numeric catch limits for 2013 through 2018 for Western Arctic bowhead whales, based upon the needs of Native hunters in Alaskan villages. A catch limit of 306 landed whales represents the U.S. portion of the total catch limit of 336 landed whales contained in the current IWC Schedule. The 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. NMFS issues the AEWC the Alaskan share of this catch limit pursuant to the WCA, which

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[1] 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.

implements the domestic obligations of the United States under the ICRW. The subsequent hunt is managed cooperatively by NMFS and the AEWC.

The purpose of this action is twofold: to manage the conservation and subsistence utilization of the Western Arctic stock of bowhead whales (as required under the ICRW, the WCA, the MMPA, the ESA, 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 a description of the applicable law and an evaluation of the environmental, social, and economic effects of the subsistence hunt and alternatives to that hunt for the upcoming six 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 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 AEWC a quota.

Alternative 2A: Grant the AEWC an annual strike quota of 67 bowhead whales, not to exceed a total of 255 landed whales over the five years 2013 through 2017, with no unused strikes added to the annual quota.

Alternative 2B: Grant the AEWC an annual strike quota of 67 bowhead whales, not to exceed a total of 306 landed whales over the six years 2013 through 2018, with no unused strikes added to the annual strike quota.

Alternative 3A: Grant the AEWC an annual strike quota of 67 bowhead whales, not to exceed a total of 255 landed whales over the five years 2013 through 2017, with unused strikes from previous years carried forward, subject to limits, and added to the annual strike quota of subsequent years, provided no more than 15 unused strikes are added to the annual strike quota for any one year. This alternative would maintain the *status quo* for five years with respect to management of the hunt.

Alternative 3B: Grant the AEWC an annual strike quota of 67 bowhead whales, not to exceed a total of 306 landed whales over the six years 2013 through 2018, with unused strikes from previous years carried forward, subject to limits, and added to the annual strike quota of subsequent years, provided no more than 15 unused strikes are added to the annual strike quota for any one year. This alternative would maintain the *status quo*

for six years with respect to management of the hunt. This is the agency's preferred alternative.

Alternative 1 (No Action), Alternative 2A, and Alternative 2B would be contrary to the IWC Schedule, and because the WCA requires NMFS to implement requirements of the IWC Schedule, these alternatives would also be contrary to the WCA. Alternative 3A would implement the catch limit in the IWC Schedule for only 5 of the 6 years provided in the Schedule and would require additional action by NMFS to issue the catch limit for 2018. Alternative 3B would implement the IWC Schedule as required by the WCA, and is consistent with the MMPA, ESA, and other applicable federal laws.

ALTERNATIVES CONSIDERED AND ELIMINATED FROM DETAILED STUDY

Alternatives considered but discarded included alternatives that both substantially decreased or increased the annual and five or six year bowhead whale subsistence catch limits for Alaska Eskimos. A substantially decreased catch limit would not meet the documented need of Alaska Eskimos for bowhead subsistence foods. A substantially increased catch limit may exceed Eskimo subsistence needs and has not been requested. Such alternatives were rejected because they do not meet the first or second objectives of the proposed action, which are to implement the U.S. obligations under the ICRW and other laws and to meet the documented cultural and nutritional needs for bowhead whales by Alaska Eskimos. One option under Alternative 1 would be to compensate the AEWC for not exercising its subsistence rights. While it may be appropriate for the AEWC to receive compensation for economic harm due to a prohibition of a commercial activity, in this case the AEWC is requesting a quota for cultural and nutritional subsistence purposes, something that cannot be compensated financially. While the No Action Alternative also does not meet either objective, NMFS has included it in accordance with NEPA.

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 in subsistence hunts off Alaska. Therefore, Alternative 1 is identified as the environmentally preferable alternative based on impacts to bowhead whales. See Chapter 4 of the FEIS 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 the annual bowhead whale subsistence hunt for the next six years. NMFS hereby selects Alternative 3B 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

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

- Alternative 3B fulfills the Federal Government's trust responsibility to 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 3B 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 Alternative 3B will allow the Western Arctic bowhead whale stock to continue to rebuild. Alaska Native subsistence takes represent 0.3% to 0.4% of the bowhead stock each year, and the stock has continued to grow at an average of 3.4% per year since 1978.
- Alternative 3B implements the United States' obligations under the ICRW, as required by the WCA.
- A cooperative agreement between the National Oceanic and Atmospheric Administration (NOAA) and the AEWC 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 Impact Statement (DEIS) in the Comment Analysis Report, which is Appendix 8.7 of the FEIS. The DEIS was released for public review on June 15, 2012. The public review period originally ended on August 14, 2012, but NMFS extended the comment period to August 31, 2012. 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 did not receive public comment letters on the FEIS. The FEIS was released on January 18, 2013, and the wait period ended on February 19, 2013.

NMFS has made this decision after careful review of the public comments on the DEIS issued June 2012.

MITIGATION MEASURES AND MONITORING

NOAA and the AEWC will enter into a cooperative agreement annually for purposes of managing the bowhead whale subsistence hunt. Cooperative agreements have been in place between NOAA and the AEWC since the first agreement was signed in March 1981. The purposes of these agreements are to protect the Western Arctic population of bowhead whales 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 ESA, as these acts relate to the aboriginal subsistence hunts for bowhead whales.

The NOAA-AEWC Cooperative Agreement (see FEIS Appendix 8.2) establishes a structure of relationships between the authorities and activities of NOAA and the AEWC. The Cooperative Agreement generally represents a functional delegation of on-the-ground management from NOAA to the AEWC, subject to NOAA oversight. The provisions of the Cooperative Agreement build on the provisions of the AEWC Management Plan (see FEIS Appendix 8.4). The authority and responsibilities of the AEWC 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 Cooperative Agreement. If the AEWC fails to carry out its responsibilities, NOAA may assert its federal management and enforcement authority to regulate the hunt after notifying the AEWC of its intent, and providing an opportunity to the AEWC to discuss the proposed action. The AEWC Management Plan provides that the AEWC is empowered to administer the following regulations: (1) insure an efficient subsistence harvest of bowhead whales; (2) provide a means within the Alaska Eskimo customs and institutions 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 AEWC (see AEWC Management Plan subsection 100.1). The AEWC 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 AEWC 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 (AEWC 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 AEWC 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 AEWC, 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 the AEWC occur over any of these matters, and resolution does not occur after consulting with the AEWC, 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 AEWC commissioner of their village on a daily basis when they are whaling. The commissioner then reports to the AEWC central office in Barrow. The AEWC office makes a report that is passed on to the NMFS office in Anchorage. After completion of the whaling season, the AEWC office submits a final report to the U.S. Department of Commerce, NOAA/NMFS office in Silver Spring, MD.

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 3B 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: _____ Date: 2-20-13

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