



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Office of International Affairs and Seafood Inspection
1315 East West Highway
Silver Spring, Maryland 20910
Phone: 301-427-8350

December 13, 2018

MEMORANDUM FOR: Chris Oliver
Assistant Administrator for Fisheries

FROM: John Henderschedt 
Office Director, Office of International Affairs and Seafood Inspection

SUBJECT: Record of Decision for Final Environmental Impact Statement for Issuing Annual Catch Limits to the Alaska Eskimo Whaling Commission for a Subsistence Hunt on Bowhead Whales for the Years 2019 and Beyond, and NOAA-Alaska Eskimo Whaling Commission Cooperative Agreement -- DECISION MEMORANDUM

I request that you sign the attached Record of Decision for the *Final Environmental Impact Statement for Issuing Annual Catch Limits to the Alaska Eskimo Whaling Commission for a Subsistence Hunt on Bowhead Whales for the Years 2019 and Beyond*. I also request that you sign the attached renewed Cooperative Agreement between the National Oceanic and Atmospheric Administration (NOAA) and the Alaska Eskimo Whaling Commission (AEWC). I request that you sign these documents by December 21, in anticipation of a possible government shutdown.

BACKGROUND

Record of Decision

The Record of Decision (ROD) (**Attachment A for your signature**) documents the decision by the National Marine Fisheries Service (NMFS) to select Alternative 4, identified as the preferred alternative in the *Final Environmental Impact Statement (FEIS) for Issuing Annual Catch Limits to the Alaska Eskimo Whaling Commission for a Subsistence Hunt on Bowhead Whales for the Years 2019 and Beyond*.

NMFS issues these catch limits under the Whaling Convention Act (WCA), through a cooperative agreement between NOAA and the AEWC. The WCA implements the United States' obligations under the International Convention for the Regulation of Whaling (ICRW). The ICRW created the International Whaling Commission (IWC) and empowered the IWC to set catch limits for aboriginal subsistence whaling.

Under this Alternative, which corresponds to the action taken by the IWC during its 67th meeting in September 2018, NMFS would grant the AEWC an annual strike limit of 67 bowhead whales, not to exceed a total of 336 landed whales over any 6-year period, with unused strikes from previous years carried forward and added to the annual strike quota of subsequent years (subject to limits), provided that no more than 50 percent of the annual strike limit is added to any one year. This Alternative would maintain the status quo for any 6-year period with respect to management of the hunt for landed whales and employ the Commission's agreed-upon 50 percent carryover principle. The AEWC supports this Alternative.

The 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 2019 and beyond. 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. A detailed description of the legal framework underlying this ROD, including federal trust responsibility, governance of aboriginal subsistence whaling catch limits under the ICRW and the 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 (see **Attachment C** for the FEIS and **Attachment F** for the Notice of Availability of the FEIS published Friday, 16 November 2018).

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.

Under the ICRW, and through the Schedule that is an integral part of the ICRW, the IWC has adopted management principles for setting subsistence catch limits for the Western Arctic stock of bowhead whales based upon the needs of Native hunters in Alaskan villages and in Russian Federation villages along the Chukotka Peninsula, and may adopt catch limits for specific years. At IWC67, the IWC adopted bowhead strike limits that provide for increased flexibility for the hunts. In 2018, the combined strike limits for the AEWC and Russian Natives were 82 strikes; whereas in 2019, the combined strike limits for the two native groups are proposed to increase to 100 strikes. In addition, the IWC has adopted an automatic renewal provision for sustainable status quo hunts.

Through the FEIS and as documented in the 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 4 provides reasonable, practical means to avoid, minimize, or compensate for environmental harm from the action.

The allocation of the IWC-set strike quota for bowhead whales between Alaska Natives and Russian Chukotkan Natives is determined on an annual basis through a bilateral agreement between the U.S. and the Russian Federation. The most recent bilateral agreement (**Attachment D**) was revised and signed by the IWC Commissioner for the Russian Federation on November 28, 2018, and subsequently signed by the acting IWC Commissioner for the U.S. on December 7, 2018. The U.S.-Russian Federation agreement allocates all of the increased bowhead whale strike quota to the AEWC, and thus, the AEWC's share of the strike quota would increase from 75 strikes in 2018 to 93 strikes in 2019.

NOAA-AEWC Cooperative Agreement

The subsequent bowhead hunt is managed cooperatively by NMFS and the AEWC through a Cooperative Agreement. Under the proposed renewed Cooperative Agreement (**Attachment B for your signature**), NMFS would issue the AEWC 93 bowhead strikes for 2019. The agreement has been revised in accord with correspondence between you and the AEWC (**Attachment E**) through which NMFS and the AEWC agreed to update the Cooperative Agreement in December with strike limits for 2019, consistent with limits adopted by the IWC at its September meeting. Then, following the AEWC Convention in July 2019, NOAA and the AEWC can sign a further amended Cooperative Agreement based on the results of discussions at the AEWC Convention. The AEWC recommended this approach for renewal of the Cooperative Agreement, and supports the attached proposed Cooperative Agreement.

RECOMMENDATIONS

I recommend that you sign the attached Record of Decision for the *Final Environmental Impact Statement for Issuing Annual Catch Limits to the Alaska Eskimo Whaling Commission for a Subsistence Hunt on Bowhead Whales for the Years 2019 and Beyond*.

I also recommend that you sign the attached Cooperative Agreement between the National Oceanic and Atmospheric Administration and the Alaska Eskimo Whaling Commission as amended in 2018.

1. I concur. Chris Olsen 12/17/18
Date
2. I do not concur. _____
Date

Attachments (6)

Attachment A – For your signature: Record of Decision for bowhead FEIS for 2019 and beyond

Attachment B – For your signature: Renewed NOAA-AEWC Cooperative Agreement as amended in 2018

Attachment C -- Bowhead FEIS for 2019 and beyond -- full version

Attachment D -- U.S.-Russian Federation signed bilateral agreement for sharing bowhead quota allocation for 2019

Attachment E -- Correspondence between NMFS and AEWG on revising Cooperative Agreement

Attachment F -- Notice of Availability for FEIS for bowheads published by EPA on 16 November 2018

RECORD OF DECISION
FINAL ENVIRONMENTAL IMPACT STATEMENT
FOR ISSUING ANNUAL CATCH LIMITS TO THE ALASKA ESKIMO WHALING
COMMISSION FOR A SUBSISTENCE HUNT ON BOWHEAD WHALES FOR THE
YEARS 2019 AND BEYOND

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

This Record of Decision (ROD) documents the decision by the National Marine Fisheries Service (NMFS) to select Alternative 4, identified as the preferred alternative in the Final Environmental Impact Statement (FEIS) for Issuing Annual Catch Limits to the Alaska Eskimo Whaling Commission for a Subsistence Hunt on Bowhead Whales for the Years 2019 and Beyond. Under this Alternative, which corresponds to the action taken by the International Whaling Commission (IWC) during its 67th meeting in September 2018, NMFS would grant the Alaska Eskimo Whaling Commission (AEWC) an annual strike limit of 67 bowhead whales, not to exceed a total of 336 landed whales over any 6-year period, with unused strikes from previous years carried forward and added to the annual strike quota of subsequent years (subject to limits), provided that no more than 50 percent of the annual strike limit is added to any one year. This Alternative would maintain the status quo for any 6-year period with respect to management of the hunt for landed whales and employ the Commission's agreed-upon 50 percent carryover principle.

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.

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.

Under the ICRW, and through the Schedule that is an integral part of the ICRW, the IWC has adopted management principles for setting subsistence catch limits for the Western Arctic stock of bowhead whales based upon the needs of Native hunters in Alaskan villages and in Russian Federation villages along the Chukotka Peninsula, and may adopt catch limits for specific years. In addition, the IWC has adopted an automatic renewal provision for sustainable status quo hunts. Based on the results of the 2018 biennial meeting of the IWC, NMFS would grant the AEWC an annual strike limit of 67 bowhead whales, not to exceed a total of 336 landed whales over any 6-year period, with unused strikes from previous years carried forward and added to the annual strike quota of subsequent years (subject to limits), provided that no more than 50 percent

of the annual strike limit is added to any one year. This Alternative would maintain the status quo for any 6-year period with respect to management of the hunt for landed whales and employ the Commission's agreed-upon 50 percent carryover principle.

NMFS issues the AEWC the Alaskan share of this catch limit pursuant to the WCA, which implements the domestic obligations of the United States under the ICRW. The allocation of the strike quota between Alaska Natives and Russian Chukotkan Natives is determined on an annual basis through a bilateral agreement between the U.S. and the Russian Federation. The subsequent hunt is managed cooperatively by NMFS and the AEWC.

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 2019 and beyond. 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 five 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 2: Grant the AEWC an annual strike limit of 67 bowhead whales, not to exceed a total of 336 landed whales over any 6-year period, with no unused strikes from previous years added to the subsequent annual limit as carry-forward.

Alternative 3: Grant the AEWC an annual strike limit of 67 bowhead whales, not to exceed a total of 336 landed whales over any 6-year period, with unused strikes from previous years carried forward and added to the annual strike limit of subsequent years (subject to limits), provided that no more than 15 additional strikes are added to any one year's allocation of strikes. This alternative would maintain the status quo for any 6-year period with respect to management of the hunt.

Alternative 4 (Preferred Alternative): Grant the AEWC an annual strike limit of 67 bowhead whales, not to exceed a total of 336 landed whales over any 6-year period, with unused strikes from previous years carried forward and added to the annual strike quota of subsequent years (subject to limits), provided that no more than 50 percent of the annual strike limit is added to any one year. This alternative would maintain the status quo for any 6-year period with respect to management of the hunt for landed whales and employ the Commission's agreed-upon 50 percent carryover principle.

Alternative 5: Grant the AEWC an annual strike limit of 100 bowhead whales, not to exceed a

total of 504 landed whales over any 6-year period, with unused strikes from previous years carried forward and added to the annual strike quota of subsequent years (subject to limits), provided that no more than 50 percent of the annual strike limit is added to any one year. This alternative would increase the harvest levels by 50 percent and employ the Commission's agreed-upon 50 percent carryover principle.

ALTERNATIVES CONSIDERED AND ELIMINATED FROM DETAILED STUDY

Alternatives considered but discarded included alternatives that substantially decreased the annual bowhead whale subsistence catch limits for Alaska Natives. A substantially decreased catch limit would not meet the documented need of Alaska Natives for bowhead subsistence foods. One option under Alternative 1 would be to compensate the AEWC for not exercising its aboriginal 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. Such alternatives were rejected because they do not meet the first objective of the proposed action, which is to meet the documented cultural and nutritional needs for bowhead whales by Alaska Natives. While the No Action Alternative does not meet this first objective, NMFS has included it in accordance with NEPA.

THE PREFERRED ALTERNATIVE

NMFS has identified Alternative 4 as its preferred alternative because it meets the purpose and need of this action, and it achieves the socio-cultural benefits of the subsistence hunt at minimal environmental cost. Alternative 4 also corresponds to the action taken by the IWC during its 67th meeting in September 2018 in Florianopolis, Brazil. At that meeting, the IWC acted on the management advice of the IWC Scientific Committee and adopted a catch limit for 2019 through 2025, with a provision for increased carryover of unused strikes, and with a provision for automatic renewal of sustainable status quo catch limits. Under the WCA, NMFS is required to implement the ICRW Schedule's provisions, including its provisions regarding catch limits.

THE NMFS DECISION AND FACTORS CONSIDERED IN THE DECISION

The Decision

The decision is to select the management policy to implement Alternative 4 in the FEIS and enter into a renewed cooperative agreement with the AEWC for management of the bowhead whale subsistence hunt. Under Alternative 4, NMFS would grant the AEWC the U.S. portion of a maximum annual strike limit of 100 strikes, i.e., 67 annual strikes plus up to 33 unused strikes from previous years which can be carried forward, subject to limits, and added to the annual strike quota of subsequent years. These strike limits would be subject to the U.S. portion of a maximum total of 336 landed whales over any six year period. NMFS's issuance of any future catch limits will be subject to IWC requirements, which will in turn be based on IWC Scientific Committee advice on the sustainability of any catch limits. The rationale for this decision is discussed below and is fully supported by the analysis documented in the FEIS.

Rationale for the Decision

NMFS's decision to select Alternative 4 as described above and in the FEIS, and enter into a renewed 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 4 best balances the environmental consequences while achieving the agency's national policy requirements, goals, and objectives.

Specifically, Alternative 4 fulfills the Federal Government's trust responsibility to provide for continued subsistence for Alaska Natives residing in the Arctic, achieving the socio-cultural benefits of the subsistence hunt at minimal environmental cost. Further, Alternative 4 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 4 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 Western Arctic bowhead whale population has been increasing in recent years at an estimated rate of 3.7 percent.

Alternative 4 also corresponds to the action taken by the IWC during its 67th meeting in September 2018 in Florianopolis, Brazil. At that meeting, the IWC acted on the management advice of the IWC Scientific Committee and adopted a catch limit for 2019 through 2025, with a provision for increased carryover of unused strikes, and with a provision for automatic renewal of sustainable status quo catch limits. Under the WCA, NMFS is required to implement the ICRW Schedule's provisions, including its provisions regarding catch limits. Alternative 4 implements the United States' obligations under the ICRW, as required by the WCA. This activity is important to satisfying both the nutritional and cultural needs of Alaska Natives. A cooperative agreement between NOAA and the AEWC would be consistent with this alternative and the AEWC Management Plan.

Public Comments

On June 14, 2018, a Notice of Availability of the Draft Environmental Impact Statement for issuing annual catch limits to the Alaska Eskimo Whaling Commission for a subsistence hunt on bowhead whales for the years 2019 and beyond was published in the Federal Register (83 FR 27756), marking the beginning of the public review period for the document. During the review period, which ended on July 31, 2018, NMFS received a total of six comment letters from the following:

- (1) Alaska Bering Sea Crabbers, letter dated July 20, 2018
- (2) The State of Alaska Department of Fish and Game (ADF&G) Division of Wildlife Conservation, letter dated July 23, 2018
- (3) U.S. Environmental Protection Agency (EPA), letter dated July 25, 2018

- (4) Marine Mammal Commission (MMC), letter dated July 31, 2018
- (5) Alaska Eskimo Whaling Commission (AEWC), letter dated July 31, 2018
- (6) North Slope Borough (NSB), letter dated July 31, 2018

Comments were submitted by email and by mail to the NMFS Office of International Affairs and Seafood Inspection. All comments received by or dated July 31, 2018, are included in a Public Comment Analysis Report in Appendix 8.7 of the FEIS. NMFS did not receive public comment letters on the FEIS. The FEIS was released on November 16, 2018, and the 30-day wait period ended on December 17, 2018.

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

MITIGATION MEASURES AND MONITORING

NOAA and the AEWEC will enter into a renewed cooperative agreement for purposes of managing the bowhead whale subsistence hunt. Cooperative agreements have been in place between NOAA and the AEWEC since the first agreement was signed in March 1981. The purposes of these agreements are to protect the Western Arctic stock of bowhead whales and the Alaska Native 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-AEWEC Cooperative Agreement establishes a structure of relationships between the authorities and activities of NOAA and the AEWEC. The Cooperative Agreement generally represents a functional delegation of on-the-ground management from NOAA to the AEWEC, subject to NOAA oversight. The provisions of the Cooperative Agreement build on the provisions of the AEWEC Management Plan (adopted in November 1977, renewed on March 4, 1981, and continuously since) (Appendix 8.3). The authority and responsibilities of the AEWEC 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 AEWEC fails to carry out its responsibilities, NOAA may assert its federal management and enforcement authority to regulate the hunt after notifying the AEWEC of its intent, and providing an opportunity for the AEWEC to discuss the proposed action. Subsection 100.1 of the AEWEC Management Plan provides that the AEWEC 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

AEWC.

As described in Subsection 100.11(b), 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. 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, participates in scientific research on bowhead whales, and initiates research to improve the accuracy and reliability of weapons used to hunt bowhead whales.

Reports of each hunt must include the date, place, time of strike, size, and sex of the bowhead whale, reasons if struck and lost, and condition of struck and lost whales (subsection 100.23). Whaling crews must use traditional harvesting methods (as defined under subsection 100.24). Meat and edible products must be used exclusively for consumption and not be sold or offered for sale. Repercussions for violators can be severe; after an opportunity for a hearing before the AEWc, violators 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 civil fine not to exceed \$10,000. Should a dispute between NOAA and AEWc occur over any of these matters, and resolution does not occur after consulting with 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 Commissioner of their village on a daily basis when they are whaling. The Commissioner of that village then reports to the AEWc's central office in Utqiagvik (Barrow), AK. The AEWc office develops a report, which is then passed on to the NMFS office in Anchorage for compilation. After completion of each whaling season (fall and spring), the AEWc submits a comprehensive harvest report to the NMFS offices in Anchorage, as well as the Office of International Affairs and Seafood Inspection. These harvest reports fulfill U.S. obligations to the IWC with respect to recording harvest information, including infractions.

This action also includes mitigation measures, which have been largely implemented, that will result in hunters exercising diligence, and utilizing their considerable expertise, to identify the species of any targeted whale before they attempt to strike it. In particular, drawing on the traditional knowledge of St. Lawrence Island bowhead captains and western knowledge of right whale scientists, NMFS will continue to collaborate with the AEWc and the St. Lawrence Island bowhead whale hunters to develop and implement an outreach program to ensure that hunters in the Bering Sea and Chukchi Sea know how to discriminate North Pacific right whales from bowhead whales, and ensure that the hunters do not approach, pursue, disturb, or strike a North Pacific right whale.

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 4 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 John Henderschedt, or Carolyn Doherty, NOAA/NMFS Office of International Affairs and Seafood Inspection, 1315 East-West Highway, Silver Spring, Maryland, 20910.

Signed: Chris Oliver

Date: 12/17/18

Chris Oliver
Assistant Administrator
National Marine Fisheries Service

