



# MARINE MAMMAL COMMISSION

31 August 2012

Douglas P. DeMaster, Ph.D.  
Director, Alaska Fisheries Science Center  
709 West 9<sup>th</sup> Street  
Juneau, Alaska 99802-1668

Dear Dr. DeMaster:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors, has reviewed the National Marine Fisheries Service's draft environmental impact statement (DEIS) for issuing quotas to the Alaska Eskimo Whaling Commission for a subsistence hunt of bowhead whales for the years 2013 through 2017/2018 [NOAA-NMFS-2011-0225]. The Marine Mammal Commission provides the following recommendations and rationale.

## RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service—

- adopt alternative 3B as described in the DEIS; and
- not pursue further in the final environmental impact statement the possibility that the United States could authorize the continued hunting of bowhead whales by Alaska Natives even if the International Whaling Commission failed to adopt a new catch limit.

## RATIONALE

The Service published the DEIS prior to the 2012 meeting of the International Whaling Commission. For that reason, it thought it necessary to consider a variety of possibilities, including that the International Whaling Commission would (1) decline to renew the catch limit for the bowhead whale hunt by Alaska Natives, (2) renew the previous authorization for another five-year period, (3) extend the previous authorization for six additional years (to coincide with an anticipated switch to biennial Commission meetings, or (4) extend the catch limit subject to revised terms or conditions (e.g., without the carryover provision for unused strikes).

At its 2012 meeting, the International Whaling Commission approved an extension of the previous annual catch limit for six years (2013-2018). Under the adopted schedule amendment, the Alaska Eskimo Whaling Commission is authorized an annual strike limit of 67 bowhead whales, and may carry over up to 15 additional unused strikes from the previous year (including unused strikes from the 2008-2012 quota). However, no more than 336 bowhead whales may be landed over the six years covered by the authorization. In essence this corresponds to alternative 3B in the DEIS.

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The parties to the International Whaling Commission expressed unanimous support for the six-year extension based on, among other things, the advice of its Scientific Committee and its Aboriginal Subsistence Whaling Sub-Committee. The Scientific Committee determined that removals from the population at this level are acceptable from a conservation perspective. The Aboriginal Subsistence Whaling Sub-Committee endorsed the findings of the Scientific Committee and endorsed the two statements of need provided by the United States and the Russian Federation (which is allocated a small share of the bowhead whale catch limit).

Based on the strong scientific evidence that the catch limits for bowhead whales taken by the Alaska Eskimo Whaling Commission are unlikely to affect the stock adversely, the documented need for the number of whales authorized to be taken, and the rigorous review of the relevant information by the International Whaling Commission, and its approval of a new six-year catch limit, the Marine Mammal Commission recommends that the National Marine Fisheries Service adopt alternative 3B described in the DEIS.

The DEIS suggests that the United States could authorize subsistence hunting of bowhead whales by Alaska Natives even if the International Whaling Commission had not approved a new catch limit. However, no detailed analysis was provided in the DEIS of the legal theory underlying such an alternative or the policy implications of the United States authorizing subsistence whaling absent a new authorization from the International Whaling Commission. This possibility was discussed at the Commission's 2012 annual meeting and the Commission is aware of the arguments put forward to support the interpretation that such whaling would be consistent with paragraph 13(b) of the Schedule to the International Convention for the Regulation of Whaling. Had the new authorization not been provided, the Service might have been able to make a plausible case that continued whaling is consistent with the Convention, the Schedule, and applicable domestic statutes and regulations. However, authorizing subsistence whaling absent explicit approval by the International Whaling Commission is fraught with difficulties from a policy perspective. As it has noted previously in discussions with the Service, the Marine Mammal Commission believes that this alternative should be considered only as a last resort. Because the International Whaling Commission approved a six-year extension of the prior catch limits, further consideration of this alternative is not necessary in the final environmental impact statement. Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service not pursue further in the final environmental impact statement the possibility that the United States could authorize the continued hunting of bowhead whales by Alaska Natives even if the International Whaling Commission failed to adopt a new catch limit.

Please let me know if you would like to discuss these comments and recommendations further.

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive style with a long horizontal stroke at the end.

Timothy J. Ragen, Ph.D.  
Executive Director