



# MARINE MAMMAL COMMISSION

31 July 2018

Ms. Carolyn Doherty  
Office of International Affairs and Seafood Inspection  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910-3225

Dear Ms. Doherty:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's (NMFS) 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 (EIS) and the associated *Federal Register* notice (83 Fed. Reg. 27756). The Commission submitted scoping comments on this EIS on [14 September 2017](#). As the Commission noted in those comments, “[s]electing alternative harvest limits to include in the EIS for the subsistence taking of bowhead whales is somewhat challenging because such limits are dependent on actions taken by the International Whaling Commission (IWC), which may reject or seek to modify proposals put forward by subsistence whaling countries.”

Although the United States and other subsistence whaling countries have submitted a proposal that includes new bowhead whale subsistence catch limits for 2019 and beyond, it remains uncertain whether the IWC will adopt that proposal. The proposal submitted to the IWC tracks Alternative 4 of the EIS. Thus, at this stage, it makes sense to identify that as the provisional preferred alternative. However, should the IWC adopt some other alternative, NMFS should be ready to consider that the preferred alternative. As noted in section 2.8 of the EIS, “NMFS is required to implement IWC Schedule provisions, including provisions regarding catch limits.”

The Commission agrees with NMFS's assessment that Alternative 1 is unacceptable for several reasons. It fails to meet the overall objective of the proposed action, which is to provide for the cultural and nutritional needs of Alaska Natives, if doing so can be done in a way that does not undermine conservation of the bowhead whale stock. It makes no sense for NMFS to decide not to implement the catch limit adopted by the IWC, given the rigorous process used by the IWC in reviewing the needs of Native communities and the science underlying the sustainability of those catch limits. Alternative 2 is similarly flawed. It makes no sense to decline to implement a carryover provision vetted by and adopted by the IWC as being consistent with the conservation goals of the Convention. Doing so would undermine the hunters' ability to adapt to variable hunting conditions, and ultimately, to satisfy the established needs of the Native communities.

Alternative 3 reflects the current bowhead whale hunting regime in Alaska. It would allow an annual strike limit of 67 whales and the carryover of up to 15 unused strikes from previous years. Presumably, this would be an acceptable alternative, should the IWC elect not to increase the number of unused strikes that can be carried over, but instead to continue with the status quo. This alternative, which currently is presented as a six-year extension in the EIS, could be extended easily to a seven-year authorization, if that is the duration of the Schedule amendment adopted by the IWC.

Alternative 4, the preferred alternative, would establish the same basic annual strike limit as under Alternative 3 (67 whales per year), but allow more unused strikes from prior years to be carried forward. As noted in the EIS, this higher carryover amount is consistent with advice provided by the IWC's Scientific Committee. Nevertheless, it is the IWC itself, rather than the Scientific Committee, that establishes catch limits. As such, the Commission agrees that this is the alternative that NMFS should implement, but only if the Schedule amendment proposed by the United States and others for governing bowhead whale subsistence hunting in 2019 and beyond is adopted at the upcoming IWC meeting. The Commission notes that Alternative 4 reflects a six-year authorization, but the proposed Schedule amendment would cover seven years. The Commission agrees with NMFS's assessment in the EIS that the impacts on bowhead whales and other resources are largely the same whether the IWC adopts a six-year or a seven-year authorization.

As noted in section 1.3.2, Alternative 5 was included in the EIS at the request of the AEWG and others. That alternative would increase the annual strike limit to 100 whales and allow the carryover of unused strikes from previous years of up to 50 percent of the annual strike limit. A total of 504 whales could be landed over a six-year period. Although the Commission understands the reason for this alternative being included in the EIS, it is unlikely that the IWC will adopt such hunting limits. This alternative is not included in the subsistence whaling proposal submitted by the United States and the increased need reflected in it has not been reviewed by the IWC. Just as the Commission believes that the United States should not set bowhead whale hunting limits lower than those authorized by the IWC (absent a compelling reason), it does not support authorizing Alaska Natives to take more whales than authorized by the IWC.

Most troubling to the Commission is the prospect that the United States might authorize subsistence whaling absent approval by the IWC. The EIS broaches the possibility that, if the IWC does not adopt a new bowhead whale catch limit, NOAA "is considering issuing annual quotas for the time period described in the Alternatives under the current IWC Schedule language." The reader is referred to sections 1.1 and 1.2 for additional information on the legal context and regulatory history of such an action. However, scant additional information is provided in those sections<sup>1</sup>. A similar suggestion was made in the previous draft environmental impact statement concerning bowhead whale catch limits, issued in 2012. As the Commission observed at that time, even if arguments can be made that this is legally permissible and scientifically supportable, authorizing subsistence whaling absent explicit approval by the IWC "is fraught with difficulties from a policy perspective." The Commission continues to recommend that this alternative be considered only as a last resort.

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<sup>1</sup> In fact, to the extent that there is any analysis, it seems confined to footnote 5 on page 9 of the EIS.

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Thank you for considering our comments. The Commission looks forward to working as part of the U.S. delegation to the 2018 IWC meeting to secure adoption of the proposed Schedule amendment for updated subsistence whaling catch limits.

Sincerely,

A handwritten signature in blue ink that reads "Peter O. Thomas". The signature is written in a cursive style with a large initial "P" and "T".

Peter O. Thomas, Ph.D.,  
Executive Director