

1.0 PURPOSE AND NEED

1.1 Introduction

1.1.1 Summary of the Proposed Action

The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) proposes to issue annual quotas to the Alaska Eskimo Whaling Commission (AEWC) to allow continuation of its subsistence hunt for bowhead whales from the Western Arctic stock¹ for the five years 2008 through 2012. The purpose of NMFS's proposed action is to fulfill its Federal trust responsibilities by recognizing the nutritional and cultural needs of Alaskan Natives, to the fullest extent possible consistent with applicable law, and to ensure that any aboriginal subsistence hunt of whales does not adversely affect the conservation of the Western Arctic bowhead whale stock.

This Environmental Impact Statement (EIS), prepared pursuant to the National Environmental Policy Act (NEPA, 42 USC 4321 et seq.), considers four alternatives for issuing the AEWC a share of catch limits approved by the International Whaling Commission (IWC). The proposed action would comply with NMFS's responsibilities under section 101(b) of the Marine Mammal Protection Act (MMPA) and under the auspices of the Whaling Convention Act (WCA).

1.1.2 Location of Action

The project area is the entire geographic range of the Western Arctic bowhead stock. The users of the bowhead resource affected by the proposed action are the residents of Alaska villages currently participating in subsistence hunts of Western Arctic bowhead whales. These include Gambell, Savoonga, Little Diomedea, and Wales (located along the coast of the Bering Sea); Kivalina, Pt. Hope, Wainwright and Barrow (along the coast of the Chukchi Sea); and Nuiqsut and Kaktovik (on the coast of the Beaufort Sea). The IWC approved catch limit is also shared with Russian subsistence hunters in villages along the Chukotka Peninsula (Figure 1.1.2-1).

1.1.3 Summary of Western Arctic Bowhead Whale Status

The current understanding is that the majority of the Western Arctic bowhead whale population migrates annually from wintering areas in the northern Bering Sea, through the Chukchi Sea in the spring (March through June), to the Beaufort Sea where they spend much of the summer (mid-May through September). In the autumn (September through November) they return to the Bering Sea to overwinter (November to March) (Braham et al., 1980; Moore and Reeves, 1993). Because the bowhead whale species is listed as "endangered" under the Endangered Species Act (ESA), the Western Arctic population is classified as a strategic stock under the MMPA and therefore also designated as "depleted" under the MMPA. The Western Arctic bowhead whale stock has been increasing in recent years; the current estimate of 10,545 is between 46% and 101% of the estimated pre-exploitation abundance (10,400-23,000, Woodby and Botkin, 1993). Some analyses suggest the population may be approaching carrying capacity though there is no sign of slowing in the population growth rate (Brandon and Wade, 2006).

¹ Also referred to as the Bering-Chukchi-Beaufort Seas stock and the Bering Sea Stock.

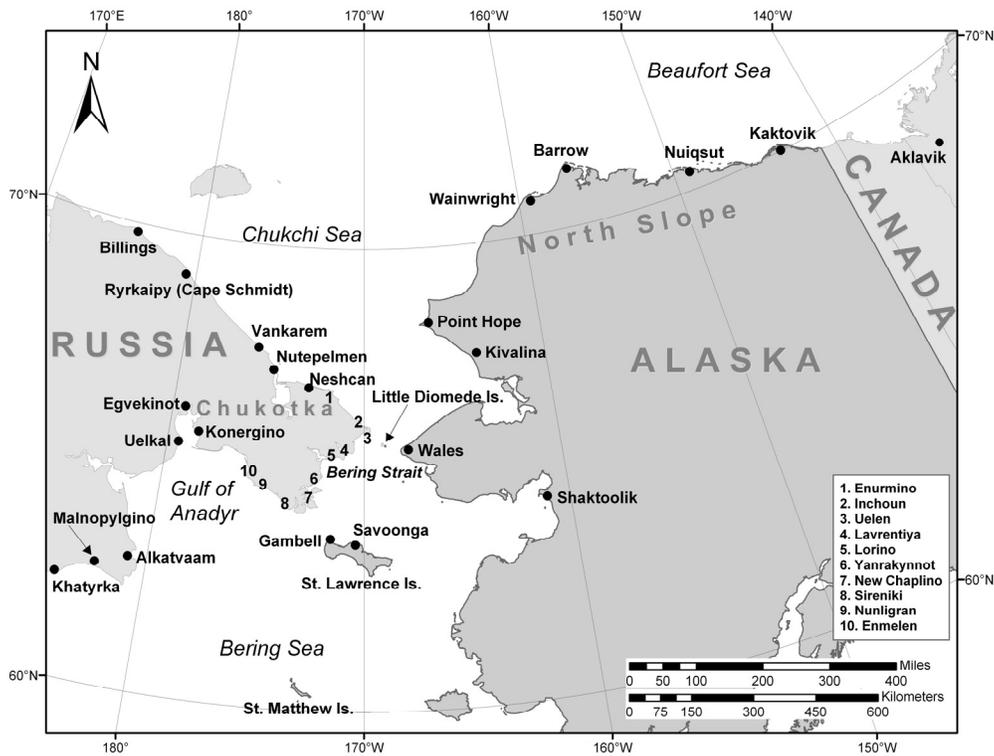


Figure 1.1.2-1 Subsistence Whaling Villages

The estimated annual mortality rate incidental to commercial fisheries (0.2) is not known to exceed 10% of the potential biological removal (PBR). PBR for the Western Arctic bowhead stock is 95 therefore, 10% of PBR is 9.5 animals and this level of mortality can be considered insignificant. The annual level of intentional human-caused mortality and serious injury (41 animals) is not known to exceed the PBR (95) or the IWC annual strike limit (67) (Angliss and Outlaw, 2005). Criteria developed for recovery of large whales in general (Angliss et al., 2002) and bowhead whales in particular (Shelden et al., 2001) will be used in the next five-year evaluation of stock status.

On February 22, 2000, NMFS received a petition from the Center for Biological Diversity and Marine Biodiversity Protection Center to designate critical habitat for the Western Arctic bowhead stock under the ESA. Petitioners asserted that the nearshore areas from the U.S.-Canada border to Barrow, Alaska should be considered critical habitat. On May 22, 2001, NMFS found the petition to have merit and initiated a formal review (66 Federal Register [FR] 28141). On August 30, 2002 (67 FR 55767), NMFS announced its decision to not designate critical habitat for this population. NMFS decided not to designate critical habitat because: (1) the decline and reason for listing the species was over exploitation by commercial whaling, and habitat issues were not a factor in the decline; (2) there was no indication that habitat degradation is having any negative impact on the increasing population; (3) the population is abundant and increasing; and (4) existing laws and practices adequately protect the species and its habitat (67 FR at 55767).

1.1.4 Eskimo Tradition of Subsistence Hunt of Bowhead Whales

Inupiat and Siberian Yupik Eskimos have hunted bowhead whales continuously for over 2,000 years (Stoker and Krupnik, 1993). Hunting bowhead whales in Alaska remains a communal activity that supplies important meat and *maktak*² for the entire community, as well as for feasts and during annual celebrations. Formalized patterns of hunting, sharing, and consumption characterize the modern bowhead harvest. In addition, whaling captains are highly respected for their traditional knowledge of ice, weather, and whale behavior, which is necessary to hunt successfully, for their generosity in supporting their whaling crews, and for their stewardship of traditions of sharing and distributing *maktak* throughout the community. Of all subsistence activities in these communities, the bowhead whale hunt represents one of the greatest concentrations of community-wide effort and time. It is highly productive, accounting for a substantial percentage of the food consumed in the AEWc communities. As the principal activity through which traditional skills for survival in the Arctic are passed to younger generations, the bowhead hunt provides ongoing reinforcement of the traditional social structure. Thus, the bowhead subsistence hunt is a large part of the cultural tradition of these communities and their modern cultural identity (Worl, 1979; Braund et al., 1997).

Subsistence whaling has been regulated by a catch limit under the authority of the IWC since 1977. Alaska Native subsistence hunters from northern Alaskan communities (Figure 1.1.2-1) take less than 1% of the stock of bowhead whales per year (Philo et al., 1993). After 1977, the number of whales landed ranged between 8 and 55 per year and whales struck and lost ranged from 5 to 28 per year (AEWC and NSB 2007).

1.2 Legal Framework

The following section describes the legal framework that will guide agency decisions related to this project, including federal trust responsibility, governance of aboriginal subsistence whaling quotas under the WCA, species protection and conservation under the MMPA and ESA, and environmental review under NEPA.

1.2.1 Federal Trust Responsibility

NMFS, as an agent of the federal government, has a trust responsibility to Indian tribes. The concept of “trust responsibility” is derived from the special relationship between the federal Government and Indians. Based upon provisions of the United States Constitution authorizing Congress to regulate commerce “among the several states, and with the Indian Tribes” (United States Constitution, Article I, Section 8, clause 3), the trust responsibility was first delineated by Supreme Court Chief Justice John Marshall in *Cherokee Nation v. Georgia*, 30 U.S. 1 (5 Pet.) (1831). Later, in *Seminole Nation v. United States*, 316 U.S. 286 (1942), the Court noted that the United States has charged itself with moral obligations of the highest responsibility and trust toward Indian tribes. The scope of the federal trust relationship is broad and incumbent upon all federal agencies. The U.S. Government has an obligation to protect tribal land, assets, and resources as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes. This unique relationship and its foundation in the Constitutional

² *Maktak* is whale skin and a layer of blubber that is used for food.

provide the basis for legislation, treaties, and Executive Orders that grant unique rights or privileges to Native Americans (*Morton v. Mancari*, 417 U.S. 535, 551-53 [1974]).

In furtherance of this trust responsibility and to demonstrate respect for sovereign tribal governments, the principles described above were incorporated into Secretarial Order No. 3206, dated June 5, 1997, and signed by the Secretaries of Commerce and Interior. This Order, entitled “American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act,” directs both departments to carry out their responsibilities under the ESA in a manner that brings into accord the Federal trust responsibility to tribes, tribal sovereignty, and statutory missions of the Departments, so as to avoid or minimize the potential for conflict and confrontation. However, this Secretarial Order did not extend to Alaska Natives; and hence, on January 19, 2001, the Secretary of Commerce and the Secretary of the Interior signed Secretarial Order No. 3225, entitled “Endangered Species Act and Subsistence Uses in Alaska” (Supplement to Secretarial Order 3206), to extend to Alaska Natives the principles articulated in Order No. 3206.

Executive Order (EO) 13084, issued May 14, 1998, requires each Federal agency to establish meaningful consultation and collaboration with Indian tribal governments (including Alaska Natives) in formulating policies that significantly or uniquely affect their communities. Entitled “Consultation and Coordination with Indian Tribal Governments,” the order requires agency policy-making to be guided by principles of respect for tribal treaty rights and responsibilities that arise from the unique legal relationship between the federal government and the Indian tribal governments. Furthermore, on issues relating to treaty rights, EO 13084 directs each agency to explore and, where appropriate, use consensual mechanisms for developing regulations.

On November 6, 2000, EO 13175 replaced EO 13084. The order carries the same title and strengths as the previous order about the government-to-government relationship between the U.S. Government and Indian tribes. EO 13175 requires that all Executive departments and agencies consult with Indian tribes and respect tribal sovereignty in developing policy on issues that affect Indian communities.

1.2.2 International Convention for the Regulation of Whaling

The International Convention for the Regulation of Whaling (ICRW) is an international treaty that was signed on December 2, 1946, to "provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry" (ICRW, Dec. 2, 1946, 161 United Nations Treaty Series 72). The United States was an original signatory to the ICRW in 1946. A main focus of the ICRW was the establishment of the International Whaling Commission (IWC). The IWC is an international organization, administered by a Secretary and staff. IWC membership consists of one Commissioner from each Contracting Government (i.e., government of a nation that signed the ICRW). Under Article V.1 of the ICRW, the IWC's charge is to adopt regulations with respect to the conservation and utilization of whale resources by periodically amending the provisions of the Schedule, a document that is an integral part of the ICRW. IWC regulations adopted in the Schedule may establish protected and unprotected species; open and close seasons and waters; implement size limits, time, method, and intensity of whaling; and specify gear, methods of measurement, catch returns and other statistical and biological records, and methods of inspection (Article V.1) for whale stocks. The IWC seeks to reach its decisions by consensus. Voting procedures apply when consensus is not possible.

According to Article III.2 of the ICRW and the Rules of Procedure, to amend the Schedule and adopt whaling regulations requires a three-fourths majority of all who voted yes or no (each Contracting Government has one vote). Criteria in Article V.2 of the ICRW specify that amendments to the Schedule shall meet the following criteria:

- a. Be necessary to carry out the objectives and purposes of the ICRW and provide for the conservation, development, and optimum utilization of whale resources;
- b. Be based on scientific findings;
- c. Not involve restrictions on the number or nationality of factory ships or land stations, nor allocate specific quotas to any factory ship(s) or land station(s); and
- d. Take into consideration the interests of the consumers of whale products and the whaling industry.

The IWC established a Scientific Committee, consisting of approximately 200 of the world's leading whale biologists, to provide advice on the status of whale stocks to inform the development of IWC whaling regulations. The Scientific Committee considers particular subject matter based on the scientific needs of the IWC. These needs are broadly expressed in the ICRW text, which directs the IWC to: "encourage, recommend, or, if necessary, organize studies and investigations relating to whales and whaling; collect and analyze statistical information concerning the current condition and trend of the whale stocks and the effects of whaling activities thereon; and study, appraise and disseminate information concerning methods of maintaining and increasing the populations of whale stocks" (Article IV.1).

The IWC recognizes a distinction between whaling for commercial purposes and whaling by aborigines for subsistence purposes. Aboriginal provisions were incorporated into predecessor treaties to the ICRW and have been a part of the whaling regime under the ICRW since the time of the first Schedule (note that 'aborigines' refers to indigenous groups for purposes of this EIS). The IWC governs aboriginal whaling internationally by setting overall catch limits on stocks. To initiate the process, Contracting Governments acting on behalf of aborigines in their respective nations make a proposal to the IWC based on cultural and nutritional needs (i.e., they submit a needs statement). At the 1994 Annual Meeting, the IWC adopted Resolution 1994-4 to reaffirm the following three broad objectives as general guidelines for evaluating such proposals from Contracting Governments:

1. To ensure that the risks of extinction to individual stocks are not seriously increased by subsistence whaling;
2. To enable aboriginal people to harvest whales in perpetuity at levels appropriate to their cultural and nutritional requirements, subject to the other objectives; and
3. To maintain the status of whale stocks at or above the level giving the highest net recruitment and to ensure that stocks below that level are moved towards it, so far as the environment permits.

Since 1997, the IWC has set catch limits for aboriginal subsistence whaling in five-year increments, subject to annual review. These catch limits are contained in paragraph 13 of the Schedule. Catch limits for Western Arctic bowhead whales have been expressed in two components: a limit on the number of whales landed, and a slightly higher number of strikes. This approach takes into account the fact that not all whales struck are landed and ensures an upper limit on total strikes for conservation management. The Whaling Convention Act (WCA)

defines aboriginal subsistence whaling as whaling authorized by paragraph 13 of the Schedule annexed to and constituting a part of the ICRW (50 Code of Federal Regulations [CFR] 230.2). Aboriginal subsistence whaling is not otherwise defined in the Schedule, but the following definition of subsistence use was adopted by consensus at the 2004 Annual Meeting of the IWC:

1. The personal consumption of whale products for food, fuel, shelter, clothing, tools, or transportation by participants in the whale harvest.
2. The barter, trade, or sharing of whale products in their harvested form with relatives of the participants in the harvest, with others in the local community or with persons in locations other than the local community with whom local residents share familial, social, cultural, or economic ties. A generalized currency is involved in this barter and trade, but the predominant portion of the products from each whale are ordinarily directly consumed or utilized in their harvested form within the local community.
3. The making and selling of handicraft articles from whale products, when the whale is harvested for the purposes defined in (1) and (2) above.

General principles governing aboriginal subsistence whaling are contained in paragraph 13(a) of the Schedule, and catch limits are set under paragraph 13(b) of the Schedule. Paragraph 13(a) of the current Schedule includes the prohibition on the "strick[ing], tak[ing] or kill[ing] calves or any whale accompanied by a calf, "applicable to Western Arctic bowhead whales, and the requirement that "all aboriginal whaling shall be conducted under national legislation that accords with paragraph 13 of the Schedule" (IWC 2005a:13(a)(4)&(5)). Native peoples engaging in subsistence hunts do so under permit issued by their governments. In the case of Alaska Eskimo and Russian Native subsistence hunts, the United States and the Russian Federation make a joint request to the IWC for a subsistence hunt for bowhead whales, based, in part, on the needs of their respective Native communities (Appendix 8.1). Once the IWC approves a request for an aboriginal subsistence whaling quota (Appendix 8.1) and sets catch limits for each whale stock in five-year increments, the WCA provides the mechanism for the United States to implement these quotas.

1.2.3 Whaling Convention Act (WCA)

The WCA was enacted to implement the domestic obligations of the United States government under the ICRW. IWC Schedule provisions to which the United States has not objected shall become effective with respect to all persons and vessels subject to the jurisdiction of the United States in accordance with the terms of the Schedule provisions and Article V of the ICRW (WCA § 916k). Under Section 916b of the WCA, the Secretary of State (with concurrence by the Secretary of Commerce) is vested with the power of presenting or withdrawing objections to regulations of the IWC on behalf of the United States as a Contracting Government.

The Secretary of Commerce holds general powers, which have been delegated to NMFS, to administer and enforce whaling³ in the United States, including issuance of necessary regulations to carry out that authority (WCA §§ 916d, 916k). The regulations (located at 50 CFR Part 230) prohibit whaling, except for aboriginal subsistence whaling authorized by the IWC (50 CFR 230.1). NMFS publishes aboriginal whaling quotas set in accordance with paragraph 13 of the

³ Under Section 102(f) of the MMPA, commercial whaling is expressly banned in waters subject to the jurisdiction of the United States.

Schedule in the Federal Register, together with any relevant restrictions, and incorporates them into cooperative agreements with the appropriate Native American whaling organization, (entities recognized by this agency as representing and governing the relevant Native American whalers for the purposes of cooperative management of aboriginal subsistence whaling) (50 CFR 230.6(a)). Publication of the quota is contingent upon agency completion of a NEPA review. Any quotas published are allocated to each whaling village or tribal whaling captain by the appropriate Native American whaling organization.

WCA regulations track the IWC provisions that prohibit whaling of any calf or whale accompanied by a calf (50 CFR 230.4(c)); they also prohibit any person from selling or offering for sale whale products from whales taken in aboriginal subsistence hunts, except that “authentic articles of Native handicrafts” may be sold or offered for sale (50 CFR 230.4(f)) (defined under the MMPA as items composed wholly or in some significant respect of natural materials) (MMPA § 101(6)(2)). Regulations also require that whaling not be conducted in a wasteful manner (50 CFR 230.4(k), MMPA § 101(b)(3)).

The WCA and its implementing regulations require licensing and reporting of aboriginal whale harvests (WCA § 916d; 50 CFR 230.5, 230.8). No one may engage in aboriginal subsistence whaling unless the person is a whaling captain or a crew member under the whaling captain's control (50 CFR 230.4(a)). The license may be suspended if the whale captain fails to comply with WCA regulations (50 CFR 230.5(b)). No person may receive money for participation in aboriginal subsistence whaling (50 CFR 230.4(e)). The whaling captain and Native American whaling organization are also responsible for reporting to NMFS, among other things, the number, dates, and locations of strikes, attempted strikes, or landings of whales, including certain data from landed whales (50 CFR 230.8). For the bowhead quota, these provisions are also laid out in the cooperative agreement between the United States Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) and the Alaska Eskimo Whaling Commission (AEWC) (Appendix 8.2).

1.2.4 NOAA-AEWC Cooperative Agreement

The AEWC was formed in 1977 to represent the bowhead subsistence hunting communities of Alaska in an effort to convince the U.S. Government to take action to preserve the Eskimos' subsistence hunt of bowhead whales. The purposes of the AEWC are to ensure that the hunting is conducted in a traditional, non-wasteful manner; to communicate to the outside world the cultural significance of bowhead whaling for the North Slope Inupiat and St. Lawrence Island Yupik; and to promote scientific research on bowhead whales to ensure their continued existence without unnecessary disruption to the whaling communities. During the initial years of controversy, the AEWC adopted its first Management Plan (May 1977), asserting the management and enforcement authority of the AEWC, requiring registration of whaling captains, specifying the traditional methods of whaling to be permitted, and requiring reporting of harvests and strikes by whaling captains (Langdon, 1984:45). With the signing of a cooperative agreement in 1981, the foundations for cooperation between AEWC and NOAA were established, and this framework has endured to the present. The AEWC also agreed to cooperate with the U.S. in scientific research efforts and to develop a management plan to be followed by all bowhead whale subsistence hunters to help improve the efficiency of the subsistence hunt.

The AEWEC and NOAA have agreed to work together through a cooperative agreement, but they bring different sources of authority to the cooperative effort. The underlying authority of the AEWEC is based on the formal cultural traditions of leadership by whaling captains. In addition, the tribal governments of the participating villages, including the Inupiat Community of the Arctic Slope, have delegated to AEWEC the tribal authority to manage the subsistence whaling of tribal members (Langdon, 1984:51). The members of the AEWEC are the registered bowhead subsistence captains and their crew members from the northern Alaskan communities. There are two classes of members: voting members and non-voting members from communities identified above in section 1.1.2. Voting members are the registered bowhead subsistence captains in each community. The crew members are non-voting members. The AEWEC is directed by a board of elected Commissioners, one from each of the participating communities. This Board has authority over all of the Commission's affairs (AEWEC By-Laws, 1982 and as amended and restated October 14, 1992). Federal authority for bowhead management is governed by statute. Management of the Eskimo subsistence bowhead whale hunt is shared through a cooperative agreement between the AEWEC and NOAA (Appendix 8.2). (Note that NMFS serves as the representative of NOAA, its parent agency, in the administration of subsistence whaling in Alaska.)

The purposes of the NOAA-AEWEC Cooperative Agreement are to

- protect the Western Arctic population of bowhead whale and the Eskimo culture;
- promote scientific investigation of the bowhead whale; and
- effectuate the other purposes of the WCA, the MMPA, and the ESA, as these acts relate to the aboriginal subsistence hunts for whales.

To achieve these purposes, the agreement provides for cooperation between members of the AEWEC and NOAA in management of the subsistence bowhead whale hunt. The agreement also provides for an exclusive enforcement mechanism applied to any violation by the registered member whaling captains or their crews. For actions of AEWEC members as they relate to aboriginal subsistence bowhead hunts, the AEWEC is the first line of enforcement for the MMPA, the ESA, the WCA, the ICRW and its Schedule, the AEWEC management plan; or the agreement itself (Appendix 8.2 and Chapter 3 Section 3.6). To support the scientific and administrative functions of the AEWEC, NOAA has provided funds through annual grants, reaching as much as \$400,000 per year in the early part of this decade (NOAA, 2007).

Although the AEWEC, the IWC, and NOAA had significantly different perspectives on the population status of the bowhead population at the outset, the rise of cooperative management in this case is highly distinctive in the degree to which the AEWEC and the North Slope Borough committed to a major peer-reviewed program of scientific research to improve understanding of the bowhead population status and dynamics in order to persuade the IWC to increase the subsistence quota (Langdon, 1984; Freeman, 1989). As improved census methods brought larger population estimates throughout the 1980s, the IWC raised the subsistence catch limits. The AEWEC members felt this research vindicated their traditional knowledge perspective that the bowhead population was much larger than the alarming estimates of the late 1970s.

1.2.5 Marine Mammal Protection Act and Endangered Species Act

The Marine Mammal Protection Act (MMPA) was enacted to protect and conserve marine mammals and their habitats. Section 2 of the MMPA contains the general purposes and policies of the act through congressional findings (16 United States Code [U.S.C.] 1361). Concerned that certain marine mammal species and population stocks were in danger of extinction or depletion, Congress established protections to encourage development of those stocks to the greatest extent feasible, commensurate with sound policies of resource management. Therefore, Congress specified that the primary objective of marine resource management under the MMPA is to maintain the health and stability of the marine ecosystem. Section 2 indicates that stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element of the ecosystem, and they should not be permitted to diminish below their optimum sustainable population (OSP).

To achieve Section 2 general purposes and policies, Congress established a moratorium on the taking and importing of marine mammals in Section 101(a) (16 U.S.C. 1371(a)). Under the MMPA, 'take' means to "harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal" (16 U.S.C. 1362(13)). Except for certain military readiness or scientific activities, the term 'harassment' means "any act of pursuit, torment, or annoyance which, (1) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (2) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B Harassment]" (16 U.S.C. 1362(18)(A)).

This moratorium is not absolute. In particular, the MMPA allows the take of marine mammals by Alaska Natives for subsistence purposes, provided that such activities are not accomplished in a wasteful manner (16 U.S.C. 1371(b)). Inedible by-products such as baleen, bone, and ivory may be fabricated into Native handicrafts for sale, under these regulations. In addition, Section 113 of the MMPA specifically states that the provisions of the MMPA are in addition to, and not in contravention of, existing international treaties, conventions, or agreements (e.g., the ICRW) (16 U.S.C. 1383(a)).

The Endangered Species Act (ESA) is the principal federal law that guides the conservation of endangered or threatened species. Similar to the MMPA, the ESA expressly provides for Alaska Native subsistence activities (16 U.S.C. 1539(e)). Under section 7 of the ESA, NMFS consults with itself and with the U.S. Fish and Wildlife Service on the effects of its proposed actions on endangered and threatened species.

1.2.6 National Environmental Policy Act

The National Environmental Policy Act (NEPA) was enacted to create and carry out a national policy designed to encourage harmony between humankind and the environment. While NEPA neither compels particular results nor imposes substantive environmental duties upon federal agencies (*Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989)), it does require that federal agencies follow certain procedures when making decisions about any proposed federal actions that may affect the environment. These procedures ensure that an agency has the best possible information with which to make an informed decision with regard to environmental

effects of any proposed action. They also ensure that the public is fully apprised of any associated environmental risks. Regulations promulgated by the Council on Environmental Quality (40 CFR 1500-1508) contain specific guidance for complying with NEPA.

Under the Council on Environmental Quality regulations, Federal agencies must prepare an environmental assessment (EA) to determine whether a proposed action is likely to have a significant impact or effect on the quality of the human environment, or an environmental impact statement (EIS), which involves a longer public process and does not need to conclude with a finding of no significant impact (FONSI). Proposed alternatives are analyzed both in terms of context and intensity of the action. If information in an EA indicates that the environmental effects are not significant, the agency issues a FONSI to conclude the NEPA review. This was the case in 2003 when NMFS published a final EA and FONSI in support of the 2003-2007 bowhead whale quota allocations to AEWC (NMFS, 2003).

For the next five-year quota block and beyond, NMFS has decided to prepare an EIS rather than an EA. This decision was not based on any new determination that significant effects occur as a result of the bowhead subsistence hunt, but rather to take advantage of the EIS's longer process and to provide greater transparency and opportunity for public review of its administration of the bowhead subsistence whaling program. An EIS provides a more detailed statement of the environmental impacts of the action, possible alternatives, and measures to mitigate adverse effects of the proposed actions. The EIS achieves NEPA's policy goals by ensuring that agencies take a hard look at environmental consequences and by guaranteeing broad public dissemination of relevant information. Although the MMPA and NEPA requirements overlap in some respects, the scope of NEPA goes beyond that of the MMPA by considering the impacts of the proposed Federal action on non-marine mammal resources such as human health and cultural resources.

An EIS culminates in a Record of Decision (ROD). The ROD will document the alternative selected for implementation as well as any conditions this agency imposes, and it will summarize the impacts expected to result from the action.

1.3 Public Involvement and Scoping Process

NEPA is often referred to as a "procedural statute." The law requires opportunities for public review and submission of comments. In preparing an EIS, the public process begins with scoping, which is the agency's first step in planning its analysis. The lead agency will typically consult with expert staff in determining the proper way to describe the proposed action, its alternative actions, and the environmental issues it feels are important to analyze in the document. The agency will also alert the public and affected stakeholders to its decision to prepare an EIS and solicit input into the scope of the document. With this information, the agency will prepare a draft EIS and make that document available for a minimum 45-day public review. Public meetings during the review period may be scheduled, depending on the level of interest in the proposed action by the public. Once the public review period on the draft EIS is completed, the agency will review comments received and respond to those comments and make revisions to the draft EIS to answer questions, provide increased clarity, and if need be, conduct new analysis where previous analysis was found lacking. Once completed, the agency publishes a final EIS document and, after a minimum 30-day review period, issues its ROD.

The scoping process for this EIS involved a number of activities that included both internal and public scoping. These activities are described in the following paragraphs.

Internal Scoping

During the internal scoping phase, NMFS identified a preliminary list of resources to address in the EIS, along with four preliminary alternatives (including the no-action alternative) to serve as starting points for discussion. These alternatives and issues were previously analyzed in the 2003 EA. This effort was conducted to help the public provide more meaningful comment on resource issues and alternatives to the proposed action during the public scoping period with the intention of reevaluating resources and alternatives, if needed, following receipt and review of public comment.

Public Scoping

On October 18, 2006, NMFS issued a notice of intent to prepare an EIS for issuing a bowhead whale subsistence quota to the AEWC for the years 2008 through 2017 (71 FR 61460). NMFS requested comments on the proposed issuance of annual quota over a ten-year period, requested information on the affected environment, and requested comments on the issues to be analyzed in the document. NMFS also sent a public news release to local Alaska newspapers and statewide public radio. In addition, NMFS sent letters to all federally recognized tribal governments located in the affected geographic area, soliciting their comments. Comments from the public were accepted through December 15, 2006.

During the scoping period, comments were received from two federal agencies, the Environmental Protection Agency (EPA) and the Marine Mammal Commission (MMC). In addition, the Animal Welfare Institute (AWI) submitted comments, written on behalf of themselves and the Whaleman Foundation (WF). The AWI letter included as an attachment a December 2005 submission to the Inter-American Commission on Human Rights from Ms. Sheila Watt-Cloutier on behalf of the Inuit of the Arctic regions of the U.S. and Canada, concerning alleged violations resulting from actions by the United States with regard to global warming.

The NMFS allocation of a bowhead whale subsistence harvest quota is a recurring regulatory action of over two decades' standing. As a result, many stakeholders are familiar with the format of the NMFS analysis, and this may explain why a limited number of public comments were received. The issues raised in the scoping comments are incorporated and addressed in the preparation of this EIS. The following paragraphs summarize these comments, drawing attention to those that augmented the issues already identified for analysis by NMFS.

The scoping comments from federal agencies focused for the most part on NEPA procedural questions. The MMC recommended that formulation of alternatives be deferred until the IWC had concluded its action in May 2007. The EPA letter emphasized the importance of meeting NEPA requirements for the components of the EIS, including a careful description of the purpose and need, an adequate range of alternatives, and a thorough cumulative effects analysis. In addition, attention was directed to requirements under the Endangered Species Act, and under Executive Orders concerning consultation with federally recognized tribes and analysis of environmental justice. EPA policy suggestions concerning cooperating agency status for affected

Alaska Native tribes were highlighted. Finally, EPA also suggested analysis of habitat capacities, including areas used by bowhead whales for migration and seasonal concentration.

The scoping comments from AWI (and WF) included NEPA procedural concerns and a variety of topics for analysis in the EIS. AWI asserted that as a matter of NEPA procedure, the United States cannot submit a request for revised catch limits to the IWC until the EIS process is complete. However, United States negotiating positions at the IWC are not subject to NEPA. Rather, the federal action, for which the EIS must be completed, is NMFS's issuance of a quota to the AEWC, not the United States' request for a quota from the IWC. Of particular note in the recommended topics for analysis, the AWI submission emphasized the variety of cumulative effects potentially arising from climate change both to the whale population and to the Inuit communities. AWI also requested analysis of habitat health and an assessment of impacts from military sonar activity. Concerning subsistence harvest practices, AWI requested analysis of the accuracy of harvest reporting and of the basis for identification of the subsistence need. Finally, in suggesting discussion of the national and international legal framework for subsistence bowhead whaling, AWI stated that if NMFS is prepared to authorize a subsistence harvest in the event that the IWC did not renew the catch limit, it must include analysis of the impacts of such an action on the effectiveness of the ICRW and, as a result, on whale populations.

Public Review of the Draft EIS

Accompanying this draft document is a letter describing the public review schedule and ways of submitting comments to NMFS during the review period.