

COOPERATIVE AGREEMENT
between the
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
and the
ALASKA ESKIMO WHALING COMMISSION
as amended
1998

1. PURPOSES

The purposes of this agreement are to protect the bowhead whale and the Eskimo culture, to promote scientific investigation of the bowhead whale, and to effectuate the other purposes of the Marine Mammal Protection Act, the Whaling Convention Act, and the Endangered Species Act as these acts relate to aboriginal subsistence whaling.

In order to achieve these purposes, this agreement provides for:

(a) Cooperation between members of the Alaska Eskimo Whaling Commission (AEWC) and the National Oceanic and Atmospheric Administration (NOAA) in management of the bowhead whale hunt for 1981 through 2002; and

(b) an exclusive enforcement mechanism that shall apply during the term of this agreement to any violation by whaling captains (or their crews) who are registered members of the AEWC of any provisions of the Marine Mammal Protection Act, the Endangered Species Act, or the Whaling Convention Act, as these acts may relate to aboriginal subsistence whaling; of the

International Convention for the Regulation of Whaling, 1946; of regulations of the International Whaling Commission; of the Management Plan; or of this agreement.

2. RESPONSIBILITIES

NOAA has primary responsibility within the United States Government for management and enforcement of programs concerning bowhead whales. The AEWC is an association governing Alaskan Eskimo whalers who hunt for bowhead whales. The AEWC adopted a Management Plan on March 4, 1981, to govern hunting for bowhead whales by Alaskan Eskimos. Under this Cooperative Agreement, the AEWC will, in cooperation with NOAA, manage the 1981 through 2002 bowhead whale hunts. The authority and responsibilities of the AEWC are contained in and limited by this agreement and the Management Plan, as amended from time to time, to the extent the Management Plan is not inconsistent with this agreement. If the AEWC fails to carry out its enforcement responsibilities or meet the conditions of this agreement or of the Management Plan, as amended from time to time, NOAA may assert its federal management and enforcement authority and will regulate the bowhead whale hunt in a manner consistent with federal law, this agreement, and the Management Plan to the extent necessary to carry out the responsibilities that are not carried out by the AEWC. Such

assertion of federal authority will be preceded by notice to the AEWC of intent to regulate the bowhead whale hunt to the extent necessary to carry out those responsibilities and conditions, and will not be effected until the AEWC or its members have been given an opportunity to present their views on the need for such assertion in a public forum: provided, however, that in cases where irreparable harm to the bowhead whale resource might result, the assertion of federal authority may be effected immediately after notice, in which cases the public forum on the need for such assertion will be conducted as soon as practicable thereafter.

3. INSPECTION AND REPORTING

NOAA personnel shall monitor the hunt and the AEWC shall assist such personnel with such monitoring. The AEWC shall provide an oral report to NOAA daily regarding the number of strikes and landings. The AEWC shall also inform all whaling captains who are engaged in whaling activities of the number of whales struck or landed at all times. On the first of each month during the spring and fall whaling seasons, the AEWC shall inform NOAA of the number of bowhead whales struck during the previous month. The AEWC shall also provide a report to NOAA within 30 days after the conclusion of the spring hunt, and within 30 days after the fall hunt but no later than January 1, containing at

least the following information:

(1) The date and exact, to the extent practicable, location of strike for each whale struck or landed, including, at a minimum, the estimated distance and bearing from the village or whaling camp;

(2) The length (as measured from the point of the upper jaw to the notch between the tail flukes), the extreme width of the flukes, and the sex of the whales landed;

(3) The length and sex of a fetus, if present, in a landed whale; and

(4) An explanation of circumstances associated with the striking of any whale not landed, and an estimate of whether a harpoon or bomb emplacement caused a wound which might be fatal to the animal (e.g., the harpoon entered a major organ of the body cavity and the bomb exploded).

NOAA shall provide technical assistance in collection of the above information. The AEWC shall assist appropriate persons in collection of specimens from landed whales, including but not limited to, ovaries, ear plugs, and baleen plates. Such specimens shall be available to appropriate government officials. NOAA personnel cooperating with the AEWC shall work closely with the AEWC Commissioner in each whaling village to facilitate the accurate monitoring of the hunt.

4. MANAGEMENT

(1) No more than seventy (75) bowhead whales shall be struck in 1998. The AEWC and NOAA shall determine the total number of bowhead whales that may be struck in each year from 1999 through 2002, and any applicable number of bowhead whales that may be landed, through annual negotiations during the first quarter of the year for which the quota is applicable. Provided, however, that the Under Secretary may, in consultation with the AEWC, reconsider and revise the terms of this paragraph if he deems it necessary on the basis of public comments received pursuant to the Federal Register notice of the proposed allocation.

(2) The AEWC Management Plan will provide that whaling captains and crews will use their best efforts to land every whale that is struck, and strike whales that are under twelve (12)-meters (39 feet) and presumed to be sexually immature.

(3) The AEWC may determine the allocation of these permitted strikes among the whaling villages.

(4) The AEWC Management Plan will provide that the meat and products of whales taken in the subsistence hunt must be used exclusively for native consumption and may not be sold or offered for sale.

5. ENFORCEMENT

(1) The AEWC agrees that whaling captains will be subject to civil monetary assessments for whales struck over any strike limit and whales landed over any landing limit that is prescribed in this agreement and the Management Plan as they may be amended from time to time. The AEWC will collect the assessments from the whaling captains and deposit them in a separate bank account from which no disbursements shall be made without the express agreement of NOAA and the AEWC. In the event of a dispute between NOAA and the AEWC over the number of whales landed or struck or the amount of the assessment, or other factual matters, NOAA will consult with the AEWC about the matter. If the dispute cannot be resolved, it will be referred to an administrative law judge for determination under a trial-type administrative proceeding of the facts and the amount of assessment. The procedures contained in 15 CFR sections 904.200-904.272 will control these proceedings. The decision of the administrative law judge may be appealed to the Administrator of NOAA. Whaling captains may also be liable for civil assessments for other violations of the Management Plan as determined by the AEWC or by an administrative law judge under the procedures described above.

(2) In consideration of the AEWC's agreement hereunder, the Government of the United States agrees that the enforcement procedure described in paragraph (1) of this section shall be the

exclusive enforcement mechanism that shall apply during the term of this agreement to any violation by whaling captains or their crew who are registered members of the AEWC of any provisions of the Marine Mammal Protection Act, the Endangered Species Act, or the Whaling Convention Act, as these Acts may relate to aboriginal subsistence whaling; of the International Convention for the Regulation of Whaling, 1946; of any regulations of the International Whaling Commission; of the Management Plan; or of this agreement.

(3) The AEWC annually will furnish NOAA the names of all registered whaling captains.

6. AUTHORITIES

This Cooperative Agreement is concluded under the authorities governing management of living marine resources, including but not limited to the Marine Mammal Protection Act of 1972 and the Whaling Convention Act of 1949.

7. DURATION

This Agreement is in effect from March, 1981, through December 31, 2002.

8. CONSULTATION

NOAA and the AEWC shall consult during the operation of this

Agreement concerning the matters addressed herein as well as all other matters related to bowhead whales which either party believes are suitable for such consultation. Specifically, NOAA shall consult with the AEWC on any action undertaken or any action proposed to be undertaken by any agency or department of the Federal Government that may affect the bowhead whale and shall use its best efforts to have such agency or department participate in such consultation with the AEWC.

9. LIMITATION OF USE

Nothing in this Agreement shall be construed to support or contradict the position of either party regarding the jurisdiction of the International Convention for the Regulation of Whaling, 1946, or the Whaling Convention Act of 1949 with respect to aboriginal subsistence whaling by Alaskan Eskimos.

Dated: _____

Burton Rexford
Chairman
Alaska Eskimo Whaling Commission

D. James Baker
Under Secretary for
Oceans and Atmosphere