

ALASKA ESKIMO WHALING COMMISSION
P.O. Box 570 Barrow, Alaska 99723

March 8, 2018

SUBMITTED VIA FEDERAL RULEMAKING PORTAL AT <http://regulations.gov>

Ms. Kelly Hammerle, Chief
National Oil and Gas Leasing Program Development and Coordination Branch
Leasing Division
Office of Strategic Resources
Bureau of Ocean Energy Management (VAM-LD)
45600 Woodland Road
Sterling, VA 20166-9216

Re: Comments on 2019-2024 Draft Proposed Outer Continental Shelf Oil and Gas Leasing Program and Scoping Comments on Programmatic Environmental Impact Statement

Dear Ms. Hammerle:

Please accept these comments on behalf of the Alaska Eskimo Whaling Commission (AEWC) in response to the Notice of Availability of the 2019-224 Draft Proposed Outer Continental Shelf Oil and Gas Leasing Program (DPP) and Notice of Intent to Prepare a Programmatic Environmental Impact Statement (PDEIS).¹ We appreciate the opportunity to provide the Bureau of Ocean Energy Management (“BOEM”) and the Department of Interior (“DOI”) with critical feedback from the potentially impacted communities of America’s Arctic.

As you may know, AEWC is a non-profit organization representing Inupiat subsistence whaling captains in Northern coastal Alaska. The AEWC manages the bowhead whale subsistence harvest, locally, pursuant to a Cooperative Agreement with the Department of Commerce/NOAA, and through village and regional IRA Tribal Resolutions under the IRA of 1934 amended for Alaskans in 1936. AEWC represents the eleven bowhead whale subsistence hunting villages of Barrow, Nuiqsut, Kaktovik, Pt. Hope, Kivalina, Wales, Savoonga, Gambell,

¹ 83 Fed. Reg. 829 (Jan. 8, 2018).

Little Diomedede, Wainwright and Pt. Lay. Our whaling captains and communities rely on the subsistence hunt of bowhead whales and other marine mammals in or adjacent to the Beaufort and Chukchi Seas, as well as the Hope and Norton Basins and St. Mathew-Hall, which are in or near the southern reaches of the bowhead whales' wintering grounds.

On behalf of our whaling captains, we are responsible for protecting the bowhead whale and for preserving the right of our whaling communities to continue our traditional bowhead whale subsistence harvest. Our people have thousands of years of traditional knowledge about our Arctic ecosystems, and the AEWC has more than 30 years of experience partnering directly with BOEM, DOI, National Marine Fisheries Service (NMFS), the North Slope Borough (NSB), and offshore operator to mitigate potential adverse impacts of offshore oil and gas activities in the Arctic to the bowhead whale and our subsistence activities. We submit these comments in a spirit of sharing the fragile resources of the Arctic Ocean that have sustained our people since time immemorial with visitors who have an interest in extraction of natural resources.

We understand that BOEM and DOI are seeking input on a DPP for 2019-2024, which includes the following nine (9) lease sales² over five years that could impact areas in which our communities hunt for bowhead whales:

Sale Year	OCS Region	Program Area
2019	Alaska	Beaufort Sea
2020	Alaska	Chukchi Sea
2021	Alaska	Beaufort Sea
2022	Alaska	Chukchi Sea
2023	Alaska	Beaufort Sea
2023	Alaska	Hope Basin
2023	Alaska	Norton Basin
2023	Alaska	St. Matthew-Hall
2024	Alaska	Chukchi Sea

We also understand that the chosen option in the DPP - Option1 for the Alaska Region - includes all the above sales with no exclusion areas.³ Option 2 includes one or more of five possible exclusions areas, including:

1. Hanna Shoal in the Chukchi Sea;
2. Subsistence Use area in the Chukchi Sea;
3. 25-mile coastal buffer in the Chukchi Sea;
4. Barrow Whaling Area in the Beaufort Sea; and
5. Kaktovik Whaling Area in the Beaufort Sea.

² DP at 8.

³ *Id.* at 10.

Our main comments on the DPP are summarized below. Following the summary, in part I of this letter, we provide more detailed feedback on the DPP. In part II of this letter, we provide scoping comments for the upcoming Programmatic EIS.

In Both the Programmatic EIS for This Proposed Program and the Agency's Record of Decision, BOEM Should Include a Discussion of the Limitations Imposed on the Bowhead Whale Subsistence Harvest by the International Whaling Commission

As noted elsewhere in these comments and in numerous reports and submissions to BOEM on the Alaskan bowhead whale subsistence hunt, this harvest is central to the nutritional and cultural health, as well as the food security, of thousands of American citizens residing in northern Alaska and throughout the state. In addition to the overarching social and cultural significance of this harvest, a single bowhead whale yields, on average, 12 – 20 tons of food. Our whaling captains harvest 40 – 45 whales per year, for an average of approximately 500 – 900 tons of highly nutritious food. An interruption of this harvest would devastate our villages and Alaska Native communities throughout the state.

Since 1977, the Alaskan bowhead whale subsistence harvest has been the subject of an onerous quota regime, imposed by the International Whaling Commission (IWC), and an intense effort by anti-whaling forces to leverage IWC jurisdiction in support of an international initiative to end all whaling, including Alaskan subsistence.

Efforts to take whales that have been disturbed by industrial activity put human life at risk. They also can result in struck and lost whales, which are counted against our IWC quota and used to support arguments to end our legal right to continue our bowhead whale subsistence harvest.

The Chukchi Sea Coastal Buffer, the Barrow and Kaktovik Deferrals, and the Recommended Deferral for Cross Island are Designed to Protect Human Life and Safety and to Aid the AEWC in Its Ongoing Effort to Preserve the Legal Right of Our Whalers to Continue to Feed the Native People of Northern Alaska.

The Secretary Should Exclude the Chukchi Sea 25-Mile Buffer, the Barrow Whaling Area on Both the Chukchi and Beafort Sea Sides of Utqeaqvik, and the Kaktovik Whaling Area From the Proposed Program.

The coastal exclusions for the Barrow Whaling Area on both sides of Utqeaqvik, the Kaktovik Whaling Area, and the 25-mile Chukchi coastal buffer were adopted by BOEM and DOI more than 10 years ago, as federal policy to protect the interests of our ocean-dependent subsistence communities and the fragile resources of the Arctic. These exclusion areas were identified on the basis of the best available science and the input of our local communities, along with a well-informed balancing under the Outer Continental Shelf Lands Act (OCSLA)⁴ of the potential risks and benefits of industrial activities in these very sensitive areas. We are gravely

⁴ 43 U.S.C. § 1344.

concerned that the Federal government is recommending a roll back of these protections for critical subsistence use and ecological areas in the DPP.

The Secretary Should Exclude from Leasing an Area Around Cross Island in the Mid-Beaufort Sea.

The long-standing subsistence hunt of bowhead whales at Cross Island by the village of Nuiqsut has been documented in extensive scientific work carried out by Dr. Michael Galginitis and funded by BOEM.⁵ Oil and gas activities in such close proximity to our subsistence hunting grounds threaten to disrupt the hunt, placing our whaling captains in grave danger when they are forced to travel many miles of open ocean in small craft to access the bowhead whale.

Moreover, past hunter experiences and scientific research demonstrate that disruptions to the fall bowhead whale migration in the mid-Beaufort Sea area can cause a deflection of the migration with the potential to disrupt the critical fall harvests at both Nuiqsut and Utqeaqvik. Our communities rely heavily on the healthy subsistence food provided by the bowhead whale.

Given the location of their village and the unique circumstances of their harvest, the Nuiqsut Whaling Captains have asked repeatedly for the opportunity to work with BOEM to devise a plan appropriate to their needs. The AEWc has and continues to support Nuiqsut in this request. We strongly encourage BOEM to take the opportunity of this new Five-Year Plan to work with Nuiqsut and our Beaufort Sea villages on a mutually-agreed set of protection and development plans for the Cross Island area.

The Secretary Should Require in the Five-Year Plan That Offshore Operators Meet with Local Whaling Captains to Negotiate a Conflict Avoidance Agreement (CAA).

Since the 1980's, AEWc has worked cooperatively with offshore operators, BOEM (and the Minerals Management Service), and NMFS to design annually mitigation measures that prevent conflicts between offshore activities and our subsistence hunt of the bowhead whale. The Annual Open Water Season Conflict Avoidance Agreement (CAA) has proven to be an effective means for the community to find common ground with offshore operators so that their respective uses can co-exist in the unique setting of the Beaufort and Chukchi Seas. Over the last 30 years, these collaborative discussions have led to the development of mitigation measures that are practicable for industry, effective, transparent and supported by our whaling captains. Engagement through this process reduces the potential for conflict on the water and for local objections to offshore development activities, thus facilitating both the harvest and the permitting and exploration and development processes. BOEM and NMFS have both been extremely supportive of these collaborative, community-led conflict avoidance efforts, particularly when industry activity ramped up several years ago. When offshore operators meet directly with the

⁵ See, e.g., Galginitis, M. 2014. *Monitoring Cross Island Whaling Activities, Beaufort Sea, Alaska: 2008-2012 Final Report, Incorporating ANIMIDA and cANIMIDA (2001-2007)*. U.S. Dept. of the Interior, Bureau of Ocean Energy Management, Alaska Region, AK. OCS Study BOEM 2013-212. 208 pp.

impacted community to develop conflict avoidance measures, the work of federal regulatory agencies can be streamlined.

To facilitate these discussions, Interior should require that offshore operators planning activities in areas having the potential to adversely affect the bowhead whale or our subsistence harvest meet with our whaling captains to negotiate a CAA. To be clear, we are not asking for a mandate to reach agreement. The lease stipulation need only require that the discussions take place.

**In Both the Programmatic EIS for This Proposed Program and the Agency’s
Record of Decision BOEM Should Recognize the Burden Borne by Our Subsistence
Communities in Researching, Commenting on, and Managing the Offshore Activities
Permitted Through the Agency, With a Strong Recommendation for Revenue Sharing To
Provide Support for This Unfunded Work**

Offshore developers and the Federal Government benefit from: (1) the Local Knowledge provided by our whaling captains on the bowhead whales, their behavior, and their habitat; (2) the scientific research conducted through our North Slope Borough Department of Wildlife Management, aided by our whaling captains; and (3) the local management provided through the CAA that enables BOEM and offshore operators to balance development with local uses and to meet the “no unmitigable adverse impact” standard of the Marine Mammal Protection Act.

The AEWG and North Slope Borough have provided these aids to federal permitting and private development for more than three decades, without federal recognition or financial support for this important and highly beneficial work. As the agency that most directly benefits from these efforts, BOEM is well situated to shine the spotlight on the work and the need for formal recognition by the federal government and financial backing through revenue sharing.

I. Comments on the DPP

A. Background on the Interplay Between the Outer Continental Shelf Lands Act (OCSLA) and the Marine Mammal Protection Act (MMPA).

Our comments on the DPP are informed by the statutory protections for the subsistence practices of the Inupiat people implemented by Congress in the MMPA.⁶ Under OCSLA, Congress extended the jurisdiction and laws of the United States to the outer continental shelf (OCS).⁷ Section 18 of OCSLA, in turn, states that management of the OCS “shall be conducted in a manner which considers * * * the potential impact of oil and gas exploration on other resource values of the [OCS] and the marine, coastal, and human environments.”⁸ The five-year plan is to be based on a balancing of the factors listed under Section 18, which include “the

⁶ 16 U.S.C. § 1361 *et seq.*

⁷ 43 U.S.C. § 1332(a)(1).

⁸ *Id.* at § 1344(a)(1).

location of such regions with respect to other uses of the sea and seabed * * *.”⁹ Thus, federal laws like the MMPA apply to activities occurring on the OCS and provide additional context for the decision to be made on the five-year plan under Section 18 of OCSLA.

The MMPA implements Congress’ intent to conserve marine mammals, the marine ecosystem, and the subsistence practices of Alaska Natives. Congress implemented a “moratorium on the taking of * * * marine mammals * * *.”¹⁰ When the MMPA was signed into law and for decades following its enactment, the sole exemption to this broad moratorium was for the taking of marine mammals by Alaska Natives for subsistence purposes.¹¹ Thus, the generally applicable moratorium does not apply to the subsistence hunting practices of our whaling captains in the Bering, Chukchi and Beaufort Seas.

The statute additionally provides for exceptions to the moratorium on taking marine mammals, including an exception for “incidental, but not intentional, taking * * * of small numbers of marine mammals * * *.”¹² This exception is used to authorize the incidental take of marine mammals pursuant to offshore oil and gas activities on the OCS that potentially harass or injure marine mammals. To issue an incidental take authorization, the Secretary of Commerce must find that the requested takes: 1) “will have a negligible impact on such species or stock,” and 2) “will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section * * *.”¹³ The exception to the moratorium for incidental takes is therefore subordinate to the exemption to the moratorium created by Congress for the subsistence practices of Alaska Natives. In issuing incidental take authorizations to industrial operators, the Secretary of Commerce shall prescribe the “measures the Secretary determines are necessary to ensure no unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses * * *.”¹⁴

Thus, under the MMPA, Congress has granted to Alaska Natives heightened protections for our subsistence uses of marine mammals on the OCS, requiring offshore operators to demonstrate, before they obtain authorization to operate in the Beaufort and Chukchi Seas, that they will have no unmitigable adverse impact on our subsistence hunt of bowhead whales, which has been taking place since time immemorial. Further evidence of this federal intent is found at 50 CFR 216, published by NMFS in 1996, to accompany the MMPA’s “no unmitigable adverse impact” language. Specifically, Section 216.104 (12) calls for the submission, by offshore operators seeking a small take authorization, of “a plan of cooperation or information that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses,” * * *including “(iii) a description of what measures the applicant has taken and/or will take to ensure that proposed activities will not interfere with subsistence whaling.” For companies operating in the Beaufort and Chukchi

⁹ *Id.* at § 1344(a)(2)(D).

¹⁰ 16 U.S.C. § 1371(a).

¹¹ 16 U.S.C. § 1371(b).

¹² 16 U.S.C. § 1371(a)(5)(a)(i), (D)(i).

¹³ 16 U.S.C. § 1371(a)(5)(A)(i)(I), (D)(i)(I)-(II).

¹⁴ 16 U.S.C. § 1371(D)(ii)(II).

Seas, local engagement through the CAA Process enables offshore operators to fulfill this regulatory requirement.

Our whaling captains have been and continue to be willing to share the nonrenewable resources with offshore operators and the rest of the country to the extent that our subsistence practices are protected pursuant to federal law. This effort requires close coordination, both as a practical matter to avoid conflicts on the water but also to ensure that all stakeholders faithfully uphold the will of Congress.

B. Background on the Subsistence Hunt of Bowhead Whales, the AEWC, and the CAA.

AEWC co-manages the subsistence harvest of the bowhead whale, our most important subsistence resource, pursuant to its Cooperative Agreement with the National Oceanic and Atmospheric Administration (NOAA). This successful partnership has resulted in a unique success story whereby local control of natural resources, along with close coordination with the federal government, has a proven track record of sustainable management in a rapidly changing, complex ecosystem.

Our sustainable management of the bowhead whale has been studied for decades by the federal government, and recent environmental documents include detailed background information that can be useful for BOEM as it considers the next iteration of the five-year OCS plan. The most recent abundance estimate for the Western Arctic stock of bowhead whales is 16,892.¹⁵ The estimated annual rate of increase from 1978 to 2001 was 3.4 percent, and the abundance doubled from approximately 5,000 to 10,000 animals.¹⁶ It's current rate of increase potentially puts the stock at more than 20,000 animals.

AEWC's co-management of the bowhead whale subsistence harvest is a unique success, despite the fact that this large baleen whale travels great distances in Arctic waters and utilizes areas of the ocean under the authority of multiple jurisdictions. This success is due in large part to the close collaboration between our whaling captains and scientists who, in addition to other research, verify the lessons to be learned from our traditional knowledge – *ie.*, our continuous observations of the bowhead whale and its habitat. With these well-founded abundance estimates, we collaborate closely with NOAA and the U.S. State Department to secure a quota for our subsistence hunt from the International Whaling Commission, and our communities have abided by and enforced that quota for decades.

In developing the DPP and determining appropriate exclusion areas, we encourage DOI to streamline its work by drawing from the wealth of existing environmental reports prepared by the federal government, which have been shaped by our input, discussing the bowhead whale, its habitat, and our subsistence practices. In particular, BOEM can look to the 2016 Programmatic EIS on the "Effects of Oil and Gas Activities in the Arctic Ocean" prepared by NMFS with

¹⁵ Givens et al. 2013.

¹⁶ George et al. 2013b.

BOEM serving as a cooperating agency (2016 NMFS Programmatic EIS).¹⁷ Specifically, Section 3.2.4.1 of the 2016 NMFS Programmatic EIS includes a robust discussion of the current status of the bowhead whale and its annual migration and use of the Arctic Ocean. We have included the 2016 NMFS Programmatic EIS along with our comments to be included in the record for the DPP. BOEM should also refer to the helpful analysis in the EIS that accompanied the most recent iteration of the Five-Year Plan.¹⁸

The federal government has long recognized the cultural and nutritional importance of our subsistence activities in the remote villages of Northern Alaska. Section 3.3.2.2 of the 2016 NMFS Programmatic EIS addresses the subsistence practices of the Inupiat and Yupik people who depend on the bowhead whale as the foundation for our mixed subsistence cash economy and our cultural traditions. “Subsistence defines the essence of who they are, and it provides a connection between their history, culture, and spiritual beliefs. An essential component of Inupiat values is the sharing of subsistence resources among families, friends, elders, and those in needs.”¹⁹ Subsistence foods are rich in nutrients, lower in fat, and healthier than store-bought foods that are available in our communities. And the subsistence activities are highly interdependent with economic opportunities and the cash economy.²⁰ The 2016 NMFS Programmatic EIS also included a long list of other recent environmental reviews discussing subsistence harvest patterns in the Arctic.²¹

The 2016 NMFS Programmatic EIS also discusses the CAA and its history of success.

Subsistence communities and the oil and gas industry have worked together to develop documents called Conflict Avoidance Agreements (CAA), which were intended to ensure that there would be ‘no unmitigable adverse impacts to subsistence uses of marine mammals’ resulting from industry activities * * *. The CAA was a binding legal agreement signed by individual companies and the Alaska Eskimo Whaling Commission (AEWC) that put agreed-upon measures in place that would purportedly allow the industry to conduct the indicated activity while ensuring there were no conflicts with the subsistence hunt that would result in unmitigable adverse impacts.

Input from the impacted bowhead whale subsistence communities indicates that they have historically found that the CAA process, through its highly interactive

¹⁷ U.S. Dep’t of Commerce, National Oceanic and Atmospheric Administration. *Effects of Oil and Gas Activities in the Arctic Ocean – Final Environmental Impact Statement*. October 2016.

¹⁸ U.S. Dep’t of the Interior, Bureau of Ocean Energy Management. *Outer Continental Shelf Oil and Gas Leasing Program: 2017-2022, Final Programmatic Environmental Impact Statement*. November 2016. OCS EIS/EA BOEM 2016-060.

¹⁹ *Id.* at 3-166. See also BurnSilver S, Magdanz J, Stotts R, Berman M, Kofinas G (2016), *Are mixed economies persistent or transitional? Evidence using social networks from arctic Alaska*. *American Anthropologist* 118(1):121–129.

²⁰ *Id.* at 3-167-68.

²¹ *Id.* at 3-169.

aspects, has effectively resulted in the development and implementation of measures that will ensure no unmitigable adverse impact. Based on this, for many years, NMFS generally found, after conducting an independent analysis, that if a company and the AEWG signed a CAA, then it was possible for a company to conduct their activity without having an unmitigable adverse impact on the bowhead whale subsistence hunt.²²

We have attached the most recent version of the CAA to these comments for review by DOI as it considers how to craft the next five-year plan. The backbone of the CAA is a structure for ongoing, regular communication between our whaling captains and offshore operators. That includes early discussions on activities to take place during the upcoming open water seasons and appropriate mitigation measures. During the open water season, industry assists in maintain and utilizing a network of communications centers (the Com-Centers) to ensure in real time that there are no conflicts on the water. And the CAA also includes mitigation measures, which can include time area closures to protect site-specific subsistence activities, restrictions on vessel speeds to protect bowhead whales in their migratory corridor, and limitations on the discharge of pollution into critical areas.

Because the CAA is revisited each year in light of proposed offshore activities, the process has proven to be effective at adapting to changing conditions in the Arctic and industry's evolving understanding of where and how it would like to operate.

C. The International Whaling Commission and International Efforts to End the Bowhead Whale Subsistence Harvest.

The special qualities of each of the coastal deferral areas, as well as Hanna Shoal, are discussed below. These areas have been set aside to protect hunters, to preserve the harvest, and to protect bowhead whale coastal habitat.

The AEWG's whaling captains are responsible for feeding and caring for our communities, and for all individuals who depend on us, whether or not those individuals live within our villages. The bowhead whale migration offers a limited window of opportunity to bring in this most important food and cultural source. Therefore, whaling captains will hunt even when conditions are unsuitable or even at times when conditions are dangerous. In addition to the physical dangers and risks to human life created by efforts to harvest whales that have been deflected or disturbed by industrial activity, hunting whales under these conditions carries an added risk not well understood by BOEM.

Under the IWC quota regime, the AEWG is allocated a limited number of bowhead whale "strikes" each year. Under IWC and U.S. regulations, a whale that is swimming erratically due to disturbance and is struck with a harpoon that does not fully penetrate because of the erratic swim pattern, counts against the quota. A whale that is struck and killed too far from shore due to deflection from disturbance, that must be cut loose because of increased wind

²² *Id.* at ES-35; *see also id.* at 2-22 (discussing the long history of the CAA).

or a rising sea state during towing, counts against the quota. A whale that is struck too far from shore due to deflection from disturbance, that becomes inedible due to the length of time for towing, counts against the quota.

Every whale that is struck and lost, for any reason, must be reported to the IWC and will be used by those opposed to whaling to argue against the Alaskan bowhead whale harvest.

The Chukchi Sea Coastal Buffer, the Barrow and Kaktovik Deferrals, and the recommended deferral for Cross Island are there to protect human life and safety and to aid the AEWc in its ongoing effort to preserve the legal right of its whalers to continue to feed the Native people of northern Alaska.

In addition to concerns regarding human safety and the efficiency of the hunt, in the past, anti-whaling organizations at the IWC have scrutinized U.S. leasing and development plans for potential impacts to bowhead whale habitat. The IWC has only one tool to apply to its conservation mission, and that is its quota regime. At the IWC, fears that the potential for offshore leasing could lead to adverse effects to bowhead whales would be expressed through efforts to reduce or eliminate the bowhead whale subsistence quota. The AEWc has worked diligently through the years to mitigate development impacts so that we can preserve our bowhead whale resource and harvest, facilitate the benefits that development can bring, and reduce the likelihood that the IWC will use its quota regime to punish the U.S., through our subsistence harvest, for overly aggressive development initiatives. BOEM has been a good partner in this undertaking and we hope to continue this very positive relationship.

D. The Secretary Should Continue DOI's Policy of Excluding the Barrow and Kaktovik Subsistence Use Areas from the Beaufort Sea Program Area.

The long-standing deferral areas for Barrow and Kaktovik are based upon many decades of scientific research, collection of traditional knowledge, and input from a wide array of stakeholders. Barrow, the AEWc's largest village harvests approximately 25 whales per year, providing 300 – 625 tons of food for this large community and the many smaller communities and families with which the whaling captains of Barrow share. Kaktovik's three whales per year yield 36 – 75 tons of food per year for this remote community and its neighbors.

There is no reasonable basis for the federal government to change course and to include these areas in the Five-Year Program. Indeed, there is nothing to be gained from including these areas within the program areas of the Beaufort and Chukchi Sea, because the analysis that would be conducted later in time during the planning of individual lease sales would simply be repetitive of work the federal government has already done to date. There is no new information and there are no new facts that would warrant a change in policy to remove the protections for the Barrow and Kaktovik subsistence uses areas. As NMFS found in its 2016 Programmatic EIS, Kaktovik relies on the bowhead whale for 63% of the community subsistence harvest based on pounds of resources per capita. For Barrow, the bowhead whale is 38% of the community

subsistence harvest.²³ In addition, the bowhead whale harvest from the AEWC's villages is part of a broader subsistence sharing network that contributes substantially to the food security and cultural and nutritional well-being of people throughout northern Alaska, as well as many in other areas with whom the AEWC communities share kin and social ties.²⁴ There is no question that these areas are critically important to our communities along the northern coast of Alaska.

The Barrow and Kaktovik deferral areas were first discussed in the Proposed Final Plan for the 2007-2012 planning period (2007-2012 PFP).²⁵ The 2007-2012 PFP included these two deferral areas in "Option 1" and noted that the:

primary effect of choosing this option would be a lessening of impacts on subsistence hunting. The lease blocks included in the deferral areas were selected based on information from the AEWC and the subsistence whaling community. These deferral areas would largely eliminate impacts from routine operations in areas known to be important for subsistence hunting.²⁶

The 2007-2012 PFP further noted that these deferral areas had been included in each of the three sales that moved forward in the program area under the 2002-2007 program, "as these deferrals have been consistently agreed to and applied, the MMS is including them in the PFP."²⁷ And the PFP found that the net economic benefit of Option 1 with the deferral areas was the same as the net benefit of Option 2, which did not include the deferral areas.²⁸

The Programmatic EIS for the 2007-2012 (2007-2012 PEIS) included further discussion and analysis of the Beaufort Sea deferral areas under Alternative 8.²⁹ In recommending that Alternative 8 be adopted as a component of the preferred alternative, MMS noted that the "benefits primarily include reduced risk to environmental resources in coastal areas and to subsistence activities in the Arctic."³⁰ MMS also found that the preferred alternative "represents a reasonable balance between the development of available hydrocarbon resources and the protection of the environment."³¹

²³ *Id.* at 3-170 (Table 3.3-7).

²⁴ BurnSilver, et al. 2016.

²⁵ U.S. Dep't of the Interior, Minerals Management Service. *Proposed Final Program Outer Continental Shelf Oil and Gas Leasing Program 2007-2012*. April 2007.

²⁶ *Id.* at 22.

²⁷ *Id.*

²⁸ *Id.* at 22-24.

²⁹ U.S. Dep't of the Interior, Minerals Management Service. *Outer Continental Shelf Oil & Gas Leasing Program: 2007-2012, Final Environmental Impact Statement*. April 2007. At that time, DOI had planned to revise the five-year planning in 2010 instead of waiting until 20912.

³⁰ *Id.* at II-33.

³¹ *Id.*

The Department of Interior next issued a Draft Proposed Program in 2009 (2009 DPP).³² In the 2009 DPP, Option 1 again included the Barrow and Kaktovik deferral areas.³³ Comments from the Governor of Alaska and the North Slope Borough, as an example, expressed continued support for the Barrow and Kaktovik deferral areas.³⁴

The Proposed Final Program for 2012-2017 again included the Barrow and Kaktovik deferral areas.³⁵ “These areas in the Beaufort Sea are excluded in this PFP for the same reasons they were excluded in the 2007-2012 Program, and those reasons are incorporated here by reference.”³⁶ The deferral areas were again included in the Programmatic EIS for the 2012-2017 program.³⁷

Most recently, DOI included the Barrow and Kaktovik deferral areas in the 2017-2022 program. In the draft program, the DOI stated that:

Deferrals have long existed around Barrow and Kaktovik at the request of stakeholders, including the North Slope Borough and Native Village of Kaktovik, respectively. BOEM will continue to identify and assess additional potential deferral areas, such as Cross Island, Barrow Canyon, Camden Bay, and other important subsistence use or environmentally sensitive areas, during the subsequent Section 18 and NEPA processes.³⁸

By the time the proposed final program was published, the President had withdrawn both the Barrow and Kaktovik whaling areas from leasing considering on January 27, 2015. Thus, the final proposed program again excluded these lease blocks from the Beaufort Program Area.³⁹

Based on this long-held policy of protecting these critical subsistence use areas, AEWC sees no basis for DOI to change course now. There has been no change in our use of these areas or in the importance of these areas as habitat for the bowhead whale. We therefore ask first that DOI defer these areas in the proposed final program. If DOI declines to do so, then we ask for a

³² U.S. Dep’t of the Interior, Minerals Management Service. *Draft Proposed Program Outer Continental Shelf (OCS) Oil and Gas Leasing Program 2010-2015*. January 2009.

³³ *Id.* at 35.

³⁴ *Id.* at 34.

³⁵ U.S. Dep’t of the Interior, Bureau of Ocean Energy Management. *Proposed Final Outer Continental Shelf Oil & Gas Leasing Program*. June 2012.

³⁶ *Id.* at 12.

³⁷ U.S. Dep’t of the Interior, Bureau of Ocean Energy Management. *Outer Continental Shelf Oil and Gas Leasing Program: 2012-2017 Final Programmatic Environmental Impact Statement* at 2-6. OCS EIS/EA BOEM 2012-30.

³⁸ U.S. Dep’t of the Interior, Bureau of Ocean Energy Management. *2017-2022 Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program* at S-6. January 2015.

³⁹ U.S. Dep’t of the Interior, Bureau of Ocean Energy Management. *2017-2022 Outer Continental Shelf Oil and Gas Leasing Proposed Final Program* at 4-2. November 2016.

rational explanation as to why DOI has decided to change its prior, long-standing policy.⁴⁰ Moreover, while we appreciate the statement in the DPP that DOI is attempting to advance the “goal of moving the United States from simply aspiring for energy independence to attaining energy dominance” by including “nearly the entire OCS” in the DPP,⁴¹ we do not believe it is wise to revisit long-held policies that were widely supported by the local community, the State of Alaska, the North Slope Borough, and other stakeholders. We are also concerned that this approach of being over-inclusive is not being applied equally across the OCS, as we understand that the entire coast of Florida has already been removed from the five-year program.

In sum, we strongly recommend that DOI exclude the Barrow and Kaktovik subsistence use areas from the Beaufort Sea program area, consistent with the long-standing policy of DOI to protect essential subsistence use areas for these two villages along the northern coast of Alaska.

E. The Secretary Should Maintain DOI’s Policy of Excluding the 25-mile Coastal Buffer in the Chukchi Sea.

The 25-mile coastal buffer in the Chukchi Sea is absolutely essential for the protection of the bowhead whale and the subsistence hunts conducted by Chukchi Sea communities, and there has been widespread and long-standing agreement among stakeholders that offshore exploration and development would not take place within this corridor. Opening this area of the Chukchi Sea to possible leases and the threat of industrial development will create a tremendous amount of unnecessary conflict. Interior should continue its policy of excluding the 25-mile buffer from the Chukchi Sea Program Area.

During the spring, this area creates a system of leads, known as the Spring Lead System (SLS), which is “extremely important for marine mammal and seabird migrations.”⁴² “In the spring, the melting and retreating ice edge of the Chukchi Sea leads to a highly productive and estuary-like near shore corridor that serves as the base of the food chain for coastal and marine Arctic species.”⁴³ As “the only dependable open water available in spring” the SLS is “vital to subsistence hunters who hunt bowhead and beluga whales in the leads and seals, walrus, and other marine mammals that inhabit the retreating ice.”⁴⁴

⁴⁰ See *FCC v. Fox TV Stations*, 556 U.S. 502 (2009).

⁴¹ 2019-2024 DPP at 1.

⁴² MMS, Chukchi Sea Lease Sale 193 EIS (May 2007) at IV-48 [hereinafter Sale 193 EIS].

⁴³ NMFS, Final Environmental Assessment For the Issuance of Incidental Harassment Authorizations for the Take of Marine Mammals by Harassment Incidental to Conducting Exploratory Drilling Programs in the U.S. Beaufort and Chukchi Seas (May 2012) at 66, available at http://www.nmfs.noaa.gov/pr/pdfs/permits/shell_beaufort_chukchi_ea2012.pdf [hereinafter NMFS 2012 Drilling EA].

⁴⁴ Sale 193 EIS at IV-187.

According to NMFS, the SLS is “one of the most sensitive environments” for bowhead whales.⁴⁵ The bowhead whales congregate in the polynyas of the SLS before migrating.⁴⁶ They then begin their migration north with ice breakup in late March or April,⁴⁷ using the shore-fast leads and polynyas to travel up the coast.⁴⁸ In May and June, the bowhead whales calve during their migration through the Chukchi Sea along the SLS.⁴⁹ Bowheads also feed during their spring migration through the leads in the Chukchi Sea,⁵⁰ and in some years, parts of the SLS are used as feeding areas over extended periods of time during the spring migration.⁵¹

Because the bowhead population migrating through the “narrow corridors”⁵² of the SLS comprises “most of the bowhead whales in the world,” and because the species is so dependent on this lead system, the species is particularly vulnerable to disturbances in this special area.⁵³ NMFS cautions that noise and disturbance in the spring lead system during the spring bowhead migration has “a fairly high potential of affecting the whales, including females with newborn calves” and that such disturbance “could be potentially biologically significant.”⁵⁴

Because of the importance of the SLS, BOEM and NMFS have provided long-standing protections for this area. As early as 1987, NMFS included conservation measures in its Section

⁴⁵ NMFS, Comments on Minerals Management Service Draft EIS for the Beaufort Sea and Chukchi Sea Planning Areas – Oil and Gas Lease Sales 209, 212, 217, and 221 (March 27, 2009) at 9.

⁴⁶ NMFS, Biological Opinion, Oil and Gas Leasing and Exploration Activities in the U.S. Beaufort and Chukchi Seas, Alaska; and Authorization of Small Takes Under the Marine Mammal Protection Act (July 17, 2008) at 12, available at <http://alaskafisheries.noaa.gov/protectedresources/whales/bowhead/biop0708.pdf> [hereinafter NMFS 2008 Biop].

⁴⁷ NMFS, Biological Opinion, Issuance of IHA under the MMPA to Shell Offshore, Inc for Exploratory Drilling in the Alaskan Chukchi Sea in 2012 (April 23, 2012) at 19, available at http://alaskafisheries.noaa.gov/protectedresources/whales/bowhead/shell_chukchi_biop042312.pdf [hereinafter NMFS 2012 Chukchi Drilling Biop].

⁴⁸ NMFS, Biological Opinion, IHA to allow for Incidental Takes of Marine Mammals during Shallow Hazard Surveys in the Chukchi Sea, Alaska, 2011 (July 22, 2011) at 17, available at <http://alaskafisheries.noaa.gov/protectedresources/whales/bowhead/biop072211.pdf> [hereinafter NMFS 2011 Chukchi Shallow Hazard Biop].

⁴⁹ NMFS, Biological Opinion, Oil and Gas Leasing and Exploration Activities in the US Beaufort and Chukchi Seas (April 2, 2013) at 69, available at <http://alaskafisheries.noaa.gov/protectedresources/esa/section7/arcticbiop2013.pdf>.

⁵⁰ NMFS, Biological Opinion, Authorization for Takes under the MMPA for certain Oil and Gas Activities in the Beaufort and Chukchi Seas, Alaska for 2010 (July 13, 2010) at 25, available at http://alaskafisheries.noaa.gov/protectedresources/whales/bowhead/biop_arcticiha_071310.pdf [hereinafter NMFS 2010 Biop].

⁵¹ NMFS 2012 Chukchi Drilling Biop at 37.

⁵² NMFS 2012 Drilling EA at 160.

⁵³ Sale 193 EIS at III-45. See also *id.* at III-52 (noting that “This lead system is an apparently obligate pathway for this population”).

⁵⁴ NMFS 2008 Biop at 52.

7 consultations to protect the bowhead whale when it migrates through the SLS.⁵⁵ In particular, NMFS recommends that vessels operating in the Chukchi Sea avoid migratory periods in the spring, and the agency cautions against small take authorizations that would allow vessels to access work sites through the spring lead system or require ice breaking.⁵⁶ At times, NMFS has added an additional protection for cow/calf pairs by prohibiting surveys prior to July 15 in the spring lead system.⁵⁷

In the Chukchi Sea Lease Sale 193 EIS, BOEM created a coastal deferral based on the recommendations from NMFS.⁵⁸ Much of the lead system was deferred from leasing to “reduce potential impacts to endangered and threatened species, including the bowhead whale.”⁵⁹ BOEM continued this protection in the 2007-2012 five-year Plan, to “eliminate most potential environmental impacts . . . such as water and gaseous discharges” on the species that use these leads.⁶⁰ In its analysis, BOEM concluded that the coastal deferral would reduce “impacts to water quality from exploration, construction activities, and discharges” and would reduce “impacts to marine mammals from noise and discharges.”⁶¹ BOEM has also protected the bowhead whales migrating through the spring lead system with standard stipulations that prohibit seismic surveys before the first of July.⁶² In comments on recent lease sale EISs, NMFS has “strongly endorse[d]” a deferral that would extend out to 60 miles to protect the SLS.⁶³

The 25-mile buffer in the Chukchi Sea was included in the Proposed Program for the 2007-2012 (2007-2012 PFP) time period.⁶⁴ At the time, Interior stated that the Secretary intended for there to be no leasing “within 25 miles of the coastline where there is no existing oil and gas activity, unless the adjacent state(s) request that the area be offered.”⁶⁵

⁵⁵ See, e.g., NMFS 2011 Chukchi Shallow Hazard Biop at 66 – 67.

⁵⁶ *Id.*

⁵⁷ Environmental Assessment on the Issuance of an Incidental Harassment Authorization to Shell to Take Marine Mammals by Harassment Incidental to Conducting an Open-water Marine Survey Program in the Chukchi Sea, Alaska, During 2009-2010 at 37, available at http://www.nmfs.noaa.gov/pr/pdfs/permits/shell_openwater_ea.pdf.

⁵⁸ Sale 193 EIS at ES-8.

⁵⁹ *Id.*

⁶⁰ MMS, Outer Continental Shelf Oil & Gas Leasing Program: 2007-2012, Final Environmental Impact Statement (April 2007) at II-25, available at <http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Five-Year-Program/2007-2012-Final-Environmental-Impact-Statement.aspx>

⁶¹ *Id.* at IV-341.

⁶² Sale 193 EIS at ES 10.

⁶³ NMFS, Comments on MMS Draft EIS for the Chukchi Sea Planning Area – Oil and Gas Lease Sale 193 and Seismic Surveying Activities in the Chukchi Sea (Lease Sale 193) at 3 (Jan. 30, 2007) (Exhibit 14); NMFS, Comments on Minerals Management Service Draft EIS for the Beaufort Sea and Chukchi Sea Planning Areas – Oil and Gas Lease Sales 209, 212, 217, and 221 (March 27, 2009) at 9-10.

⁶⁴ U.S. Dep’t of the Interior, Minerals Management Service. *Proposed Program Outer Continental Shelf Leasing Program 2007-2012* at 7. August 2006.

⁶⁵ *Id.*

The Programmatic EIS that accompanied the Proposed Program (2007-2012 Final EIS) includes additional information on the potential benefits of protecting the 25-mile coastal buffer from industrial activity.⁶⁶ Alternative 5 in the 2007-2012 Final EIS included the 25-mile coastal buffer in the Chukchi.⁶⁷ DOI found in the EIS that the “25-mile buffer provides additional protection from potential impacts to the bowhead whales during their spring migration because there would be no OCS infrastructure or activity in the migration area, which is limited to 25 miles of the coast.”⁶⁸ DOI also noted the importance of this area for our subsistence practices.

The establishment of a 25-mile buffer would reduce potential impacts on Native subsistence because subsistence hunting activities occur within the deferral area. Possible adverse health or environmental impacts from changes in subsistence resources and harvest patterns would be reduced.⁶⁹

DOI stated in the EIS that “establishment of a 25-mile buffer would substantially reduce potential impacts on Native subsistence.”⁷⁰ Since that time, the 25-mile buffer has been excluded from the Chukchi Sea Program Area.

The 2016 Programmatic EIS from NMFS provides additional information on the spring migration of bowhead whales through the Chukchi Sea, which takes place within the 25-mile coastal buffer.

The spring migration from April to June follows leads in the sea ice through the Bering Strait to the Chukchi Sea and past Barrow and into the Beaufort Sea (Figure 3.2-7). Tagged whales began migrating north in early April, passed into the Chukchi Sea by mid-April, on average, and all passed Barrow by May 7, during 2009 and 2010, travelling parallel to and within 40 km (24.8 mi) of the coast (Quakenbush et al. 2012).⁷¹

Figures 3.2-6, 3.2-7, 3.3-10, and 3.3-11 from the 2016 Programmatic EIS provide helpful visuals of the spring migratory route used by bowhead whales and our subsistence use areas within the 25-mile Chukchi Sea deferral area.

⁶⁶ U.S. Dep’t of the Interior, Minerals Management Service. *Outer Continental Shelf Oil & Gas Leasing Program: 2007-2012, Final Environmental Impact Statement*. April 2007.

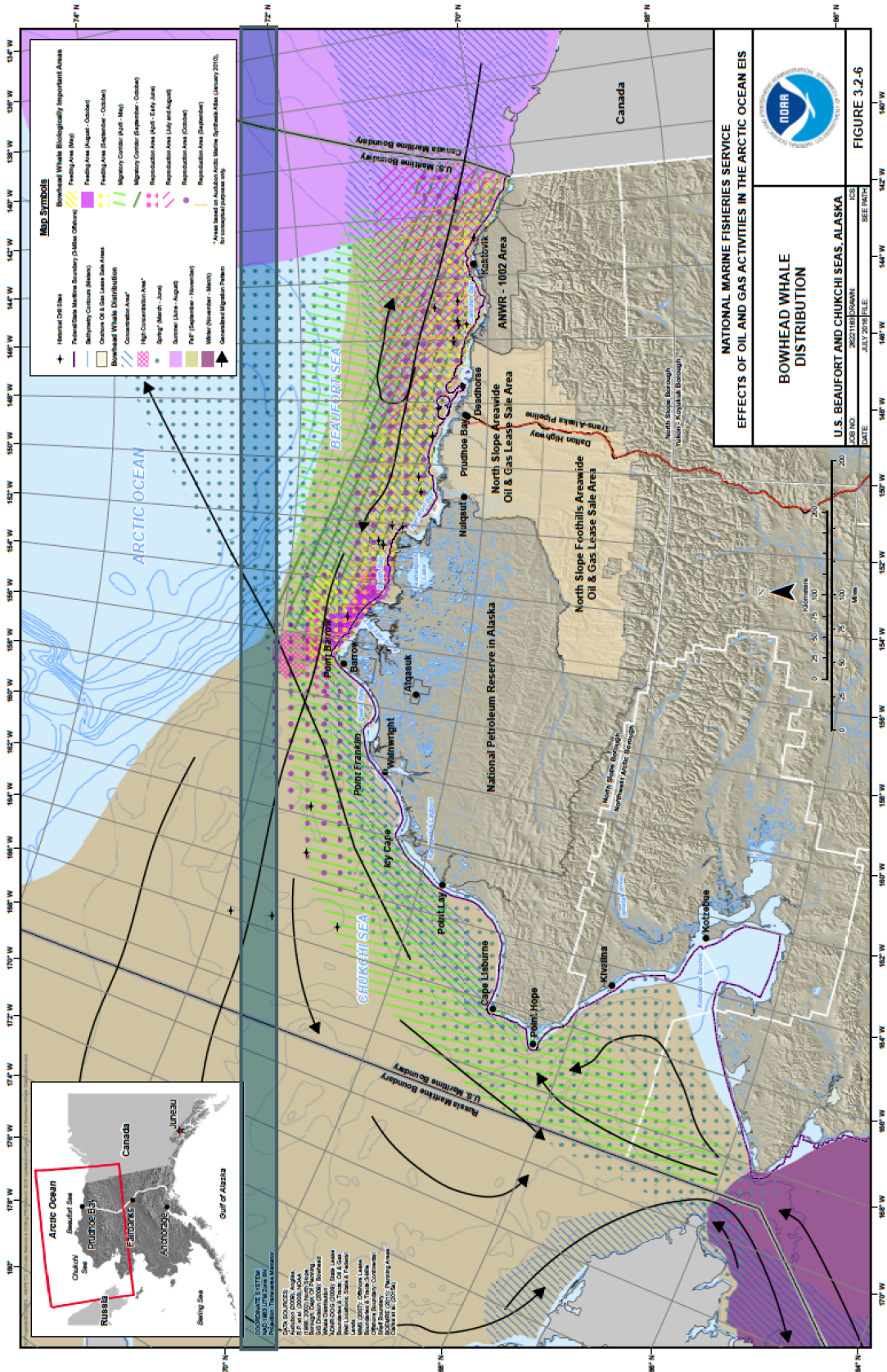
⁶⁷ See generally *id.* at Table of Contents.

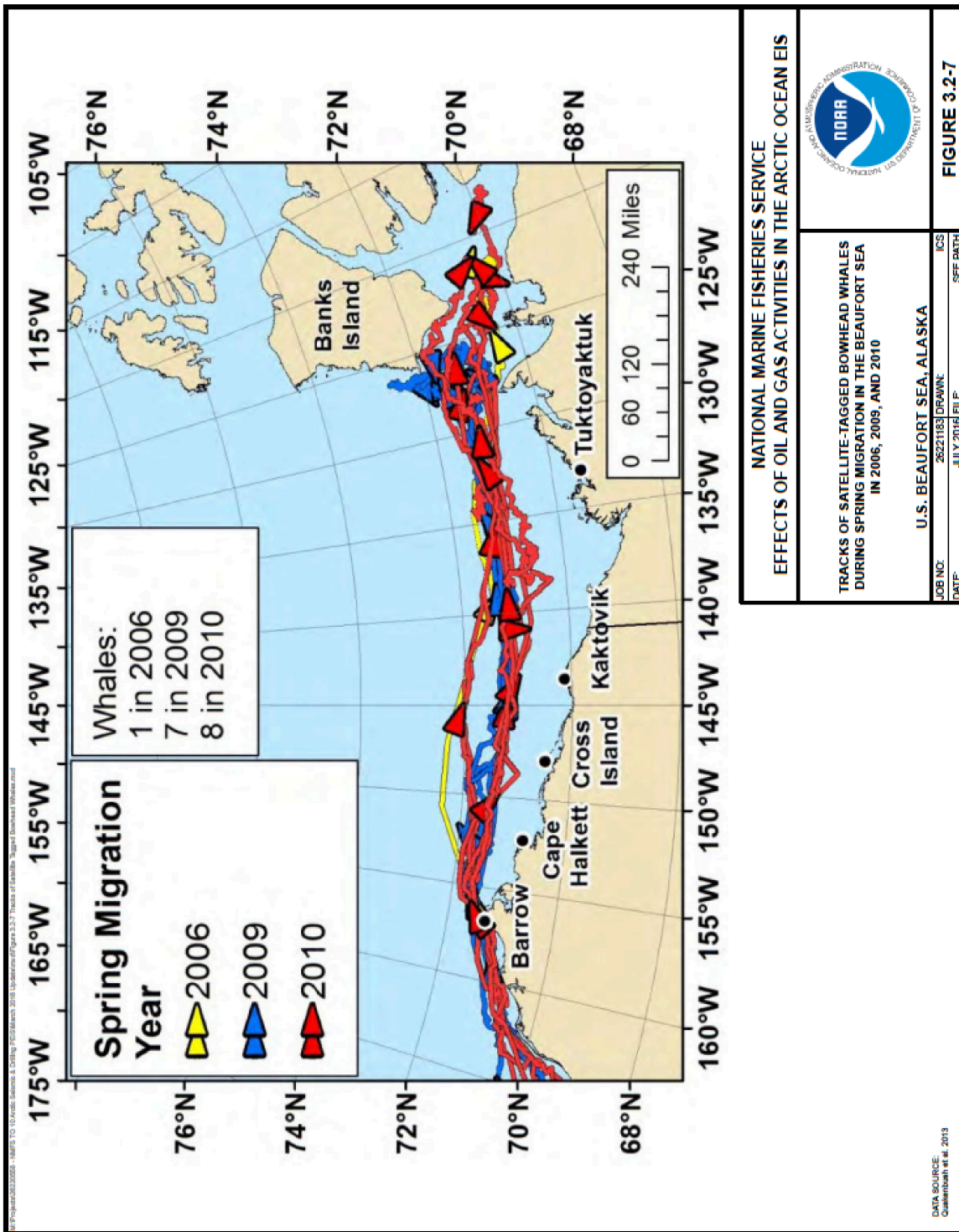
⁶⁸ *Id.* at II-25.

⁶⁹ *Id.*

⁷⁰ *Id.* at IV-342.

⁷¹ 2016 NMFS Programmatic EIS at 3-92.





NATIONAL MARINE FISHERIES SERVICE
EFFECTS OF OIL AND GAS ACTIVITIES IN THE ARCTIC OCEAN EIS

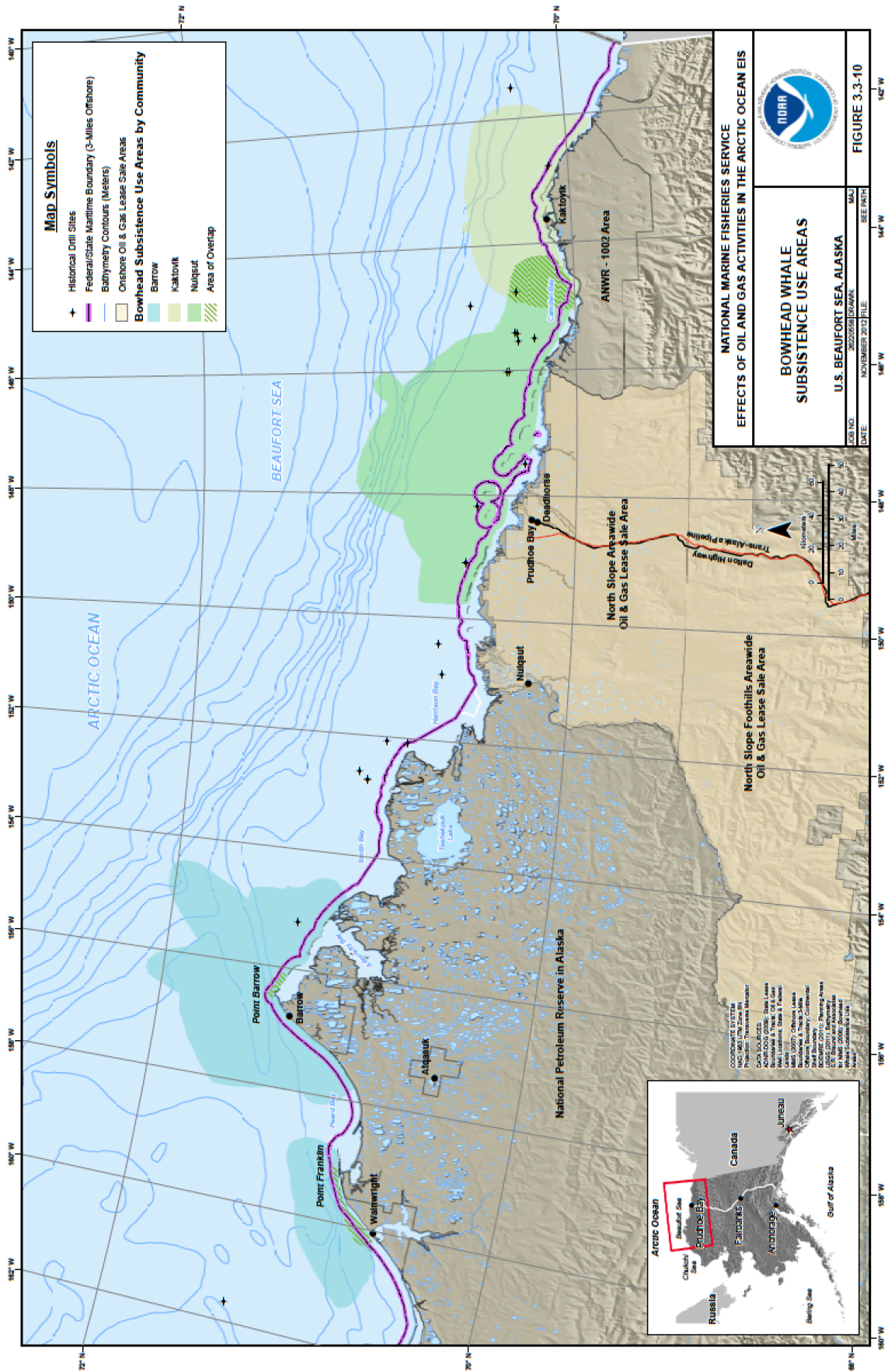
TRACKS OF SATELLITE-TAGGED BOWHEAD WHALES DURING SPRING MIGRATION IN THE BEAUFORT SEA IN 2006, 2009, AND 2010

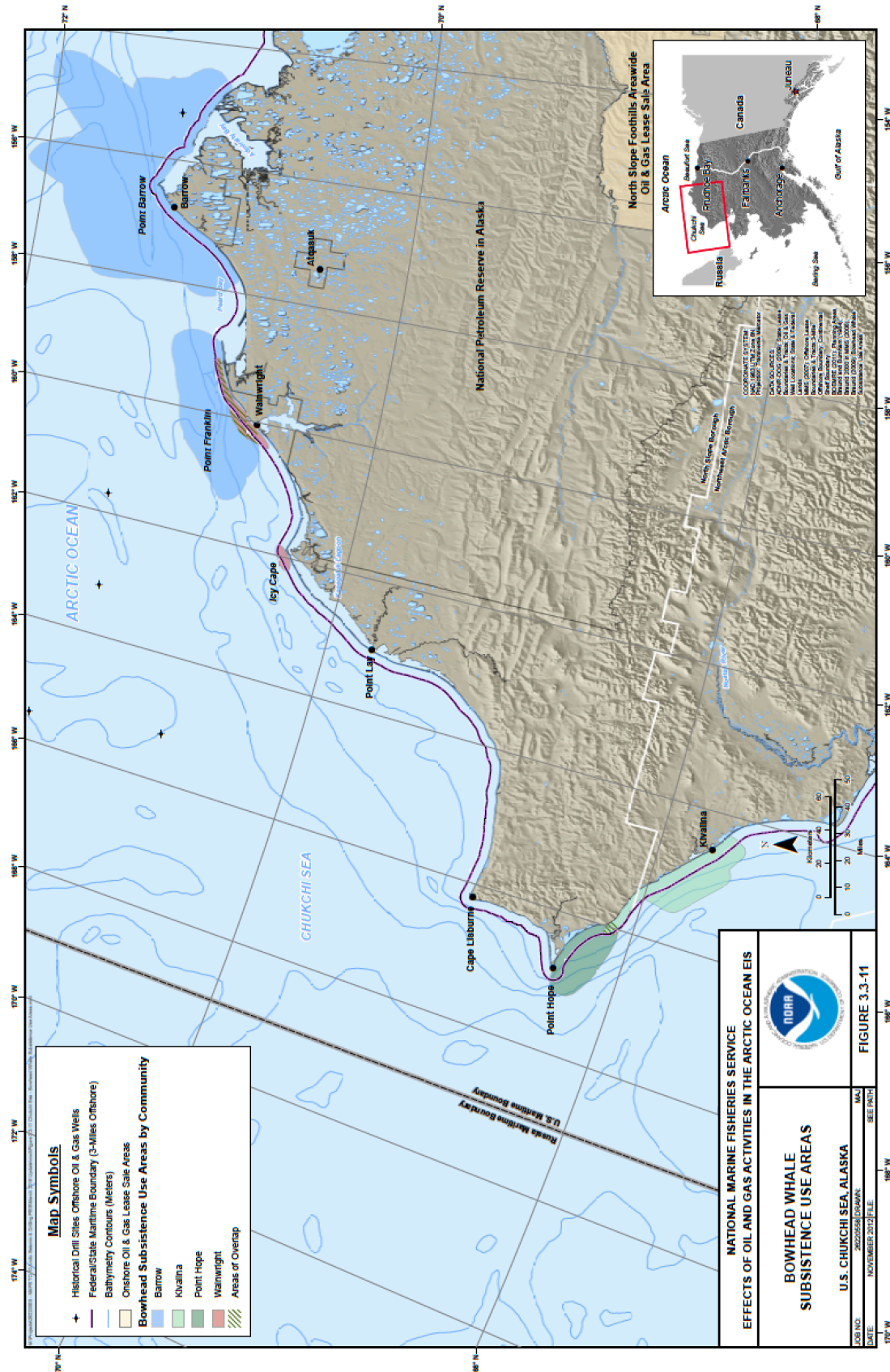
U.S. BEAUFORT SEA, ALASKA

JOB NO: 26221183 DRAWN:
 DATE: JULY 2016 FILE: SEE PATH

FIGURE 3.2-7

DATA SOURCE:
 Guilletbani et al. 2013





Thus, there is no basis for DOI to change its policy of excluding the 25-mile coastal buffer from the Chukchi Sea planning area. The Governor of Alaska has also expressed support for continuing this deferral area. There has been no change in the value of this area to bowhead whales. And there has been no change in the important subsistence uses that take place in the coastal buffer, which serve as the foundation for a cultural traditional and mixed subsistence cash economy.

F. The Secretary Should Continue To Support Research on the Biology and Oceanography of Hanna Shoal To Aid in Better Understanding of the Biological Significance of This Area.

Hanna Shoal, a benthically rich area at the intersection of the Beaufort and Chukchi Seas, is an important feeding area for marine mammals and sea birds. Research indicates that fall migrating bowhead whales often congregate in this area as well, with evidence of feeding in the region gathered from the stomach contents of whales taken during the fall at Barrow.

Existing oceanographic and biological research at Hanna Shoal is relatively sparse. However studies, including research supported by BOEM, are underway to better document the oceanographic and ecological characteristics of this area of clear biological significance. Sea ice retreat and attendant changes in sea state and wind action are affecting Hanna Shoal in ways that are not understood.

As Interior is aware, BOEM has been funding the Hanna Shoal Ecosystem Study to investigate the ecological values of this area of the Chukchi Sea, which is led by Dr. Kenneth Dunton from the University of Texas Marine Science Institute. The 2016 final report for the Hanna Shoal Ecosystem Study provides updated information that should be given careful consideration by DOI in deciding whether to exclude this area from the Chukchi Sea Program Area.⁷² DOI can also look to the satellite tagging work of Dr. Lori Quackenbush and her team, funded by BOEM, who have documented that migrating bowhead whales frequently utilize the area in and around Hanna Shoal during their fall migration to the Bering Sea from Pt. Barrow.⁷³ AEWG worked closely with both projects to develop a better understanding of how bowhead whales are utilizing the Chukchi Sea.

In light of the above, the AEWG encourages BOEM to continue to support research on the biology and oceanography of this area to aid in a better understanding of its biological importance to the bowhead whale.

⁷² Dunton, K.H., C. Ashjian, R.G. Campbell, L.W. Cooper, J.M. Grebmeier, H.R. Harvey, B. Konar, D.M. Maidment, J.H. Trefry, and T.J. Weingartner. 2016. Chukchi Sea Offshore Monitoring in Drilling Area (COMIDA): Hanna Shoal Ecosystem Study. Final Report. OCS Study BOEM 2016-047. Prepared for Bureau of Ocean Energy Management, Anchorage, AK, but the University of Texas Marine Science Institute, Port Arkansas, TX. 352 pp.

⁷³ Quackenbush, L.Y., Citta, J.J., George, J.C., Small, R.J., Heide-Jorgensen, M.P. 2010. Fall and winter movements of bowhead whales (*Balena mysticetus*) in the Chukchi Sea and within the potential petroleum development area. *Arctic* 63, 289-307.

G. The Secretary Should Continue DOI's Policy of Excluding the Chukchi Sea Subsistence Use Area from the Chukchi Sea Program Area.

The DPP does not specify the location of the proposed Chukchi Sea subsistence deferral area⁷⁴, but we presume that Interior is referring to the area that was excluded from the Chukchi Sea Program Area in the 2012-2017 Five-Year Plan. This area lies to the north and west of Barrow adjacent to the outer edge of the 25-mile coastal buffer.⁷⁵ Interior should maintain its policy of excluding this area from proposed leasing.

In deciding to defer this area in the 2012-2017 Five-Year Plan, the Secretary:

determined that it is appropriate at the PFP stage to exclude areas in the Chukchi Sea planning area that (1) involve at least medium intensity subsistence use or higher; (2) allow for unencumbered subsistence use; (3) are contiguous with and extend the boundary of an existing deferral area, and (4) do not include significant acreage identified as offering high resource potential. Analysis of the Chukchi and Beaufort Sea planning areas shows that this portion of the Chukchi Sea area described above meets those criteria, and is appropriate for exclusion at the PFP. This area does not include any blocks that are currently leased or have been leased in the past. While there is a sliver of acreage in this exclusion area that is identified as having high resource potential, the sliver does not include significance acreage, and including this sliver in the program area would not allow for unencumbered use of the entire medium subsistence use area.⁷⁶

Interior should continue its policy of excluding the Chukchi Sea subsistence use area around Barrow from the Chukchi Sea program area. As depicted in Figure 3.3-11 from the 2016 NMFS Programmatic EIS, our subsistence practices extend out to 72 degrees North, which is in an area outside of and adjacent to the 25 mile-buffer in the Chukchi Sea. Thus, this area receives at least medium intensity subsistence uses from our community members, it is adjacent to the existing buffer area, and its exclusion will allow for very important unencumbered subsistence uses. We further believe that this reasonable exclusion area will not have a significant impact on the resource potential of the Chukchi Sea Program Area.

H. The Secretary Should Work with the Whaling Captains of Nuiqsut to Establish an Area Around Cross Island in the Central Beaufort Sea to Protect the Fall Subsistence Hunt of Bowhead Whales Conducted by the Village of Nuiqsut.

Consistent with DOI's prior practice of protecting important subsistence use areas for our villages along the northern coast of Alaska, the Secretary should exclude an area around Cross Island in the mid-Beaufort Sea to protect the fall subsistence hunt conducted by the village of

⁷⁴ DPP at 10.

⁷⁵ 2012-2017 DPP at Maps A, C.

⁷⁶ *Id.* at 11.

Nuiqsut. Research funded by BOEM and carried out by Dr. Michael Galginitis demonstrates that hunters of Nuiqsut use the area around Cross Island, extending well over 20 miles to the west, north, and east of the island, for their fall bowhead whale subsistence harvest.⁷⁷ AEWC and our hunters from Nuiqsut have collaborated with Dr. Galginitis for many years to carry out this research, and now is the time for DOI to utilize this scientific information to strike an appropriate balance between the protection of subsistence use areas and offshore activities.

As Dr. Galginitis describes, Nuiqsut is located 12 miles inland on the Colville River, and our hunters must travel more than 70 miles to reach Cross Island, which serves as the base for their fall subsistence hunt.⁷⁸ Despite the distance, however, the fall subsistence hunt of bowhead whales serves as an important year-round focus for the community and provides irreplaceable subsistence foods while continuing important cultural traditions.⁷⁹

Over many years, our whaling captains worked with Dr. Galginitis to collect GPS data on where they have hunted and landed bowhead whales from Cross Island. Figure 23 in Dr. Galginitis' report provides a helpful depiction of the tracks taken by our vessels and the locations where whales have been landed.⁸⁰

Monitoring Cross Island Whaling Activities, Beaufort Sea, Alaska: 2008-2012 Final Report

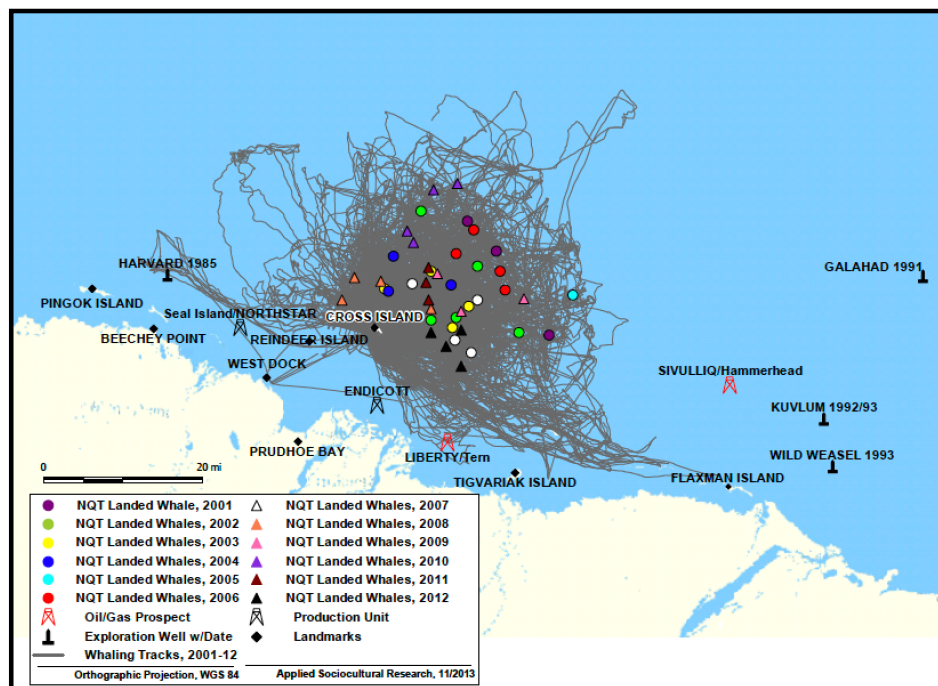


Figure 23. Documented bowhead whale harvest sites near Cross Island, 2001-2012

⁷⁷ Galginitis 2014.

⁷⁸ *Id.*

⁷⁹ 2016 NMFS Programmatic EIS at 3-182-183.

⁸⁰ Galginitis 2014 at Figure 23.

The distances traveled from the island, as shown in these GPS tracks, indicate the area of coverage needed by the hunters to scout and track migrating whales as they move into the range where they can be safely harvested and brought to shore. Hunter observations and science-based research confirm that migrating bowhead whales are extremely sensitive to disturbance from underwater noise and will deflect north, away from shore when faced with noise disturbance. Industrial activity in the vicinity of Cross Island, therefore, would have the potential to drive whales out of hunting range at Cross Island and possibly to interfere with hunting at Barrow if the deflection were to continue.

Our Cross Island hunters are already working hard to manage impacts from the North Star, Liberty, and Endicott projects, which include noise associated with the operations of these facilities and increased vessel traffic associated with supplying and maintaining them. Even when whales do not deflect, they are known to change swimming patterns in the presence of anthropogenic noise, making them more difficult and dangerous to hunt.

Further offshore development to the east – *i.e.* “upstream” of Cross Island during the fall migration – would likely deflect bowhead whales further to the north into the Arctic Ocean far from existing subsistence hunting grounds. In this situation, our whaling captains would be subjected to grave dangers having to travel great distances in the Arctic Ocean to access their subsistence resources. Planning documents from BOEM and NMFS include numerous reports from our whaling captains relaying their experiences during the 1980s and 1990s when drilling to the east of Cross Island interfered with Nuiqsut’s subsistence hunting.

We strongly encourage the Secretary and BOEM to meet directly with our whaling captains in Nuiqsut to hear their concerns and to discuss the specifics of the area to be excluded from the Beaufort Sea Program Area. AEWG would be happy to facilitate that discussion if desired by Nuiqsut and BOEM. Again, our comments in this regard are informed by both OCSLA and the need to consider impacts on other uses of the ocean, and also by the MMPA and the heightened protections for our subsistence hunt implemented by Congress to ensure that offshore activities do not interfere with our subsistence practices. The best way to ensure that our nation’s offshore energy program does not have an unmitigable adverse impact on our subsistence practices is to exclude an area around Cross Island from leasing and development, consistent with the existing policy of the federal government to protect the subsistence uses areas for Barrow and Kaktovik.

I. The Secretary Should Delay any Actions Having the Potential To Affect Hope Basin, Norton Basin, or St. Matthew-Hall, Until Bowhead Whale Use of These Areas Is Better Understood and Development Plans Can Be Balanced with Subsistence Protections.

The proposal to open Hope and Norton Basins, and St. Matthew-Hall is premature. The Bering Strait Region and northern Bering Sea are wintering grounds for the entire Western Arctic Stock of bowhead whales. Furthermore, with ocean warming and the retreat of sea ice, this entire region is undergoing dramatic change that is not understood. What is known, based

on scientific research and past hunter observations is that this region contains important bowhead whale feeding habitat.

Citta et al. (2014) presented important new evidence of bowhead winter-feeding in the Bering Sea based on a long-term bowhead satellite telemetry study. The study showed high densities of bowhead whales wintering and likely feeding near the sea floor at several locations in the Bering Sea in winter. While the St. Matthew Island region did not fall within a ‘core-use’ area with the highest occupancy rates as defined by the study, surprisingly the St. Matthew Island area did fall within the next highest usage tier suggesting it’s an important wintering and feeding area. The evidence for feeding is based on dive profiles, oceanographic survey data and comparative evidence from years of studies in known feeding areas elsewhere.

Based on satellite telemetry, the majority of bowheads appear to winter in the western and central Bering Sea within the sea ice and polynyas during 2006-2012. However, earlier aerial surveys and other records indicate that bowheads do winter in the more eastern areas of the Bering Sea including Norton Sound as evidenced by a bowhead harvested at Shaktoolik in 1980.⁸¹

More work is needed, including the gathering of local observations, to aid in understanding how this area is used by the this stock of whales, and then to determine whether it would be possible to design development proposals consistent with that use. Therefore, at this time, the AEWG must strongly encourage BOEM to delay action in the Hope and Norton Basin, and St. Matthew-Hall region of the northern Bering and southern Chukchi Seas, pending further research.

J. The Secretary Should Require That Offshore Operators Engage with AEWG and Local Impacted Communities on Conflict Avoidance Mechanisms.

Please review our earlier comments submitted on August 5, 2017 in response to the Request for Information for additional information on the Annual Open Water Season Conflict Avoidance Agreement (CAA). BOEM has years of experience working in partnership with AEWG and offshore operators within the context of the CAA to ensure that offshore operations do not interfere with our rights to access and hunt the bowhead whale. We offer a few clarifying remarks on the role of the CAA below. We ask that the Secretary commit in the final program to include a lease stipulation in any lease offered in the Beaufort or Chukchi Seas, or the Bering Strait Region requiring offshore operators to engage in discussions with AEWG on a CAA.

First, the CAA is a long-standing, collaborative, community-based conflict avoidance process that has been ongoing for more than thirty (30) years in the Alaskan Arctic. Through this process, our whaling captains meet directly with representatives from offshore operators well in advance of the open water season to learn about proposed operations and to discuss ways to avoid conflicts with our subsistence hunt of bowhead whales. We have developed with

⁸¹ Citta, J.J., et al. Ecological characteristics of core-use areas used by Bering–Chukchi–Beaufort (BCB) bowhead whales, 2006–2012. *Prog. Oceanogr.* (2014), <http://dx.doi.org/10.1016/j.pocean.2014.08.012>

industry a standard set of mitigation measures, which include communication centers and protocols, vessel guidelines such as travel routes and speed restrictions to protect sensitive areas like the spring lead system, limitations on discharge of certain pollutants in certain places, and limited time area closures to protect specific hunting areas during the fall open water season. We adjust these standard mitigation measures each year, if necessary, based on the specific proposals brought to us by industry. This adaptive, collaborative conflict avoidance process has been highly successful in building trust between the oil and gas industry and local communities while giving our whaling captains a voice in decisions that could affect their ability to gather food vital to our communities. All of the successful operations conducted by industry in the Beaufort and Chukchi Seas in recent years have been carried out pursuant to the CAA. With its long track record, this collaborative process has proven to be transparent, predictable, and efficient.

Second, we are not asking the Secretary to require that offshore operators reach agreement on a CAA with AEW. We are only asking that a lease stipulation require that the operators engage in discussions with us through the CAA process well in advance of any operations taking place out in the water. There is great value in the CAA reflecting a voluntary agreement reached through a sanctioned process between offshore operators and the local community. Mutually effective outcomes require the commitment of both parties to regular engagement with each other to ensure, on an ongoing and real-time basis, that potential conflicts can be addressed in advance, or if necessary as they arise on the water. Because outcomes are mutually agreed upon, all stakeholders are heard and their concerns are addressed.

Third, this process has great value to the federal government. As noted above, NMFS routinely relies on the CAA in reaching its determination, required by the Marine Mammal Protection Act, that proposed industry operations will not have an unmitigable adverse impact on our subsistence activities. While NMFS must still conduct an independent analysis, the agreement embodied in the CAA reflects the traditional knowledge and views of our whaling captains along with industry's perspective on what mitigation measures are practicable. Thus, while NMFS must review the proposed mitigation measures, the CAA greatly assists the agency because it does not have to formulate those measures from scratch. The CAA process also goes a long way towards avoiding conflicts that might otherwise manifest themselves in the agency permitting process. Thus, the CAA process can greatly lower the regulatory burden on both BOEM and NMFS to make and defend difficult decisions that might otherwise pit the indigenous community against powerful oil and gas companies. Up-front conflict avoidance is by far the best way to avoid this difficult situation.

Finally, we believe the CAA process can be transformative for industry and the individuals who lead offshore operations. Our communities are based upon sharing, and that includes the sharing of our subsistence resources with each other and also the sharing of our natural bounty with visitors, including the oil and gas industry. It is our experience that when the people in our villages sit down face-to-face with the people who work for industry, relationships are built that can transform the way industry representatives think about operating in the Arctic. The people who work for offshore operators have a much better understanding of the tremendous challenges facing our remote villages and how their operations can threaten the personal safety of our whaling crews and our food security, and cause great anxiety for our families. And they

come away from those interactions with much greater faith that our communities, rather than opposing offshore activities, want to help to ensure that operations are carried out safely and successfully. The strong, personal relationships developed through this process are absolutely essential to the oil and gas industry's future in the Arctic. The collective voice of our communities is unified in calling for offshore operators to build those relationships through the CAA process, to ensure that offshore operations bring mutual benefit without threatening our bowhead whale and our subsistence traditions.

K. In the Proposed Program, the Analysis of Equitable Sharing Must Account for the Unique Risks Posed to Our Subsistence Activities on the OCS.

In formulating the Five-Year Plan, the Secretary must consider whether the plan provides for “an equitable sharing of developmental benefits and environmental risks among the various regions.”⁸² The DPP does not include a “specific analysis” of equitable sharing but rather sets forth a framework for how that analysis will be conducted at “later stages of the National OCS Program.”⁸³ “The first specific analysis will be included in the Proposed Program.”⁸⁴

We are concerned by the framework set forth in the DPP, because it does not include a rational consideration of the unique risks to the Alaska Region resulting from interference with subsistence activities **occurring on the OCS**. The only discussion in the DPP relates to the potential risks to subsistence activities occurring onshore from the development of associated infrastructure.

In Alaska, the area around the Cook Inlet Planning Area and certain parts of the coast adjacent to the Beaufort Sea Planning Area have extensive infrastructure in place (including those supporting state oil and gas production). Other areas, such as the majority of the Arctic coast, have very little and would require significant development of onshore facilities. Additional risks from onshore construction in Alaska are associated with the potential disruption of subsistence resources, such as access to hunting areas or disturbance of animals such as caribou.⁸⁵

We agree generally with the DPP that the Secretary must consider the risks posed to the Alaska Region relating to interference with subsistence activities. However, as we have discussed in these comments, operations on the OCS threaten to interfere with our subsistence hunt of bowhead whales, which also occurs on the OCS. This subsistence hunt serves as the foundation for a connected network of other social and economic benefits in our communities. Our physical and spiritual health is dependent on access to these nutritional subsistence foods. Our mixed subsistence cash economy depends on the annual subsistence hunt. We depend on the subsistence hunt to carry on our indigenous traditions and to strengthen the bonds within our

⁸² 42 U.S.C. § 1334(a)(2)(B).

⁸³ DPP at 8-12.

⁸⁴ *Id.*

⁸⁵ *Id.* at 8-9.

families and among our communities. All of this is threatened if offshore operations interfere in our subsistence hunt that takes place on the OCS.

Thus, the Proposed Program must include a rational consideration of the unique threats posed to the Alaska Region by potential offshore operations in the Beaufort and Chukchi Seas, as well as the Hope and Norton Basins, and St. Michael Hall. This is all the more important where the DPP proposes to eliminate the exclusion areas that were designed to protect our subsistence hunts and to open areas like the Hope and Norton Basins for the first time. We believe that a rational analysis will recognize the detrimental cascading effects that could reverberate throughout our communities and the Alaska Region as a whole if OCS activities are poorly managed in these areas and that a rational balancing of risks and benefits will weigh heavily in favor of the exclusion areas and additional policies we have asked for in these comments. Conversely, we do not believe the Secretary can make a rational decision to reject our recommendations without conducting an analysis of equitable sharing that includes consideration of the risks that routine operations conducted on the OCS will interfere with the subsistence hunt of bowhead whales on the OCS.

II. Scoping Comments on the Programmatic Environmental Impact Statement

In preparing the Programmatic EIS for the 2019-2024 Five-Year Plan, we request that BOEM give close consideration to the following scoping comments, which are designed to ensure that the environmental analysis includes critical information on the potential adverse impacts of oil and gas leasing in areas of the Arctic that provide habitat for the bowhead whale and are used by our communities for the subsistence hunt. BOEM has a wealth of information to draw upon in preparing the Programmatic EIS, and our comments are intended to assist the federal government in compiling an accurate and thorough analysis based on existing information.

As discussed above, the 2016 NMFS Programmatic EIS, which included BOEM as a cooperating agency, includes current information on the status of the bowhead whale, the timing and location of the subsistence hunts carried about by our local coastal communities, and the potential impacts of offshore exploration and development. BOEM should draw from this existing document with an eye towards updating the analysis where appropriate based on more recent information, such as the 2016 report on Hanna Shoal funded by BOEM. We provide more detailed comments below.

A. Incorporation of Traditional Knowledge

Please ensure that the EIS reflects the lessons learned from our traditional – or local – knowledge regarding bowhead whale behavior and the potential impacts from offshore activities. Our communities have been sharing this information with BOEM and NMFS for many years, and this information is reflected in many of the existing planning documents. Recognizing the fundamental importance of local hunter knowledge to decisionmaking in Alaska, BOEM personnel recently published a paper describing how BOEM relies on traditional knowledge to

“inform decision-making; scientific research; planning for the National Oil and Gas Leasing Program; and environmental impact analysis . . .”⁸⁶

BOEM should be able to obtain relevant traditional knowledge information from its own files to use in the upcoming Programmatic EIS. Once BOEM reviews this existing information, please let us know if there is any way can assist in addressing gaps or clarifying the information.

B. Alternatives

As discussed above, AEWG does not believe that the Secretary should consider reversing years of established federal policy by doing away with the deferrals for the subsistence use areas for Utqeaqvik and Kaktovik and the Chukchi Sea 25-mile coastal buffer and subsistence use area. However, if the Secretary insists on considering this misguided change in policy, we request that the Programmatic EIS include as the first (and preferred) alternative maintaining all of these deferral areas in the Alaska Region.

The preferred alternative also should include a deferral area for Cross Island, to be developed through consultation with the Nuiqsut Whaling Captains, along with a lease stipulation requiring offshore operators to engage in discussions with AEWG over a CAA.

A second alternative for the Alaska Region could then include the option of reversing course on the deferral and including the entire Chukchi and Beaufort Seas within the program areas.

The remainder of the Programmatic EIS should then include a clear comparison of the potential impacts to the bowhead whale and our subsistence practices from these various alternatives.

C. Impacts to Our Subsistence Practices and the Bowhead Whale

In the Programmatic EIS, BOEM should include the most up-to-date information on our subsistence practices with a particular emphasis on the subsistence hunt of bowhead whales. The EIS should include maps and other visuals that depict our subsistence use areas and those areas known to be important to bowhead whales during their annual migration in the Alaska region. We have already referenced many of the most relevant documents in our comments, including the 2016 NMFS Programmatic EIS, the work from Dr. Galginitis regarding the subsistence hunt at Cross Island, and the bowhead whale tagging studies by Dr. Lori Quakenbush and her team of scientists.

We also request that BOEM place a particular emphasis on recent work by Shauna Burnsilver et al., who have documented the extensive sharing that takes place in our

⁸⁶ James J. Kendall, Jr., et al., *Use of traditional knowledge by the United States Bureau of Ocean Energy Management to support resources management*, Czech Polar Reports 7(2): 151-163, ASSW 2017.

communities around the subsistence hunt of bowhead whales.⁸⁷ This information is critical to a robust understanding of the full range of social, economic, and cultural harm that could result if offshore activities interfere with our subsistence hunt. In our remote communities in northern Alaska, there is no way to replace the myriad values derived from the subsistence hunt, which has formed with backbone of our communities since time immemorial.

Furthermore, there is a wealth of information in BOEM's possession indicating that interference with subsistence practices can result in harm to human health. These impacts have the potential to cause food insecurity and hunger, metabolic disorders (including diabetes, obesity, hypertension, and hyperlipidemia), cardiovascular disease, increased injury, and psychological and social problems, including depression, alcoholism, anxiety, and domestic violence. Given the harsh Arctic conditions, the potential impacts of climate change, and fragile economy, our communities are particularly vulnerable to the public health implications of increased industrialization. While it can certainly be beneficial to our communities, we must protect our subsistence traditions to strike the appropriate balance.

This information is critical to present in the EIS so that the decisionmaker can be well-informed on the importance of deferral areas and other means of protecting our traditional practices as required by Congress under the MMPA.

D. Discharge and Impacts on Water Quality and our Subsistence Hunt

Bowhead whales are extremely sensitive to discharge of pollution to the water column, thus, discharges associated with exploration and development have the potential to deflect bowhead whales from their migratory routes and from our traditional subsistence hunting grounds. Please include in the Programmatic EIS a robust discussion of the potential impacts to the bowhead whale and our subsistence practices resulting from discharge as well as potential mitigation measures, like zero discharge requirements, that can and should be used to address these threats.

E. Cumulative Impacts

In a changing climate, our communities in the Arctic are dealing with a host of additional impacts, in addition to oil and gas activity. Please ensure that the programmatic EIS considers the cumulative impacts of additional exploration and development in the context of all of the other increased activities. Those include increased commercial shipping, particularly as it effects our Bering Strait communities, increased scientific research and associated vessel traffic, and increased oil and gas exploration and development in State waters and at Liberty. It is critically important the potential negative impacts to the Alaska Region be understood within this larger context, because many of our remote coastal communities are extremely vulnerable to the effects of social, cultural and economic disruption because of these other changes taking place.

⁸⁷ Burnsilver, S; J. Magdanz; R. Stotts; M. Berman; G. Kofinas. *Are Mixed Economies Persistent or Transitional? Evidence Using Social Networks from Arctic Alaska*. *American Anthropologist* 118(1):121-129.

F. Environmental Justice

Please ensure that the EIS includes a robust environmental justice analysis to determine whether our communities are being forced to bear a disproportionate burden under the Five-Year plan. The EIS should also address how those disproportionate burdens can be mitigated. This analysis should be placed in the context of Executive Order 12,898, which requires agencies to identify and address disproportionately high adverse human health or environmental effects of its activities on minority and low-income populations. Again, we believe this analysis weighs strongly in favor of the reasonable measures we have recommended to protect our important subsistence hunting areas.

CONCLUSION

Thank you for providing us with the opportunity to comment on the DPP and the upcoming EIS. We appreciate the change to provide early feedback in an effort to shape the development of the Five-Year Plan to ensure that it results in a balanced schedule that protects our subsistence hunt of bowhead whales as intended by Congress. If we can provide any additional information or assistance, please do not hesitate to contact our office.

Sincerely,



John Hopson, Jr.

Chairman

Alaska Eskimo Whaling Commission

cc: Mayor Harry Brower
Congressman Don Young
Senator Lisa Murkowski
Senator Dan Sullivan