

Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Baker, James A.: Files
Folder Title: Department of Commerce (3)
Box: 01

To see more digitized collections
visit: <https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:
<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>

THE WHITE HOUSE

WASHINGTON

March 3, 1981

File
Gen. Stevens

Frank --

Mac Baldrige's Executive Assistant is Helen Robbins. I spoke to her regarding the bowhead whale issue and she is giving it her attention. She will also involve their designated selection for Commerce Counsel, Sherman Unger.

Helen wanted to pass along her request that the personnel approval process at the White House be speeded up as the lack of policy personnel at the Commerce Department is inhibiting their ability to manage.

Kate

March 20, 1981

NOTE FOR THE RECORD

FROM: FRANK HODSOLL

SUBJECT: BOWHEAD WHALES

Bud Walsh called yesterday to inform me that he had been in touch with Ted Stevens on the issue. Stevens was comfortable with his proceeding to negotiate a deal with the Eskimos on future quotas. Walsh felt the grand jury investigation would not go anywhere, and that the Eskimos would not be any better off under the Marine Mammal Protection Act than under the IWC regime. There was also a risk that if one attempted to deny IWC jurisdiction; the IWC would respond with insisting on jurisdiction and reducing the quota.

I told Bud that, so long as Ted Stevens was satisfied with the process, the White House was satisfied. I said I would write Stevens a letter to this effect. Walsh agreed, and told me that he would let me know if there were any problems.

THE WHITE HOUSE

WASHINGTON

March 17, 1981

MEMORANDUM FOR FRANK HODSOLL

FROM: KATE MOORE

K7M

SUBJECT: Bowhead Whales

The purpose of this memorandum is to bring you up to date on the subject of Eskimo subsistence hunting of bowhead whales, following our initial discussion with representatives from Ted Stevens's office.

I have spoken with Sherman Ungar, the designated Counsel to the Commerce Department. He has requested that the NOAA staff look into the subject and provide a status report.

Background is provided below but the key issue is this:

The Commerce Department will need direction from the White House, it appears, in order to decide that the regulations promulgating the IWC quotas are "major rules." This designation will result in delay due to the regulatory impact analysis required by President Reagan's Executive Order. In light of such delay, it would be necessary to enter into a temporary agreement with the Eskimos as to the level of quotas they would honor for the spring hunt.

Background

Below is a chronology of events associated with the regulations implementing the IWC quota:

- 1) On October 2, 1980, an advance notice of proposed rulemaking was published and proposed regulations were published January 16, 1981. The proposed regulations allocate the IWC 3-year quota of 45 landed or 65 struck among the whaling villages for 1981, 1982 and 1983.
- 2) The quota regulation was affected by the January 29 freeze on regulations issued by President Reagan.
- 3) The Department of Commerce, under the auspices of the Acting Counsel Alfred Meicner, forwarded a list of regulations that would be significantly impacted by the freeze and requested exemptions for those regulations. Among those for which he was seeking an exemption was the quota regulation.

- 4) OMB granted the exemption, based on an emergency need to act (the regulation calls for implementation by April).
- 5) I contacted the Commerce Department, and have been dealing with Sherman Ungar, the designated Counsel for DOC. Ungar has been in touch with NOAA's staff and has become informed of this issue.
- 6) The Eskimos sought and obtained an extension of the deadline for commenting on the proposed regulation and on March 10 the Counsel for the Alaska Eskimo Whaling Commission officially submitted comments. The comments were far-reaching and broad, but in particular the AEWEC Counsel proposed the following:
 - a) The regulation implementing the IWC quota is a "major rule," and should be so treated. With this designation, the rules will require a regulatory impact analysis along with a regulatory flexibility analysis.
 - b) The Eskimos also recommend that an environmental impact statement be submitted.
 - c) In the interim, the AEWEC would enter into a cooperative agreement under the Marine Mammal Protection Act with the Secretary of Commerce to limit native harvest to a level which satisfies cultural and nutritional needs.

Proposed Action

The designated Counsel of NOAA, Ungar, is ready to take our direction on this issue. I have discussed a possible course of action with him. Ungar agrees that the proposed course of action seems feasible and makes sense. Action would be as follows:

- 1) Designate the quota regulations as a "major rule."
- 2) Proceed with required regulatory analysis.
- 3) Negotiate a temporary agreement with the Eskimos for the spring hunt which will begin in May or thereabouts.

My one concern is the implications such actions will have on our relationship to the IWC in that we are ostensibly delaying their quota. On the other hand, we are only executing the President's Executive Order which affects, of course, a broad range of rules and regulations; this quota is only one of them. Ungar's opinion is that this line of reasoning makes sense.

A longer term question will still remain as to the IWC jurisdiction but this is in the courts and additional time may allow this particular issue to be resolved judicially.

As of this time I have asked Ungar to look into the implications of such action for our relationship with the IWC. He has asked NOAA to prepare an options paper.

The issue is confounded by the lack of politically-appointed personnel who are in place at Commerce Department. Ungar tells me that the only confirmed appointment is the Secretary himself, and so direction will need to come from a very high level.

I would appreciate hearing your thoughts on the above, particularly if you have other suggested courses of action.

Many thanks.

THE WHITE HOUSE
WASHINGTON

March 20, 1981

Honorable Ted Stevens
U.S. Senate
Washington, D.C. 20510


Dear Senator Stevens:

I enjoyed meeting the other day with Steve Perlis, formerly of your staff, on the bowhead whale issue.

We raised the issue with the Commerce Department. I understand Bud Walsh of NOAA has been in contact with you and that you are satisfied with his proposal to attempt to negotiate with the Eskimos for a reasonable quota for bowheads.

Please let me know if I can be of any further assistance to you.

Sincerely,



F.S.M. Hodson
Deputy Assistant to the President

BCC: Bud Walsh
Kate Moore

THE WHITE HOUSE

WASHINGTON

March 4, 1981

*H
File
Senator Storer*

MEMORANDUM FOR SHERMAN UNGAR

FROM: KATE MOORE *KM*
Office of the Chief of Staff

SUBJECT: Bowhead Whale Quotas

Thank you for your time today in discussing the bowhead whale quota issue.

Attached are the materials we talked about, i.e. the Hopson vs. Kreps briefs and a letter from Congressman Don Young to Attorney General Smith regarding the criminal proceedings against Eskimos.

I look forward to hearing from you on your point of view as to how we can best handle this sensitive issue.

Many thanks.

cc: Frank Hodson
Helen Robbins

File
Sen. Stevens

SUMMARY

Bowhead
non-commercial
stock; deleted
exception for
aborigine whaling

Legal?
on jurisdiction
in Dist. Ct.
of Alaska

Justice ~~contra~~ pro juris
Interior contra legis
NOAA

Creation of Bowhead Whale Problem for Alaska Eskimos

- 1977 action of Carter Administration in Canberra, Australia at International Whaling Commission meeting
- Failure to file an objection to zero quota

abstained
90 days
Hollings, Nag
Stevens agreed
no IWC juris

Eskimo Response

- Creation of Alaska Eskimo Whaling Commission (voluntary association controlling whale hunt)
- Initial Cooperation
- Work with United States for domestic management and up-to-date information on the whale stock

Pres. made
decis that
juris +
raise quota

Agreed to
abide by
quota if
work out

IWC Response

- 1978 18 landed; 27 struck
- 1979 18 landed; 26 struck

-800
-2264 whale
recruitment
490

Criminal
Grand Jury
conspiracy

Role of the United States Scientists

Eskimo Response: Lawsuit challenging the jurisdiction of International Whaling Commission

Took 1 more; shot by
person on
shore (non-whaling
village)

Carter Administration action in 1980

- Abandonment of domestic management goal at 1980 IWC meeting: 3-year quota of 45 landed/65 struck
- Grand Jury Investigation contempt citations

Only
Eskimos
can enforce

Present Situation

- Notice of proposed rulemaking to implement IWC quota under authority of Whaling Act of 1949 (16 U.S.C. § 916)
- Issued January 16, 1981

US scuttled it:

LEO
lobbied
to keep in
IWC

45 landed,
65 struck

-- Without regulatory analysis or impact statements required by law.

-- During pendency of lawsuit challenging U.S. authority to regulate aboriginal whaling.

- February 17, President Reagan issued regulatory relief order applicable to pending rulemaking (Exec. Order 12291)

- Subpoenas for Grand Jury Proceedings are still being issued

Justice issued subpoenas on grand jury Racketeering procedures against

Objective

- To delay effective regulations long enough to permit a regulatory analysis to be conducted

- To permit the new Administration an opportunity to achieve a non-regulatory solution to this perplexing problem.

-- Eskimos are prepared to negotiate for a quota system which is legally binding and which meets their needs under domestic law if IWC jurisdiction is removed.

-- Negotiated settlement is best for Eskimos and the whales

o Course of action suggested

- Designation of rulemaking as a major rule under Executive Order 12291

-- Direct Department of Commerce

*Designate as major rule
to final end March.*

- If Department of Commerce refuses have OMB so designate rules
- At such time as it appears that rules will be delayed beyond the time the spring hunt commences, call in Eskimos to agree to a voluntary quota.
(Note: Rules are vulnerable to judicial invalidation in any event for failure to comply with NEPA)
- Permanently sever hunt from jurisdiction of the IWC

? of new legal opinion of Justice better environmentally than current which unenforceable

Carl Collier

- ① Major rule suspended pending law suit on juris.
- ② Voluntary agree. for spring hunt under Marine Mammal Protection (which authorizes)

 200 mile zone ^{exception for IWC} on commercial whaling should apply to aboriginal whaling
 -- could negotiate in 200 mile zone if IWC didn't have jurisdiction.
 deal with Canada on bowhead

 ③ Criminal proceedings don't matter
 . most that ever happened \$300

DON YOUNG
CONGRESSMAN FOR ALL ALASKA

COMMITTEES:
INTERIOR AND INSULAR
AFFAIRS
MERCHANT MARINE AND
FISHERIES

Congress of the United States
House of Representatives
Washington, D.C. 20515

2331 RAYBURN BUILDING
TELEPHONE 202/225-5765

DISTRICT OFFICES
FEDERAL BUILDING AND
U.S. COURT HOUSE
701 C STREET, BOX 3
ANCHORAGE, ALASKA 99513
TELEPHONE 907/271-5978
BOX 10, 101 12TH AVENUE
FAIRBANKS, ALASKA 99701
TELEPHONE 907/456-6949

February 24, 1981

Honorable William French Smith
Attorney General of the U.S.
U.S. Department of Justice
Washington, D.C. 20530

Dear Attorney General Smith:

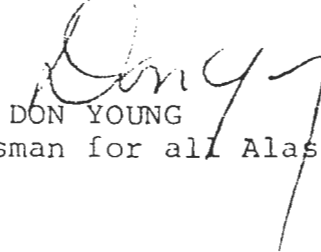
As you are aware, the previous administration began a grand jury investigation of possible misdemeanors in connection with alleged violations of the subsistence quota on subsistence harvest of bowhead whales by Alaskan Eskimos. These criminal proceedings, which were initiated in spite of the objections of the acting U.S. Attorney in Alaska, have caused a great deal of concern to those Eskimos who rely on the bowhead whale as a source of food and who are anxious to cooperate with the U.S. government in the conservation and management of the bowhead whale population. I would like to suggest that you review this situation and make your own determination as to the necessity of further grand jury proceedings.

The International Whaling Commission was established to regulate commercial whaling by the member nations. In this regard, it has been very successful. However, there is some doubt as to whether the IWC has any jurisdiction over subsistence harvest of whales. This interpretation of the International Whaling Convention of 1946 is now being debated before the Ninth Circuit Court of Appeals. In spite of the jurisdictional uncertainty, the Eskimo whalers in Arctic Alaska have voluntarily cooperated with the U.S. government in establishing and maintaining quotas, regulating means of taking, etc. However, in 1980, it is alleged that the "struck" quota established by the IWC may have been violated and that one whale may have been landed following closure of the whaling season. If such violations did occur, they would be punishable as misdemeanors. It is quite remarkable, therefore, that the federal government has begun criminal proceedings against the alleged violators. Further, based on the subpoenas issued and the questions asked of witnesses, it appears that the prosecutors are attempting to infringe upon the Eskimos' right of free association, a right guaranteed by the Constitution.

Given the need for cooperation between the whalers and the federal government in the conservation and management of bowhead whales, it would seem to me that further actions of this type by the U.S. government would be unwise. I would therefore urge you to carefully review the government's actions and the background of this issue before continuing with the investigation. Further, I would urge you to discuss this problem with me and other members of the Alaska Congressional delegation. We are all interested in the welfare of both the bowhead populations and those American citizens who depend on the bowhead as a source of food. However, actions which are viewed as vindictive will serve only to destroy the spirit of cooperation which we have tried to nurture.

I hope that you will provide Senator Stevens, Senator Murkowski and myself an opportunity to meet with you and discuss this serious problem.

Sincerely,



DON YOUNG

Congressman for all Alaska

cc: Hon. T. Stevens
Hon. F. Murkowski

DY:rhu

United States Senate

OFFICE OF
THE ASSISTANT MAJORITY LEADER
WASHINGTON, D.C. 20510

1. How many whales taken in relation to quota?
2. Why did IWC take juris? Who pushed?
3. Who at Justice (Fed GO) Who at NOAA

February 24, 1981

Mr. Francis S. N. Hodsoll
Deputy Assistant to the President
and Deputy to the Chief of Staff
First Floor, West Wing
The White House
Washington, D.C. 20500

Dear Frank:

It has been a long time since we have had an opportunity to get together. Let's have dinner sometime soon.

Senator Stevens would like the President to review a decision made by the Carter Administration to extend the jurisdiction of the International Whaling Commission over the Alaskan Eskimo subsistence hunt of bowhead whales.

Eskimos of Northwestern Alaska have hunted the bowhead whales for more than five thousand years, and whale products remain an essential source of food for many Eskimos. The bowhead whale hunt also has great cultural significance. Each year inhabitants of the whaling villages participate in the whale hunt through elaborate and formal ceremonies. There is no substitute for the hunt in the Eskimo economy and culture.

The International Whaling Commission was expressly established in 1949 to protect the world whaling stocks from the pressures of commercial whaling. The transcripts of the multinational negotiation clearly showed an intent on the part of the framers of the treaty to except native subsistence whaling from IWC jurisdiction. It remained so until June of 1977.

At the June, 1977 meeting of the IWC, the Commission voted to include Alaska Native subsistence hunting under its regulatory authority. That action was concurred in by the Carter Administration even though the hunt was already subject to jurisdiction under the Marine Mammal Protection Act.

Senator Stevens views the Carter Administration decision as a political move to appease the environmental community in the U.S. and within the Carter hierarchy. The Eskimo Community in Alaska feels quite rightly that they were abandoned by the United States Government in negotiations with the IWC. The Eskimos are now looking for the Reagan Administration to right what they and Senator Stevens believes to be a great injustice.

Since 1977, the Carter Administration has promulgated formal rules through the National Marine Fisheries Service implementing IWC quota's on a yearly basis. In December of this year, a three-year block quota established by the IWC at the 1980 meeting was also implemented. Little or no consultation with the Eskimo community has occurred under the Carter Administration even though the threat to the cultural integrity of the Alaska Eskimos is extreme.

At present, a Federal Grand Jury in Anchorage is investigating misdemeanor violations by the Alaska Eskimos of quotas on whaling from last year. This general procedure was initiated by the Carter Administration over the written objections of the United States Attorney in Alaska, Renee Gonzales, dated October, 1980.

The Grand Jury proceeding has been used strictly to harass and intimidate the Alaskan Eskimos and has no legal validity. In addition, it represents a gross abuse of the criminal process. All charges against the Eskimos are misdemeanors. Yet in fighting the proceeding, Eskimos have faced potential felony charges for criminal contempt. Statutes allowing misdemeanors to be bootstrapped into felonies were intended solely to assist the Justice Department in investigating organized crime.

Conversations with the Eskimos involved reveal that the questions asked during the Grand Jury proceedings relate mainly to the operation of the Alaskan Eskimo Whaling Commission (AEWC). This Commission has been established by the Eskimo Community as a self-policing entity to allow the Eskimos a greater voice in setting the quotas for the bowhead whale.

Any future regulatory scheme for control of subsistence whaling activities can only be implemented through the cooperation of the Eskimo community. The establishment of the AEWC was a step in that direction and this Administration should work directly with AEWC to see that proper

Mr. Francis S.N. Hodson
February 24, 1981
Page Three

domestic regulation of the whaling activities can occur. Eskimos, themselves, recognize that their own interests are served by sensible regulation of the taking of bowheads and they have consistently supported a domestic regulatory scheme, undertaken pursuant to the valid legal authority and due process protections contained in the Marine Mammal Protection Act.

Senator Stevens believes that if the Administration found that no jurisdiction lay in the International Whaling Commission, a cooperative agreement between the U.S. and AEWIC would be the most effective way to manage the bowhead whale resource. Such a cooperative agreement is in the best interest of the United States, the Eskimo and the bowhead.

I look forward to seeing you again tomorrow. Senator Stevens has asked to express his appreciation to you for meeting with me on such short notice.

With best wishes,

Cordially,



Steven R. Perles
Legislative Assistant to
TED STEVENS
United States Senator