



# Alaska Eskimo Whaling Commission

*P.O. Box 570 • Barrow, Alaska 99723*

*(907) 852-2392 • Fax: (907) 852-2303 • Toll Free: 1-800-478-2392*

## **The Alaska Eskimo Whaling Commission's Work to Manage Potential Adverse Impacts of Arctic Offshore Oil and Gas Development**

Good afternoon, my name is Harry Brower, I am a whaling captain from Barrow and Chairman of the Alaska Eskimo Whaling Commission (AEWC). I also am the Deputy Director of the North Slope Borough Department of Wildlife Management.

I was asked to talk to you today about the AEWC's experiences with offshore oil and gas development and the strategies we use to protect our marine resources and hunting.

But first a little background on the AEWC.

The AEWC was formed in 1977 by the 9 bowhead whale subsistence hunting villages of Barrow, Nuiqsut, Kaktovik, Wainwright, Pt. Hope, Wales, Kivalina, Gambell, and Savoonga. Since then, Little Diomedede and Pt. Lay have joined us, giving us 11 villages in our Commission.

The AEWC is a federally recognized 501(c)(3) charitable and educational organization. We manage the AEWC through a board of 11 Commissioners, one from each of the 11 villages. And our membership is composed of the more than 150 bowhead subsistence whaling captains of these villages.

The AEWC was formed for the purpose of protecting the bowhead whale resource, its habitat, and the bowhead whale subsistence hunt. We manage the bowhead whale subsistence hunt under delegated authority from the U.S. Department of Commerce/National Oceanic and Atmospheric Administration.

And as part of that agreement, we represent our hunters at the annual meetings of the International Whaling Commission, where we work to protect our bowhead whale subsistence quota.

When offshore oil and gas activity first started ramping up in the Beaufort and Chukchi Seas in the early 1980s, the AEWC stepped forward to protect our hunters and our marine resources.

At that time, we were threatened by large industry boats using our waters during our

bowhead whale subsistence hunt. They were driving our whales away and endangering our crews in their small boats.

So, in 1985, we put the first Open Water Season Conflict Avoidance Agreement (CAA) together. At that time it was called the "Oil/Whalers Agreement."

We knew we had to deal with the direct threats to our hunters from the industry boats, so we started by creating a communications system, with a radio tower and Communications Center, we call it Com-Center, at Deadhorse, and with VHF radio equipment provided by the oil companies.

The first CAA was a set of instructions for regular communications through the Com-Center.

Our next step was to start designing mitigation measures, based on our traditional knowledge of how our animals act, and our experience with the offshore impacts.

Working with your hunters to design mitigation measures is important because the Marine Mammal Protection Act states that offshore industrial activities cannot have an "unmitigable adverse impact" on the availability of marine mammal subsistence resources to your hunters.

And as hunters, we are the people with the direct knowledge of what impacts are occurring.

The greatest impact we have observed in the Beaufort and Chukchi Seas has been from noise caused by industry vessels, aircraft, and seismic, drilling, and icebreaker activities. So, we started with mitigation measures that keep the noise sources away from our marine mammal migrations before and during our hunting times.

But we met with a lot of resistance from the industry and the federal agencies. They tried to tell us that their scientific research showed that bowhead whales did not react to seismic shooting or vessel traffic.

We knew they were wrong, so we brought in the North Slope Borough Department of Wildlife Management and other scientists to listen to what our whaling captains had to say about the impacts they were seeing to our whales and other marine mammals from the offshore development.

Our scientists started reviewing the industry operators' monitoring plans to find out why their research did not come up with the same results as our observations.

From their work, we learned that the operators and the agencies were not designing their research plans in the right way.

After that, we started pushing for proper research design. And this research has turned out to support our whaling captains' observations.

So, it is very important to base your mitigation measures on your traditional knowledge

and your direct observations. If you do this, scientists can work with you to design research programs that will help uncover the causes of the impacts you are seeing.

Then from there, you can design mitigation measures that the developers can understand. Working with scientists is very helpful in this regard because it will be easier for you get the operators and agencies to believe you. They don't like to listen to our traditional knowledge.

We also work with lawyers who know how to listen to us. This way, we can make sure that our concerns are properly conveyed in language that the operators and agencies can understand.

We don't like to file law suits. We prefer to work things through in discussions. But, we have filed lawsuits on a few occasions, because the operators and agencies didn't want to listen.

We have learned that litigation is another area where it is important to have scientific research to support you, because courts also have a hard time understanding traditional knowledge.

Back to the monitoring plans. The MMPA also requires independent peer review of industry monitoring plans when operators are working in areas where we hunt for our subsistence resources.

As part of this peer review, the AEWC participates in the Open Water Season Peer Review Meeting, hosted each year by NMFS. At this meeting, we get together with our scientists and industry and agency scientists to review monitoring plans for the upcoming operating season.

Finally, we make sure that we keep our Congressional Delegation in Washington up to speed on what we are doing. This is important, because some of the operators like to send representatives to Washington to complain to our Alaska Delegation about us.

They like to paint us as unreasonable. So it is important to keep the Delegation aware of what we are doing to try to protect our livelihood and culture.

Returning to the CAA, as the years have gone by and we have had more time to observe impacts, and more scientific research to help expand our knowledge, we have expanded the measures set out in the CAA.

Two of the issues we are dealing with right now are: (1) putting a limit on the number of offshore operations taking place at a given time, and (2) waste disposal into our waters from planned drilling operations.

Shell Oil and ConocoPhillips are giving us a big fight on these two. But we won't back down.

Another thing we have learned about offshore development is that it comes and goes. When the price of oil is high, we see lots of operators and activities. Then when the

price of oil declines, we don't see as many.

You may see the same thing in your waters, but the important thing to remember is that the price always goes back up and the next time around there will be more operators.

Part of the reason for this is because they are running out of places to look for oil and gas. And with the ice retreat, Alaska is looking more attractive. Now, I would like to talk a little bit about how we convince the oil companies to accept our Conflict Avoidance Agreement.

It is not required by law, so we can't force them to agree to it. But, like I said, the MMPA does prohibit offshore oil and gas activities from having an unmitigable adverse impact on the availability of marine mammal resources.

Because of this, the offshore operators need to find ways to mitigate the impacts of their activities. And this is where the CAA comes in.

If operators agree to our CAA, the National Marine Fisheries Service agrees that the companies have met the MMPA requirement for "no unmitigable adverse impact."

If the companies decide not to agree to our CAA, we send it to the National Marine Fisheries Service with our comments on the operator's Incidental Harassment Authorization. And we tell the agency that we need the mitigation measures that are in the CAA to protect our hunting.

The other thing that makes the CAA work is that we include the companies in discussions on the mitigation measures. Our goal is to provide our hunters with the protections they need. But sometimes this can be done in more than one way.

So, we work with the operators to try to find a way that best meets their operational needs, while giving our hunters and resources the protections they require.

In 2007, the AEWC succeeded in gaining strong local and national support for our use of the CAA to set restrictions on the very sizeable drilling operation planned for Camden Bay that year by Shell Oil.

Achieving this outcome took a great deal of courage from the whaling captains in Nuiqsut, the most directly affected community, who were supported by the AEWC and all of its villages.

That CAA effort represented a very significant accomplishment for the AEWC and the communities we represents, since it was the first time an oil company tested the CAA by refusing to come to terms with the AEWC and our whaling captains.

Shell's refusal to reach agreement with our whalers cost the company a great deal of good will on the North Slope. And it generated very strong resistance from the AEWC and other North Slope residents.

The AEWC and North Slope Borough filed a successful lawsuit at the 9<sup>th</sup> Circuit Court of

Appeals, that revoked Shell's drilling permit for those operations. And Shell still hasn't gotten out into the Beaufort Sea to drill.

Another private agreement we have been able to put in place is the Oil Spill Contingency Agreement. We worked the first of these agreements out with British Petroleum when they were getting ready to start producing from Northstar. The North Slope Borough and the Inupiat Community of the Arctic Slope also are parties to this agreement.

Now we require it of all companies doing drilling operations, including exploratory drilling and production.

We put this agreement together because we learned from the Exxon Valdez spill that the federal government's Oil Pollution Act does not provide any protections for subsistence.

So we require the companies to agree up front that they will provide our subsistence hunters with the funding necessary to travel to other locations to find their subsistence resources. Or that in an extreme emergency, food will be brought in.

In addition to BP, this agreement also has been used since for exploratory drilling by Encana at McCovey in the Beaufort Sea and was signed by Shell Oil when they were planning their drilling operations at Sivulliq in Camden Bay.

But, it is important to keep in mind that none of this is automatic. We work on these issues year-round.

We stay in touch with NMFS and the operators.

We have scientists working with us on the research questions that we need answered to help clarify issues; or on the types of research that needs to be done to help us expand on our traditional knowledge.

One example of this is work we are getting ready to undertake on baseline research in the Chukchi Sea, where things are happening beyond the reach of our own observations.

Our scientists also help us by keeping on top of the industry monitoring plans, to make sure that they are designed properly.

Finally, we have backing from the North Slope Borough, which requires that companies requesting permits to operate in state waters have a signed CAA. And we have 11 villages speaking with one voice. This support is very important to our success.

So, that is a brief overview of some of our work on offshore oil and gas operations.

And I thank you for taking the time to listen.

Quyanaqpak.

*Harry Brower 2/5/09*