

All past fuel economy rules, however, have had economic impacts in excess of \$100 million per year. The rule was reviewed by the Office of Management and Budget under Executive Order 12866 and is considered significant under the Department's regulatory procedures. Although the agency has no discretion under the statute (as well as with respect to the costs it imposes), NHTSA is treating this rule as "economically significant" under Executive Order 12866 and "major" under 5 U.S.C. 801.

B. Environmental Impacts

NHTSA has not conducted an evaluation of the impacts of this action under the National Environmental Policy Act. There is no requirement for such an evaluation where Congress has eliminated the agency's discretion by precluding any action other than the one announced in this notice.

C. Impacts on Small Entities

NHTSA has not conducted an evaluation of this action pursuant to the Regulatory Flexibility Act. The agency notes that this final rule, which was not preceded by a Notice of Proposed Rulemaking is not a "rule" as defined by the Regulatory Flexibility Act and is, therefore, not subject to its provisions. Furthermore, as Congress has eliminated the agency's discretion by precluding any action other than the one taken in this notice, NHTSA would not be able to take any action in the event such an analysis supported setting the light truck fuel economy at a different level. Past evaluations indicate, however, that few, if any, light truck manufacturers would have been classified as a "small business" under the Regulatory Flexibility Act.

The Regulatory Flexibility Act of 1980 (Public Law 96-354) requires each agency to evaluate the potential effects of a final rule on small businesses. Establishment of a fuel economy standard for light trucks affects motor vehicle manufacturers, few of which are small entities. The Small Business Administration (SBA) has set size standards for determining if a business within a specific industrial classification is a small business. The Standard Industrial Classification code used by the SBA for Motor Vehicles and Passenger Car Bodies (3711) defines a small manufacturer as one having 1,000 employees or fewer.

Very few single stage manufacturers of motor vehicles within the United States have 1,000 or fewer employees. Those that do are not likely to have sufficient resources to design, develop, produce and market a light truck. For

this reason, NHTSA certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

D. Executive Order 12612 (Federalism)

NHTSA has analyzed this final rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment. As a historical matter, prior light truck standards have not had sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually.

The agency notes that Section 322 of the FY 1998 DOT Appropriations Act precludes the agency from the expenditure of any funds to prepare, propose or promulgate any fuel economy standard that differs from those currently in effect. This directive forbids NHTSA from studying any alternative fuel economy standards other than those presently in force. The agency cannot consider any other alternative standards that may result in lower costs, lesser burdens, or more cost-effectiveness for state, local or tribal governments or the private sector. Furthermore, as the agency is precluded from expending any funds to prepare an alternative fuel economy standard, it cannot embark on any studies of such alternatives. NHTSA has therefore not prepared a written assessment of this rule for the purposes of the Unfunded Mandates Act.

F. Paperwork Reduction Act

There are no information collection requirements in this rule.

G. Department of Energy Review

In accordance with section 49 U.S.C. § 32902(j), NHTSA submitted this final rule to the Department of Energy for review. That Department made no unaccommodated comments.

III. Conclusion

Based on the foregoing, the agency is establishing a combined average fuel economy standard for non-passenger

automobiles (light trucks) for MY 2000 at 20.7 mpg.

List of Subjects in 49 CFR Part 533

Energy conservation, Fuel economy, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 533 is amended as follows:

PART 533—[AMENDED]

1. The authority citation for part 533 continues to read as follows:

Authority: 49 U.S.C. 32902; delegation of authority at 49 CFR 1.50.

2. § 533.5(a) is amended by revising Table IV to read as follows:

§ 533.5 Requirements.

(a) * * *

TABLE IV

Model year	Standard
1996	20.7
1997	20.7
1998	20.7
1999	20.7
2000	20.7

* * * * *

Issued On: March 30, 1998.

Ricardo Martinez,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 230

[I.D. 022398A]

Whaling Provisions; Aboriginal Subsistence Whaling Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of aboriginal subsistence whaling quotas.

SUMMARY: NMFS announces aboriginal subsistence whaling quotas and other limitations deriving from regulations adopted at the 1997 Annual Meeting of the International Whaling Commission (IWC). For 1998, the quotas are 77 bowhead whales struck, and 5 gray whales landed. These quotas and other limitations will govern the harvest of bowhead whales by members of the Alaska Eskimo Whaling Commission (AEWC) and the harvest of gray whales

by members of the Makah Indian Tribe (Tribe). These are initial quotas that will remain in effect for the 1998 season unless they are revised as a result of the completion of arrangements with the Russian Federation. Any revisions to the quotas will be published in the **Federal Register**.

DATES: Effective April 6, 1998.

Comments on the aboriginal subsistence whaling quotas and related limitations must be received by May 6, 1998.

ADDRESSES: Send comments to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226.

FOR FURTHER INFORMATION CONTACT: Catherine Corson, (301) 713-2322.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (WCA), 16 U.S.C. 916 *et seq.*, and by rules at 50 CFR part 230. The rules require the Secretary of Commerce (Secretary) to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 1997 Annual Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock, and gray whales from the Eastern stock in the North Pacific. The bowhead quota was based on a joint request by the United States and the Russian Federation, accompanied by documentation concerning the needs of two Native groups, Alaska Eskimos and Chukotka Natives in the Russian Far East. The gray whale quota was also based on a joint request by the Russian Federation and the United States, again with documentation of the needs of two Native groups, the Chukotka Natives and the Makah Indian Tribe in Washington State.

These actions by the IWC thus authorized aboriginal subsistence whaling by the AEWC for bowhead whales, and by the Tribe for gray whales, as discussed in greater detail in this document (see "Background information" and "1997 Annual Meeting"). The harvests will be conducted in accordance with cooperative agreements between NOAA and the AEWC, and between NOAA and the Makah Tribal Council (Council); these agreements are the means by which NOAA recognizes the AEWC and the Tribe as Native American whaling organizations under 50 CFR part 230.

Quotas

The IWC set a 5-year block quota of 280 bowhead whales landed. For each of the years 1998-2002, the number of bowhead whales struck may not exceed 67, except that any unused portion of a strike quota from any year, including 15 unused strikes from the 1995-97 quota, may be carried forward. No more than 15 strikes may be added to the strike quota for any 1 year. At the end of the 1997 harvest, there were 15 unused strikes available for carry-forward, so the combined strike quota for 1998 is 82 (67 + 15). Because the quota approved by the IWC in 1997 was based in part on a request for five bowheads a year for the Chukotka people, the 1998 quota for the AEWC is 77 strikes (82 - 5). The AEWC will allocate these strikes among the 10 villages whose cultural and subsistence needs have been documented in past requests for bowhead quotas from the IWC.

The United States and the Russian Federation plan to conclude an arrangement to ensure that the total quota of bowhead whales landed and struck will not exceed the quotas set by the IWC.

The IWC also set a 5-year block quota (1998-2002) of 620 gray whales, with an annual cap of 140 animals taken. The IWC regulation does not address the number of allowed strikes. The requested quota and accompanying documentation assumed an average annual harvest of 120 whales by the Chukotka people and an average annual harvest of 4 whales by the Makah Indian Tribe. In accordance with the agreement between NOAA and the Council, the Makah hunters will take no more than five gray whales in any 1 year. The Council will manage the harvest to use no more than 33 strikes over the 5-year period, and will take measures to ensure that the overall ratio of struck whales to landed whales does not exceed 2:1. Because the U.S. request for a gray whale quota was not based on the needs of separate whaling villages, but rather on the needs of the Tribe as a whole, the Council will allocate the quota among whaling captains to whom permits have been issued.

The United States and the Russian Federation will also conclude an arrangement to ensure that the block quota and annual cap for gray whales are not exceeded.

Other Limitations

The IWC regulations, as well as the NOAA rule at 50 CFR 230.4(c), forbid the taking of calves or any whale accompanied by a calf.

NOAA rules (at 50 CFR part 230) contain a number of other provisions

relating to aboriginal subsistence whaling, some of which are summarized here. Only licensed whaling captains, or crew under the control of those captains, may engage in whaling. They must follow the provisions of the relevant cooperative agreement between NOAA and a Native American whaling organization (the AEWC or the Council), as well as applicable rules in part 230. The aboriginal hunters must have adequate crew, supplies, and equipment. They may not receive money for participating in the hunt. No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native handicrafts. Captains may not continue to whale after the relevant quota is taken, the season has been closed, or their licenses have been suspended. They may not engage in whaling in a wasteful manner.

Background Information

The United States is a member of the IWC, the body established by the International Convention for the Regulation of Whaling (ICRW). U.S. participation in the IWC and management of whaling activities under U.S. jurisdiction are governed by the WCA, which requires that relevant IWC regulations be submitted by the Secretary for publication in the **Federal Register**. This notice fulfills that requirement.

The IWC's primary function is the adoption of regulations (called the "Schedule"), which are considered an integral part of the Convention. Since the late 1970s, the IWC has set quotas for the aboriginal subsistence harvest of whales from several stocks, including bowhead whales from the Bering-Chukchi-Beaufort Seas stock and gray whales from the Eastern stock in the North Pacific. Although the IWC sets quotas for the aboriginal subsistence harvest of these stocks at the request of a Contracting Government, the quotas are not assigned to a particular group of aborigines or to a particular country. The reason for this is found in Article V.2.c of the ICRW, which specifies that regulations may not "allocate specific quotas to any factory or ship or land station or to any group of factory ships or land stations."

During the 2 decades that the IWC has set quotas for aboriginal whaling, it has been the case that only one Contracting Government has made a request for a quota from any one stock. During the 1980s, however, up to 10 animals of the gray whale quota based on the Soviet Union's request were understood by the IWC to be available for take by Alaska Eskimos, through an informal

arrangement between the Soviet Union and the United States. This arrangement was modeled on the bilateral or multilateral arrangements of Contracting Parties to allocate commercial quotas set by the IWC before the moratorium on commercial whaling took effect. Catches of gray whales for aboriginal subsistence use by Alaska Eskimos, when they occurred, were reported by the United States each year and were published in the Annual Reports of the IWC. No IWC member objected to these catches.

During these 2 decades, the IWC has never established a mechanism for recognizing the subsistence needs of an aboriginal group, other than by setting a quota based on the documentation of those needs by the Contracting Government. The IWC has never adopted a resolution or taken any other action explicitly recognizing subsistence needs of a particular group. While Alaska Eskimos were taking gray whales in the 1980s, the only indications in the IWC record of the U.S.-Soviet arrangement were brief floor statements noting the existence of the bilateral agreement.

The IWC has developed the practice of setting aboriginal quotas that are in place for 3 or 4 years. For example, the IWC in 1994 set a quota of 140 gray whales for each of the years 1995–97, based on a proposal by the Russian Federation. At the same meeting, the IWC adopted by consensus a proposal by the United States for a total of 204 bowhead whales for the years 1995–98, where an annual cap on strikes was also specified.

In 1996, when the United States first put forward the proposal for a gray whale quota for the Makah Indian Tribe, the U.S. delegation did not ask the Russians to share the existing (1995–97) quota of 140 per year, which had been based on the subsistence needs of the Chukotka people. Instead, it requested an increase in the existing quota; the U.S. proposed to allow an additional take from the same stock of up to five gray whales a year in the years 1997–2000 from waters off the west coast of the United States. This approach was consistent with the U.S. position that each country wishing to establish or continue an aboriginal subsistence hunt must submit its own unique documentation (“needs statement”), justifying its request for the setting of an appropriate quota. While the U.S. proposal had considerable support at the 1996 annual meeting, it did not appear to have the necessary three-quarters majority vote for a Schedule amendment and was withdrawn before a vote was taken.

1997 Annual Meeting

In preparation for the IWC’s Annual Meeting in October 1997, the U.S. delegation began considering suggestions from other Commissioners that the United States should find a way to share a gray whale quota with the Russians, preferably a quota lower than the combined requests of 145 per year. This approach had implications for the U.S. position that aboriginal subsistence quotas should be based on unique documentation of the needs of each aboriginal group, as well as on the conservation requirements of each stock.

Because the gray whale quota of 140 per year would expire in 1997, the Russians had to propose a new Schedule amendment at the 1997 annual meeting. Extensions of quotas are not automatic; they require the same three-quarters or consensus vote as any other Schedule amendment. In August 1997 the Russian government submitted to the IWC a request for an annual quota of 140 gray whales for the years 1998–2002. At the same time, the U.S. government stated its intention to propose an amendment to the Schedule for gray whales. Both countries submitted needs statements documenting the subsistence needs of their Native groups. Both governments also indicated they would propose amendments to the Schedule provision on bowhead whales.

As explained, 1997 was the first year when two Contracting Governments were simultaneously requesting quotas from the same stock for purposes of aboriginal subsistence whaling. After extensive discussions with the AEWC about bowhead whales and the Makah Tribe about gray whales, as well as an internal policy review, the U.S. delegation consulted with the Russian delegation on the appropriate formulation of Schedule language, given the Convention’s prohibition against allocating quotas to individual countries and the desire expressed by some delegations for a shared quota.

The Russian and U.S. delegations each made a presentation about the needs of their Native groups for gray whales and bowhead whales at the meeting of the IWC’s Aboriginal Subsistence Whaling Subcommittee on October 18, 1997. The needs statements were each discussed at considerable length by the Subcommittee.

Following the meeting of the Subcommittee, the two delegations again consulted and decided to submit joint proposals for Schedule amendments for the gray whale and bowhead whale quotas. The joint

proposal for a block quota for bowhead whales was adopted by consensus on the afternoon of October 22, 1997.

The joint proposal for a gray whale quota began with the customary introductory language:

The taking of gray whales from the Eastern stock in the North Pacific is permitted, but only by aborigines or a Contracting Party on behalf of aborigines, and then only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines.

The proposal then specified, for the years 1998–2002, that the number of gray whales not exceed 620, provided that the number of gray whales taken in any 1 of the years 1998–2002 not exceed 140.

The two delegations also circulated a written explanation and delivered oral statements demonstrating the basis for the proposed numbers. The 5-year block quota of 620 represented a reduction of 105 from the combined original requests. The total of 620 assumed an average annual harvest of 120 by the Chukotka people and 4 by the Makah Tribe. The joint explanation said that the block quota would be allocated through a bilateral arrangement.

The gray whale proposal was debated in a plenary session on the afternoon of October 22, 1997. Some delegations suggested that an amendment should be made to the introductory portion of the proposal. Debate was then adjourned to allow for consultation among the delegations.

One delegation proposed to the U.S. delegation that the following words be added: “whose traditional subsistence and cultural needs have been recognized by the International Whaling Commission”. U.S. delegates responded that the words “by the International Whaling Commission” were not acceptable, because the IWC had no established mechanism for recognizing such needs, other than adoption of a quota.

At a Commissioners-only meeting the next morning, the U.S. representatives expressed their understanding that adoption of a quota in the Schedule constituted IWC approval, with no further action required. A clear majority of Commissioners then expressed their support for the U.S. approach. When the plenary session resumed, the Chair announced that a consensus had been achieved. The Russia-United States proposal for a gray whale quota was adopted on October 23, 1997, without a vote or further debate, with the addition of the words “whose traditional aboriginal subsistence and cultural needs have been recognized”.

NOAA therefore concludes that the gray whale quota set by the IWC is available for use, under the limitations set forth above, by members of the Makah Tribe. The Tribe's subsistence and cultural needs have been recognized by the IWC's setting a quota for gray whales based on the documentation of those needs, and by the United States in the NOAA-Council agreement and other documents.

Procedural Matters

Licensing: A question has been raised about the method of issuing licenses to aboriginal hunters. Since 1979, NOAA's rules (at 50 CFR 230.5) have automatically issued a license to whaling captains identified by the relevant Native American whaling organization. The Assistant Administrator for Fisheries, as well as the two organizations, may suspend the license of any captain who does not comply with NOAA's rules.

This rule serves the statutory purposes of identifying hunters who are allowed to take whales in the subsistence harvest; ensuring that hunters have adequate crews, supplies, and equipment; and enforcing applicable rules, including the prohibition against receiving money for participation in the hunt. NOAA relies upon the Native American whaling organizations to make the administrative decision as to the eligibility of whaling captains. The rule thus minimizes Federal interference in the Native American organizations' administration of the subsistence hunt. Over the years, it has proved to be an effective and efficient means of complying with the WCA while allowing self-governance by Native groups.

Environmental assessment: A draft environmental assessment (EA) on the Makah harvest of gray whales was made available for public comment on August 22, 1997. The final EA was completed on October 17, 1997 (see 62 FR 5393). The EA weighed the impacts of the U.S. government's support of the Makah request to continue their traditional practice of whaling, and considered several alternatives. The EA, which incorporated and responded to public comments, concluded that the proposed action would have no significant impact on the human environment.

Monitoring program: NMFS and the IWC have been monitoring the status and population trends of the gray whale for several decades. NMFS and its

predecessor agencies have monitored the eastern North Pacific stock of gray whale during its southbound migration since 1952; annual gray whale shore surveys off California were conducted between 1967-68 and 1980-81, and between 1984-85 and 1987-88. NMFS conducted a status review for the gray whale and certain other species in 1984 (49 FR 44774, November 9, 1984) and 1991 (56 FR 29471, June 27, 1991). For the status reviews, NMFS estimated that the eastern North Pacific stock of gray whale was increasing at an annual rate of approximately 2.5 percent, and had recovered to or exceeded its population size prior to commercial exploitation. By the time of the 1991 status review, the estimate of abundance for this stock was 21,113.

With the determination to remove the eastern North Pacific stock of the gray whale from the List of Endangered and Threatened Wildlife, NMFS indicated its intention to implement a 5-year program to monitor the status of this stock, 58 FR 3121 at 3135 (January 7, 1993). The contents of this monitoring program are summarized in 59 FR 28846 (June 3, 1994), and Gray Whale Monitoring Task Group, *A 5-year Plan for Research and Monitoring of the Eastern North Pacific Population of Gray Whales* (NMFS, October 1993). NMFS is now implementing this monitoring program.

Results from research conducted under the 5-year monitoring program indicate that the population remains healthy and is continuing to recover to levels approaching its carrying capacity, i.e., its equilibrium population. Surveys of northbound migrating cow/calf pairs were conducted between 1994 and 1997. Indices of calf production (estimate of number of calves/total population estimate) were 4.4 percent in 1994, 2.6 percent in 1995, 5.1 percent in 1996, and 6.5 percent in 1997. These values were similar to values reported from surveys of northbound migrating cow/calf pairs conducted in the early 1980s. Another northbound survey will be conducted in 1998.

Estimates of abundance from the southbound migration were made during the winters of 1992-93, 1993-1994, and 1995-96. The population estimate from the 1992-93 survey was 17,674 and the 1993-94 estimate was 23,109. The most recent shore count of the southbound migration was made between December 1995 and February 1996; the resulting estimate was 22,571. The 1993-94 and 1995-96 estimates are

not statistically different from each other. The final southbound migration shore survey for the 5-year period following delisting had to be suspended in early February 1998 due to severe weather.

Data from all the surveys will be used to assess the status of this stock (e.g., estimated population status relative to carrying capacity, estimated rate of increase). A workshop to review a draft status report is scheduled for the summer of 1999.

Research concerning the carrying capacity for the eastern North Pacific stock of gray whale also was recommended in the 5-year research and monitoring plan. Based on a revised Bayesian analysis of gray whale population dynamics, point estimates for the equilibrium population (i.e., the carrying capacity) ranged from 25,130 to 30,140, depending upon the starting year of the trajectory.

Results from research conducted under the 5-year research and monitoring program and earlier studies indicate that the eastern North Pacific stock of gray whale continues to increase at a rate of approximately 2.5 percent per year. These results are consistent with the conclusion that the take of five additional gray whales per year by the Makah Tribe will have no significant impact on the eastern North Pacific stock of gray whale.

Classification

The Assistant Administrator is issuing the aboriginal subsistence whaling quotas for the 1998 season, consistent with action taken by the International Whaling Commission, as required by the Whaling Convention Act, 16 U.S.C. 916 et seq. Consequently, this notice constitutes a foreign affairs function, exempt from the requirement to provide prior notice and opportunity for public comment under 5 U.S.C. 553(a)(1).

Because prior notice and an opportunity for public comment are not required to be provided for this notice by 5 U.S.C. 553, or any other law, the analytical requirements for the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are not applicable.

Dated: March 30, 1998.

Dave Evans,

*Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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