



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910
THE DIRECTOR

November 27, 2023

Makah Indian Tribe
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Margaret Owens
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National Marine Fisheries Service
West Coast Region
Chris McNulty Laurie K. Beale & Caitlin B. Imaki
NW 7600 Sand Point Way NE
Seattle, Washington 98115

Dear Parties:

As you know, the National Marine Fisheries Service's (NMFS) West Coast Regional Office (WCRO) has proposed to issue a waiver and regulations under the Marine Mammal Protection Act (MMPA) in response to a request from the Makah Tribe to take a limited number of Eastern North Pacific gray whales (*Eschrichtius robustus*) for ceremonial and subsistence purposes pursuant to the Tribe's treaty rights. A hearing to consider the proposed MMPA waiver and regulations took place November 14 through November 21, 2019 in Seattle, Washington before Administrative Law Judge George J. Jordan. On September 23, 2021, Judge Jordan transmitted his recommended decision to NMFS along with the hearing transcript and other required documentation. As required by MMPA regulations, NMFS published a *Federal Register* notice on September 29, 2021, requesting public comment on the Judge's recommended decision. NMFS extended the comment period until November 13, 2021.

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES



Since then, NMFS has been working to complete steps under the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA) and the Coastal Zone Management Act (CZMA) related to the Tribe's request. On July 1, 2022, NMFS issued a Supplemental Draft Environmental Impact Statement (SDEIS) and announced a 45-day comment period on the SDEIS, which was extended until October 14, 2022, and then reopened from October 28, 2022, through November 3, 2022. Under section 7 of the ESA, NMFS concluded consultation with the U.S. Fish and Wildlife Service on March 16, 2023, and with NMFS WCRO on November 8, 2023. Pursuant to section 307(c)(3) of the CZMA, on June 2, 2023, the State of Washington Department of Ecology concurred with NMFS' determination that the hunt described in Judge Jordan's recommended decision was consistent with the enforceable policies in Washington's Coastal Zone Management Plan.

NMFS released a Final Environmental Impact Statement (FEIS) on November 17, 2023. It took longer than we anticipated to complete the FEIS due to new information about the gray whale population that came to light over the past year, which has delayed our decision-making related to the waiver. The FEIS is available on the [Makah Tribal Whale Hunt webpage](#), and consultation documents are available on the [Makah Tribal Whale Hunt Chronology webpage](#).

Pursuant to the procedural regulations governing the waiver proceeding, I must make a final decision on the proposed regulations and waiver, but I also have the discretion to "remand the hearing record to the presiding officer for a fuller development of the record." 50 C.F.R. § 228.21(a). Before I determine next-steps in the waiver proceeding, I am providing you with an opportunity to submit comments on what, if any, procedural steps are necessary prior to rendering a final decision on the waiver and regulations. Parties may also use the comment period to address new analysis on gray whales that has emerged since the comment period on the Supplemental Draft Environmental Impact ended, for example Stewart et al. (2023)¹, Eguchi et al. (2023a)², Eguchi et al. (2023b)³, and Harris et al. (2023)⁴.

Comments are due on December 20, 2023. Parties may submit responses to the comments of other parties by January 17, 2024. Comments and responses must be submitted by email to

¹ Stewart, J.D., T.W. Joyce, J.W. Durban, J. Calambokidis, D. Fauquier, H. Fearnbach, J.M. Grebmeier, M. Lynn, M. Manizza, W.L. Perryman, M.T. Tinker, and D. Weller. 2023. Boom-bust cycles in gray whales associated with dynamic and changing Arctic conditions. *Science*, 382, 207-211. DOI:[10.1126/science.adi1847](https://doi.org/10.1126/science.adi1847).

² Eguchi, T., A.R. Lang, and D.W. Weller. 2023a. Abundance of eastern North Pacific gray whales 2022/2023. U.S. Department of Commerce, NOAA Technical Memorandum NMFS-SWFSC-680. <https://doi.org/10.25923/n10e-bm23>.

³ Eguchi, T., A.R. Lang, and D.W. Weller. 2023b. Eastern North Pacific gray whale calf production 1994-2023. U.S. Department of Commerce, NOAA Technical Memorandum NMFS-SWFSC-685. <https://doi.org/10.25923/e9at-x936>.

⁴ Harris, J., J. Calambokidis, A. Perez, J. Laake, and P.J. Mahoney. 2022. Recent trends in the abundance of seasonal gray whales (*Eschrichtius robustus*) in the Pacific Northwest, 1996-2020. AFSC Processed Rep. 2022-05, 22 p. Alaska Fish. Sci. Cent., NOAA, Natl. Mar. Fish. Serv., 7600 Sand Point Way NE, Seattle, WA 98115. <https://media.fisheries.noaa.gov/2022-09/harris-et-al-2022.pdf>

Ellen Keane and Joseph Heckwolf at the emails below. All parties to the waiver proceeding must be copied on comments and responses.

I appreciate your patience, perseverance, and participation in this lengthy process. Any matters related to the merits of the waiver proceeding should be addressed in formal written comments and responses. Questions unrelated to the merits may be directed to both Ellen Keane at ellen.keane@noaa.gov and Joseph Heckwolf at joseph.heckwolf@noaa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Janet Coit". The signature is written in a cursive style with a large initial "J" and a distinct "C".

Janet Coit
Assistant Administrator