

**FOR FURTHER INFORMATION CONTACT:** Laura Morse or Jennifer Skidmore, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226).

The objectives of the proposed research are to chronologically profile anthropogenic and physiological data from whale earplugs and determine individual- through population-level exposure and stress. Up to 25 earplugs each of blue whale (*Balaenoptera musculus*), sei whale (*B. borealis*), minke whale (*B. acutorostrata*), humpback whale (*Megaptera novaeangliae*), and gray whale (*Eschrichtius robustus*) will be imported from museums worldwide for analysis. The requested duration of the permit is 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 15, 2012.

**Tammy C. Adams,**

*Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XC021

#### Notice of Intent To Terminate the Existing Draft Environmental Impact Statement and Prepare a New Environmental Impact Statement

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

**ACTION:** Notice; request for comments.

**SUMMARY:** We, NMFS, intend to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA), related to the Makah Indian Tribe's (Tribe) request that we authorize treaty right hunting of eastern North Pacific gray whales in usual and accustomed fishing grounds off the coast of Washington State. This notice briefly describes the background of the Makah Tribe's request for waiver, terminates a prior draft EIS (DEIS), and identifies and requests comments on a set of new potential alternatives currently under consideration.

**DATES:** Comments and information regarding the proposed revisions must be received (See **ADDRESSES**) no later than 5 p.m. Pacific Time on August 10, 2012.

**ADDRESSES:** You may submit comments, identified by [NOAA-NMFS-2012-0104], by any of the following methods:

**Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

**Mail:** Send comments to: Steve Stone, Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232.

**Facsimile (fax) to:** 503-230-5441.

**Instructions:** Comments will be posted for public viewing as soon as possible during the comment period. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. We may elect not to post comments that contain obscene or threatening content. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

We will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. If your submission is made via hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review to the extent consistent with applicable law. However, we cannot guarantee that we will be able to do so.

**FOR FURTHER INFORMATION CONTACT:** Donna Darm, NMFS, Northwest Region,

206-526-6150; or Shannon Bettridge, NMFS, Office of Protected Resources, 301-427-8402. References used in this notice and related information are available via our Web site at <http://www.nwr.noaa.gov/Marine-Mammals/Whales-Dolphins-Porpoise/Gray-Whales/Index.cfm>.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 14, 2005, we received the Makah Tribe's request for a limited waiver of the Marine Mammal Protection Act (MMPA) take moratorium under Section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A)), including issuance of regulations and any necessary permits. The waiver, regulations, and permit would allow the Tribe to continue treaty right ceremonial and subsistence hunting of eastern North Pacific (ENP) gray whales in its usual and accustomed fishing grounds (U&A). The Tribe made the request following the Ninth Circuit Court's decision in *Anderson v. Evans*, 371 F.3d 475, that the Tribe must comply with the process prescribed in the MMPA for authorizing take of marine mammals. On January 24, 2006, the Tribe requested that we also take any other necessary actions, including under the Whaling Convention Act (16 U.S.C. 916 *et seq.*), associated with a tribal hunt.

The Tribe's waiver request proposes to conduct treaty ceremonial and subsistence harvest in the Tribe's U&A of up to 20 gray whales from the ENP stock in any 5-year period with a maximum of five whales per year, corresponding with aboriginal subsistence whaling limits established by the International Whaling Commission (IWC) in response to a joint request from the United States and Russia. In addition, the waiver request states that tribal regulations would limit the number of gray whales that may be struck to no more than seven in any calendar year, and would limit the number of struck and lost whales to no more than three in any calendar year.

Other tribal regulations proposed in the waiver request include measures to target migrating whales and avoid the intentional harvest of whales that may be part of the Pacific Coast Feeding Aggregation (or Pacific Coast Feeding Group—PCFG). This small group of gray whales (approximately 200 animals) forages in waters from Northern California to Northern British Columbia, including waters in and adjacent to the Makah U&A during the summer. The measures include allowing hunting only from December 1 through May 30 (avoiding the summer, when PCFG whales predominate), restricting

hunting to the coastal portion of the Tribe's U&A (avoiding the Strait of Juan de Fuca, where PCFG whales predominate), and establishing an allowable bycatch level for PCFG whales. The Makah Tribe's proposal includes other standards for hunting, such as: (1) Monitoring and adaptive management measures to ensure that any incidental harvest of gray whales from the PCFG remains at or below the annual bycatch level, (2) measures to ensure that hunting is conducted in the most humane manner practicable, consistent with continued use of traditional hunting methods, and (3) measures to protect public safety. The full waiver request is posted online at <http://www.nwr.noaa.gov/Marine-Mammals/Whales-Dolphins-Porpoise/Gray-Whales/Index.cfm>.

On May 9, 2008, we released a draft environmental impact statement (DEIS) that analyzed impacts to the human environment from the Makah Tribe's request and five alternatives, including no action. The alternatives varied the principal components of a hunt, including: The time when whale hunting would occur; the area where whale hunting would occur; the annual and 5-year limits on the number of whales harvested, struck, and struck and lost; cessation of whale hunting if a predetermined number of PCFG whales were harvested; and the method of hunting.

We held three public meetings and received over 300 comments on the DEIS during the 98-day comment period. In the fall of 2008 we began developing responses to these comments and considering whether any new alternative(s) might be needed to address some comments. A substantial number of comments were concerned with potential hunting impacts on PCFG whales.

Soon after releasing the DEIS, several substantive scientific issues arose that required an extended period of consideration in our NEPA analysis. First, NMFS scientists determined that population estimates for ENP gray whales should be re-analyzed due to potential biases in those estimates. That analysis was completed in December 2009 (Laake *et al.*, 2009) and led to subsequent modeling work by Punt and Wade (2010), who concluded that the ENP stock was within its "optimum sustainable population" size. That conclusion was accepted by NMFS in its stock assessment report for ENP gray whales (Allen and Angliss, 2010), and the papers by Laake (2009) and Punt and Wade (2010) were also reviewed and endorsed by the IWC Scientific Committee. In addition, in 2010 and

2011, researchers studying the genetics of ENP and PCFG whales found evidence of population substructure indicating that PCFG whales may warrant consideration as a separate management unit (Frasier *et al.*, 2011; Lang *et al.*, 2011). More recently, researchers tracking and sampling gray whales discovered that at least some individuals from summer feeding grounds utilized by the endangered western stock migrate across the Pacific and into areas used by ENP gray whales (including the Makah U&A) (Lang *et al.*, 2010; IWC, 2011; Mate *et al.*, 2011; Weller *et al.*, 2011). We have made the studies cited above and related information available on our Web site (see **FOR FURTHER INFORMATION CONTACT**).

This information is central to our consideration of the Tribe's request under the MMPA and to our NEPA analysis. Moreover, the information is also under active consideration by the IWC as part of a regular implementation review of ENP gray whales to assess whether changes are needed in the international harvest scheme for these whales. The IWC Scientific Committee is scheduled to meet this summer and conclude its review of gray whales by June 23, 2012; the IWC will consider that review at its annual meeting, which ends July 6, 2012. Documents and reports are typically posted on the IWC Web site at <http://www.iwcoffice.org/meetings/reportsmain.htm>. We encourage interested parties to review these documents and reports as soon as they become available during the public comment period on this notice.

#### Considerations

Pursuant to NEPA, NMFS must: (1) Take a hard look at the environmental consequences of its proposed action to subsequently develop an informed decision; (2) ensure that NEPA reviews provide high quality environmental information via clear and concise documentation; and (3) ensure that the high quality environmental information related to the proposed action is available to the public before the agency makes its decision (40 CFR 1500). In light of the substantial new scientific information described above, and the amount of time that has elapsed since the 2008 DEIS was published for comment, we conclude it is appropriate to formally terminate that DEIS and to begin preparation of a new EIS that is informed by the substantial new information, upcoming IWC proceedings, and public input.

We have identified the following preliminary alternatives for public consideration and comment before the range of reasonable alternatives is

finalized. This set of alternatives differs somewhat from those examined in the 2008 DEIS, reflecting public comments we received on the 2008 DEIS and our current understanding of the new scientific information described above. Preliminary alternatives include:

*Alternative 1: No Action*—Under the No Action Alternative, we would not waive the take moratorium under the MMPA, nor issue the regulations or permits to authorize a tribal hunt.

*Alternative 2: The Tribe's Proposed Action*—We would waive the take moratorium and issue regulations that would allow us to issue permits to the Makah Tribe to hunt gray whales under the terms proposed in its waiver request.

*Alternative 3: Offshore Hunt*—We would waive the take moratorium and issue regulations that would allow us to issue permits to the Makah Tribe to hunt gray whales under the terms proposed in its waiver request, except hunting would be allowed only in offshore waters at least three miles from shore.

*Alternative 4: Summer-only Hunt*—We would waive the take moratorium and adopt regulations that would allow us to issue permits to the Makah Tribe to hunt gray whales under the terms proposed in its waiver request except hunting would only be allowed during the period June 1 through November 30, to minimize the potential for taking a gray whale migrating to or from the western North Pacific.

*Alternative 5: Adaptive Management Hunt*—We would waive the take moratorium and adopt regulations that would allow us to issue permits to the Makah Tribe to hunt gray whales in the coastal portion of the Tribe's U&A under an adaptive management scheme that would allow for flexibility in: Permit terms; hunting seasons; allowable levels of struck, struck and lost, and landed whales up to the levels proposed by the Tribe; and methods of calculating an allowable bycatch level for PCFG whales.

The EIS assessment will identify potentially significant direct, indirect, and cumulative impacts on a variety of resources, including:

- Marine Habitat and Species
- Gray Whales
- Other Wildlife Species
- Economics
- Environmental Justice
- Social Environment
- Cultural Resources
- Ceremonial and Subsistence Resources
- Noise
- Aesthetics

- Transportation
- Public Services
- Public Safety
- Human Health
- National and International Regulatory Environment

For all potentially significant impacts, the EIS will identify measures to avoid, minimize, and mitigate impacts, where feasible, to a level below significance.

#### Request for Comments

We provide this notice to: (1) Advise other agencies and the public of our intentions; (2) obtain suggestions and information on the scope of issues to include in the EIS; and (3) terminate the prior notice of intent to prepare an EIS published on May 9, 2008 (73 FR 26375). In addition to considering the comments we receive in response to this notice in developing a new DEIS, we will consider the comments received on the 2008 DEIS. When we publish a new DEIS we will respond in writing to comments received on the 2008 DEIS. We invite comments from all interested parties to ensure that the full range of issues related to the Makah Tribe's waiver request and all significant issues are identified. We request that comments be as specific as possible. We seek public input on all aspects of our NEPA analysis, including any new information that we should take into consideration; the range of reasonable alternatives; and associated impacts of any alternatives on the human environment.

Comments concerning this environmental review process should be directed to NMFS (see **ADDRESSES**). See **FOR FURTHER INFORMATION CONTACT** for questions. All comments and material received, including names and addresses, will become part of the administrative record and may be released to the public.

#### Authority

The environmental review of continuation of the Makah Tribe's subsistence gray whale hunting will be conducted under the authority and in accordance with the requirements of NEPA, Council on Environmental Quality Regulations (40 CFR parts 1500–1508), other applicable Federal laws and regulations, and policies and procedures of NMFS for compliance with those regulations. This notice is being furnished in accordance with 40 CFR 1501.7 to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS.

Dated: May 11, 2012.

**Helen M. Golde,**

*Acting Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA595**

#### Marine Mammal Stock Assessment Reports

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

**ACTION:** Notice of availability; response to comments.

**SUMMARY:** As required by the Marine Mammal Protection Act (MMPA), NMFS has incorporated public comments into revisions of marine mammal stock assessment reports (SARs). The 2011 reports are final and available to the public.

**ADDRESSES:** Electronic copies of SARs are available on the Internet as regional compilations and individual reports at the following address: <http://www.nmfs.noaa.gov/pr/sars/>. You also may send requests for copies of reports to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments.

Copies of the Alaska Regional SARs may be requested from Robyn Angliss, Alaska Fisheries Science Center, 7600 Sand Point Way, BIN 15700, Seattle, WA 98115.

Copies of the Atlantic Regional SARs may be requested from Gordon Waring, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543.

Copies of the Pacific Regional SARs may be requested from Jim Carretta, Southwest Fisheries Science Center, NMFS, 8604 La Jolla Shores Drive, La Jolla, CA 92037–1508.

**FOR FURTHER INFORMATION CONTACT:** Shannon Bettridge, Office of Protected Resources, 301–427–8402, [Shannon.Bettridge@noaa.gov](mailto:Shannon.Bettridge@noaa.gov); Robyn Angliss, Alaska Fisheries Science Center, 206–526–4032, [Robyn.Angliss@noaa.gov](mailto:Robyn.Angliss@noaa.gov); Gordon Waring, Northeast Fisheries Science Center, 508–495–2311, [Gordon.Waring@noaa.gov](mailto:Gordon.Waring@noaa.gov); or Jim Carretta, Southwest Fisheries Science

Center, 858–546–7171, [Jim.Carretta@noaa.gov](mailto:Jim.Carretta@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare SARs for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports contain information regarding the distribution and abundance of the stock, population growth rates and trends, the stock's Potential Biological Removal (PBR) level, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every 3 years for non-strategic stocks. NMFS and FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in each of the three regions.

As required by the MMPA, NMFS updated SARs for 2011, and the revised reports were made available for public review and comment for 90 days (76 FR 52940, August 24, 2011). NMFS received comments on the draft SARs and has revised the reports as necessary. The final reports for 2011 are available on NMFS' Web site (see **ADDRESSES**).

##### Comments and Responses

NMFS received letters containing comments on the draft 2011 SARs from the Marine Mammal Commission (Commission), six non-governmental organizations (Humane Society of the United States, Cascadia Research Collective, Center for Biological Diversity, Center for Coastal Studies, Garden State Seafood Association, and Hawaii Longline Association), the Western Pacific Regional Fisheries Management Council, and one individual.

Many comments recommended initiation or repetition of large data collection efforts, such as abundance surveys, observer programs, or other efforts to estimate mortality. Many comments, including those from the Commission, recommending additional data collection (e.g., additional