



NMFS' REVIEW
of
Makah Tribe's Request
for Waiver of the Marine Mammal
Protection Act Take Moratorium



Marine Mammal Commission
Meeting – August 2007

Current Status of Makah Whaling



- With protection, ENP gray whales recovered and were de-listed under ESA in 1994
- In 1995, the Makah Tribe requested authorization to resume treaty harvest of gray whales; harvested one whale in 1999
- Litigation has prevented hunting since 2000
- In February 2005, Tribe again requested authorization to resume hunting
- Before the Tribe may resume hunting, several procedural requirements must be met



International Requirements

- International Whaling Commission (IWC) sets 5-year catch limits for aboriginal subsistence whaling
- In 2007 the IWC set a catch limit of 620 gray whales over 5 years, at the request of the United States and Russian Federation
- Under a bilateral agreement, the catch limit is shared between the two countries, with 20 whales allocated to the United States on behalf of the Makah Tribe



National Requirements – Whaling Convention Act

- Whaling Convention Act implements ICRW domestically, bans commercial whaling
- Aboriginal subsistence whaling quotas set by IWC must be allocated under WCA regulations



National Requirements – Marine Mammal Protection Act

- Marine Mammal Protection Act imposes a moratorium on the take of all marine mammals (with certain exceptions and an exemption for Alaska Natives)
- Secretary of Commerce may waive the moratorium, under certain conditions
- NMFS is currently evaluating the Tribe's MMPA waiver request – NEPA review is the first step in the evaluation



National Requirements – NEPA

- National Environmental Policy Act requires federal agencies to consider impacts on the human environment of major federal actions
- NMFS' consideration of Tribe's request triggers NEPA
- Notice of intent to prepare EIS published 2005
- EIS will address both MMPA waiver and WCA quota allocation



Purpose of the EIS

- Evaluate impacts of the proposed hunt on the human environment
- Evaluate and compare a range of reasonable alternatives
- Evaluate suitable mitigation measures
- Provide information for a subsequent determination of whether the proposed hunt, or any alternatives, meet the requirements of the MMPA and WCA



Steps in the NEPA Process

- Scoping (completed)
- Publish Draft EIS
- Public Comments on Draft EIS
- Final EIS
- Record of Decision



Steps in the MMPA Process

- If, after full evaluation, an initial decision is made to waive the moratorium, NMFS would consult with the MMC on potential regulations
- NMFS would publish "notice of hearing," proposed waiver and proposed regulations
- Administrative Law Judge (ALJ) would consider all information and determine whether hearing on the record is necessary
- ALJ would make a recommended decision
- NMFS' Assistant Administrator would make final decision on proposed waiver and regulations. If waiver approved, final regulations issued
- Permit issued consistent with regulations



Notice of Hearing and MMC

- In any Notice of Hearing, NMFS would include information regarding:
 - Any recommendations made by or for the Marine Mammal Commission that relate to the establishment of the proposed regulations
 - Any written advice received from the Marine Mammal Commission



Public Input Opportunities

- Public Scoping (completed)
- Comment on Draft EIS
- If waiver and regulations are proposed:
 - Potential to participate in briefing ALJ
 - Potential to participate in ALJ Hearing (if one is scheduled)
 - Comment on ALJ recommendation (if issued)
 - Comment on permit (if one is proposed)