



**STATE OF WASHINGTON**  
**DEPARTMENT OF ECOLOGY**

PO Box 47600, Olympia, WA 98504-7600 • 360-407-6000

June 2, 2023

United States Department of Commerce  
National Oceanic & Atmospheric Administration  
National Marine Fisheries Service  
ATTN: Chris Yates  
501 West Coast Blvd, Suite 4200  
Long Beach, CA 90802-4213

Re: Coastal Zone Management Federal Consistency Decision for Activity Undertaken by a  
Federal Agency  
NOAA Rulemaking - Makah Tribe MMPA Waiver to Hunt Eastern North Pacific Gray  
Whales  
Makah Tribe Reservation, Washington

Dear Chris Yates:

On April 18, 2023, the National Oceanic & Atmospheric Administration (NOAA) submitted a Consistency Determination with the Washington State Coastal Zone Management Program (CZMP) regarding proposed rulemaking for the Marine Mammal Protection Act (MMPA).

NOAA's National Marine Fisheries Service (NMFS) Office of Protected Resources (OPR) is currently reviewing the Makah Tribe's 2005 request for a waiver under the MMPA to resume limited hunting of Eastern North Pacific (ENP) gray whales (*Eschrichtius robustus*) for ceremonial and subsistence purposes. If granted, the waiver would be issued for a 10-year period. The 1855 Treaty of Neah Bay expressly secures the Tribe's right to hunt whales.

For a hunt to be authorized, NMFS must waive the MMPA's take moratorium, issue MMPA regulations and permits, and comply with provisions governing aboriginal subsistence whaling under the Whaling Convention Act (WCA). Waiving the MMPA's moratorium requires formal rulemaking. As part of the National Environmental Policy Act (NEPA) analysis for the proposed project, NOAA Fisheries published a draft environmental impact statement (DEIS) in 2015. A proposed waiver and regulations were published in the Federal Register in April, 2019 (84 FR 13639), and a subsequent trial-type hearing before an Administrative Law Judge (ALJ) took place in November 2019. In September 2021, the ALJ issued a decision recommending that

NMFS grant the waiver and implement the proposed regulations, with some modifications. The recommended decision was published and made available for public comment on September 29, 2021 (86 FR 53949). Among a number of other proposed restrictions, the ALJ's recommended decision would allow up to twenty-five ENP gray whales to be killed and twenty to be harvested over the 10-year waiver period, with no more than two or three whales killed in a given hunt season.

If granted, the proposed project would occur within the Makah Tribe's usual and accustomed fishing grounds (U&A) off the coast of Washington State and in the western portion of the Strait of Juan de Fuca, as adjudicated by the Western District Court of Washington in *United States v. Washington* (1974 and 1985). Landed whales would be brought ashore within the Makah Tribe's reservation or U&A.

Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with NOAA's determination that the proposed work is consistent with Washington's CZMP.

If you have any questions regarding Ecology's consistency determination, please contact Teresa Pucylowski at 360-764-0546.

## **Your right to appeal**

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal, you must do all of the following within 30 days of the date of receipt of this Order:

- File your notice of appeal and a copy of this Order with the PCHB (see filing options below). "Filing" means actual receipt by the PCHB during regular business hours as defined in WAC 371-08-305 and -335. "Notice of appeal" is defined in WAC 371-08-340.
- Serve a copy of your notice of appeal and this Order on the Department of Ecology, in paper form, by mail or in person (see addresses below). E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

## **Filing an appeal with the PCHB:**

For the most current information regarding filing with the PCHB, visit:  
<https://elaho.wa.gov/content/11>

## Address and Location Information

### Street Address:

**Department of Ecology**

Attn: Appeals Processing Desk  
300 Desmond Drive SE  
Lacey, WA 98503

**Pollution Control Hearings Board**

1111 Israel RD SW  
STE 301  
Tumwater, WA 98501

### Mailing Addresses:

**Department of Ecology**

Attn: Appeals Processing Desk  
PO Box 47608  
Olympia, WA 98504-7608

**Pollution Control Hearings Board**

PO Box 40903  
Olympia, WA 98504-0903

### E-Mail Address:

**Department of Ecology**

Not currently available (see WAC 371-08)

**Pollution Control Hearings Board**

Pchb-shbappeals@elaho.wa.gov

Sincerely,



Loree' Randall, Section Manager  
Federal Permitting Section  
Shorelands and Environmental Assistance Program

Sent via e-mail: chris.yates@noaa.gov

E-cc: fedconsistency@ecy.wa.gov

Teresa Pucylowski, Ecology

Hanna Miller, NOAA

Grace Ferrara, NOAA

Laurie Beale, NOAA

Jessica Stocking, WDFW