DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 181019964-9283-01]

RIN 0648-XG584

Request for Public Comment Regarding Proposed Waiver and Regulations Governing the Taking of Marine Mammals

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

ACTION: Notice; request for comments.

SUMMARY: NMFS has proposed to grant a waiver of the Marine Mammal Protection Act’s moratorium on the take of marine mammals to allow the Makah Indian Tribe to take a limited number of Eastern North Pacific gray whales. A formal hearing took place on November 14-21, 2019 before Administrative Law Judge George J. Jordan in the Henry M. Jackson Federal Building, 915 Second Avenue, Seattle, WA 98174. NMFS now requests public comment on the proposed waiver and proposed regulations.

DATES: Comments must be submitted in writing by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2019-0037, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-
2019-0037, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Attn: Steve Stone, NMFS West Coast Region, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Include the identifier “NOAA-NMFS-2019-0037” in the comments.

  **Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Michael Milstein, NMFS West Coast Region, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232-1274; 503-231-6268.

**SUPPLEMENTARY INFORMATION:** On February 14, 2005, NMFS received a request from the Makah Indian Tribe for a waiver of the MMPA moratorium on the take of marine mammals to allow for take of ENP gray whales (*Eschrichtius robustus*). The Tribe requested that NMFS authorize a tribal hunt for ENP gray whales in the coastal portion of the Tribe’s usual and accustomed fishing area for ceremonial and subsistence purposes and the making and sale of handicrafts. The MMPA imposes a general moratorium on the taking of marine mammals but authorizes the Secretary of Commerce
to waive the moratorium and issue regulations governing the take if certain statutory criteria are met.

On April 5, 2019, NMFS published a Notice of Hearing and the associated proposed regulations in the Federal Register (84 FR 13639 and 84 FR 13604). Pursuant to an interagency agreement, a Coast Guard Administrative Law Judge was assigned to conduct the formal hearing and issue a recommended decision in this matter under the procedures set forth at 50 CFR part 228.

On November 14, 2019, Judge George J. Jordan commenced the hearing in this matter, which took place over six days. The hearing was publicly conducted and reported verbatim by an official reporter. All filings associated with the hearing, including a full transcript of the hearing, are available for public viewing and inspection at https://www.uscg.mil/Resources/Administrative-Law-Judges/Decisions/ALJ-Decisions-2016/NOAA-Formal-Rulemaking-Makah-Tribe/. Information pertaining to this hearing is also available at the NMFS West Coast Region website: https://www.fisheries.noaa.gov/action/formal-rulemaking-proposed-mmpa-waiver-and-hunt-regulations-governing-gray-whale-hunts-makah.

The regulations governing this proceeding permit any interested person to file written comments on the proposed regulations and waiver, including proposed findings and conclusions and written arguments of briefs. These filings must be based upon the record and cite where practicable the relevant page or pages of the transcript. 50 CFR 228.19(b).

After the expiration of the comment period, the presiding officer will make a written decision based on the record and transmit it to the Assistant Administrator. There
will then be another opportunity for public comment before the Assistant Administrator
issues a final decision on the proposed waiver and regulations. 50 CFR 228.20.

(Authority: 16 U.S.C. 1371 et seq.)


Barry A. Thom,

Regional Administrator, West Coast Region,

National Marine Fisheries Service.

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