



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-BI58**

**Draft Supplemental Environmental Impact Statement**

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

**ACTION:** Notice of intent to prepare.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA), this notice announces that NMFS is preparing a Draft Supplemental Environmental Impact Statement (DSEIS) to supplement information in the 2015 Draft Environmental Impact Statement (DEIS) on the Makah Tribe Request to Hunt Gray Whales, which was prepared in response to the Makah Indian Tribe's request that NMFS authorize a limited ceremonial and subsistence hunt of eastern North Pacific (ENP) gray whales in the Makah Tribe's usual and accustomed (U&A) fishing grounds off the coast of Washington State.

**DATES:** Because NMFS has previously requested (80 FR 13373, March 13, 2015; 80 FR 30676, May 29, 2015) and received information from the public on issues addressed in the DEIS, and because the Council on Environmental Quality (CEQ) regulations for implementing the NEPA do not require additional scoping for this DSEIS process (40 CFR 1502.9(c)(4)), NMFS is not asking for further public scoping information and comment at this time. Upon release of the DSEIS, NMFS will provide a 45-day public review/comment period.

**ADDRESSES:** The DEIS is available in electronic form on the Internet at the following address: <https://www.fisheries.noaa.gov/west-coast/makah-tribal-whale-hunt>. The DEIS also may be viewed at various libraries identified at this Internet address or at the following NMFS offices:

(1) NMFS Protected Resources Division, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232. Contact Steve Stone at 503-231-2317; and

(2) NMFS, Protected Resources Division, 7600 Sand Point Way NE., Building 1, Seattle, WA 98115-6349. Contact Lesley Kilp at 206-526-6150.

**FOR FURTHER INFORMATION CONTACT:** Grace Ferrara, NMFS Protected Resources Division, by email at [grace.ferrara@noaa.gov](mailto:grace.ferrara@noaa.gov) or by phone at 206-526-6172.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On February 14, 2005, the Makah Indian Tribe submitted to NMFS a request to resume treaty-based hunting of eastern North Pacific (ENP) gray whales in the coastal portion of the Tribe's usual and accustomed fishing grounds (U&A). The Tribe's request stems from the 1855 Treaty of Neah Bay, which expressly secures the Makah Tribe's right to hunt whales. To exercise that right, the Makah Tribe is seeking authorization from NMFS under the Marine Mammal Protection Act (MMPA) and Whaling Convention Act. 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 of marine mammals if certain statutory criteria are met. The decision to waive the moratorium and issue regulations must be made on the record

after an opportunity for an agency hearing on both the waiver and regulations (16 U.S.C. 1373(d)).

On May 9, 2008, NMFS released a DEIS but later terminated that DEIS in 2012 (77 FR 29967, May 21, 2012) because of new scientific information. In that 2012 notice the agency announced its intent to prepare a new DEIS and open a scoping process (77 FR 29967, May 21, 2012). On March 13, 2015, NMFS released a new DEIS (80 FR 13373) for public comment that included a no-action alternative and five action alternatives. On April 5, 2019, NMFS published a proposed rule (84 FR 13604) and notice of hearing (84 FR 13639) to issue a waiver under the MMPA and propose regulations governing the hunting of ENP gray whales by the Makah Tribe for a 10-year period. The hunt proposal as set forth in the proposed rule represents a composite alternative that combines certain elements from the five DEIS action alternatives.

As required under the MMPA, NMFS convened a hearing before an Administrative Law Judge regarding the proposed waiver and regulations (16 U.S.C. 1373(d)). The hearing took place from November 14, 2019 through November 21, 2019 in Seattle, Washington. In addition to NMFS, five parties participated at the hearing. Following the hearing, the Administrative Law Judge will issue a recommended decision regarding the proposed waiver and regulations, NMFS will provide notice of a 20-day public comment period, and then the NMFS Assistant Administrator will make a final decision on the proposed regulations and waiver in accordance with the regulations at 50 CFR part 228.

NEPA regulations at 40 CFR 1502.9 provide for supplementing a DEIS if the agency determines that there are significant new circumstances or information relevant to

environmental concerns and bearing on the proposed action or its impacts. An agency may also prepare a supplement when it determines that the purposes of NEPA will be furthered by doing so. A new issue of fact that occurred after issuance of the 2015 DEIS but was addressed at the agency hearing is the Unusual Mortality Event (UME) for ENP gray whales declared by NMFS in May 2019 (see information posted <https://www.fisheries.noaa.gov/national/marine-life-distress/2019-gray-whale-unusual-mortality-event-along-west-coast>). Because information concerning the ongoing 2019 UME was presented at the agency hearing but not expressly addressed in the 2015 DEIS, NMFS has determined that it would now benefit both the public and agency decision making to prepare a supplement to the DEIS. NMFS expects that the supplement will incorporate the information presented at the hearing regarding the 2019 UME and any additional relevant information and will take into consideration the Administrative Law Judge's recommended decision. NMFS also intends to expressly identify the hunt proposal, as described in the proposed rule and addressed at the agency hearing, as a separate action alternative in the supplement. Previously, NMFS determined that because the hunt proposal comprises elements and outcomes within the scope of the DEIS action alternatives and does not substantially change the proposed action in a manner relevant to environmental concerns, a supplement to the DEIS was not warranted based on the consideration of the composite alternative alone. Given our determination that NEPA's purposes would be furthered through a DSEIS addressing the 2019 UME, we will also separately evaluate the composite alternative/hunt proposal in the DEIS.

### **Authority**

The environmental review of the Makah Tribe's request to resume treaty-based hunting of ENP gray whales will be conducted under the authority and in accordance with the requirements of the NEPA of 1969 as amended (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the MMPA (16 U.S.C. 1361-1421h), other applicable Federal laws and regulations, and policies and procedures of NMFS for compliance with those regulations.

Dated: February 24, 2020.

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Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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