



Chronology of Major Events Related to Makah Tribal Whale Hunt

The Makah Indian Tribe's (Makah) tradition of whaling dates back at least 1,500 years.

1855 – U.S. Government and Makah Tribe enter into the Treaty of Neah Bay, securing “[t]he right of taking fish and of whaling and sealing at usual and accustomed grounds and stations...” and ceding most of the Tribal lands on the Olympic Peninsula.

1920s - Makah cease whaling after commercial whaling decimates the eastern North Pacific (ENP) gray whale population.

1946 – U.S. signs the International Convention for the Regulation of Whaling (ICRW), established in order “to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry....” The ICRW creates the International Whaling Commission (IWC) to implement the Schedule. The IWC amends the schedule to impose a complete ban on the taking or killing of gray whales, but includes an aboriginal subsistence exception “when the meat and products of such are to be used exclusively for local consumption by the aborigines.”

1949 – The Whaling Convention Act (WCA) is enacted to domestically implement the ICRW, prohibiting whaling in violation of the ICRW, the Schedule, or any regulation adopted by the Secretary of Commerce (16 U.S.C. 916 *et seq.*).

June 2, 1970 - Gray whales are among the baleen whales listed as “endangered” under the U.S. Endangered Species Conservation Act, precursor to the 1973 Endangered Species Act (ESA).

1972 – The Marine Mammal Protection Act (MMPA) is enacted. Under the MMPA, NOAA Fisheries is responsible for the conservation of 147 stocks of whales, dolphins, and porpoises as well as seals, sea lions, and fur seals, including the ENP gray whale (16 U.S.C. 1316 *et seq.*).

June 16, 1994 – ENP gray whales are removed from the Federal Endangered Species List after a determination that the population has “recovered to near its estimated original population size and is neither in danger of extinction throughout all or a significant portion of its range, nor likely to again become endangered within the foreseeable future throughout all or a significant portion of its range.” (59 FR 31094). NOAA Fisheries begins a five-year monitoring program.

May 5, 1995 - Makah formally notify the U.S. Government of their interest in resuming treaty right ceremonial and subsistence harvest of ENP gray whales, asking the Department of Commerce to represent it in seeking approval from the IWC for an annual quota.

October 13, 1997 – NOAA Fisheries and Makah enter into an agreement to pursue a quota at the IWC meeting, adding time and area restrictions on the hunts to a prior, similar agreement signed in March of 1996.

October 17, 1997 – NOAA Fisheries issues a final environmental assessment (EA) and finding of no significant impact (FONSI) after conducting an environmental review under the National Environmental Policy Act (NEPA).

October 18, 1997 - IWC sets a catch limit of 620 ENP gray whales for 1998 through 2002. The Russian Federation (acting on behalf of the Chukotkan people for a total of 600 whales) and the United States (acting on behalf of the Makah Tribe for a total of 20 whales) submit needs statements to the IWC.

April 6, 1998 – NOAA Fisheries allocates the quota to the Makah for limited hunts in 1999 under the WCA (63 FR 16701).

September 21, 1998 – District Court for the Western District of Washington grants summary judgment for NOAA Fisheries on a lawsuit filed in October of 1997, ruling that the Makah can resume whaling.

May 17, 1999 – Makah hunt, strike, and land ENP gray whale.

August 1999 – NOAA publishes Technical Memorandum NOAA Fisheries-AFSC-103 “Status Review of the [ENP] Stock of Gray Whales,” concluding the 5-year monitoring and assessment following delisting, and recommending the continuation of the stock’s classification as non-threatened.

June 9, 2000 – *Metcalf v. Daley*, 214 F.3d 1135 - Ninth Circuit Court of Appeals reverses and remands the District Court’s September 1998 Opinion, holding that NOAA Fisheries failed to take a “hard look” under NEPA at the proposed whale hunt.

August 11, 2000 – NOAA Fisheries rescinds the agreement with the Makah to pursue quotas at the IWC.

January 14, 2001 - NOAA Fisheries distributes its draft EA on issuing a quota to the Makah for a subsistence hunt on gray whales for 2001 and 2002 for public comment with a preferred alternative of allowing a hunt on migrating whales.

February 1, 2001 – NOAA Fisheries holds a public hearing on the draft EA in Seattle, WA.

July 12, 2001 - NOAA Fisheries issues its final EA with a preferred alternative granting the Makah the IWC quota of five whales a year for ceremonial and subsistence purposes with restrictions that allow a limited hunt on the Pacific Coast Feeding Aggregation (PCFA), a portion of the ENP stock that occurs along the Pacific coast south of the Bering Sea during the feeding season. 3

May 2002 - IWC sets a catch limit of 620 ENP gray whales for 2003 through 2007. The Russian Federation (acting on behalf of the Chukotkan people for a total of 600 whales) and the United States (acting on behalf of the Makah Tribe for a total of 20 whales) submit needs statements to the IWC.

August 2002 - District Court for the Western District of Washington grants summary judgment for NOAA Fisheries on a lawsuit filed in January 2002 alleging violations of the MMPA and NEPA.

December 20, 2002 – *Anderson v. Evans*, 314 F.3d 1006 – Ninth Circuit Court of Appeals reverses the District Court’s August 2002 Opinion, ruling that 1) an EIS (rather than an EA) should have been prepared under NEPA and 2) the Makah, to pursue any treaty rights for whaling, must comply with the process prescribed in the MMPA for authorizing take of marine mammals otherwise prohibited by a moratorium.

November 26, 2003 and **June 7, 2004** – Ninth Circuit Court of Appeals twice denies *en banc* rehearings on *Anderson v. Evans*, and issues the first amended Opinion (350 F.3d 815) and second amended Opinion (371 F.3d 475). The amended opinions clarify the legal reasoning of the decision but do not change the decision.

February 14, 2005 – NOAA Fisheries receives the Makah Tribe’s request for a waiver of the MMPA’s take moratorium, including a letter of transmittal, tribal resolution 17-05, Appendix A Needs Statement for 2002, and Appendix B Treaty of Neah Bay (available on the Northwest Region website at www.nwr.noaa.gov).

February 26, 2005 – NOAA Fisheries publishes a Notice of Availability of the waiver request in Federal Register (70 FR 10359).

August 25, 2005 - NOAA Fisheries publishes a Notice of Intent to conduct public scoping meetings and to prepare an EIS related to the Makah Tribe’s request to continue treaty right subsistence hunting of ENP gray whales (70 FR 49911).

October 2005 - NOAA Fisheries conducts public scoping meetings in Neah Bay, Port Angeles, Seattle, and Washington D.C. to receive public input on the resources to be analyzed and the possible alternatives to include in the EIS.

February 27, 2006 – NOAA Fisheries announces decision to expand the scope of the EIS to include issuance of IWC quotas under the WCA.

September 8, 2007 - Five members of the Makah Tribe hunt and kill a gray whale in the Strait of Juan de Fuca in a hunt that was not authorized by the Tribe or NOAA Fisheries. This unauthorized hunt did not comply with numerous provisions and restrictions defined in the Tribe's application, and both the Tribe and NOAA Fisheries make statements condemning the unlawful hunt.

October and November 2007 - The five tribal members involved in the September 2007 killing of a gray whale are indicted in federal court on October 5, 2007, for unauthorized whaling, unauthorized take of a marine mammal, and conspiracy to engage in unlawful whaling. On November 16, 2007, the five are charged in tribal court for violating the Tribe's gray whale management plan, violating state and federal laws, and reckless endangerment.

March and April 2008 - Three of the tribal members enter guilty pleas on March 27, 2008, to unlawful taking of a marine mammal in violation of the MMPA. On April 7, 2008, after a Bench Trial on Stipulated Facts, the court finds the remaining two tribal members guilty of conspiracy and unlawful taking of a marine mammal in violation of the MMPA.

May 9, 2008 – NOAA Fisheries announces the release of a draft EIS concerning the Makah Tribes request to continue treaty right subsistence hunting of ENP gray whales. The DEIS considers various alternatives to the Tribe's proposed action and is made available for a 60-day public comment period.