

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

<i>In re:</i>)	Administrative Law Judge
Proposed Waiver and Regulations Governing the Taking of Eastern North Pacific Gray Whales by the Makah Indian Tribe)	Hon. George J. Jordan
)	Docket No. 19-NMFS-0001
)	RINs: 0648-BI58; 0648-XG584
)	

DECLARATION OF GREIG ARNOLD

I, Greig Arnold, declare as follows:

1) I am an enrolled member of the Makah Indian Tribe. Like all Makahs, I am a beneficiary of the Tribe’s treaty-reserved right to hunt whales. I served many years on the Makah Tribal Council where I was part of Council decisions about the Tribe’s efforts to resume whaling, trained with whaling crews in 1999 and 2000, personally experienced the benefits to our community from the successful 1999 hunt, and plan to be involved in future Makah hunts. Once this process is completed, I hope the Tribe can go hunting again on a regular basis and exercise the “right of . . . whaling” that our ancestors secured to us in the Treaty of Neah Bay. Ex. M-0601 (Treaty of Neah Bay art. 4).

2) I support the Makah Tribe’s proposed issues of fact for this hearing. Specifically, I believe that whale hunting is an essential element of Makah subsistence and culture, that the Treaty of Neah Bay secured to the Makah Tribe the right to hunt whales, and that the Tribe’s treaty right supports the National Marine Fisheries Service’s proposed waiver and regulations that are the subject of the hearing.

3) I have lived in Neah Bay all of my life. My grandfather’s great grandfather, Tse-kauwtl, was the first Makah to sign the Treaty of Neah Bay in 1855. Ex. M-0601. His son Wilson

Parker was a successful whaler who left songs, ceremonies and stories about his whaling for our family.

4) Since the late 1980s I have served four three-year terms (and a 6-month appointed term) on the Makah Tribal Council, the Tribe's elected governing body. In 2001 I served as chairman, and I have been vice chairman for six years, including in 2018 before I retired. Previously, I have been employed as a fisherman, the Tribe's general manager, director of the Makah Cultural and Research Center (also known as the MCRC and often called the "Museum"), and in the Tribe's planning department. I earned degrees from Central Washington University in 1974 and the University of Washington in 1976 studying anthropology and museology.

5) I was born eating fish and seal, and still do. I remember my grandma's smoked seal meat and oil. Being raised on those foods, I keep wanting to eat them. In our community, everyone has a fisherman in the family. You can go down to the dock and ask a fisherman for food – our people understand this and they'll never deny you food. Sharing is central to who we are even if someone needs the food themselves. Almost any fresh food gets shared, like berries and clams. Young men will come by the house after they've been out fishing and make sure the elders in our community have fish. I don't hunt elk or deer any more, but friends still give me meat.

6) The remoteness of Neah Bay makes life here very special. I love my people and our land. I know how to live here because there's everything you need – food and the means to get food. Some say that the city is more convenient, but out here you can get all kinds of fresh foods from the ocean, rivers and forest. This is how I want to live.

7) Whaling is central to our identity as Makahs. It's what our people have done since Thunderbird delivered the first whale and saved us from starvation. I am a whaler and I know this from firsthand experience – our hunt is highly ritualized and requires a crew to be prepared

physically, spiritually, and emotionally in order to execute a hunt successfully. If the crew is not prepared, the whale will not give itself up. The experience of training for a hunt helps whalers understand who they are in the context of Makah culture and history. It helps bring families together and the emphasis on communication and teamwork has many benefits beyond the crew and the hunt itself.

8) I trained with Makah whaling crews in 1999 and 2000, before the Tribe's hunts were stopped by the courts. On May 17, 1999, when the crew landed our first whale in generations, I was in Grenada, representing the Tribe at the International Whaling Commission (IWC) meeting. As a result, I was unable to witness this historic event in our community or the community feast and celebration that followed a few days later.

9) In 2000 our whaling crew approached whales off of Cape Alava in the Pacific Ocean a few times, but no harpoons were thrown. One day there were whales all around us; other times there were none. That year I also experienced the disruption that Sea Shephard and other protestors had on our hunts. Our hunting efforts in 2000 were ultimately unsuccessful.

10) Although I was not present for the 1999 hunt, when I returned to Neah Bay I was given meat and blubber from the whale by family and members of the crew, and I ate it prepared several different ways. I am a carver and have made objects such as jewelry and clubs out of whale bone that I have been gifted, found on beaches or received through barter and trade. I have often given these items to friends and members of my family. Whale products would naturally be an important part of many ceremonies in the Makah community like the wedding potlatch I gave for my son and his wife several years ago.

11) The absence of whaling in our community since 2000 has meant that certain songs and dances that are part of whaling ceremonies cannot be performed until the next time a whale is

harvested. It is important to emphasize that whaling songs and dances are specific to individual families and are a central aspect of whaling ceremonies. Because families are not performing those specific whaling songs and dances, we are missing this way of bringing families together and it ultimately hurts the cultural identity and unity of our people. In the time since our last hunt, we've also lost elders and others in our community who possessed tremendous knowledge about whales and whaling. In the absence of a hunt, we also haven't had the consistent food and nutritional benefits that whale provides to our community.

12) The delays and uncertainty about whether and how we will be able to go whaling again have taken their toll in other ways. Although some are preparing for the next hunt in their own way, there is less focus and excitement because the MMPA's waiver process has caused so much uncertainty on the timing and created a sense in some Makahs that we may not be able to count on another hunt, let alone regular hunts in the community. The substantial expense and effort in preparing to execute a successful hunt – canoe, harpoons and rifle, lines and floats, butchering tools, and training time – has also made it difficult for Makahs to fully engage in preparations given the uncertainty we have faced for almost twenty years.

13) I had no involvement in the unauthorized 2007 hunt and was working in the Tribe's planning department at the time. Killing the whale without proper preparations – without asking for its life – goes against my belief in how a hunt should be conducted. I wondered about the spirit of the whale, and what would happen to it because the ceremonies that would ordinarily have occurred did not take place. That illegal hunt also hurt the Tribe in other ways – it delayed the process, was a setback to our credibility both in Washington state and in Washington, DC, and resulted in the total waste of the animal. Although I strongly disagree with what these men did, I understand their desire to exercise the treaty right.

14) For over twenty years, I have been deeply involved in the Tribe's efforts to secure both international and domestic approval of our whale hunt. In 1997 I represented the Tribe at the IWC meeting in Monaco, where our first catch limit (which was called a quota at the time) was approved. I have attended over a dozen IWC meetings, including recent meetings of the Aboriginal Subsistence Whaling Working Group in Manitsoq, Greenland and Barrow, Alaska. In 2018 at the IWC's biennial meeting in Florianopolis, Brazil, I made a presentation to the plenary session on Makah whaling. Although I was not on Council when the Tribe submitted its waiver request in February 2005, I have been very involved over the years, including during 1999 and 2000 when the Tribe was hunting and in my most recent time on Council from 2013 to 2018.

15) One of my priorities in recent years has been the development of the Tribe's ocean policy. Makahs have always been dependent on the ocean for our well-being and life itself. This includes whales and all other interconnected resources in the sea, and I think it is essential that we outline our belief in this connection through the Tribe's ocean policy. Completed in 2017, it's a statement of who we are as a people and how our treaty connects all that is important to us. By actively engaging in ocean planning processes and, in doing so, protecting our ocean resources for use by current and future generations of Makahs, we are continuing to fulfill the words of my ancestor Tse-kauwtl, who signed the treaty and told the U.S. negotiators that the sea was his country. Ex. M-0602 p.3 (Treaty of Neah Bay minutes).

16) If NMFS approves the waiver, it will have many benefits for the Tribe. It will affirm our treaty right and strengthen the connection to our ancestors who secured this right for us in 1855 by giving up so much. It will be beneficial to our community, invigorate our cultural practices and sense of place, identity and connection between generations, and it will increase Makahs'

consumption of natural foods by making whale products available on a regular basis in the community. Exercising the treaty right means living your values and recognizing that whales are connected to everything else in the ocean that we depend on. Spiritually, the preparation for a hunt is an important process and helps focus everyone involved on a singular purpose. And physically it will help members of the whaling crew improve their health through training, diet and living a clean and sober life.

17) The past 19 years have been difficult because we have been prevented from whaling, which is where all of the benefits I described flow from – cultural, spiritual, physical, community, and family. While our identity as Makahs and whalers persists without an active whale hunt and many aspects of our unique relationship with whales has been maintained over the generations without active hunting, it is much harder to realize the full benefits of whaling without a hunt because we cannot practice certain whaling ceremonies, songs and dances and we have no whale products to utilize in the community. Even if a whale comes to us by some way besides a hunt (such as a stranding or ship strike), this chance occurrence cannot replace the regular hunting activity that sustained our people for thousands of years. Without the prospect of going whaling, crews will be reluctant to undergo the intense physical, spiritual and emotional training that is required for a successful hunt, and the benefits that spread to the community as a whole will not occur.

18) For me, the Treaty of Neah Bay was our ancestors' way of showing that whales, seals, fish and other resources were of utmost importance and were worth sacrificing most of our land to protect. It gives us the right for all time to go out and get those resources as the Treaty says – throughout our Usual and Accustomed areas. Once our ancestors secured that agreement with

the United States – an agreement unique among the hundreds of treaties signed with tribes – it became the law that everyone must follow.

19) I struggle with the restrictions imposed by the MMPA after the *Anderson* Court told us we have to comply with a law enacted over a hundred years after the treaty was signed. Even if I don't go whaling again, I am likely to be directly affected by the rules about handicrafts and sharing whale products. I and other Makahs understand that this is part of a process, and I know that the Tribal Council is committed to carrying out the result in good faith. The hunt that is proposed has many similarities to the methods and equipment that were successful in 1999. As a result, while the MMPA process has been financially burdensome for the Tribe, the hunt as proposed by NMFS should be feasible from an economic perspective.

20) I am familiar with the rules about sharing and consuming edible whale products proposed by NMFS, and am concerned that these rules would severely burden (or prevent entirely) my family's desire to consume meat and blubber off of the Reservation. My son Wilson is an enrolled member who works as a school teacher in Everett and is married to a non-member. Their two children are also Makah members. I have been married for over 32 years to Ann Renker, who is not a Makah member. Although our primary residence is in Neah Bay, because of work commitments we also rent a home in Sequim. The proposed rules for off-reservation use of edible products make it very difficult, if not impossible, for me or my son to bring whale meat and blubber to share with our families in our off-reservation homes. This is contrary to core value of hunting whales to meet our subsistence needs if we have to be concerned that law enforcement might come into our homes to check for whale meat in our freezers, inspect (or possibly even weigh) the meat, blubber and oil we eat at family meals, or ask if we have permission from the Tribal Council. Makahs should be able to provide for their spouses,

partners and children when they live in the same household, whether or not everyone in the family or others who live in or visit the home as guests are members of the Tribe. This is a core aspect of our treaty right, and the rules NMFS has proposed should be modified to allow this kind of use of edible whale products in the same way that it would be allowed on the reservation.

21) Long before the MMPA or the treaty, Makahs had their own way of ensuring whales would always be available to our people. We've been here for thousands of years, and we still have all the resources our ancestors utilized. We were taught to not take more than you needed and that there were ceremonies to do whenever you got an animal. This reinforced that a living thing had surrendered its life to sustain you. Traditionally, we only had to ask the creator to provide for us. Now, we've had to adapt to a form of management that is heavy on rules and enforcement, co-management with the state and federal governments, and even involves going to an international forum to get approval for taking a small number of whales in our hunt. When whales became scarce, we didn't want to hurt them by hunting, so I grew up just watching whales from the bluff. That was one of the ways I maintained a relationship with whales. Back then, I could only dream that gray whales would someday recover to the numbers we have today and that we would be able to hunt them again.

22) Despite the many obstacles the Makah people have faced in our effort to hunt whales, whales have remained important to Makahs and we have always intended to go whaling again. Keeping true to that commitment is a way to honor our ancestors and our culture and look out for the needs of future generations. I firmly believe that the Tribe should never give up trying to whale or give up its right to go whaling. It is too important a food source. No people should ever give up their ceremonies, prayers, songs and dances. If we did, Makahs would lose their identity.

23) The importance of whales and whaling is reflected in the priorities of the Makah Tribal Council. In my years of service on the Council (over a decade from the late 1980s to 2018), we committed considerable resources (staff, attorneys, and travel costs) to the ongoing effort to resume whaling. This reflected the community's values – we knew that Makahs wanted the Council to always protect our treaty rights.

24) I was on the Council when it adopted the Makah Whaling Ordinance in 2013. Ex. M-0603. The Ordinance replaced the management plan that governed our whaling at the time of the 1999 and 2000 hunts, and provides for stronger management oversight by the Council and the Makah Fisheries Management Department, where our Marine Mammal Biologist is employed, and enforcement by the Tribe's Natural Resource Enforcement office. The Ordinance will be used to guide management decisions on a general level, and we will use tribal whaling permits and annual or seasonal regulations to fine tune that management. The Ordinance was drafted in the years following the waiver request and the unauthorized 2007 hunt, and we understand that it will need to be amended to make it consistent with final regulations approved by NMFS at the end of this process. As with other tribal ordinances covering a wide range of topics, the Whaling Ordinance was made available for comment by Makah members before the Council adopted it, and afterward, was reviewed and approved by the Bureau of Indian Affairs.

25) For me – and for many of our people – whaling is deeply personal and emotional. When a whale is landed, our community comes together in a way that is truly moving. It is inspiring to see the collective effort required for butchering, processing, and sharing a whale in our community. In August of 2018, our community received a gift from the creator. A humpback whale was struck and killed by a ship. It was towed to Neah Bay and we gave thanks for receiving the bounty of the ocean. I was up until 4:30 in the morning helping with butchering

and participating in ceremonies to commemorate the importance of the event and to release the spirit of the whale. It was a magical experience, and I'll never forget the feeling I had of being there with my son and so many other Makahs, celebrating what the creator gave to us.

I declare, under penalty of perjury under the laws of the United States, that the foregoing is true and correct to the best of my knowledge, information and belief.


Greig Arnold

Dated: 5/16/2019

**DECLARATION OF GREIG ARNOLD
EXHIBIT LIST**

Exhibit No.	Citation	Document
M-0601	Treaty of Neah Bay	Treaty with the Makah, 1855. Jan. 31, 1855. 12 Stat., 939. Ratified Mar. 8, 1859. Proclaimed Apr. 18, 1859.
M-0602	Treaty of Neah Bay minutes	Treaty of Neah Bay minutes
M-0603	Makah Whaling Ordinance	Makah Whaling Ordinance. Adopted by Makah Tribal Council August 13, 2013.

TREATY WITH THE MAKAH, 1855.

Jan. 31, 1855.
 12 Stat., 939.
 Ratified Mar. 8, 1859.
 Proclaimed Apr. 18,
 1859.

Articles of agreement and convention, made and concluded at Neah Bay, in the Territory of Washington, this thirty-first day of January, in the year eighteen hundred and fifty-five, by Isaac I. Stevens, governor and superintendent of Indian affairs for the said Territory, on the part of the United States, and the undersigned chiefs, head-men, and delegates of the several villages of the Makah tribe of Indians, viz: Neah Waatch, Tsoo-Yess, and Osett, occupying the country around Cape Classett or Flattery, on behalf of the said tribe and duly authorized by the same.

Surrender of lands
 to the United States.

ARTICLE 1. The said tribe hereby cedes, relinquishes, and conveys to the United States all their right, title, and interest in and to the lands and country occupied by it, bounded and described as follows, viz: Commencing at the mouth of the Oke-ho River, on the Straits of Fuca; thence running westwardly with said straits to Cape Classett or Flattery; thence southwardly along the coast to Osett, or the Lower Cape Flattery; thence eastwardly along the line of lands occupied by the Kwe-déh-tut or Kwill-eh-yute tribe of Indians, to the summit of the coast-range of mountains, and thence northwardly along the line of lands lately ceded to the United States by the S'Klallam tribe to the place of beginning, including all the islands lying off the same on the straits and coast.

Boundaries.

Reservation.
 Boundaries.

ARTICLE 2. There is, however, reserved for the present use and occupation of the said tribe the following tract of land, viz: Commencing on the beach at the mouth of a small brook running into Neah Bay next to the site of the old Spanish fort; thence along the shore round Cape Classett or Flattery, to the mouth of another small stream running into the bay on the south side of said cape, a little above the Waatch village; thence following said brook to its source; thence in a straight line to the source of the first-mentioned brook, and thence following the same down to the place of beginning; which said tract shall be set apart, and so far as necessary surveyed and marked out for their exclusive use; nor shall any white man be permitted to reside upon the same without permission of the said tribe and of the superintendent or agent; but if necessary for the public convenience, roads may be run through the said reservation, the Indians being compensated for any damage thereby done them. It is, however, understood that should the President of the United States hereafter see fit to place upon the said reservation any other friendly tribe or band to occupy the same in common with those above mentioned, he shall be at liberty to do so.

Whites not to reside
 thereon unless, etc.

Roads may be made.

Other friendly
 bands may be placed
 thereon.

Indians to settle on
 reservation within a
 year.

ARTICLE 3. The said tribe agrees to remove to and settle upon the said reservation, if required so to do, within one year after the ratification of this treaty, or sooner, if the means are furnished them. In the mean time it shall be lawful for them to reside upon any land not in the actual claim and occupation of citizens of the United States, and upon any land claimed or occupied, if with the permission of the owner.

Rights and privi-
 leges secured to In-
 dians.

ARTICLE 4. The right of taking fish and of whaling or sealing at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the United States, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands: *Provided, however,* That they shall not take shell-fish from any beds staked or cultivated by citizens.

Proviso.

Payments by the
 United States.

ARTICLE 5. In consideration of the above cession the United States agree to pay to the said tribe the sum of thirty thousand dollars, in the following manner, that is to say: During the first year after the ratification hereof, three thousand dollars; for the next two years, twenty-

five hundred dollars each year; for the next three years, two thousand dollars each year; for the next four years, one thousand five hundred dollars each year; and for the next ten years, one thousand dollars each year; all which said sums of money shall be applied to the use and benefit of the said Indians, under the direction of the President of the United States, who may from time to time determine at his discretion upon what beneficial objects to expend the same. And the superintendent of Indian affairs, or other proper officer, shall each year inform the President of the wishes of said Indians in respect thereto.

How to be applied.

ARTICLE 6. To enable the said Indians to remove to and settle upon their aforesaid reservation, and to clear, fence, and break up a sufficient quantity of land for cultivation, the United States further agree to pay the sum of three thousand dollars, to be laid out and expended under the direction of the President, and in such manner as he shall approve. And any substantial improvements heretofore made by any individual Indian, and which he may be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President and payment made therefor accordingly.

Appropriation for removal and for clearing and fencing land, etc.

ARTICLE 7. The President may hereafter, when in his opinion the interests of the Territory shall require, and the welfare of said Indians be promoted thereby, remove them from said reservation to such suitable place or places within said Territory as he may deem fit, on remunerating them for their improvements and the expenses of their removal, or may consolidate them with other friendly tribes or bands; and he may further, at his discretion, cause the whole, or any portion of the lands hereby reserved, or such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate thereon as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be practicable.

Indians may be removed from the reservation.

Tribes may be consolidated.

Ante, p. 612.

ARTICLE 8. The annuities of the aforesaid tribe shall not be taken to pay the debts of individuals.

Annuities of tribe not to pay individual debts.

ARTICLE 9. The said Indians acknowledge their dependence on the Government of the United States, and promise to be friendly with all citizens thereof, and they pledge themselves to commit no depredations on the property of such citizens. And should any one or more of them violate this pledge, and the fact be satisfactorily proven before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the Government out of their annuities. Nor will they make war on any other tribe except in self-defence, but will submit all matters of difference between them and other Indians to the Government of the United States or its agent for decision and abide thereby. And if any of the said Indians commit any depredations on any other Indians within the Territory, the same rule shall prevail as that prescribed in this article in case of depredations against citizens. And the said tribe agrees not to shelter or conceal offenders against the United States, but to deliver up the same for trial by the authorities.

Indians to preserve friendly relations.

To pay for depredations.

Not to make war, except.

To surrender offenders.

ARTICLE 10. The above tribe is desirous to exclude from its reservation the use of ardent spirits, and to prevent its people from drinking the same, and therefore it is provided that any Indian belonging thereto who shall be guilty of bringing liquor into said reservation, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her for such time as the President may determine.

Annuities to be withheld from those drinking ardent spirits.

ARTICLE 11. The United States further agree to establish at the general agency for the district of Puget's Sound, within one year from the ratification hereof, and to support for the period of twenty years, an agricultural and industrial school, to be free to children of the said tribe in common with those of the other tribes of said district and to

United States to establish an agricultural, etc., school for the Indians; to provide tools and employ mechanics, etc.

provide a smithy and carpenter's shop, and furnish them with the necessary tools and employ a blacksmith, carpenter and farmer for the like term to instruct the Indians in their respective occupations. *Provided, however,* That should it be deemed expedient a separate school may be established for the benefit of said tribe and such others as may be associated with it, and the like persons employed for the same purposes at some other suitable place. And the United States further agree to employ a physician to reside at the said central agency, or at such other school should one be established, who shall furnish medicine and advice to the sick, and shall vaccinate them; the expenses of the said school, shops, persons employed, and medical attendance to be defrayed by the United States and not deducted from the annuities.

A physician, etc.

The tribe is to free all slaves and not to acquire others.

Not to trade out of the United States.

Foreign Indians not to reside on the reservation.

When treaty to take effect.

ARTICLE 12. The said tribe agrees to free all slaves now held by its people, and not to purchase or acquire others hereafter.

ARTICLE 13. The said tribe finally agrees not to trade at Vancouver's Island or elsewhere out of the dominions of the United States, nor shall foreign Indians be permitted to reside in its reservation without consent of the superintendent or agent.

ARTICLE 14. This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President of the United States.

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian affairs, and the undersigned, chiefs, headmen and delegates of the tribe aforesaid have hereunto set their hands and seals at the place and on the day and year hereinbefore written.

Isaac I. Stevens, governor and superintendent. [L. s.]

Tse-kauwtl, head chief of the Makah tribe, his x mark.	[L. s.]	Baht-se-ditl, Neah village, his x mark.	[L. s.]
Kal-chote, subchief of the Makahs, his x mark.	[L. s.]	Wack-shie, Neah village, his x mark.	[L. s.]
Tah-a-howtl, subchief of the Makahs, his x mark.	[L. s.]	Hah-yo-hwa, Waatch village, his x mark.	[L. s.]
Kah-bach-sat, subchief of the Makahs, his x mark.	[L. s.]	Daht-leek, or Mines, Osett village, his x mark.	[L. s.]
Kets-kus-sum, subchief of the Makahs, his x mark.	[L. s.]	Pah-hat, Neah village, his x mark.	[L. s.]
Haatse, subchief of the Makahs, his x mark.	[L. s.]	Pai-yeh, Osett village, his x mark.	[L. s.]
Keh-chook, subchief of the Makahs, his x mark.	[L. s.]	Tsah-weh-sup, Neah village, his x mark.	[L. s.]
It-an-da-ha, subchief of the Makahs, his x mark.	[L. s.]	Al-is-kah, Osett village, his x mark.	[L. s.]
Klah-pe-an-hie, or Andrew Jackson, subchief of the Makahs, his x mark.	[L. s.]	Kwe-tow'tl, Neah village, his x mark.	[L. s.]
Tsal-ab-oo, or Peter, Neah village, his x mark.	[L. s.]	Kaht-saht-wha, Neah village, his x mark.	[L. s.]
Tahola, Neah village, his x mark.	[L. s.]	Tchoo-quut-lah, or Yes Sir, Neah village, his x mark.	[L. s.]
Kleht-li-quat-stl, Waatch village, his x mark.	[L. s.]	Klatts-ow-sehp, Neah village, his x mark.	[L. s.]
Too-whai-tan, Waatch village, his x mark.	[L. s.]	Kai-kl-chis-sum, Neah village, his x mark.	[L. s.]
Tahts-kin, Neah village, his x mark.	[L. s.]	Kah-kwt-lit-ha, Waatch village, his x mark.	[L. s.]
Nenchoop, Neah village, his x mark.	[L. s.]	He-dah-titl, Neah village, his x mark.	[L. s.]
Ah-de-ak-too-ah, Osett village, his x mark.	[L. s.]	Sah-dit-le-uad, Waatch village, his x mark.	[L. s.]
William, Neah village, his x mark.	[L. s.]	Klah-ku-pihl, Tsoo-yess village, his x mark.	[L. s.]
Wak-kep-tup, Waatch village, his x mark.	[L. s.]	Billuk-whltl, Tsoo-yess village, his x mark.	[L. s.]
Klaht-te-di-yuke, Waatch village, his x mark.	[L. s.]	Kwah-too-qualh, Tsoo-yess village, his x mark.	[L. s.]
Oobick, Waatch village, his x mark.	[L. s.]	Yooch-boott, Tsoo-yess village, his x mark.	[L. s.]
Bich-took, Waatch village, his x mark.	[L. s.]	Swell, or Jeff. Davis, Neah village, his x mark.	[L. s.]

Executed in the presence of us. The words "five hundred" being first interlined in the 5th article, and erasures made in the 8th and 9th articles.

M. T. Simmons, Indian agent.
George Gibbs, secretary.
B. F. Shaw, interpreter.
C. M. Hitchcock, M. D.
E. S. Fowler.
Orrington Cushman.
Robt. Davis.

TREATY WITH THE CHIPPEWA, 1855.

Articles of agreement and convention made and concluded at the city of Washington, this twenty-second day of February, one thousand eight hundred and fifty-five, by George W. Manyenny, commissioner, on the part of the United States, and the following-named chiefs and delegates, representing the Mississippi bands of Chippewa Indians, viz: Pug-o-na-ke-shick, or Hole-in-the-day; Que-we-sans-ish, or Bad Boy; Wand-e-kaw, or Little Hill; I-awe-showe-we-ke-shig, or Crossing Sky; Petud-dunce, or Rat's Liver; Mun-o-man-e-kay-shein, or Rice-Maker; Mah-yah-ge-way-we-durg, or the Chorister; Kay-gwa-daush, or the Attempter; Caw-caug-e-we-goon, or Crow Feather; and Show-baush-king, or He that passes under Everything, and the following-named chiefs and delegates representing the Pillager and Lake Winnibigoshish bands of Chippewa Indians, viz: Ash-ke-bug-e-koshe, or Flat Mouth; Be-sheck-kee, or Buffalo; Nay-bun-a-caush, or Young Man's Son; Mang-e-gaw-bow, or Stepping Ahead; Mi-gi-si, or Eagle, and Kaw-be-mub-bee, or North Star, they being thereto duly authorized by the said bands of Indians respectively.

Feb. 22, 1855.

10 Stat., 1165.
Ratified Mar. 3, 1855.
Proclaimed Apr. 7,
1855.

ARTICLE 1. The Mississippi, Pillager, and Lake Winnibigoshish bands of Chippewa Indians hereby cede, sell, and convey to the United States all their right, title, and interest in, and to, the lands now owned and claimed by them, in the Territory of Minnesota, and included within the following boundaries, viz: Beginning at a point where the east branch of Snake River crosses the southern boundary-line of the Chippewa country, east of the Mississippi River, as established by the treaty of July twenty-ninth, one thousand eight hundred and thirty-seven, running thence, up the said branch, to its source; thence, nearly north in a straight line, to the mouth of East Savannah River; thence, up the St. Louis River, to the mouth of East Swan River; thence, up said river, to its source; thence, in a straight line, to the most westwardly bend of Vermillion River; thence, northwestwardly, in a straight line, to the first and most considerable bend in the Big Fork River; thence, down said river, to its mouth; thence, down Rainy Lake River, to the mouth of Black River; thence, up that river, to its source; thence, in a straight line, to the northern extremity of Turtle Lake; thence, in a straight line, to the mouth of Wild Rice River; thence, up Red River of the North, to the mouth of Buffalo River; thence, in a straight line, to the southwestern extremity of Otter-Tail Lake; thence, through said lake, to the source of Leaf River; thence down said river, to its junction with Crow Wing River; thence down Crow Wing River, to its junction with the Mississippi River; thence to the commencement on said river of the southern boundary-line of the Chippewa country, as established by the treaty of July twenty-ninth, one thousand eight hundred and thirty-seven; and thence, along said line, to the place of beginning. And the said Indians do further fully and entirely relinquish and convey to the United States, any and all right, title, and

Cession to the
United States.

to this day.

Chim-a-kum - Chief Hul-kah-had or Gen. Pierce - We talk to you, but what should we say, we can say nothing but what this flag tells. We give our hearts to you with it, in return for what you do for us. We were once wretched, but since you come you have made us right. When the Americans came to my country they shall find my heart like this. Formerly other Indians did wrong to us. Since the Whites had come, we are free and have not been killed." Gave a flag-- and Governor Stevens addressed him. "You are young. I hope your heart will be always white as your flag, and that you will be a father to your people. I too will take care of them and we will keep the record of the people on that flag and trust it will always be good."

Gov. Stevens once more asked them if they were satisfied to sign the Treaty. They all declared themselves so. It was accordingly signed, and a salute fired from the Steamer as a signal.

Some hostile feeling having previously existed on the part of the Chemakums towards the 'Klallams and Skokomish. Gov. Stevens now desired that they should drop it forever, and that their hearts towards each other should be good as well as towards the Whites. The three chiefs then on behalf of their people shook hands.

The presents were then distributed to them as in the other cases, and in the afternoon the party re-embarked, Mr. Mason returning to Olympia in the steamer and Governor Stevens with the rest proceeding to Port Townsend in the Schooner, on his way to Cape Flattery the next point of meeting.

George Gibbs,
Secretary.

The treaty is as follows:

NOTE: Here follows a treaty with the S'Klallam, January 26, 1855, 12 Stats. p. 933, Capplers' Laws & Treaties, Vol. 2. p. 504.

TREATY OF NEAH BAY

Monday, January 29th The Schooner reached Neah Bay on the Evening of the 28th, and today the tents, goods and men were landed and the Camp established. Governor Stevens, the agent

and interpreter immediately put themselves in communication with the Indians of the Bay through the medium of Capt. E. S. Fowler, a Kallam Sub-chief called Captain Jack, who spoke the Makah language, and two Makahs Iwell or Jefferson Davis and Peter who spoke Chinook. Expresses were immediately sent off to bring in the other Makah Villages and also if possible the tribes adjoining them on the Coast.

Tuesday, Jan. 30 Gov. Stevens and the Secretary (George Gibbs) crossed the Peninsula of Cape Flattery to the Coast for the purpose of making a general examination of the country and selecting a spot suitable for the separate reserve of this tribe and such others as might be included with them. The Indians of the other Makah Villages arrived today but stated that the other tribes could not be called in until several days. It was accordingly determined to send for them to meet at Grays Harbor. In the evening Governor Stevens called a meeting of the Makah Chiefs on board the Schooner to hear the details of the proposed treaty more particularly. Being interrogated as to their relations with the tribes below them, they said that with the Kive-deh-tut or Kwilleh - yeites they were on terms of anity, as also with the Kwaaksat or Hooch, but that with the next band or tribe the Kivites or Kahts ahuat, they were not, that tribe having killed one of their people once years ago. They did not however desire to cherish any animosity, but did not know the feelings of that tribe towards them. They were directed to make a full return of each of their own villages the next day.

Governor Stevens then informally mentioned the principal features of the proposed treaty as follows, "The great Father had send him here to watch over the Indians. He had talked with the other tribes of the Sound, and they had promised to be good friends with their neighbors and he had now come to talk with the Makahs. When he had done here he was going to the Indians down the Coast and would make them friends to the Makahs. He had treated with the Sound Tribes for their land, setting aside reserves for them and had stipulated to give them a school, farmer, etc., and a physician, when he had finished.

Kal-chote of Neah Bay spoke "Before the big Chiefs (Kleh-silt, the White Chief, yallacoom or Flattery Jack and Heh-ike) died he was not the head chief himself, he was only a small chief, but though there were many Indians there, he was not the least of them. He knew the country all around and therefore he had a right to speak. He thought he ought to have the right of fish and take whales and get food where he liked. He was afraid that if he could not take halibut where he wanted, he would become poor."

Koh-chook of the Stone House followed - "What Kal-chote had said was his wish. His country extended up to Noke-ho. He did not want to leave the salt water."

Gov. Stevens informed them that so far from wishing to stop their fisheries, he intended to send them oil, kettles and fishing apparatus."

Klah-pe-at-hoo of Neah Bay. "Since his brother died, he had been sick at heart (his brother was the late 3d chief.) He was willing to sell his land: all he wanted was the right of fishing.

Tse-heu-wrl - He wanted the sea! What was his country if whales were killed and floated ashore, he wanted for his people the exclusive right of taking them and if their slaves ran away, they wanted to get them back."

Governor Stevens replied that he wanted them to fish but that the whites should fish also. Whoever killed the whale was to have them if they came ashore. He added as a reason for buying their land that many whites were coming into the Country and that he did not want the Indians to be crowded out."

Kalchote resumed - "He wanted always to live on his old ground and to die on it. He only wanted a small piece for a house and would live as a friend to the whites and they should fish together."

Kah-pe-at-hn - "He and Kalchote lived together. They did not want to leave their old Home."

Tse-kaw-wtl - said the same thing. He too only wanted his house.

Ke-bach-sat of Tso-yess - "My heart is not bad but I do not wish to leave all my land. I am willing you should have half, but I want the other half myself. You know my country. I want part for my village. It is very good, I want the place where the stream comes in."

Heatse his brother was of the same mind.

It-an-daha of Wa atch "My father, my father! I now give you my heart. When any ships come and the Whites injure me I will apply to my father and will tell him of my trouble and look to him for help, and if any Indians wish to kill me. I shall still call on my father, I shall submit all my difficulties to him; my wish is like the rest, I do not wish to leave the salt water. I want to fish in

common with the whites. I don't want to sell all the land. I want a part in common with the whites to plant potatoes on. I want the place where my house is. We do not want to say much, we are all of one mind. I have no particular country myself, mine and that of the Tse-kaw-wtl are the same."

Kal-chote again "I do not want you to leave me destitute. I want my house on the Island (Tatooch Island, commonly called the Stone House.)

Governor Stevens asked "whether if the right of drying fish where ever they pleased was left them, they could not agree to live at one place for a winter residence and potato ground explaining the idea of sub-division of lands and he desired them to think the matter over during the night. They were also directed to consult among themselves upon the choice of a head chief. As they declined doing this on the ground that they were all of equal rank, he selected Tse-kow-wootl, the Ozette Chief as the head. A choice in which they all acquiesced with satisfaction.

Temporary papers in lieu of commissions were then issued to Kal-chote, and Klah-pe-at-hu of Neah, Keh-tchook of the Stone House (Tatooch I) It-an-da-ha and Waatch Haatse and Kebach sat of Tsooyess as sub chiefs.

Col. Simmons then explained to them that "these papers were given them as evidence that they were chiefs, that as such they must take care of the people, and that by and bye the great papers would be given them. On his former visit they had declined to receive papers, but now they were evidently much valued." The general council was then adjourned to the next day.

January 31, Wednesday - The heads of the Treaty had been adjusted and on the morning the Indians were again assembled. Two additional sub-chiefs received papers. vis: Tah-a-kowtl of Ozett and Kats-kussum of the Stone House. The number of the whole tribe was found to be 600. Governor Stevens then addressed them: "My children I have seen many other of my children before you. They have been glad to see me and to hear the words of the great Father. I saw the great Father a short time since and he sent me here to see you and give you his mind. The whites are crowding in upon you and in the great Fathers wishes to give you your homes. He wants to buy your land and give you a fair price but

leaving you enough to live on and raise your potatoes. He knows what whalers, you are, how you go far to sea, to take whales, He will send you barrels in which to put your oil, Kettles to try it out, lines and implements to fish with. The great Father wants your children to go to school and learn trade and this will be done if we agree today. I am now about to read you a paper. If you like it, we will sign it. If it is good I shall send it to the great Father and if he likes, it he will send it back with his name. If he wants it altered he will let you know, when it is agreed to, it is a bargain."

The treaty was then read to them, interpreted clause by clause and explained.

Governor Stevens then asked if they were satisfied. If they were to say so. If not to answer freely and state their objections.

Tee-knw-wr1 brought up a white flag and presented it saying - "Look at this flag, see if there are any spots on it. There are none and there are none in our hearts."

Kalchote presented another flag - "What you have said was good and what you have written is good."

The Indians gave three cheers or shouts as each concluded. The governor then signed the Treaty and was followed by the Indian chiefs and principal men.

The Treaty is as follows:

NOTE: Here follows the Treaty with the Makahs on January 31, 1855, 12 Stat. p. 939; Vol. 2, Cappulars Law & Treaties, P.510.

The presents were afterwards distributed and in the evening the party re-embarked. Owing to the wind the vessel did not reach Port Townsend till the 3rd of February. The next day (February 4th) Gov. Stevens left with some of the party in the steamer Mayor Tompkins for Victoria in order to confer with Gov. Douglas on the subject of the Northern Indians and on the 5th returned to Port Townsend and reached Olympia on that night of the 6th.

MAKAH WHALING ORDINANCE

Introduction and Declaration of Policy

The Makah Tribe has a tradition of hunting whales off the northwestern tip of the Olympic Peninsula that has endured for at least 1,500 years. Whaling was, and continues to be, central to the Tribe's way of life, providing a primary means of subsistence as well as essential spiritual, social and cultural functions. The need to continue whaling was so important to the Tribe that when it negotiated the 1855 Treaty of Neah Bay with the United States, it reserved the right of whaling, making it the only tribe with whaling rights expressly protected by federal law. In the early twentieth century, Makah whaling declined because of the overexploitation of Pacific Ocean whale stocks by non-Indian commercial whaling operations. In contrast with this depletion by Yankee whalers, the Makah Tribe has always sought to live in harmony with the abundant resources of its marine environment. It is the purpose of the Tribe in adopting this Ordinance to control and manage all whaling by Tribal members in order to achieve sustainable utilization and conservation of whales, implement the whaling rights reserved by the Treaty of Neah Bay and preserve the treaty right for future generations of Makahs.

This Ordinance sets forth the Makah Tribe's management intent and applicable Tribal law governing the exercise of treaty ceremonial and subsistence whaling rights. The Makah Tribal Council enacts the Makah Whaling Ordinance pursuant to the inherent authority of the Council to manage Tribal members' exercise of the Tribe's treaty whaling rights and the authority vested in it by Article VI, Sections 1(i) and 1(j) of the Makah Constitution and Bylaws.

The Council's intent under this Ordinance is to authorize the hunting of only gray whales pursuant to the International Whaling Commission (IWC) aboriginal subsistence whaling catch limit and federal regulations promulgated pursuant to the Tribe's pending application for a waiver of the Marine Mammal Protection Act's take moratorium. The Council will amend this Ordinance to authorize the hunting of other species of whales only if approval for such whaling is obtained under international and federal law.

The Makah Whaling Ordinance contains general provisions for the exercise of whaling rights and provides for Council adoption of regulations regarding harvest quotas, strike limits and time and area restrictions and for Council issuance of whaling permits which may contain additional limitations. The Ordinance also contains a number of management measures to ensure the orderly development of safe, efficient, humane, and culturally appropriate whale hunts. The Ordinance strictly prohibits commercial sale of whale products except for sale within the United States of traditional handicrafts (including artwork) made from non-edible parts of the whale. The Ordinance contains provisions relating to the use of stranded whales.

The Ordinance also specifies penalties for violations of its provisions, Makah whaling regulations and whaling permits. Because the treaty whaling right is fundamental to the Tribe, the Council intends for the Ordinance and the regulations and permits issued under it to be applied strictly and for violations to be prosecuted to the full extent of Tribal law. The whaling right is central to the subsistence needs, culture and identity of the Makah Nation and belongs to present and future generations of Makahs. Any action by an individual that jeopardizes the Tribe's whaling right shall be subject to serious consequences.

The management of treaty ceremonial and subsistence whaling provided for in the Makah Whaling Ordinance and any regulations adopted or permits issued by the Council shall not limit, waive or modify any of the Tribe's whaling rights under the Treaty of Neah Bay and any such construction of this Ordinance, Makah whaling regulations or whaling permits is improper and unauthorized.

Chapter 1. General Provisions

1.010 Title.

This Ordinance shall be known as the "Makah Whaling Ordinance."

1.020 Prior Tribal Whaling Laws Superseded.

This Ordinance supersedes all prior Makah whaling management plans and whaling regulations.

1.030 Treaty Whaling Rights – Authority of the Makah Tribal Council.

The whaling rights reserved expressly to the Makah Tribe in the Treaty of Neah Bay are reserved to the Makah Tribe as a whole. The exercise of these treaty reserved whaling rights by a Tribal member is a privilege extended to that member by the Makah Tribe through its representative and governing body, the Makah Tribal Council.

1.040 Jurisdiction.

(a) Territory.

The provisions of this Ordinance and all regulations adopted under it shall apply to the full extent of the sovereign jurisdiction of the Makah Tribe, including but not limited to the Makah Reservation and the Makah Tribe’s usual and accustomed whaling places as provided in the Treaty of Neah Bay.

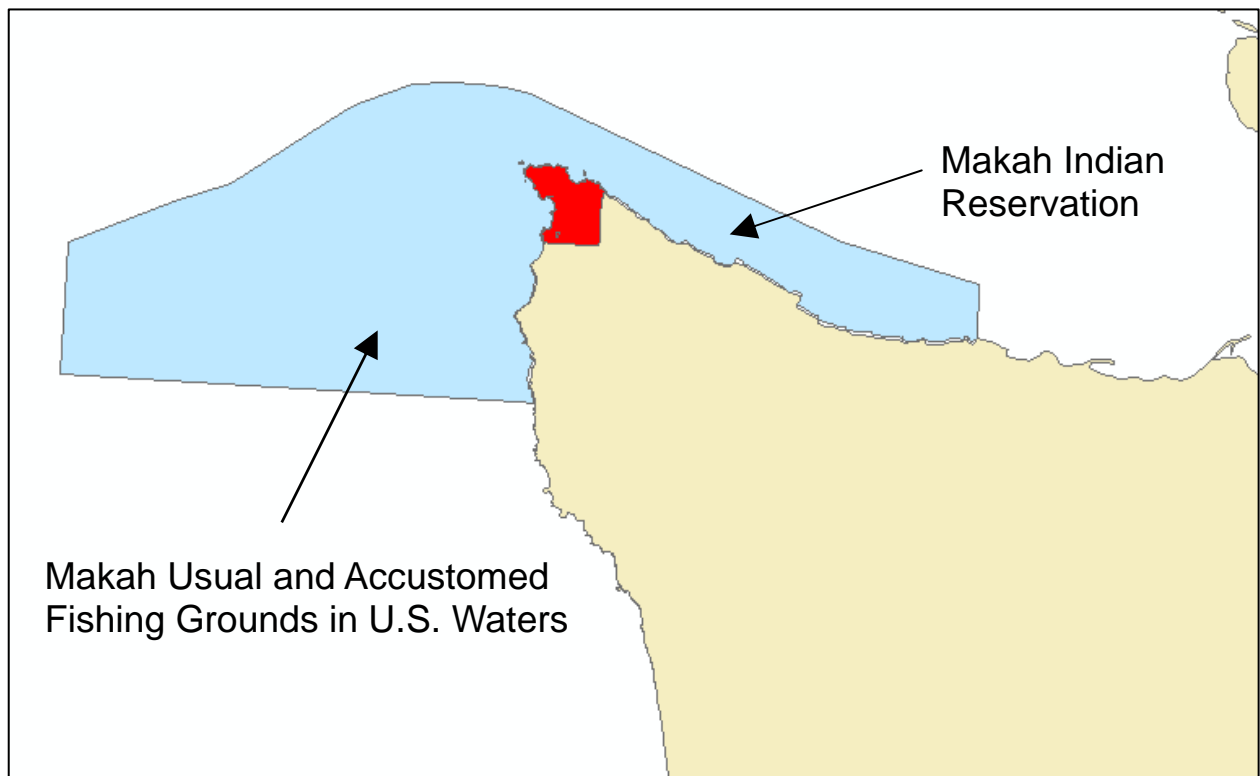


Figure 1: The Makah Tribe’s adjudicated Usual and Accustomed Fishing Grounds in U.S. Waters.

(b) Persons.

The provisions of this Ordinance shall extend to all Tribal members who are exercising or purporting to exercise treaty whaling rights of the Makah Tribe while engaged in whaling, traveling to or from off-reservation areas on a whaling expedition, or any other activity regulated by this Ordinance.

1.050 General Closure.

All areas within the Tribe's jurisdiction are closed to whaling unless those areas are specifically opened by regulation. All times of the year are closed to whaling unless they are specifically opened by regulation. Areas and times opened by regulation are only opened to whaling in accordance with this Ordinance and all applicable regulations and permits.

Chapter 2. Definitions

2.010 Definitions.

The following terms have the meanings set forth below when they appear in this Ordinance, Makah whaling regulations and whaling permits, unless explicitly stated otherwise:

- (a) "Calf" means any whale less than 1 year old.
- (b) "Council" means the Makah Tribal Council.
- (c) "Commission" means the Makah Whaling Commission.
- (d) "Edible whale product" means whale meat or blubber. Edible whale products do not include whale products that are diseased, contaminated, or damaged in the course of the hunt.
- (e) "Handicraft" is a term used in the Marine Mammal Protection Act and is not intended to denigrate the quality of work of Makah artists. As used in this Ordinance, the term "handicraft" means artwork and other items which are composed wholly or in significant part of non-edible whale products from a gray whale harvested under this Ordinance and Makah whaling regulations or from a

stranded gray whale, and which are individually produced, decorated or fashioned by a member.

- (f) “Land” or “Landing,” when used as a verb, means bringing a whale or any part of a whale onto land in the course of a whaling expedition.
- (g) “Makah Fisheries” means the Makah Fisheries Management Department.
- (h) “Member” means an enrolled member of the Makah Indian Tribe.
- (i) “Non-edible whale product” means any whale product that is not an edible whale product.
- (j) “Regulation” means any rule or regulation adopted by the Makah Tribal Council pursuant to this Ordinance.
- (k) “Revocation of Whaling Privileges” means the loss of all rights and privileges to whale under this Ordinance and Makah whaling regulations until such time, if any, as whaling privileges are restored.
- (l) “Stranded” means a whale that dies of causes other than a Tribal hunt or becomes live stranded and is floating or beach cast.
- (m) “Strike” means any blow or blows delivered to a whale by a harpoon, lance, rifle, explosive device or other weapon which may result in death to a whale. When used as a verb, “Strike” means the act of delivering such a blow or blows to a whale. A harpoon blow is a strike if the harpoon penetrates and lodges in the whale. A harpoon that lodges in the whale counts as a strike even if the harpoon later pulls out of the whale. Any rifle shot which hits a whale is a strike. For purposes of determining strike limits, multiple strikes on a single whale shall count as a single strike.
- (n) “Suspension of Whaling Privileges” means the loss of all rights and privileges to whale under this Ordinance and Makah whaling regulations for a period of time specified by this Ordinance, the Court or the Council.
- (o) “Tribe” means and “Tribal” refers to the Makah Indian Tribe.
- (p) “Tribal Court” or “Court” means the Makah Tribal Court.

- (q) “Waste” means the taking of a whale subject to regulation under this Ordinance and Makah whaling regulations and allowing edible whale products to spoil or otherwise become unfit for human consumption or medicinal or spiritual use.
- (r) “Wasteful manner” means a method of whaling that is not likely to result in the landing of a struck whale or that does not include all reasonable efforts to retrieve a struck whale.
- (s) “Whale product” means any part of a whale, including blubber, meat, bones, whale oil, meal and baleen. The definition of whale products excludes handicrafts that are made from non-edible whale products.
- (t) “Whale” in its verb form, and such derivatives as “whaling,” means the scouting for, hunting, striking, killing, or landing of a whale.
- (u) “Whaling captain” means the member in charge of a whaling team who holds a whaling permit issued by the Council under this Ordinance and Makah whaling regulations.
- (v) “Whaling expedition” means a voyage in which a whaling team leaves port or shore for the purpose of whaling and returns to port or shore.
- (w) “Whaling team” means a group of members under the control of a whaling captain who holds a whaling permit issued by the Council under this Ordinance and Makah whaling regulations.

Chapter 3. Whaling Administration

3.010 Makah Tribal Council as Administrator; Delegation of Authority.

The exercise of treaty whaling rights pursuant to this Ordinance shall be subject to the exclusive management and administration of the Makah Tribal Council, with the advice of Makah Fisheries and the Makah Whaling Commission as sought by the Council or otherwise provided for by this Ordinance. The Council may delegate all or part of its authority to manage and administer tribal whaling to Makah Fisheries and/or the Commission, provided that any action taken pursuant to such delegation of authority shall be subject to final approval by the Council

and provided further that such delegation may be revoked, modified or withdrawn at any time by the Council.

3.020 Regulations.

Prior to each whaling season and at such other times as it may find appropriate, the Council shall by a duly-enacted resolution adopt regulations as are necessary to implement the policy of the Tribe with respect to whaling, this Ordinance, and any cooperative agreement with the National Oceanic and Atmospheric Administration (“NOAA”). Such regulations shall be consistent with any applicable federal regulations promulgated under the Marine Mammal Protection Act. The regulations adopted pursuant to this provision shall address, but are not limited to, the following:

- (a) Annual harvest quotas and strike limits; and
- (b) Time and area restrictions.

The Council may impose additional limitations on the exercise of whaling rights through its issuance of whaling permits under Chapter 5, below.

3.030 Notice of Regulations.

Makah whaling regulations shall be adopted, filed and made available to the Commission, National Oceanic and Atmospheric Administration, Coast Guard and Marine Mammal Commission at least thirty (30) days prior to the opening date of the applicable whaling season to ensure adequate notice. All regulations shall be posted in appropriate places, including the Natural Resources Enforcement and Makah Fisheries offices, and otherwise made available to tribal members as specified by general regulations designated to give adequate notice.

3.040 Revocation or Suspension of Whaling Privileges.

In addition to judicially imposed penalties for violations of this Ordinance, Makah whaling regulations or the terms of a whaling permit, any member’s whaling privileges may be revoked or suspended by the Council for good cause shown when the Council by duly-enacted resolution determines that such revocation or suspension will be in the best interest of the Tribe. "Good cause" for suspension or revocation shall include, but not be limited to, a conviction for

violating this Ordinance, Makah whaling regulations or a whaling permit, conviction of a Class AA or Class A offense under the Makah Law and Order Code, failure to appear in Makah Tribal Court as required for charges or a conviction under this Ordinance, disobeying Court orders including sentencing orders for charges or a conviction under this Ordinance, assault on a Natural Resources Enforcement Officer, other law enforcement officer or other tribal official, reckless disregard for the safety of others when whaling, and any actions that might jeopardize the Tribe's ability or opportunity to responsibly manage its whaling rights or to otherwise accomplish the purposes of this Ordinance. Prior to any such revocation or suspension the Tribal Council shall make necessary arrangements to ensure that the member affected is given adequate notice of the proposed revocation or suspension and an opportunity to be heard before the Council. This Section shall be construed to be in addition to and not in conflict with or in derogation of those sections of this Ordinance dealing with judicial penalties for violations.

Chapter 4. Enforcement

4.010 Natural Resource Enforcement Officers.

It shall be the duty of every tribal Natural Resources Enforcement Officer to enforce this Ordinance, Makah whaling regulations and whaling permits, and to this end all such officers shall be vested with such authority to the full extent of Tribal law. Natural Resources Enforcement Officers may issue citations or make arrests and seizures in accordance with this Ordinance and the Makah Law and Order Code. Officers may use such vessels and/or vehicles as are necessary to perform their duties. The Tribal Council may also, from time to time, appoint and deputize persons to assist Natural Resources Enforcement Officers in the performance of their duties.

4.020 Arrests for Criminal Offenses.

Natural Resources Enforcement Officers shall have the authority to make an arrest of any person whaling under this Ordinance or Makah whaling regulations or issue citations or summons or other appropriate forms to assure appearance in Court whenever such person is in violation of any provision of this Ordinance, Makah whaling regulations or the terms of a whaling permit.

4.030 Searches.

Natural Resources Enforcement Officers may conduct limited searches without warrant. These include inspection and searching of gear and vessels, and patting down the person of a whaler who is of the same sex as the officer.

4.040 Seizure of Whale and Gear.

Upon arrest or the issuance of a citation, a Natural Resources Enforcement Officer may seize the whale and parts of the whale which the officer has reasonable grounds to believe have been taken, killed, possessed or used by the alleged violator contrary to the provisions of this Ordinance, Makah whaling regulations or a whaling permit. In lieu of seizing the whale, the officer may direct the whaling captain to tow the whale to land. A Natural Resources Enforcement Officer may, in addition, seize any weapons, vessels or other paraphernalia which the officer has reasonable grounds to believe have been used in the commission of a violation of this Ordinance, Makah whaling regulations or a whaling permit. The Natural Resources Enforcement Officer shall prepare an inventory of all items seized, which shall be signed by the officer and, if known, the owner or possessor. A copy of the inventory shall be given to the owner or possessor, if known, and to the Commission. If the owner or possessor is not known, a reasonable attempt shall be made to locate him or her to provide a copy of the inventory.

4.050 Disposition of Seized Whale Products and Handicrafts.

If whale products or handicrafts are seized from a whaling captain, whaling team member or other tribal member, the Natural Resources Enforcement office shall dispose of the property in a manner consistent with applicable Tribal and federal law. The Natural Resources Enforcement office shall consult with the Council, Makah Fisheries and the National Oceanic and Atmospheric Administration prior to making a decision regarding the disposition of any seized whale products or handicrafts.

4.060 Disposition of Other Seized Property.

This section applies only to seized property other than whale products or handicrafts. After: (1) final disposition of any charges arising from the events which led to the seizure of property under Section 4.040 above; (2) satisfactory proof of ownership or rightful possession; and (3) payment of reasonable costs for retrieval and storage, the Natural Resources Enforcement office may release such seized property (except contraband) to the owner or rightful possessor. Any person claiming ownership or rightful possession of seized property who is unable to obtain its release from the Natural Resources Enforcement office may petition the Tribal Court for an order releasing the property. The Court shall order the release of seized property only in conformance with this Section, provided that the Court may order the release of such property prior to final disposition of the charges if the Court finds: (1) it would cause undue hardship not to release the property; (2) the property is not needed for evidence; and (3) the Court has received satisfactory assurances that the property will not be used in violation of this Ordinance, Makah whaling regulations, or any other Tribal law. In circumstances where the owner or rightful possessor of seized property is unknown, and the property is neither contraband nor necessary evidence, the Natural Resources Enforcement office shall post a notice at the tribal Natural Resources Enforcement office and other appropriate places to ensure adequate notice to members which describes the items seized, the location, date and time of seizure, and states that the items shall be forfeited to the Tribe unless claimed by the owner or rightful possessor within thirty (30) days of the date the notice is posted. The notice shall state the date and time by when, and location where, the property must be claimed, as well as the amount of any retrieval or storage costs that must be paid.

Chapter 5. Permits

5.010 Issuance; Possession by Whaling Captain.

No member may engage in whaling except under the control of a whaling captain who is in possession of a whaling permit issued by the Council. To be valid, a whaling permit must be in writing, approved by a majority of the Council, and signed by the Chairman of the Tribal

Council or his designee. All whaling permits issued by the Council shall incorporate all applicable requirements of this Ordinance and Makah whaling regulations. The Council may also include in all whaling permits any additional requirements the Council deems appropriate.

5.020 Contents of Permit.

Any whaling permit approved by the Council shall be issued only to a whaling captain certified by Makah Fisheries or the Commission, as designated by the Council pursuant to Chapter 6 below. The permit shall identify the date the permit is approved by the Council, the vessels that will participate in the hunt, the members and any alternates who will be part of the captain's whaling team, and the boundaries of the designated area in which hunting will be permitted.

5.030 Certification of Whaling Captain and Whaling Team Prior to Issuance.

The Council shall not approve a whaling permit without determining that the whaling captain, each whaling team member and any alternates identified in the permit have been certified by Makah Fisheries or the Commission, as designated by the Council pursuant to Chapter 6 below.

5.040 Notice to Federal Government.

The Council shall provide at least 24 hours advance notice to the National Marine Fisheries Service ("NMFS") and the United States Coast Guard ("USCG") prior to approving a whaling permit, provided that, if a NMFS observer is already present on the Makah Reservation, the Council shall provide at least 3 hours advance notice to NMFS and the USCG prior to approving a whaling permit.

5.050 Coordination with NMFS Observer and Coast Guard.

The whaling captain shall coordinate with any on-site NMFS observer, the Coast Guard and the Tribal observer prior to departing on a whaling expedition.

5.060 Termination.

A whaling permit shall terminate and become invalid when any one of the following events occurs: (1) the whaling team lands a whale; (2) the whaling team strikes a whale but is unable

to land it; (3) the whaling team has not struck or landed a whale within 10 days of the Council's approval of the permit; (4) the applicable whaling season ends; or (5) the Council determines, for any reason, to terminate the permit.

5.070 Determination of Need.

The Council will issue a whaling permit only after determining, based on the advice of the Commission, that there is an unmet traditional, subsistence or cultural need for whale products in the Tribal community.

Chapter 6. Training/Qualifications

6.010 Certification of Whaling Captain and Whaling Team.

The Council shall establish, with the advice of the Commission, certification guidelines and a certification process for whaling captains, harpooners, riflemen, safety officers, other whaling team members and any alternates. Makah Fisheries or the Commission, as designated by the Council, shall implement the certification guidelines and the certification process. The certification guidelines and the certification process shall ensure that every whaling captain and each member who serves on a whaling team has received adequate training to perform his assigned role on the team. Certification of riflemen and harpooners shall include a demonstration of proficiency and accuracy under simulated hunting conditions. Certification of safety officers shall include a demonstration of proficiency under simulated hunting conditions.

Chapter 7. Whaling Vessels, Equipment and Hunting Methods

7.010 Vessels.

A whaling team must include one or more canoes, one or more chase boats, and one or more support boats.

7.020 Whaling Canoe.

All canoes used in whaling must be at least 30 feet in length and manned by a harpooner and at least six paddlers.

7.030 Chase Boat.

All chase boats used in whaling must be at least 18 feet in length. Each chase boat shall be manned by a pilot, rifleman, and harpooner. At least one chase boat shall be manned by a diver. The diver or an additional whaling team member shall act as a safety officer. One boat shall be equipped with a navigation system capable of precisely fixing the vessel's position on the water. If the chase boat is not powered by an engine large enough to tow an adult whale to port, it must be accompanied by at least one support boat with this capability.

7.040 Harpoons.

All whaling harpoons must be connected to one or more floats and bear a permanent distinctive mark identifying the whaling captain who is in charge of the whaling team using the harpoon. The whaling harpoon used for the initial strike must be equipped with a toggle point.

7.050 Rifle.

The rifle used in whale hunts shall be an adequate very high-powered rifle (.50 caliber or higher), approved by the Council, with the advice of the Commission, for use in whaling. The whaling team shall have at least two rifles available and sufficient ammunition to dispatch a whale.

7.060 Striking the Whale.

The first strike made upon a whale shall be made by the harpooner and shall affix one or more floats to the whale. The chase boat will pursue the whale, and the rifleman aboard the chase boat will kill the whale as expeditiously as practicable with rifle shots directed at the whale's brain stem and upper spinal cord.

7.070 Prohibition on Striking Whale Calf or Whale Accompanied by a Calf.

No member may strike a whale calf or a whale accompanied by a calf or calves.

7.080 Prohibition on Striking Whales Other Than Gray Whales.

No member may strike a whale that is not a gray whale (*Eschrichtius robustus*).

7.090 Discharging the Rifle; Role of Safety Officer.

The rifleman on the chase boat shall not discharge his weapon until authorized to fire by the safety officer. The safety officer will not authorize the discharge of the rifle unless it is safe to do so.

7.100 Visibility – Suspension of Hunt.

The whaling captain shall suspend the hunt, if the safety officer determines that visibility is inadequate to ensure a safe hunt.

7.110 Towing the Whale.

Upon the death of a whale, the chase boat crew shall secure the whale for towing to shore. The whale will be expeditiously towed to shore by chase and/or support boats.

7.120 Best Efforts to Land Whales; Prohibition on Whaling in a Wasteful Manner.

A whaling captain shall make best efforts to land every whale that is struck, while minimizing risk to human life and property. It is a violation of this Ordinance for a whaling captain and whaling team to conduct a hunt in a wasteful manner.

Chapter 8. Area Restrictions

8.010 Usual and Accustomed Grounds – Pacific Ocean Waters.

All whaling shall occur within the portion of the Makah Tribe's adjudicated usual and accustomed fishing grounds in U.S. waters to the west of a line connecting the following points: the northwestern tip of Cape Flattery; the Tatoosh Island Lighthouse; the buoy adjacent to

Duntze Rock; and Bonilla Point on Vancouver Island, provided that a whale struck inside the area specified by this Section and a permit may be pursued to an area that is otherwise closed to whaling.

8.020 Area Restricted by Permit.

Within the area open to whaling under Section 8.010 above, whaling may be confined to an area designated by the Council in each whaling permit.

8.030 Closed Area under Weapons Control Ordinance.

A whale shall not be struck within the “closed area” designated in Section 10.5.02 of the Makah Law and Order Code (Weapons Control Ordinance No. 43 enacted 9/5/89) or east of the “closed area” to a line extending from the southern end of Waadah Island to Baada Point.

Chapter 9. Use of Meat, Whale Products and Handicrafts

9.010 Local Consumption.

Whale products harvested pursuant to this Ordinance and Makah whaling regulations or collected from a stranded gray whale shall be used exclusively for local consumption and/or ceremonial purposes and may not be sold or offered for sale. No member may receive money for participation in whaling.

9.020 Handicrafts - Sale.

Notwithstanding Section 9.010 above, handicrafts made from non-edible whale products may be sold or offered for sale only within the United States and in accordance with the requirements of this Ordinance and all federal regulations.

9.030 Handicrafts – Marking and Registration.

The Tribe shall develop and implement a registration system to ensure the authenticity of Makah whale handicrafts. Prior to any sale pursuant to Section 9.020 above, all Makah whale handicrafts must be marked and entered in the Tribe’s official registry of whale handicrafts. All

handicrafts must bear a distinctive marking approved by the Council. For the official registry, the Tribe will collect and maintain records regarding the following information for each handicraft: (a) artist(s); (b) whale product(s) used; (c) a brief description, including subject matter and approximate size; and (d) registration number. The Tribe shall issue a certificate for each handicraft that must accompany any sale pursuant to Section 9.020. The official registry may be inspected upon request by NOAA.

9.040 Prohibition on Wasting.

A whaling captain and whaling team shall not, upon landing a whale, cause it to go to waste.

9.050 Stranded Whales.

Members may collect whale products from stranded gray whales in the Makah usual and accustomed fishing grounds in U.S. waters for subsistence and ceremonial use and for making handicrafts, but such collection may not occur until Makah Fisheries has had the opportunity to examine the carcass and take samples and has confirmed that the whale is a gray whale and that it did not die from a Tribal hunt. Makah Fisheries will provide timely notice to the National Marine Fisheries Service of all known whale strandings in areas within the Tribe's jurisdiction.

Chapter 10. Monitoring and Reporting

10.010 Whaling Observers.

A representative of Makah Fisheries, or another Tribal department as designated by the Council, will accompany each whaling team as a Tribal observer. Upon request of the National Marine Fisheries Service, the Tribal observer will permit an additional observer from the National Marine Fisheries Service to observe the hunt.

10.020 Responsibility of Tribal Observer – Recording Data from the Hunt.

The Tribal observer shall be responsible for recording:

- (a) for each attempted strike,
 - (1) the time, date and precise location of the attempted strike(s);

- (2) whether the whale is landed;
 - (3) if the whale is not landed, the circumstances associated with the attempted striking of the whale and an estimate of whether the animal suffered a wound that might be fatal;
- (b) for each whale landed,
- (1) the body length (as measured from the point of the upper jaw to the notch between the tail flukes);
 - (2) the extreme width of the flukes
 - (3) the sex of the whale; and
 - (4) the length and sex of any fetus in the landed whale;
- (c) the time interval between the initial strike and the death of the whale; and
- (d) such other information as NOAA regulations require.

10.030 Responsibility of Tribal Observer – Reporting.

The Tribal observer shall be responsible for compiling and transmitting such reports as are required under any regulations promulgated under the Marine Mammal Protection Act and any cooperative agreement with the National Oceanic and Atmospheric Administration to the Council.

10.040 Joint Annual Report.

Following a season in which whaling has occurred, Makah Fisheries shall prepare a written report compiling all of the data for the season recorded by the Tribal observer(s) under Sections 10.020 and 10.030 above, as well as any additional data provided by National Marine Fisheries Service personnel, and transmit such report to the Council and the appropriate representative of the National Marine Fisheries Service within thirty (30) days of the last day of the season.

10.050 Collection of Specimen Materials.

Makah Fisheries may collect specimen materials from all landed whales, including but not limited to ovaries, ear plugs, baleen plates, stomach contents, and tissue samples. A

representative of the National Marine Fisheries Service shall have reasonable access to all landed whales to collect specimen materials.

10.060 Photography of Landed Whales.

Makah Fisheries shall photograph all landed whales and transmit a copy of such photos to the National Marine Fisheries Service.

10.070 Observer Access.

Makah Fisheries, and the representative of the National Marine Fisheries Service as appropriate, shall have adequate access to landed whales to comply with the requirements of this Chapter. No person shall interfere with the actions necessary to comply with this Chapter.

Chapter 11. Violations

11.010 Responsibility of Whaling Captain and Whaling Team; Strict Construction.

It is the responsibility of every member engaging in whaling to know the contents of this Ordinance, Makah whaling regulations and the permit under which the member is whaling. This Ordinance, Makah whaling regulations and the terms of a whaling permit shall be strictly construed against such persons, taking into account the importance of the Tribe's management of the treaty whaling right and the whaling resource and the purpose and intent of the Council in enacting this Ordinance. Copies of this Ordinance and current Makah whaling regulations shall be available for review in the Makah Fisheries and Natural Resources Enforcement offices. Any member shall have the opportunity to have the Ordinance and regulations read to him or her upon request.

11.020 Criminal Offenses.

(a) Any member who whales without authorization under a valid whaling permit is guilty of a Class AA Offense under the Makah Law and Order Code.

(b) Any member who whales in violation of a time, area or species provision of this Ordinance, Makah whaling regulations, or the terms of a whaling permit is guilty of a Class AA Offense under the Makah Law and Order Code.

(c) Any member who strikes a whale calf or whale accompanied by a calf and who knows or should know that such whale is a calf or whale accompanied by a calf, is guilty of a Class AA Offense under the Makah Law and Order Code.

(d) Any member who violates a provision of this Ordinance, Makah whaling regulations or the terms of a whaling permit that is not specified in Sections 11.020(a) through 11.020(c) is guilty of a Class A Offense under the Makah Law and Order Code.

11.030 Liability of Whaling Captain.

A whaling captain shall be deemed liable if a member of a whaling team identified in a permit issued to the whaling captain, or otherwise under his control, violates a provision of this Ordinance, Makah whaling regulations or the terms of the whaling permit.

Chapter 12. Penalties

12.010 Law and Order Code Penalty.

(a) Any member convicted by the Tribal Court of an offense in Sections 11.020(a) through 11.020(c) shall be sentenced pursuant to the penalties provided for Class AA criminal offenses under Section 5.8.01 of the Makah Law and Order Code.¹

(b) Any member convicted by the Tribal Court of an offense in Sections 11.020(d) or 11.020(e) shall be sentenced pursuant to the penalties provided for Class A criminal offenses under Section 5.8.02 of the Makah Law and Order Code.²

12.020 Suspension of Treaty Privileges.

(a) For any member convicted by the Tribal Court of an offense in Sections 11.020(a) through 11.020(c), the Court shall suspend the member's treaty fishing, hunting and

¹ Section 5.8.01 of the Makah Law and Order Code currently provides that a Class AA offense is punishable by a fine not to exceed \$5000 and imprisonment not to exceed 12 months.

² Section 5.8.02 of the Makah Law and Order Code currently provides that a Class A offense is punishable by a fine not to exceed \$500 and imprisonment not to exceed 6 months.

whaling privileges for a minimum of three (3) years and a maximum of five (5) years. The length of the suspension of treaty privileges is not required to be identical for all treaty privileges. The Court may not impose a suspended sentence for this portion of the penalty.

(b) For any member convicted by the Tribal Court of an offense in Sections 11.020(d) or 11.020(e), the Court may suspend the member's treaty fishing, hunting and whaling privileges for a maximum of five (5) years. The length of the suspension of treaty privileges is not required to be identical for all treaty privileges.

12.030 Commission Disqualification.

(a) Any member convicted by the Tribal Court of an offense in Sections 11.020(a) through 11.020(c) shall be ineligible to hold a position as a member or alternate of the Commission for ten (10) years and shall be permanently ineligible to serve as an officer of the Commission.

(b) Any member convicted by the Tribal Court of an offense in Sections 11.020(d) or 11.020(e) shall be ineligible to hold a position as a member or alternate of the Commission for two (2) years and shall be permanently ineligible to serve as an officer of the Commission.

12.040 Sentencing Considerations.

In determining the sentence, the Court shall take into account the harm caused by the person to the Tribe, the Tribe's treaty right and Tribal resources. The Court may seek written recommendations with respect to these factors from the Council and the Commission.

Chapter 13. Miscellaneous Provisions

13.010 Amendments.

The Council may amend this Ordinance from time to time as new information becomes available from Makah Fisheries, the Commission, the National Oceanic and Atmospheric Administration and other reliable sources, provided that the requirements of the Ordinance shall comply with the applicable International Convention for the Regulation of Whaling ("ICRW")

Schedule Amendment, any cooperative agreement between NOAA and the Council, and all applicable federal and Tribal law.

13.020 Severability.

The provisions of this Ordinance are severable. If any provision of this Ordinance or its application to any person or legal entity or circumstances is held invalid, the remainder of this Ordinance, or the application of the provision to other persons or legal entities or circumstances, shall not be affected.