

unknown, to bring about acts that constituted a violation of the Regulations when it agreed to participate in the export of the furnace referenced above to BRIMT in China without the Department of Commerce license required by Section 744.3 of the Regulations. In furtherance of the conspiracy, Sunford and its co-conspirators agreed to conceal the identity of the actual end-user and of the item being exported in an attempt to circumvent the license requirement described in Section 744.3 of the Regulations.

3. *One violation of 15 CFR 764.2(b)—Causing an Export to China Without the Required Department of Commerce License.* Beginning on or about November 23, 1998 and continuing to on or about July 20, 1999, Sunford caused the export of the furnace described above to BRIMT in China without the required Department of Commerce license. Specifically, Sunford ordered, bought, financed, and/or forwarded the industrial furnace described above, thereby causing the furnace to be exported to BRIMT in China despite the fact that the Department of Commerce license required by Section 744.3 of the Regulations had not been obtained.

Whereas, BIS and Sunford have entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and

Whereas I have approved of the terms of such Settlement Agreement;

*It is therefore ordered:*

*First*, that a civil penalty of \$33,000 is assessed against Sunford, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

*Second*, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Sunford will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

*Third*, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Sunford. Accordingly, if

Sunford should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Sunford's export privileges for a period of one year from the date of entry of this Order.

*Fourth*, for a period of three years from the date of entry of the Order, Sunford Trading, Ltd., Room 2208, 22/F, 118 Connaught Road West, Hong Kong, China, its successors or assigns, and when acting for or on behalf of Sunford, its officers, representatives, agents, or employees ("Denied Person") may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

*Fifth*, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is

intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Sixth*, that, to prevent evasion of this Order, BIS, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, may make any person, firm, corporation, or business organization related to Sunford by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services subject to the provisions of this Order.

*Seventh*, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

*Eighth*, that the charging letter, the Settlement Agreement, this Order, and the record of this case as defined by Section 766.20 of the Regulations shall be made available to the public.

*Ninth*, that the administrative law judge shall be notified that this case is withdrawn from adjudication.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register**.

Entered this 18th day of August 2005.

**Wendy Wysong,**

*Acting Assistant Secretary of Commerce for Export Enforcement.*

[FR Doc. 05–16885 Filed 8–24–05; 8:45 am]

BILLING CODE 3510-DT-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 081905B]

### Notice of Intent to Conduct Public Scoping Meetings and to Prepare an Environmental Impact Statement Related to the Makah Tribe's Continuation of Treaty Right Hunting of Gray Whales

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; scoping meetings.

**SUMMARY:** We intend to conduct public scoping meetings to gather information to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA), related to the Makah Tribe's request that NMFS waive the take moratorium of the Marine Mammal Protection Act (MMPA) to allow for treaty right hunting of eastern North Pacific gray whales in usual and accustomed grounds off the coast of Washington State. This notice briefly describes the background of the Makah's request for waiver; gives dates, times, and locations of public scoping meetings; identifies a set of preliminary alternatives to serve as a starting point for discussions; and terminates the prior notice of intent to prepare an EIS on a similar action.

**DATES:** Three public scoping meetings are scheduled:

1. October 5, 2005, Neah Bay, WA.
2. October 6, 2005, Port Angeles, WA.
3. October 11, 2005, Seattle, WA.

See **SUPPLEMENTARY INFORMATION** for specific times and locations of the public meetings.

In addition to the meetings, written or electronic comments from all interested parties are encouraged and must be received no later than 5 p.m. PDT October 24, 2005.

**ADDRESSES:** All comments concerning preparation of the EIS and NEPA process should be addressed to: Cassandra Brown, NMFS Northwest Region, Building 1, 7600 Sand Point Way NE, Seattle, WA 98115. Comments may also be submitted via fax (206)526-6426, Attn: Makah Tribe Whale Hunt EIS, or by electronic mail to [MakahEIS.nwr@noaa.gov](mailto:MakahEIS.nwr@noaa.gov) with a subject line containing the document identifier: Makah Whale EIS.

**FOR FURTHER INFORMATION CONTACT:** Cassandra Brown, NMFS Northwest Region, (206)526-4348.

**SUPPLEMENTARY INFORMATION:**

**Public Scoping Meetings**

*Specific Times and Locations*

Public scoping meetings will be held at the following addresses and times:

1. October 5, 2005, 6:30 p.m. – 9:30 p.m., Makah Tribal Council Community Hall, 81 3<sup>rd</sup> Avenue (Makah Passage), Neah Bay, WA.
2. October 6, 2005, 6:30 p.m. – 9:30 p.m., Vern Burton Memorial Community Center, 308 East 4<sup>th</sup> Street (corner of 4<sup>th</sup> Street and Peabody Street), Port Angeles, WA.

3. October 11, 2005, 6:30 p.m. – 10 p.m., South Lake Union Park, 860 Terry Avenue North (The Naval Reserve Building), Seattle, WA.

The meeting format has been designed so that the public can constructively assist NMFS in development of the draft EIS, and will generally include presentations and small group work sessions. More details regarding meeting format will be posted under the "gray whale" link at <http://www.nwr.noaa.gov> by mid-September 2005.

**Reasonable Accommodation**

Persons needing reasonable accommodations to attend and participate in the public meetings should contact Cassandra Brown (see **FOR FURTHER INFORMATION CONTACT**). To allow sufficient time to process requests, please call at least 10 business days prior to the relevant meeting(s). Information regarding the Makah's request is available in alternative formats upon request.

**Background**

The Makah Indian Tribe of Washington State (Makah) seeks to continue its subsistence hunt(s) of eastern North Pacific (ENP) gray whales, a tradition dating back at least 1,500 years. The Makah's right to hunt whales at usual and accustomed grounds and stations off the coast of Washington was secured in Article 4 of the 1855 Treaty of Neah Bay in exchange for most of the land in the Olympic Peninsula. The Treaty of Neah Bay is the primary instrument defining the legal relationship between the United States Government and the Makah.

The Makah hunted whales until the 1920s when commercial whaling had drastically reduced the numbers of ENP gray whales available to the Makah hunters for harvest. Prior to enactment of the Endangered Species Act (of 1973 16 U.S.C. 1351 *et seq.*), the U.S. Fish and Wildlife Service included gray whales (among several genera of baleen whales) on its 1970 list of endangered species (35 FR 8491, June 2, 1970). The ENP distinct population segment was subsequently delisted on June 16, 1994 (59 FR 31094). In 1999, Makah hunters killed one ENP gray whale pursuant to an aboriginal subsistence harvest quota granted for 1998 through 2002 by the International Whaling Commission (IWC) and domestically implemented by NMFS under the Whaling Convention Act (WCA)(16 U.S.C. 916 *et seq.*). Due to a series of lawsuits, no whales were hunted by the Makah for the remainder of the 1998 through 2002 quota.

In May 2002, the IWC approved another aboriginal subsistence harvest

quota of 620 gray whales for 2003 through 2007, on the basis of a joint request by the Russian Federation (approved for 600 whales) and the United States (approved for 20 whales). The United States' request was made on behalf of the Makah. On March 6, 2003 NMFS initiated an EIS to assess the environmental impacts of allocating the 2003 through 2007 quota to the Makah by soliciting comments and information to facilitate the environmental analysis (68 FR 10703). Due to litigation (described below), NMFS did not complete the EIS and did not allocate the quota under the WCA. The Makah have not conducted subsistence hunts to date under the 2003 through 2007 IWC quota.

On June 7, 2004, the Ninth Circuit Court of Appeals in the second amended version of *Anderson v. Evans*, 371 F.3d 475, held that the Tribe, to pursue any treaty rights for whaling, must comply with the process prescribed in the MMPA (16 U.S.C. 1361 *et seq.*) for authorizing "take" of marine mammals otherwise prohibited by a moratorium in section 101(a)(16 U.S.C. 1371(a)). The term  $\geq$ take $\geq$  means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13)). Subsequent to the *Anderson v. Evans* ruling, the Makah submitted a request for a limited waiver of the moratorium on taking marine mammals, which we received on February 14, 2005. We published notice of availability of the waiver request for public inspection on March 3, 2005 (70 FR 10369), available online at <http://www.nmfs.noaa.gov/pr/international/makah> (soon to be available on the NMFS Northwest Region website under the "gray whale" link at <http://www.nwr.noaa.gov>).

To exercise subsistence hunting treaty rights of gray whales, the Makah Tribe must undergo three separate but related processes: (1) The United States must obtain an aboriginal subsistence quota from the IWC on the Makah Tribe's behalf, (2) NMFS must decide whether to waive the MMPA take moratorium for the Makah Tribe, including conducting a NEPA review and issuing possible regulations and permits (see Proposed Action for more details), and (3) NMFS must allocate the IWC quota under the WCA. More information regarding these processes will soon be available to the public under the NMFS Northwest Region website "gray whale" link at <http://www.nwr.noaa.gov>. The NEPA review initiated by this notice of intent is to comply with process number (2) described above, which requires preparation of a site-specific EIS related

to the Makah Tribe's request for a waiver of the MMPA take moratorium.

### Proposed Action

The Makah's proposed action is to hunt up to 20 ENP gray whales during a 5-year period, subject to a maximum of five gray whales in any calendar year, within its adjudicated usual and accustomed grounds (See, *United States v. Washington*, 626 F.Supp. 1405, 1467 (W.D. Wash 1985)), subject to quotas granted by the IWC. The Makah proposes to hunt up to seven gray whales per year. The Makah's proposal to continue subsistence hunting of gray whales includes other standards for hunting, such as: (1) time and area restrictions designed to avoid any intentional harvest of gray whales comprising the Pacific Coast Feeding Aggregation (PCFA), (2) monitoring and adaptive management measures to ensure that any incidental harvest of gray whales from the PCFA remains at or below the annual strike limit, (3) measures to ensure that hunting is conducted in the most humane manner practicable, consistent with continued use of traditional hunting methods, and (4) measures to protect public safety. The full waiver request is posted online at <http://www.nmfs.noaa.gov/pr/international/makah>, and will soon be available at NMFS Northwest Region's website at <http://www.nwr.noaa.gov> under the "gray whale" link.

Based on the Makah's waiver request, the Federal action consists of three parts: (1) Waiving the moratorium on take of marine mammals under section 101(a)(3)(A)(16 U.S.C. 1371(3)(A)) of the MMPA, and subsequently (2) promulgating hunting regulations implementing the waiver in accordance with section 103 (16 U.S.C. 1373) of the MMPA, and (3) issuing any necessary permit(s) to the Makah for whale hunting.

If NMFS waives the MMPA take moratorium and issues the necessary regulations and permit(s), the Makah would be allowed to continue subsistence hunting of ENP gray whales, subject to IWC quotas and allocation of those quotas under the WCA. The NEPA review initiated by this notice of intent, therefore, involves preparation of a site-specific EIS related to the Makah Tribe's proposed action of continuing treaty right subsistence ENP whale hunting (i.e., request for a waiver of the MMPA take moratorium), and alternatives to the waiver request.

### Alternatives

Pursuant to NEPA, which requires Federal agencies to conduct an environmental analysis of proposed

actions to determine if the actions may affect the human environment, and in recognition of the Ninth Circuit Court of Appeals ruling in *Anderson v. Evans*, we intend to conduct public scoping meetings and to prepare an EIS. Under NEPA, a reasonable range of alternatives to a proposed action must be developed and considered in our environmental review. Alternatives considered for analysis in this EIS may include: variations in the scope of the hunting activities, variations in the hunting location, or a combination of these elements. In addition, the EIS will identify potentially significant direct, indirect, and cumulative impacts on geology and soils, air quality, water quality, other fish and wildlife species and their habitat, vegetation, socioeconomics/tourism, treaty rights and Federal trust responsibilities, environmental justice, cultural resources, noise, aesthetics, transportation, public services, and human health and safety, and other environmental issues that could occur with the implementation of the Makah's proposed action and alternatives. For all potentially significant impacts, the EIS will identify avoidance, minimization, and mitigation measures to reduce these impacts, where feasible, to a level below significance.

We have identified the following preliminary alternatives for public comment during the public scoping period, and encourage information on additional alternatives to consider:

**Alternative 1: No Action** - Under the No Action Alternative, we would not approve the requested whale hunting, would not grant the waiver of the moratorium on take under the MMPA, nor issue the necessary regulations and permits.

**Alternative 2: The Proposed Action** - Under the proposed action, the Makah Tribe would be allowed to continue treaty right subsistence hunting of gray whales imposing time and area restrictions designed to target migrating whales and to avoid any intentional harvest of whales from the PCFA. We would grant the waiver of the moratorium on take under the MMPA and issue the necessary regulations and permits.

**Alternative 3: The proposed action** would be modified to allow limited take of gray whales from the PCFA during hunts.

**Alternative 4: The proposed action** would be modified to remove time and area restrictions from the hunts.

**Alternative 5: The proposed action** would be modified to allow hunting to target migrating whales, imposing time and area restrictions different than those

contained in the proposed action that would maximize the likelihood of taking a migrating whale (and minimize the likelihood of taking a PCFA whale).

### Request for Comments

We provide this notice to: (1) Advise other agencies and the public of our intentions, (2) obtain suggestions and information on the scope of issues to include in the EIS, (3) terminate the prior notice of intent to prepare an EIS on allocation of the 2003 through 2007 quota (68 FR 10703) published on March 6, 2003. Comments and suggestions received during the prior public comment period for the 2003 through 2007 quota allocation (March 6 through April 21, 2003), will be considered in developing the current EIS. Other comments and suggestions are invited from all interested parties to ensure that the full range of issues related to the Makah's waiver request and all significant issues are identified. We request that comments be as specific as possible. We seek public input on the scope of the required NEPA analysis, including the range of reasonable alternatives; associated impacts of any alternatives on the human environment, including geology and soils, air quality, water quality, other fish and wildlife species and their habitat, vegetation, socioeconomics/tourism, treaty rights and Federal trust responsibilities, environmental justice, cultural resources, noise, aesthetics, transportation, public services, and human health and safety; and suitable mitigation measures.

Comments concerning this environmental review process should be directed to NMFS (see ADDRESSES). See **FOR FURTHER INFORMATION CONTACT** for questions. All comments and material received, including names and addresses, will become part of the administrative record and may be released to the public.

### Authority

The environmental review of continuation of the Makah subsistence gray whale hunting will be conducted under the authority and in accordance with the requirements of NEPA, Council on Environmental Quality Regulations (40 CFR 1500-1508), other applicable Federal laws and regulations, and policies and procedures of NMFS for compliance with those regulations. This notice is being furnished in accordance with 40 CFR 1501.7 to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS.

Dated: August 19, 2005.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 080405A]

#### **Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar**

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

**ACTION:** Notice; issuance of two Letters of Authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has issued two 1-year Letters of Authorization (LOAs) to take marine mammals by harassment incidental to the U.S. Navy's operation of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar operations to the Chief of Naval Operations, Department of the Navy, 2000 Navy Pentagon, Washington, D.C., and persons operating under his authority.

**DATES:** Effective from August 16, 2005, through August 15, 2006.

**ADDRESSES:** Copies of the LOAs and the Navy's March 31, 2005 application, which contains a list of references used in this document, are available by writing to Steve Leathery, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: <http://www.nmfs.noaa.gov/prof1res/PR2/Small1Take/smalltake1info.htm#applications>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Jolie Harrison (ext 166) or Kenneth Hollingshead (ext 128), Office of Protected Resources, NMFS, (301) 713-2289.

## SUPPLEMENTARY INFORMATION:

### Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Authorization may be granted for periods of 5 years or less if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's operation of SURTASS LFA sonar were published on July 16, 2002 (67 FR 46712), and remain in effect until August 15, 2007. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the SURTASS LFA sonar system.

On November 24, 2003, the President signed into law the National Defense Authorization Act of 2004 (NDAA) (Public Law 108-136). Included in this law were amendments to the MMPA that apply where a "military readiness activity" is concerned. Of specific importance for the SURTASS LFA sonar take authorization, the NDAA amended section 101(a)(5) of the MMPA to exempt military readiness activities from the "specified geographical region" and "small numbers" requirements. The term "military readiness activity" is defined in Public Law 107-314 (16 U.S.C. 703 note) to include all training and operations of the Armed Forces that relate to combat; and the adequate and realistic testing of military equipment, vehicles, weapons and sensors for proper operation and suitability for combat use. The term expressly does not include the routine operation of installation operating support functions, such as military

offices, military exchanges, commissaries, water treatment facilities, storage facilities, schools, housing, motor pools, laundries, morale, welfare and recreation activities, shops, and mess halls; the operation of industrial activities; or the construction or demolition of facilities used for a military readiness activity.

NMFS published a proposed rule to amend its SURTASS LFA sonar final rule and regulations, to implement provisions of the NDAA (69 FR 38873; June 29, 2004). The public comment period ended on July 29, 2004. NMFS has not issued a final rule as of the date of this notice.

### Summary of LOA Request

NMFS received an application from the U.S. Navy for two LOAs, one covering the *R/V Cory Chouest* and one the USNS IMPECCABLE, under the regulations issued on July 16, 2002 (67 FR 46712). The Navy requested that the LOAs become effective on August 16, 2005. The application requested authorization, for a period not to exceed 1 year, to take, by harassment, marine mammals incidental to employment of the SURTASS LFA sonar system for training, testing and routine military operations on the aforementioned ships. The application's take estimates are based on 16 nominal 9-day active sonar missions (or equivalent shorter missions) between both vessels, regardless of which vessel is performing a specific mission, not to exceed a total of 432 hours of LFA sonar transmission time combined for both vessels.

The specified geographic regions identified in the application in which the Navy proposes to operate SURTASS LFA sonar are the following oceanographic provinces described in Longhurst (1998) and identified in 50 CFR 216.180(a): the Archipelagic Deep Basins Province, the Western Pacific Warm Pool Province, and the North Pacific Tropical Gyre West Province, all within the Pacific Trade Wind Biome; the Kuroshio Current Province and the Northern Pacific Transition Zone Province within the Pacific Westerly Winds Biome; the North Pacific Epicontinental Sea Province within the Pacific Polar Biome; and the China Sea Coastal Province within the North Pacific Coastal Biome. The operational areas proposed in the Navy's application are portions of the provinces but do not encompass the entire area of the provinces. Due to critical naval warfare requirements, the U.S. Navy has identified the necessity for both SURTASS LFA sonar vessels to be stationed in the North Pacific Ocean during fiscal year 2006.