

Attachment 1

Makah Whaling Ordinance (50A)
(and Resolution No. 014-25)

RESOLUTION NO.: 014-25

DATE ENACTED: 2-5-2025

SUBJECT MATTER: Makah Whaling
Ordinance (50A)

RESOLUTION NO. 014-25 OF THE MAKAH TRIBAL COUNCIL

WHEREAS, the Makah Tribal Council is the governing body of the Makah Indian Tribe under the Tribe's Constitution and Bylaws approved on May 16, 1936, by the Secretary of the Interior; and

WHEREAS, the Makah Tribe has a documented whaling tradition and has depended on whaling as the basis of its economy, subsistence, and culture for at least 1,500 years; and

WHEREAS, the Tribe reserved the right of whaling in perpetuity by Article 4 of the Treaty of Neah Bay, 12 Stat. 939 (1855); and

WHEREAS, the Tribal Council is authorized under Article VI, § 1(i) of the Tribe's Constitution to promulgate and enforce ordinances governing the conduct of members of the Tribe, and under Article VI, § 1(j) to safeguard and promote the health, safety and general welfare of the Tribe; and

WHEREAS, the Tribal Council recognizes the paramount importance of whaling to the Makah Tribe and the central role that effective management of the whaling resource and regulation of whaling must play in the Tribe's exercise of its treaty whaling right; and

WHEREAS, the Makah Tribe previously managed and regulated whaling under a management plan adopted on January 30, 1998 by Resolution No. 67-98 and under a prior version of this Ordinance adopted on August 13, 2013 by Resolution No. 118-13; and

WHEREAS, on June 18, 2024, the National Marine Fisheries Service promulgated a final rule approving the Makah Tribe's request for a partial waiver of the Marine Mammal Protection Act's moratorium on taking marine mammals to authorize the Makah Tribe to conduct ceremonial and subsistence hunts of Eastern North Pacific gray whales;

WHEREAS, in addition to providing a 30-day period for Makah Tribal membership to review and comment on a draft of the revised version of the Makah Whaling Ordinance, the Tribal Council also hosted a meeting of community members and received both verbal and written feedback on a draft of the revised version of the Makah Whaling Ordinance; and

WHEREAS, the Tribal Council finds that it is necessary to adopt this revised version of the Makah Whaling Ordinance to implement the Makah Tribe's management, regulation and enforcement of the Tribe's treaty whaling right.

NOW THEREFORE BE IT RESOLVED, that the Makah Tribal Council hereby adopts the Makah Whaling Ordinance (50A), a copy of which is attached to this Resolution. The

Ordinance so adopted shall supersede all prior Makah whaling management plans, ordinances, amendments thereto, and whaling regulations upon approval by the Secretary of the Interior.

MAKAH TRIBAL COUNCIL



Timothy J. Greene, Sr.
Chairman

CERTIFICATION

The foregoing Resolution was adopted at a regular meeting held on February 5, 2025 at which a quorum was present, and the Resolution was adopted by a vote of 4 FOR and 0 AGAINST, the Chairperson, or the Vice-Chairperson in his absence, being authorized to sign the Resolution.

By:



Christopher Martinez, Interim Tribal Secretary

APPROVED BY: _____

Regional Director
Bureau of Indian Affairs – Northwest Regional Office

DATE: _____

MAKAH WHALING ORDINANCE
(50A)

Legislative History

Management Plan

Adopted:	Management Plan for Makah Treaty Gray Whale Hunting for the Years 1998-2002, Resolution No. 67-98 (1/30/98)
Amended:	Resolution No. 57-01 (5/30/01)
Superseded:	Resolution No. 118-13 (8/13/13)

Ordinance

Enacted:	Makah Whaling Ordinance, Resolution No. 118-13 (8/13/13)
Superseded:	Makah Whaling Ordinance 50A, Resolution No. 014-25 (2/5/25)

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MAKAH WHALING ORDINANCE **Introduction and Declaration of Policy**

The Qʷidiččaʔa·tš, or Makah, have hunted whales in the waters off of the Makah ancestral homelands on northwestern tip of what is presently known as the Olympic Peninsula for at least 1,500 years. Whaling was, and continues to be, central to the Makah 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 it reserved the right of whaling in the 1855 Treaty of Neah Bay, 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-Native commercial whaling operations. In contrast with this depletion by non-Native 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 “right . . . of whaling” secured in Article 4 of the Treaty of Neah Bay, and protect the treaty whaling right for future generations of Makahs.

In February 2005, the Tribe submitted a request to the National Marine Fisheries Service (NMFS) to waive the take moratorium under the Marine Mammal Protection Act (MMPA) and allow the Tribe to conduct limited ceremonial and subsistence hunts of gray whales pursuant to the treaty right. On June 18, 2024, NMFS published a final decision approving the waiver request and issued federal regulations to implement the waiver (“NMFS waiver regulations”). 89 Fed. Reg. 51600 (June 18, 2024); 50 C.F.R. §§ 216.110 - 216.119. The NMFS waiver regulations require that the Tribe demonstrate that it has “enacted a Tribal ordinance governing hunting that is consistent with this subpart.” 50 C.F.R. § 216.113(b)(6)(ii). Accordingly, the Tribe reviewed the Makah Whaling Ordinance enacted in 2013 and amended and superseded it with this Makah Whaling Ordinance (50A) to achieve consistency with the NMFS waiver regulations and for other purposes.

The Makah Tribe recognizes that, under current federal law, consistency and compliance with the NMFS waiver regulations is necessary to resume exercise of the Tribe’s Treaty-reserved whaling right. Ordinance 50A memorializes and demonstrates such consistency. Nevertheless,

the Tribe maintains as a matter of principle that exercise of its Treaty-reserved whaling right should be subject to management solely by the Tribe pursuant to its Treaty right and sovereign authorities. For well over a millennium, the Tribe demonstrated effective internal governance of the practice of whaling, including conservation of the resource. Ordinance 50A also reflects the Tribe's intrinsic expertise regarding and sovereign authority to govern Makah whaling.

Ordinance 50A sets forth the Makah Tribe's management intent and applicable Tribal law governing the exercise of treaty ceremonial and subsistence whaling rights. It is enacted by the Makah Tribal Council pursuant to the Council's inherent authority to manage Tribal members' exercise of the Tribe's treaty whaling rights and establish procedures and requirements for the Tribe's administration of treaty whaling and whaling-related activities. Article VI, Sections 1(i) and 1(j) of the Makah Constitution and Bylaws provide further authority for enactment of the Ordinance.

The Council's intent under this Ordinance is to authorize the hunting of only Eastern North Pacific (ENP) gray whales pursuant to the Tribe's treaty whaling right and consistent with the International Whaling Commission (IWC) aboriginal subsistence whaling catch limit for ENP gray whales and the NMFS waiver regulations issued with NMFS' approval of the waiver.

Makah Whaling Ordinance 50A contains general provisions for the exercise of whaling rights and provides for Council adoption of regulations and issuance of Tribal whaling permits and Tribal training permits that establish, among other things: time and area restrictions; gear requirements; and limits on strikes, landed whales, training approaches, and training harpoon throws. The Ordinance also contains a number of management measures to ensure the orderly development of safe, efficient, and humane whale hunts that harmonize traditional and modern whaling methods. The Ordinance establishes requirements for and limits on the use of edible and nonedible whale products and Makah handicrafts.

The Ordinance specifies criminal penalties for violations of its provisions, Makah whaling regulations, Tribal whaling permits, and Tribal training permits. Because whaling is fundamentally important to the Tribe and its members, the Council intends for the Ordinance and the regulations and permits issued under it to be applied strictly to ensure the treaty right is protected. Whaling is central to the subsistence needs, culture, and identity of the Makah Tribe and belongs to present and future generations of Makahs. Therefore, any action that jeopardizes the Tribe's whaling right shall be prosecuted to the full extent of Tribal law.

The management of treaty ceremonial and subsistence whaling under this Makah Whaling Ordinance 50A and any regulations adopted or permits issued by the Council shall not limit, waive or modify any aspect of the Tribe's whaling rights under the Treaty of Neah Bay. Any such interpretation of this Ordinance, Makah whaling regulations or Tribal whaling permits is improper and unauthorized.

Chapter 1. General Provisions

1.010 Title.

This Ordinance shall be known as the Makah Whaling Ordinance (“Ordinance”).

1.020 Prior Tribal Whaling Laws Superseded.

This Ordinance supersedes all prior versions of the Makah Whaling Ordinance, Makah management plans, and Makah 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 and permits issued 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, which have not been specifically determined. Solely for purposes of this Ordinance, Makah whaling regulations, Tribal whaling permits, and Tribal training permits, the Tribe’s usual and accustomed whaling places are considered coextensive with the Tribe’s adjudicated usual and accustomed fishing grounds (U&A).
- (b) Persons. The provisions of this Ordinance shall extend to all Makah 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 or Makah U&A areas on a whaling expedition, or any other activity regulated by this Ordinance.

1.050 General Closure.

All species and stocks of whales other than ENP gray whales are closed to whaling because, following the June 18, 2024 NMFS approval of the Tribe's waiver request, all other whales remain subject to the moratorium on taking marine mammals under the Marine Mammal Protection Act. All areas within the Tribe's jurisdiction are closed to whaling, training approaches and training harpoon throws unless those areas are specifically opened by Makah whaling regulations. All times of the year are closed to whaling, training approaches, and training harpoon throws unless they are specifically opened by Makah whaling regulations. Areas and times opened by Makah whaling regulations 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, Tribal whaling permits, and Tribal training permits, unless explicitly stated otherwise:

- (a) "Authenticated" means the status of a Makah handicraft that has been marked, certificated, and registered pursuant to Section 9.050 below.
- (b) "Barter" means the exchange of gray whale parts or products for other wildlife or fish or their parts or products, or for other food or for nonedible items other than money, if the exchange is of a noncommercial nature.
- (c) "Bonilla-Tatoosh Line" means the line running from the western end of Cape Flattery (48°22'53" N lat., 124°43'54" W long.) to Tatoosh Island Lighthouse (48°23'30" N lat., 124°44'12" W long.) to the buoy adjacent to Duntze Rock (48°28'00" N lat., 124°45'00" W long.), then in a straight line to Bonilla Point (48°35'30" N lat., 124°43'00" W long.) on Vancouver Island, British Columbia.
- (d) "Calf" means any whale less than 1 year old.
- (e) "Council" means the Makah Tribal Council.

- (f) “Edible whale product” means whale meat or blubber. Edible whale products do not include whale products that are diseased, contaminated, damaged in the course of the hunt, or possessing a strong medicinal smell.
- (g) “ENP gray whale” means a member of the eastern North Pacific stock of gray whales (*Eschrichtius robustus*).
- (h) “Export” means the act of sending goods from one country to another.
- (i) “Gray whale” means a member of the species *Eschrichtius robustus*.
- (j) “Handicraft” is a term used in the Marine Mammal Protection Act (16 U.S.C. § 1371(b)(2)). The NMFS waiver regulations use the term “Makah Indian handicraft” (50 C.F.R. § 216.112). These terms are not intended to denigrate the quality of work of Makah artists. As used in this Ordinance, the term “handicraft” or “Makah handicraft” means artwork, articles, or other items made by a Makah Tribal member that: contain any nonedible whale products obtained pursuant to a Tribal whaling permit issued under this Ordinance and Makah whaling regulations and a NMFS hunt permit; are significantly altered from their natural form; and are individually produced, decorated or fashioned in the exercise of Makah artistry. Handicrafts include, but are not limited to, articles that are carved, beaded, drawn, or painted. Artwork, articles, or other items may qualify as handicrafts under this subsection regardless of whether they are authenticated pursuant to Section 9.050 below.
- (k) “Harpooner” means a Makah Tribal a member who has been certified by the Tribe as having demonstrated the qualifications commensurate with the duties and responsibilities of harpooning a gray whale as a member of a whaling team.
- (l) “Hunt” or “Hunting,” in its verb form, means to pursue, strike, harpoon, shoot, or land a gray whale under a NMFS hunt permit and a Tribal whaling permit, or to attempt any such act; but does not include hunting approaches, training approaches, or training harpoon throws. “Hunt,” in its noun form, means any act of hunting.
- (m) “Hunting approach” means to cause, in any manner, a vessel to be within 100 yards of a gray whale during a hunt.

- (n) “Hunt permit” or “NMFS hunt permit” means a permit issued by NMFS in accordance with the MMPA and NMFS waiver regulations.
- (o) “Land” or “Landing,” in its verb form, means bringing a whale or any part of a whale onto land or a vessel in the course of a whaling expedition.
- (p) “Makah Fisheries” means the Makah Fisheries Management Department.
- (q) “Makah whaling regulations” means any rule or regulation adopted by the Council pursuant to this Ordinance.
- (r) “Member,” “Makah Tribal member,” or “Tribal member” means any person who is an enrolled member of the Tribe. A “non-member” is any person who is not a member of the Tribe.
- (s) “MMPA” means the Marine Mammal Protection Act, 16 U.S.C. §§ 1361-1407, which is the federal law governing the conservation and management of marine mammals.
- (t) “NMFS” means the National Marine Fisheries Service, a sub-agency of the National Oceanic and Atmospheric Administration, or NOAA, and is sometimes referred to as “NOAA Fisheries.”
- (u) “NMFS hunt observer” means a person designated by NMFS to accompany and observe a hunt.
- (v) “Nonedible whale product” means any part of a whale that is not an “edible whale product” under Section 2.010(f) above.
- (w) “OSP” means Optimum Sustainable Population, which is defined by the MMPA as, “with respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.” 16 U.S.C. § 1362(9).
- (x) “PCFG” means Pacific Coast Feeding Group. A “PCFG gray whale” or “PCFG whale” means an ENP gray whale photo-identified during two or more years between June 1 and November 30 within the region between northern California and northern Vancouver Island (from 41° N lat. to 52° N lat.) and entered into one or more photo-identification catalogs recognized by the Regional Administrator of NMFS for the West Coast Region.

- (y) “Recordkeeping” and “Reporting” mean the collection and delivery of photographs, biological data, harvest data, and other information regarding activities conducted under the NMFS waiver regulations.
- (z) “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.
- (aa) “Rifleman” means a member who has been certified by the Tribe as having demonstrated the qualifications commensurate with the duties and responsibilities of shooting a gray whale as a member of a whaling team.
- (bb) “Safety officer” means a member who has been certified by the Tribe as having demonstrated the qualifications commensurate with the duties and responsibilities of evaluating hunt conditions including, but not limited to, visibility, target range and bearing, and sea condition, as a member of a whaling team.
- (cc) “Share” means to voluntarily transfer or gift to another person without compensation edible or nonedible whale products.
- (dd) “Strike” or “struck,” in its verb form, means the act of causing a harpoon, lance, darting gun, or other weapon, or a projectile from a rifle or other weapon, to penetrate a whale’s skin. “Strike,” when used as a noun, is an instance in which a whale’s skin is penetrated by such a weapon or projectile during hunting. A harpoon that penetrates the skin of a whale is a strike even if the harpoon later pulls out of the whale. Any rifle shot that hits a whale is a strike. Multiple strikes on the same whale are considered a single strike.
- (ee) “Struck and lost” refers to a whale that is struck but not landed.
- (ff) “Summer-Fall hunt” means a hunting season spanning four consecutive months from July 1 to October 31.
- (gg) “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 Tribal Court, or the Council.
- (hh) “Take” is defined by the MMPA as “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.” 16 U.S.C. § 1362(13).

- (ii) “Training approach” means to cause, in any manner, a training vessel to be within 100 yards of a gray whale.
- (jj) “Training harpoon throw” means an attempt to contact a gray whale with a blunted spear-like device that is incapable of penetrating the skin of a gray whale.
- (kk) “Training vessel” means a canoe or other vessel used to train for a hunt that is not carrying weapons ordinarily used by a harpooner or rifleman to strike a gray whale.
- (ll) “Tribal Court” or “Court” means the Makah Tribal Court.
- (mm) “Tribal hunt observer” means a member or representative designated by the Tribe who has been certified by the Tribe as having demonstrated the qualifications commensurate with the duties and responsibilities of monitoring and reporting on a hunt.
- (nn) “Tribe” or “Makah Tribe” means, and “Tribal” refers to, the Makah Indian Tribe.
- (oo) “U&A” or “Usual and accustomed fishing grounds” means the Tribe’s usual and accustomed fishing grounds, which area consists of waters in the western Strait of Juan de Fuca west of 123°42’17” W long. and waters of the Pacific Ocean off the mainland shoreline of the Washington coast north of 48°02’15” N lat. (Norwegian Memorial) and east of 125°44’00” W long.
- (pp) “Unsuccessful strike attempt” means any attempt to strike a gray whale while hunting that does not result in a strike.
- (qq) “Waste” or “wasting,” in its verb form, means to allow or fail to take all reasonable efforts to prevent edible whale products from spoiling or otherwise become unfit for human consumption or medicinal or spiritual use.
- (rr) “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.
- (ss) “WNP gray whale” means a member of the western North Pacific stock of gray whales (*Eschrichtius robustus*).
- (tt) “Whale product” means any part of an ENP gray whale, including blubber, meat, bones, whale oil, meal and baleen. “Whale products” do not include handicrafts.
- (uu) “Whale” or “whaling,” in its verb form, means the scouting for, hunting, striking, killing, or landing of a gray whale.

- (vv) “Whaling captain” means the member in charge of a whaling team, who has been certified by the Tribe as having demonstrated the qualifications commensurate with the duties and responsibilities of leading, supervising, and controlling a hunt as a member of the whaling team.
- (ww) “Whaling expedition” means a trip in which a whaling team leaves port or shore in one or more vessels for the purpose of whaling and returns to port or shore.
- (xx) “Whaling permit” or “Tribal whaling permit” means a permit issued by the Council under Section 5.010 of this Ordinance and Makah whaling regulations.
- (yy) “Whaling team” or “Whaling crew” means a group of Makah Tribal members under the leadership, supervision, and control of a whaling captain. Only members certified by the Tribe as having demonstrated the qualifications commensurate with the duties and responsibilities of participating in a hunt may join a whaling team. At the whaling captain’s discretion, a Makah Tribal member serving as the Tribal hunt observer may be included as a member of the whaling team.
- (zz) “Winter-Spring hunt” means a hunting season spanning six consecutive months from December 1 to May 31 of the following calendar year.

Chapter 3. Management and Administration of Whaling and Whaling-Related Activities

3.010 Makah Tribal Council as Administrator; Delegation of Authority.

- (a) The exercise of treaty whaling rights pursuant to this Ordinance shall be subject to the management and administration of the Council, with the advice of Makah Fisheries and/or other entity designated by the Council 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 whaling and whaling-related activities of members, including the use of whale products and handicrafts, to Makah Fisheries and/or other entity designated by the Council, provided that any action taken pursuant to such delegation of authority shall be subject to final approval by the Council at its sole discretion, and provided further that such delegation may be revoked, modified or withdrawn at any time by the Council.

- (b) The Council, Makah Fisheries, and/or other entity designated by the Council shall ensure that Tribal management and administration of whaling and whaling-related activities, including but not limited to the adoption of Makah whaling regulations and issuance of Tribal whaling permits and Tribal training permits, will be consistent with:
 - (i) the NMFS waiver regulations, 50 C.F.R. § 216.110 *et seq.*;
 - (ii) the applicable NMFS hunt permit;
 - (iii) the notice provided by the NMFS Regional Administrator of PCFG strike limits;
 - (iv) this Ordinance; and
 - (v) other applicable Tribal or federal laws and/or requirements.

3.020 Regulations.

Prior to each whaling season and at such other times as appropriate, Makah Fisheries shall develop and the Council shall adopt Makah whaling regulations to implement the policy of the Tribe with respect to whaling and this Ordinance. Makah whaling regulations shall be consistent with the NMFS waiver regulations, the applicable NMFS hunt permit, and any cooperative agreement with NOAA. Regulations adopted pursuant to this provision may address, among other things, the following:

- (a) Limits on the number of ENP gray whales that may be struck, landed, or subjected to hunting approaches, training approaches, and unsuccessful strike attempts;
- (b) Time and area restrictions;
- (c) Gear and equipment; and
- (d) Other issues reasonable and necessary for the Tribe's management of whaling and whaling-related activities.

The Council may impose additional limitations or specifications on the exercise of whaling rights through its issuance of Tribal whaling and training permits pursuant to Chapter 5 of this Ordinance below.

3.030 Notice of Regulations.

Makah whaling regulations shall be adopted by the Council and made available to NMFS and the U.S. Coast Guard at least thirty (30) days prior to the opening date of the applicable whaling season to ensure adequate notice. In-season and emergency Makah whaling regulations shall be made available as soon as practicable. All Makah whaling regulations shall be posted in appropriate places on the Makah Reservation, including: at the Natural Resources Enforcement and Makah Fisheries offices; online via the Makah Community Portal; and otherwise made available to members as specified by general Tribal regulations governing adequate notice.

3.040 Revocation or Suspension of Whaling Privileges by Makah Tribal Council.

- (a) In addition to penalties imposed by the Tribal Court for violations of this Ordinance, Makah whaling regulations, a Tribal whaling permit, or a Tribal training permit, the Council may revoke or suspend any member's whaling privileges 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. For purposes of this Section, the Council's consideration of the "best interest of the Tribe" shall include the policy of the Tribe with respect to whaling, with an emphasis on protecting the treaty whaling right for future generations of Makahs.
- (b) "Good cause" for suspension or revocation shall include, but not be limited to:
 - (i) conviction for violating this Ordinance, Makah whaling regulations, a Tribal whaling permit or a Tribal training permit;
 - (ii) failure to appear in Makah Tribal Court as required for charges or a conviction under this Ordinance;
 - (iii) disobeying Court orders, including sentencing orders for charges or a conviction under this Ordinance;
 - (iv) reckless disregard for the safety of others when engaging in whaling or whaling-related activities;
 - (v) conviction of a Class AA or Class A offense under the Makah Law and Order Code;

- (vi) assault on a Natural Resources Enforcement Officer, other law enforcement officer or other Tribal official; or
 - (vii) actions that may jeopardize the Tribe's exercise of treaty whaling rights or the ability or opportunity to responsibly manage such rights or to otherwise accomplish the purposes of this Ordinance.
- (c) Prior to any such revocation or suspension, the Council shall make necessary arrangements to ensure that any subject member is provided written notice of the proposed revocation or suspension and an opportunity to be heard, orally and/or in writing, before the Council. The Council may seek written input from Makah Fisheries and/or other entity designated by the Council regarding proposed suspension or revocation. The Council shall issue its decision in the form of a written, duly enacted resolution based on the evidence presented.
- (d) This Section shall be construed to be in addition to and not in conflict with or in derogation of Chapters 4, 11, and 12 of this Ordinance below, which govern and set forth the standards for judicial penalties for violations.

Chapter 4. Enforcement

4.010 Natural Resources Enforcement Officers.

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

4.020 Arrests for Criminal Offenses.

NRE Officers shall have the authority to make an arrest of any person whaling or engaging in whaling-related activities under this Ordinance or issue citations or summonses or other

appropriate forms to assure appearance in Court whenever such person is in violation of this Ordinance, Makah whaling regulations, a Tribal whaling permit, or a Tribal training permit.

4.030 Searches.

NRE Officers and other tribal law enforcement officers may conduct limited searches without warrant. Whenever practicable, searches will be conducted by NRE Officers of the same sex as the detained person. Vessels, gear, campers, tents, vehicles, and any place or any premises in the immediate area of whaling activity may also be searched without a warrant. Such “plain view” searches may only be conducted when an officer has reasonable grounds to believe there has been a violation of this Ordinance or Makah whaling regulations. Nothing in this Section shall limit the officer’s authority under the Makah Law and Order Code or change the limits on such authority under the Indian Civil Rights Act.

4.040 Seizure of Whale, Whale Products, and Gear.

Upon arrest or the issuance of a citation, a NRE Officer may seize the whale, parts of the whale or whale products which the officer has reasonable grounds to believe have been taken, killed, used or possessed contrary to the provisions of this Ordinance, Makah whaling regulations, a Tribal whaling permit or a Tribal training permit. In lieu of seizing a whale that has not been landed, the officer may direct the whaling captain to tow the whale to land. A NRE Officer may, in addition, seize any weapons, gear, 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, a Tribal whaling permit or a Tribal training permit. The NRE 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, the Council, and/or other entity designated by the Council. If the owner or possessor is not known, a reasonable attempt shall be made to locate that person to provide a copy of the inventory.

4.050 Disposition of Seized Whale, Whale Products and Handicrafts.

If a whale, whale products or handicrafts are seized from a whaling captain, whaling team member or other Tribal member, the NRE office shall dispose of the property in a manner consistent with

applicable Tribal and federal law. The NRE office shall consult with the Council, Makah Fisheries and NMFS prior to making a decision regarding the disposition of any seized whale, whale products or handicrafts.

4.060 Disposition of Other Seized Property.

- (a) This section applies only to seized property other than a whale, whale products or handicrafts. All such seized property shall as soon as practicable be brought to the place designated by the Tribe for storage. Such seized property shall be stored in such a manner as to minimize further damage to it.
- (b) 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 NRE office may release such seized property (except contraband) to the owner or rightful possessor.
- (c) Any person claiming ownership or rightful possession of seized property who is unable to obtain its release from the NRE 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 other Tribal law.
- (d) In circumstances where the owner or rightful possessor of seized property is unknown, and the property is neither contraband nor necessary evidence, notice shall be posted at the NRE 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. If the property is not claimed, it shall be forfeited and turned over to the Tribe for the benefit of the Tribe.

Chapter 5. Tribal Whaling Permits; Tribal Training Permits

5.010 Tribal Whaling Permit Required; Possession by Whaling Captain.

A Tribal whaling permit issued by the Council is required for every whaling expedition and hunt. Upon submission of a completed Tribal whaling permit application by a whaling captain, the Council may issue a Tribal whaling permit, provided the prerequisites set forth in Section 5.020 below are fulfilled. A member may not engage in whaling unless the member is under the leadership, supervision, and control of a whaling captain who is in possession of a valid Tribal whaling permit issued by the Council.

5.020 Prerequisites to Tribal Whaling Permit Issuance.

The Council shall not issue a Tribal whaling permit to a whaling captain without first:

- (a) determining that the whaling captain, each whaling team member, any alternates, and the Tribal hunt observer have been certified for their assigned roles;
- (b) determining based on reasonably available information, which may include the advice of Makah Fisheries and/or other entity designated by the Council, that there is an unmet traditional, subsistence, or cultural need for whale products in the Tribal community; and
- (c) providing notice of anticipated Tribal whaling permit issuance to NMFS, consistent with the type and timing of notice specified in the NMFS hunt permit.

5.030 Form and Contents of Tribal Whaling Permit.

A Tribal whaling permit must be in writing, approved by the Council, and signed by the Chair or the Chair's designee. A Tribal whaling permit shall identify:

- (a) the date the permit is issued by the Council;
- (b) the members and any alternates who will be part of the permitted whaling team, their assigned roles, and certification credentials;
- (c) the vessels that will participate in the hunt;

- (d) the area in which hunting will be permitted;
- (e) the limit on hunting approaches, unsuccessful strike attempts, and/or strikes;
- (f) the date on which the permit expires; and
- (g) any additional terms and requirements the Council may deem appropriate.

Tribal whaling permits shall incorporate all applicable requirements and limits of this Ordinance, Makah whaling regulations, NMFS waiver regulations, the NMFS hunt permit, and the notice provided by the NMFS Regional Administrator regarding PCFG strike limits. Tribal whaling permits are not public documents. To protect the privacy and safety of the certified whaling team members and alternates participating in hunting, such permits shall not be posted or otherwise made available to the public.

5.040 Coordination with NMFS Hunt Observer and Coast Guard.

The Council or its designee shall notify the U.S. Coast Guard of issuance of a Tribal whaling permit. The whaling captain shall, prior to departing on a whaling expedition, notify the Tribal hunt observer and make a reasonable effort to notify the NMFS hunt observer and the U.S. Coast Guard. This requirement shall be included in all Tribal whaling permits.

5.050 Termination or Suspension of Tribal Whaling Permit.

- (a) A Tribal whaling permit shall terminate and become invalid when any one of the following events occurs:
 - (i) the permitted whaling team lands a whale;
 - (ii) the permitted whaling team strikes a whale but does not land it within a reasonable time, provided that only the struck whale may be pursued during the reasonable time for landing;
 - (iii) the permitted whaling team has not struck or landed a whale before the permit's expiration date;
 - (iv) the applicable whaling season ends;
 - (v) the applicable NMFS hunt permit expires;
 - (vi) the Tribe receives written notice from the NMFS Regional Administrator that the Tribe has reached the limit of PCFG whales that may be struck in any hunting season;

- (vii) the Tribe receives written notice from the NMFS Regional Administrator that the Regional Administrator has determined that the population of the ENP gray whale stock has fallen below OSP;
 - (viii) the Tribe receives written notice from the NMFS Regional Administrator that the Regional Administrator has determined a WNP gray whale was struck during a hunt; or
 - (ix) the Council determines, at its sole discretion, to terminate the permit and provides notice to the whaling captain of such termination.
- (b) A Tribal whaling permit shall be immediately suspended when another whaling team operating under a separate Tribal whaling permit strikes a whale, provided that the Council may reinstate a suspended Tribal whaling permit consistent with the applicable NMFS hunt permit, this Ordinance, Tribal whaling regulations, and the terms and conditions of the subject Tribal whaling permit.

5.060 Tribal Training Permit; Possession by Whaling Captain.

A Tribal training permit issued by the Council is required for every training approach and training harpoon throw. Upon submission of a completed Tribal training permit application by a whaling captain, the Council may issue a Tribal training permit. A member may not make a training approach or a training harpoon throw unless the member is under the leadership, supervision, and control of a whaling captain who is in possession of a valid Tribal training permit issued by the Council, or Makah Fisheries as designated by the Council. The Council shall not issue a Tribal training permit to a whaling captain without first providing notice of anticipated Tribal training permit issuance to NMFS, consistent with the type and timing of notice specified in the NMFS hunt permit.

Training approaches and training harpoon throws are optional training activities that a whaling team may carry out at the discretion of the whaling captain. Training approaches and training harpoon throws are not prerequisite to obtaining a Tribal whaling permit.

5.070 Form and Contents of Tribal Training Permit.

A Tribal training permit must be in writing and signed by the Council Chair, the Chair's designee, or the Director of Makah Fisheries. A Tribal training permit shall identify:

- (a) the date the permit is issued by the Council or Makah Fisheries;
- (b) the members who will participate in the permitted training activities and their assigned roles;
- (c) the vessel(s) that will participate in training approaches and training harpoon throws;
- (d) the area in which training approaches and/or training harpoon throws will be permitted;
- (e) the limit on training approaches and/or training harpoon throws;
- (f) the date on which the permit expires; and
- (g) any additional terms and requirements the Council or Makah Fisheries may deem appropriate.

Tribal training permits shall incorporate all applicable requirements and limits of this Ordinance, Makah whaling regulations, NMFS waiver regulations, and the NMFS hunt permit. Tribal training permits are not public documents. To protect the privacy and safety of Makah members participating in training activities, such permits shall not be posted or otherwise made available to the public.

5.080 Termination of Tribal Training Permit.

A Tribal training permit shall terminate and become invalid when any one of the following events occurs:

- (a) the limit on training approaches and/or training harpoon throws is reached;
- (b) the permit expires; or
- (c) the Council determines, at its sole discretion, to terminate the permit and provides notice to the whaling captain of such termination.

Chapter 6. Training and Certification Process

6.010 Certification of Whaling Captain, Members of Whaling Team, and Tribal Hunt Observer.

The Council shall establish, with the advice of Makah Fisheries and/or other entity designated by the Council, certification guidelines and a certification process for:

- (a) whaling captains;
- (b) harpooners;
- (c) riflemen;
- (d) safety officers;
- (e) Tribal hunt observers; and
- (f) other whaling team members and alternates.

Makah Fisheries and/or other entity designated by the Council shall implement the certification process and ensure compliance with the certification guidelines. 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 and, where required by the certification guidelines, has demonstrated the qualifications commensurate with the duties and responsibilities of their assigned role on the team. Certification records shall be maintained by Makah Fisheries and/or other entity designated by the Council.

6.020 Certification Required.

It is a violation of the Ordinance for a member to participate in a whaling expedition unless they have been certified for their assigned role on the whaling team pursuant to the certification guidelines and certification process established under this Chapter.

Chapter 7. Whaling Vessels, Equipment and Hunting Methods

7.010 Vessels.

A whaling expedition must include one or more canoes and one or more chase boats. If no chase boat has capacity to tow an adult whale to port, the whaling expedition must have one support boat with this capability on call and available to promptly meet the whaling expedition.

7.020 Whaling Canoe.

Any canoe used in whaling: shall be of a suitable size and length for whaling; shall be manned by a harpooner and an adequate number of paddlers; and may be manned by a diver.

7.030 Chase Boat.

Any chase boats used in whaling: shall be motorized; shall be manned by a skipper, a rifleman, and a safety officer; and may be manned by a diver and/or the Tribal hunt observer.

7.040 Whaling Harpoons.

All harpoons used in whaling must bear a permanent distinctive mark identifying the whaling captain in charge of the whaling team using the harpoon. All whaling harpoons must be connected to one or more floats. The whaling harpoon used for the initial strike must be equipped with a toggle point. Only a certified harpooner may make a harpoon throw during a hunt.

7.050 Whaling Rifles.

All rifles used in whaling must be of adequate power for firing a bullet to penetrate the central nervous system of a whale (.50 caliber or higher) and approved by the Council, with the advice of Makah Fisheries and/or other entity designated by the Council, for use in whaling. The whaling team shall have on board the chase boat carrying the rifleman at least two (2) approved whaling rifles and sufficient ammunition to dispatch a whale. Only a certified rifleman may discharge a whaling rifle during a hunt.

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 shall pursue the whale, and the rifleman aboard the chase boat shall 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.

- (a) No member may strike, make a training harpoon throw on, or approach a whale calf or a whale accompanied by a calf after a member of the whaling team has identified the presence of a calf.
- (b) No member shall be in violation of this section or section 11.020(f) if:
 - (i) a whale calf or a whale accompanied by a calf comes to within 100 yards of a vessel carrying one or more member(s); or

(ii) a member identifies the presence of a calf during an approach; provided, the member or whaling team expeditiously endeavors to distance itself at least 100 yards from the calf or whale accompanied by a calf after identification of the presence of a calf.

7.080 Prohibition on Striking Whales Other Than ENP Gray Whales.

No member may strike a whale that is not an ENP gray whale, consistent with the June 18, 2024 NMFS approval of the Tribe's waiver request.

7.090 Discharging Rifle; Role of Safety Officer.

The rifleman and safety officer shall coordinate to ensure the safe discharge of the rifle from the chase boat and shall make best efforts to apply the safety requirements approved by the Council.

7.100 Visibility – Suspension of Hunt.

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

7.110 Towing the Whale.

The crew of the chase boat or support boat 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 or 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, training approaches, and training harpoon throws shall occur within the portion of the Tribe's U&A in U.S. waters to the west of the Bonilla-Tatoosh Line, provided that a whale

struck by a whaling team may be pursued to an area that is otherwise closed to whaling under this Ordinance, Makah whaling regulations, or a Tribal whaling permit in order to dispatch the whale and secure it for towing.

8.020 Open Area Restricted by Tribal Whaling Permits and Tribal Training Permits.

Any Tribal whaling permit or Tribal training permit may restrict whaling, training approaches, and training harpoon throws to a designated subarea within the area opened to whaling and training under Makah whaling regulations pursuant to Section 1.050 above.

Chapter 9. Use of Whale Products and Handicrafts

See Appendix A for chart illustrating the requirements and limitations on use of whale products and handicrafts.

9.010 Tribal Management of Use of Whale Products and Handicrafts.

The Council, Makah Fisheries, and/or other entity designated by the Council shall be responsible for managing all activities of members under this Chapter, pursuant to Section 3.010 above.

9.020 Prohibition on Wasting.

Upon landing a whale, the whaling captain and whaling team members shall not cause the whale to go to waste nor fail to make all reasonable efforts to prevent waste.

9.030 Whale Products – General Requirements and Limits.

- (a) Whale products do not include handicrafts. *See* Section 2.010(tt) above.
- (b) Whale products harvested pursuant to this Ordinance and Makah whaling regulations shall:
 - (i) be used exclusively for local consumption and/or for cultural or ceremonial purposes, consistent with the catch limit approved by the International Whaling Commission; and
 - (ii) not be sold or offered for sale.
- (c) No member may receive money for participation in whaling.

9.040 Edible Whale Products – Use and Restrictions.

- (a) Members may possess, consume and transport edible whale products, and may share and barter such products with other members, both within and outside the Makah Reservation, subject to the following restrictions:
 - (i) Within the Reservation, members may share edible whale products with any person.
 - (ii) Outside the Reservation, members may share edible whale products:
 - (A) at the member's residence with any person, provided the products are shared for consumption at the member's residence; or
 - (B) with any person attending a tribal or intertribal gathering sanctioned by the Council, so long as there is not more than two (2) pounds of such edible product per person attending the gathering.
 - (iii) Members may not barter edible whale products with non-members under any circumstances.
- (b) Non-members may possess, consume, and transport edible whale products within the Reservation so long as the products are shared by a member. Outside the Reservation, non-members may possess, consume and transport edible whale products only at a member's residence or at a Tribal or intertribal gathering sanctioned by the Council if such products are shared by a member and the person consumes the products at the gathering.

9.050 Nonedible Whale Products – Use and Restrictions.

Members may possess nonedible whale products, may transport such products, and may share and barter such products with other members, both within and outside the Makah Reservation.

9.060 Handicrafts – Marking, Certification, Registration, and Reporting.

- (a) The Tribe shall maintain an official registration system to ensure the authenticity of Makah handicrafts. Prior to any sale pursuant to Section 9.070 below, all handicrafts must be authenticated by completing the following requirements:
 - (i) permanently marked with a distinctive marking approved by the Council;
 - (ii) certificated by the Council or its designee as an authentic Makah handicraft; and
 - (iii) entered in the Tribe's official registry of handicrafts.
- (b) The official registry of Makah handicrafts shall include the following information for each authenticated handicraft:
 - (i) date of certification;
 - (ii) the permanent distinctive mark identifying the article as a Makah handicraft;
 - (iii) brief description of the handicraft, including artist's full name, whale product(s) used, and approximate size; and
 - (iv) at least one digital photograph of the entire handicraft.

A copy of the official registry of Makah handicrafts shall be provided to NMFS personnel, including NMFS enforcement officers, upon request.

- (c) Pursuant to Section 10.030 below and Appendix B of this Ordinance, by April 1 of each year, the Tribe shall prepare and submit to NMFS an annual handicraft report that enumerates all handicrafts certified during the previous calendar year and includes for each such handicraft the information required under subsection (b)(i-iv) of this Section.

9.070 Handicrafts – Use and Restrictions on Non-Authenticated Handicrafts.

The following restrictions govern Makah handicrafts that have not been marked, certificated, and registered (non-authenticated) pursuant to Section 9.050 above.

- (a) Both within and outside the Makah Reservation:
 - (i) members may possess and transport non-authenticated handicrafts.

- (ii) members may share and barter with other members non-authenticated handicrafts.
- (b) Within the Makah Reservation:
 - (i) members may share or barter non-authenticated handicrafts with any person;
 - (ii) non-members may possess and transport non-authenticated handicrafts, provided the non-authenticated handicraft was shared or bartered by a member; and
 - (iii) non-members may share or barter non-authenticated handicrafts only with members.

9.080 Handicrafts – Conveyance and Commerce of Authenticated Handicrafts.

In the United States, any person may possess, transport, share, barter, offer for sale, sell, or purchase Makah handicrafts, provided such handicrafts are authenticated pursuant to Section 9.050 above. Authenticated handicrafts may be delivered, carried, transported, or shipped in interstate commerce.

Chapter 10. Monitoring and Reporting

10.010 Monitoring – Tribal and NMFS Hunt Observers; Hunting.

- (a) A Tribal hunt observer shall accompany each whaling expedition.
- (b) The Tribal hunt observer shall record in a hunting logbook approved by Makah Fisheries or other entity designated by the Council the time, date, and location (latitude and longitude, accurate to at least the nearest second or decimal minute) of:
 - (i) each hunting approach of a gray whale;
 - (ii) each attempt to strike a gray whale; and
 - (iii) each gray whale struck.
- (c) For each gray whale struck, the Tribal hunt observer shall record in a hunting logbook whether the whale was landed. If not landed, the Tribal hunt observer will:

- (i) describe the circumstances associated with the striking of the whale;
 - (ii) estimate whether the whale suffered a wound that might be fatal;
 - (iii) note the number and method(s) of strikes and attempted strikes;
 - (iv) estimate the whale's total length;
 - (v) collect digital photographs of the whale; and
 - (vi) note any other observations concerning the whale or circumstances of the hunt.
- (d) For each gray whale landed, the Tribal hunt observer shall record in a hunting logbook, in addition to the information required pursuant to subsection (b) of this Section:
 - (i) the number and method(s) of strikes and attempted strikes;
 - (ii) the body length (as measured from the point of the upper jaw to the notch between the tail flukes);
 - (iii) the extreme width of the flukes;
 - (ii) the sex of the whale;
 - (iii) if the whale is female, lactation status and the length and sex of any fetus;
 - (iv) the time interval between the initial strike and the death of the whale
 - (v) photographs of various parts of the whale, pursuant to Appendix B section (2)(B); and
 - (vi) any other observations concerning the whale or circumstances of the hunt.
- (e) For each gray whale approached by the whaling team, the Tribal hunt observer shall make every reasonable attempt to collect photographs useful for photo-identification purposes.
- (f) Whaling captains shall allow a NMFS hunt observer to accompany and observe any hunt. It is a violation of this Ordinance to deny or interfere with a NMFS hunt observer accompanying and observing a hunt.

10.020 Monitoring – Training; Logbooks.

- (a) Each vessel involved in a training approach shall have onboard a training logbook approved by Makah Fisheries and/or other entity designated by the Council for recording the date, location, and number of gray whales approached and training harpoon throws. Each training approach and training harpoon throw must be reported to the Tribal hunt observer within 24 hours.
- (b) Makah Fisheries and/or other entity designated by the Council shall maintain hunting and training logbooks as specified in Sections 10.010 and 10.020(a) above and allow persons designated by NMFS to inspect them upon request.

10.030 Reporting.

- (a) The Council or its designee shall ensure, with the assistance of the Tribal hunt observer(s), Makah Fisheries, other entity designated by the Council, and/or other Tribal staff as appropriate, that the following reports are prepared and submitted to the NMFS West Coast Region office in Seattle as follows:

Report	Submission Date
1. Tribal certification report	30 days prior to each hunting season (and updated as needed)
2. Incident report	48 hours after striking a gray whale
3. Hunt report	30 days after the end of each hunting season
4. Annual approach report	January 15
5. Annual handicraft report	April 1

Each required report shall contain the contents set out in Appendix B of this Ordinance.

- (b) The Council or its designee shall prepare and submit any reports required by any cooperative agreement with NOAA, the International Whaling Commission, and the Whaling Convention Act (WCA). For purposes of reporting under the WCA, 50 C.F.R. § 230.8, the Council shall serve as the “relevant Native American

whaling organization.” The WCA report shall contain the contents set out in Appendix C of this Ordinance.

10.040 Collection of Specimen Samples.

- (a) Makah Fisheries, the Tribal hunt observer, and other persons designated by the Council shall have reasonable access to landed whales to collect specimen samples. Such persons may collect, store, transfer, and analyze specimen samples from struck gray whales.
- (b) Persons designated by NMFS shall have reasonable access to landed whales to collect specimen samples for management purposes. Before persons designated by NMFS may collect, store, transfer, or analyze samples from landed gray whales for purposes other than management, they must obtain an appropriate permit from the Tribe. Persons designated by NMFS shall not compromise the safety of the hunt when making reasonable attempts to collect genetic samples from struck whales.
- (c) It is a violation of this Ordinance to deny or interfere with access to landed whales as provided under subsections (a) and (b) of this Section.

10.050 Photography and Videography of Whales and Whaling-Related Activities.

Tribal hunt observers, NMFS hunt observers, and members may collect photographs or videos as needed to document hunting and training approaches, strikes (successful and unsuccessful attempts), and landings. The Tribal hunt observer shall photograph all landed whales and struck but not landed whales consistent with the required contents of incident reports and hunt reports (*see* Appendix B).

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 requirements, processes, prohibitions and limits of this Ordinance, Makah whaling regulations and the Tribal whaling permit or Tribal training permit under which the member is whaling or engaging in whaling-

related activities. This Ordinance, Makah whaling regulations, and Tribal whaling permit or Tribal training permit shall be strictly construed against such persons, taking into account the importance of protecting the treaty right for future generations of Makahs, ensuring the Tribe's ability to effectively manage the treaty whaling right and the whaling resource, and implementing the purpose and intent of the Council in enacting this Ordinance. Copies of this Ordinance, current Makah whaling regulations, any Tribal whaling permits or Tribal training permits in effect and the NMFS waiver regulations shall be available for review in the Makah Fisheries and NRE offices. Any member shall have the opportunity to have the Ordinance, regulations, and permit(s) read to the member upon request.

11.020 Criminal Whaling Violations

- (a) Unauthorized Whaling. Any member who whales without authorization under a valid Tribal whaling permit is guilty of a Class AA Offense under the Makah Law and Order Code.
- (b) Species. Any member who whales in violation of a species provision of this Ordinance, Makah whaling regulations, a Tribal whaling permit or a Tribal training permit is guilty of a Class AA Offense under the Makah Law and Order Code.
- (c) Time and Area. Any member who whales in violation of a time or area provision of this Ordinance (unless in pursuit of a struck whale under Section 8.010), Makah whaling regulations, a Tribal whaling permit or a Tribal training permit is guilty of a Class A Offense under the Makah Law and Order Code.
- (d) Calf and Whale Accompanied by Calf – Class A. Any member who knowingly strikes or attempts to strike a whale calf or an adult whale accompanied by a calf after a member of the whaling team has identified the presence of a calf is guilty of a Class A Offense under the Makah Law and Order Code.
- (e) Calf and Whale Accompanied by Calf – Class B. Any member who knowingly makes a training harpoon throw on a whale calf or an adult whale accompanied by a calf after a member of the whaling team has identified the presence of a calf is guilty of a Class B Offense under the Makah Law and Order Code.
- (f) Calf and Whale Accompanied by Calf – Infraction. Any member who knowingly makes an approach on or fails to remain at least 100 yards away from a whale calf

or an adult whale accompanied by a calf after a member of the whaling team has identified the presence of a calf is guilty of a criminal infraction under the Makah Law and Order Code.

- (f) Unauthorized Taking. Any member who takes a whale except as authorized by a Tribal whaling permit issued under this Ordinance, Tribal training permit issued under this Ordinance, a NMFS hunt permit, or a whaling-related take authorization issued by NMFS is guilty of a Class B Offense under the Makah Law and Order Code.
- (g) Failure to Possess Whaling Permits. Any member who participates in a hunt or whaling expedition while failing to carry onboard the vessel at all times the Tribal whaling permit and the NMFS hunt permit (or an electronic copy or photocopy of these permits) is guilty of a Class C Offense under the Makah Law and Order Code.
- (h) Failure to Possess Training Permits. Any member who makes a training approach or a training harpoon throw while failing to carry onboard the training vessel at all times the Tribal training permit, the NMFS hunt permit (or an electronic copy or photocopy of these permits), and a training logbook is guilty of a Class B Offense under the Makah Law and Order Code.
- (i) Uncertified Whaling Team Member. Any member who participates in a hunt as a whaling captain, rifleman, harpooner, Tribal hunt observer, or safety officer without being certified for such position and so named in the current Tribal certification report issued under Section 10.030(a) and Appendix B, is guilty of a Class B Offense under the Makah Law and Order Code.
- (j) Exceedance of Permit Limits - Hunting. Any member who hunts or makes a hunting approach, after reaching the limits specified in the Tribal whaling permit or NMFS hunt permit is guilty of a Class A Offense under the Makah Law and Order Code.
- (k) Exceedance of Permit Limits - Training. Any member who makes a training approach or training harpoon throw after reaching the limits specified in the Tribal training permit or NMFS hunt permit is guilty of a Class B Offense under the Makah Law and Order Code.

- (l) PCFG Limits #1. Any member who hunts if the limit on PCFG whales or PCFG females that may be struck is less than one as a result of accounting per 50 C.F.R. §§ 216.115(b)(1-3) is guilty of a Class B Offense under the Makah Law and Order Code.
- (m) PCFG Limits #2. Any member who hunts after the Tribe has been notified in writing by the NMFS Regional Administrator that the limit of PCFG whales that may be struck has been reached or that the PCFG abundance is below the limits specified in 50 C.F.R. § 216.114(d)(4) is guilty of a Class B Offense under the Makah Law and Order Code.
- (n) Continuing to Hunt After Whale Landed. Any member who hunts after a gray whale has been landed and before the Tribe has received notification from the NMFS Regional Administrator in accordance with 50 C.F.R. § 216.115(b) is guilty of a Class B Offense under the Makah Law and Order Code.
- (o) Hunting if ENP Gray Whale Population Falls Below OSP. Any member who hunts after the Tribe has been notified by the NMFS Regional Administrator under 50 C.F.R. § 216.114(e) that the ENP gray whale population has fallen below optimum sustainable population is guilty of a Class B Offense under the Makah Law and Order Code.
- (p) Sale of Whale Products. Any member who sells, offers for sale, or purchases any whale products, except authenticated Makah handicrafts under Section 9.050 above, is guilty of a Class B Offense under the Makah Law and Order Code.
- (q) Export of Whale Products. Any member who exports any whale products to a foreign country is guilty of a Class A Offense under the Makah Law and Order Code.
- (r) Unlawful Barter of Gray Whale Products. Any member who barter edible whale products with a non-member is guilty of a criminal infraction under the Makah Law and Order Code.
- (s) Unlawful Sharing of Edible Gray Whale Products. Any member who shares edible whale products outside the Reservation with a non-member, except at a member's residence, or with non-members attending a Tribal or intertribal gathering sanctioned by the Council, so long as there is not more than two pounds

of edible product per person attending the gathering under Section 9.030 above, is guilty of a criminal infraction under the Makah Law and Order Code.

- (t) Unlawful Sharing or Bartering of Gray Whale Products. Any member who shares or barter nonedible whale products:

- (i) outside the Makah Reservation with a non-member, except Makah handicrafts that are authenticated under Section 9.050 above; or
- (ii) within the Makah Reservation with a non-member, except a product that has been fashioned into a Makah handicraft, regardless of whether the handicraft has been authenticated under Section 9.050 above

is guilty of a Class C Offense under the Makah Law and Order Code.

- (u) Failure to Provide Permits. Any member who fails to provide required permits for inspection upon request by persons designated by NMFS is guilty of a Class C Offense under the Makah Law and Order Code.
- (v) Non-Members on Whaling Team. Any whaling captain who allows non-members to be part of a whaling team is guilty of a Class A Offense under the Makah Law and Order Code.
- (w) Non-Members or Non-Tribal Hunt Observers in Training or Hunting Vessel. Any whaling captain who allows anyone other than members, Tribal hunt observers, Tribal hunt observer assistants, or NMFS hunt observers to be in a training or hunting vessel engaged in hunt training or hunting is guilty of a Class B Offense under the Makah Law and Order Code.
- (x) Hunting or Training Without Required WNP Take Authorization. Any member who hunts, engages in hunting approaches, training approaches or training harpoon throws without additional authorization to take WNP gray whales, if the NMFS Regional Administrator has notified the Tribe that additional authorization is required for the take of WNP gray whales, is guilty of a Class B Offense under the Makah Law and Order Code.
- (y) Unenumerated Violations. Any member who violates a provision of this Ordinance, Makah whaling regulations, a Tribal whaling permit or a Tribal

training permit that is not specified in Sections 11.020(a) through 11.020(x) is guilty of a Class C Offense under the Makah Law and Order Code.

11.030 Supervisory Liability of Whaling Captain.

A whaling captain may be deemed liable if a member of a whaling team identified in a Tribal whaling permit or Tribal training permit issued to the whaling captain, or otherwise under the whaling captain's leadership, supervision and control, violates a provision of this Ordinance, Makah whaling regulations, a Tribal whaling permit or a Tribal training permit, and the whaling team member's violation occurred while under the whaling captain's supervision on a whaling expedition or during training activities. A whaling captain held liable under this Section is guilty of a Class B Offense under the Makah Law and Order Code.

11.040 Statute of Limitations – 5 Years.

Notwithstanding Makah Law and Order Code Sections 5.1.3, 4A.10.1, and any other section of the Code establishing a statute of limitations for criminal offenses, no complaint, information, or citation shall be filed charging the commission of any offense defined in this Ordinance unless the offense shall have been committed within a five (5) year time period, provided that prosecution (or other enforcement) of the offense by a separate sovereign shall toll this statute of limitations for the duration of that proceeding, including all appeals.

Chapter 12. Penalties

12.010 Law and Order Code Penalty.

Any member convicted by the Tribal Court of an offense under Chapter 11 shall be sentenced pursuant to the penalties provided for criminal offenses under Section 5.21 of the Makah Law and Order Code.¹

¹ Section 5.21 of the Makah Law and Order Code was enacted in 2015 and provides for sentencing of members convicted of offenses from Class AA to Class C and Infractions. See MLOC §§ 5.21.1 – 5.21.5.

12.020 Suspension of Treaty Privileges.

- (a) For any member convicted by the Tribal Court of a Class AA or Class A offense under Chapter 11, the Court shall suspend the member's fishing, hunting and/or whaling privileges for a minimum of one (1) year and a maximum of five (5) years. The length of the suspension(s) of such privilege(s) is not required to be identical for all such privileges. The Court may not impose a suspended sentence for this portion of the penalty. After the period(s) of suspension, the member must meet with the Council and receive written permission to exercise such privilege(s) again.
- (b) For any member convicted by the Tribal Court of any offense under Chapter 11 that is not a Class AA or Class A offense, the Court may suspend the member's fishing, hunting and/or whaling privileges for a maximum of three (3) years. The length of the suspension(s) of such privilege(s) is not required to be identical for all such privileges. After the period(s) of suspension, the member must meet with the Council and receive written permission to exercise such privilege(s) again.

12.030 Sentencing Considerations.

In determining a sentence, the Tribal Court shall consider the harm caused by the offender to the Tribe, the Tribe's treaty whaling right, the treaty whaling resource and Tribal resources; and shall consider the effect of the person's conduct on the Tribe's ability to maintain authorization under the NMFS waiver regulations, NMFS hunt permits, and any other whaling-related authorization issued by NMFS. The Tribal Court may seek written input with respect to these factors from the Council, Makah Fisheries, and/or other entity designated by the Council.

Chapter 13. Miscellaneous Provisions

13.010 Amendments.

The Council may amend this Ordinance as new information becomes available from Makah Fisheries, NMFS, the International Whaling Commission, and/or other entity designated by the Council, provided that the requirements of the Ordinance shall be consistent with the International Convention for the Regulation of Whaling ("ICRW") and Schedule, the NMFS waiver

regulations, any cooperative agreement with NOAA, the WCA, and other 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.

Appendix A

Use of Whale Products and Handicrafts

See Whaling Ordinance, Chapter 9 and Section 11.020(p)-(t)

	Members		Non-members	
	<u>On-Reservation</u>	<u>Off-Reservation</u>	<u>On-Reservation</u>	<u>Off-Reservation</u>
Non-edible whale products (e.g., unworked bones, baleen, etc.)	<i>Same on- and off-Reservation</i> ✓ Possess ✓ Transport ✓ Barter (non-monetary exchange) <i>with other Makah members only</i> ✓ Share (gift) <i>with other Makah members only</i> ✗ May <u>not</u> sell, purchase or export	<i>Same on- and off-Reservation</i> ✓ Possess ✓ Transport ✓ Barter (non-monetary exchange) <i>with other Makah members only</i> ✓ Share (gift) <i>with other Makah members only</i> ✗ May <u>not</u> sell, purchase or export	<i>Same on- and off-Reservation</i> ✗ May <u>not</u> possess, transport, barter, share, sell, purchase or export	<i>Same on- and off-Reservation</i> ✗ May <u>not</u> possess, transport, barter, share, sell, purchase or export

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Appendix A, *continued* – Use of Whale Products and Handicrafts – See Chapter 9 and Section 11.020(p)-(t)

	Members		Non-members	
	<u>On-Reservation</u>	<u>Off-Reservation</u>	<u>On-Reservation</u>	<u>Off-Reservation</u>
Edible whale products (e.g., meat, blubber, etc.)	<ul style="list-style-type: none"> ✓ Possess ✓ Consume ✓ Transport ✓ Barter <i>with other Makah members only</i> ✓ Share <i>with any person</i> (Makah member or non-member) ✗ May <u>not</u> sell, purchase or export 	<ul style="list-style-type: none"> ✓ Possess ✓ Consume ✓ Transport ✓ Barter <i>with other Makah members only</i> ✓ Share <i>with any person</i> (Makah member or non-member), but only if: <ul style="list-style-type: none"> a) At the Makah member's residence, to be consumed at the residence -or- b) At a tribal or intertribal gathering approved by the Council, provided no more than 2lbs. of edible whale product per person attending ✗ May <u>not</u> sell, purchase or export 	<p><i>Only if shared by a Makah member, then a non-member may:</i></p> <ul style="list-style-type: none"> ✓ Possess ✓ Consume ✓ Transport ✗ May <u>not</u> share, barter, sell, purchase or export 	<p><i>Only if shared by a Makah member, then a non-member may:</i></p> <ul style="list-style-type: none"> a) At a Makah member's residence, to be consumed at the residence -or- b) At a tribal or intertribal gathering approved by the Council, provided no more than 2lbs. of edible whale product per person attending: ✓ Possess ✓ Consume ✓ Transport ✗ May <u>not</u> share, barter, sell, purchase or export

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Appendix A, *continued* – Use of Whale Products and Handicrafts – See Chapter 9 and Section 11.020(p)-(t)

	Members		Non-members	
	<i>On-Reservation</i>	<i>Off-Reservation</i>	<i>On-Reservation</i>	<i>Off-Reservation</i>
Non-Authenticated Handicrafts (i.e., whale-based artwork <u>not</u> certificated, marked, registered)	✓ Possess ✓ Transport ✓ Barter <i>with any person</i> (Makah member or non-member) ✓ Share <i>with any person</i> (Makah member or non-member) ✗ May <u>not</u> sell, purchase or export	✓ Possess ✓ Transport ✓ Barter <i>with other Makah members only</i> ✓ Share <i>with other Makah members only</i> ✗ May <u>not</u> sell, purchase or export	<i>Only if shared -or- bartered by a Makah member:</i> ✓ Possess ✓ Transport ✓ Barter <i>with Makah members only</i> ✓ Share <i>with Makah members only</i> ✗ May <u>not</u> sell, purchase or export	✗ May <u>not</u> possess, transport, barter, share, sell, purchase or export
Authenticated Handicrafts (i.e., whale-based artwork that has been certificated, marked, registered in official Makah handicraft registry)	<i>Same on- and off-Reservation, for Makah members and non-members</i> In the U.S., ✓ Sell ✓ Offer for sale ✓ Purchase ✓ Possess ✓ Transport ✓ Barter ✓ Share ✗ May <u>not</u> export (send or bring to another country)	In the U.S., ✓ Sell ✓ Offer for sale ✓ Purchase ✓ Possess ✓ Transport ✓ Barter ✓ Share ✗ May <u>not</u> export (send or bring to another country)	In the U.S., ✓ Sell ✓ Offer for sale ✓ Purchase ✓ Possess ✓ Transport ✓ Barter ✓ Share ✗ May <u>not</u> export (send or bring to another country)	In the U.S., ✓ Sell ✓ Offer for sale ✓ Purchase ✓ Possess ✓ Transport ✓ Barter ✓ Share ✗ May <u>not</u> export (send or bring to another country)

Appendix B

Reporting Requirements under Section 10.030

See also NMFS Waiver Regulations, 50 C.F.R. § 216.118(a)(6)(i)-(v)

Report	Submission Date
1. Tribal certification report	30 days prior to each hunting season (and updated as needed)
2. Incident report	48 hours after striking a gray whale
3. Hunt report	30 days after the end of each hunting season
4. Annual approach report	January 15
5. Annual handicraft report	April 1

(1) **Tribal certification report.** Thirty (30) days prior to the beginning of a hunting season, the Tribe will provide NMFS with a report that includes the names of all certified Tribal hunt observers and members who have been certified to participate in a hunt as whaling captains, riflemen, harpooners, and safety officers. Additional names may be provided during the hunting season.

(2) **Incident report.** An incident report must be submitted within 48 hours after striking a gray whale. The report may address multiple gray whales so long as the Tribe submits the report within 48 hours of the first gray whale being struck. An incident report must contain the following information:

(A) Struck and lost gray whale(s): The whaling captain's name; the Tribal hunt observer's name; the date, location (latitude and longitude, accurate to at least the nearest second or decimal minute), time, and number of strikes and attempted strikes if any; the method(s) of strikes and attempted strikes; an estimate of the whale's total length. The report will describe the circumstances associated with the striking of the whale and estimate whether the animal suffered a wound that might be fatal. The report will include all photographs taken by a Tribal hunt observer of gray whales struck and lost by the whaling crew. The report may also contain any other observations by the Tribe concerning the struck and lost whale(s) or circumstances of the hunt.

(B) Struck and landed gray whale(s): The whaling captain's name; the Tribal hunt observer's name; the date, location (latitude and longitude, accurate to at least the nearest second), time, and number of strikes and attempted strikes if any; the method(s) of strikes and attempted strikes; the whale's body length as measured from the point of the upper jaw to the notch between the tail flukes; an estimate of the whale's maximum girth; the extreme width of the tail flukes; the whale's sex and, if female, lactation status; the length

and sex of any fetus in the landed whale; photographs of the whale(s), including the entire dorsal right side, the entire dorsal left side, the dorsal aspect of the fluke, and the ventral aspect of the fluke. All such photographs must include a ruler to convey scale and a sign specifying the Tribe's name, whaling captain's name, whale species, and date. The report must also describe the time to death (measured from the time of the first strike to the time of death as indicated by relaxation of the lower jaw, no flipper movement, or sinking without active movement) and the disposition of all specimen samples collected and whale products, including any whale products deemed unsuitable for use by Tribal members. The report may also contain any other observations by the Tribe concerning the landed whale or circumstances of the hunt.

(3) **Hunt report.** Within 30 days after the end of each hunting season, the Tribe will submit a report to NMFS that describes the following information for each day of hunting:

(A) Struck and lost gray whale(s): The report must contain the information specified in Paragraph 2(A) above.

(B) Struck and landed gray whale(s): The report must contain the information specified in Paragraph 2(B) above.

(C) Hunting approaches and unsuccessful strike attempt(s): For each gray whale approached or subjected to an unsuccessful strike attempt(s), the report must contain: the whaling captain's name; the Tribal hunt observer's name; the date, location (latitude and longitude, accurate to at least the nearest second), time, and number of approaches and unsuccessful strike attempts; the method of attempted strikes; an estimate of the total length of any whale subjected to an unsuccessful strike attempt; and all photographs taken by a Tribal hunt observer of gray whales approached by the whaling crew. The report may also contain any other observations by the Tribe concerning the whale(s) approached or subjected to unsuccessful strike attempts or circumstances of the hunt.

(4) **Annual approach report.** By January 15 of each year, the Tribe will submit a report containing the dates, location, and number of gray whales subjected to hunting approaches, training approaches, and training harpoon throws during the previous calendar year. The report may also contain any other observations by the Tribe concerning the approached whales or circumstances of the approaches and training harpoon throws.

(5) **Annual handicraft report.** By April 1 of each year, the Tribe will submit a report that describes all Makah handicrafts certificated by the Council or its designee during the previous calendar year. The report must contain the following information for each handicraft certificated:

- (a) The date of the certification;
- (b) The permanent distinctive mark identifying the article as a Makah handicraft;
- (c) A brief description of the handicraft, including artist's full name, gray whale product(s) used, and approximate size; and
- (d) At least one digital photograph of the entire handicraft.

Appendix C

Reporting Requirements under Whaling Convention Act, 50 C.F.R. § 230.8 (2024)

50 C.F.R. § 230.8

Reporting by whaling captains.

(a) The relevant Native American whaling organization shall require each whaling captain licensed pursuant to [50 C.F.R. § 230.5] to provide a written statement of his/her name and village of domicile and a description of the distinctive marking to be placed on each harpoon, lance, and explosive dart.

(b) Each whaling captain shall provide to the relevant Native American whaling organization an oral or written report of whaling activities including but not limited to the striking, attempted striking, or landing of a whale and, where possible, specimens from landed whales. The [NMFS] Assistant Administrator is authorized to provide technological assistance to facilitate prompt reporting and collection of specimens from landed whales, including but not limited to ovaries, ear plugs, and baleen plates. The report shall include at least the following information:

(1) The number, dates, and locations of each strike, attempted strike, or landing.

(2) The length (taken as the straight-line measurement from the tip of the upper jaw to the notch between the tail flukes) and the sex of the whales landed.

(3) The length and sex of a fetus, if present in a landed whale.

(4) An explanation of circumstances associated with the striking or attempted striking of any whale not landed.

(c) If the relevant Native American whaling organization fails to provide [NMFS] the required reports, the [NMFS] Assistant Administrator may require the reports to be submitted by the whaling captains directly to [NMFS].