

***** ERRATA *****

**61ST MEETING OF THE
INTERNATIONAL WHALING
COMMISSION (IWC) TO BE HELD
IN MADEIRA, PORTUGAL
JUNE 22-26, 2009**

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON INSULAR AFFAIRS,
OCEANS AND WILDLIFE

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

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This errata corrects the inadvertent omission of a letter submitted for the record by the Makah Indian Tribe for the hearing held by the Subcommittee on Insular Affairs, Oceans and Wildlife on May 20, 2009. The letter has been added to the Table of Contents and can be found on new pages 34 and 35.

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The hearing record will be held open for 10 days for these responses. Again, I want to thank the members of the panel for being here. I think we have learned a great deal, and we will continue to investigate, and hopefully something will come of all of this as we proceed forward. So if there is no further business before the Subcommittee, the Chairwoman again thanks the Members of the Subcommittee and our witnesses. The Subcommittee stands adjourned.

[Whereupon, at 2:12 p.m., the Subcommittee was adjourned.]
[Additional material submitted for the record follows:]

Statement submitted for the record by the Makah Indian Tribe

The Makah Indian Tribe has a documented 1500-year history of whaling in the waters adjacent to its home on the most northwestern part of the contiguous United States in Washington State. The Tribe's subsistence culture—both past and present—relies heavily on whales and the other abundant resources of the marine environment. Whaling is also fundamental to Makahs' identity and social framework and is reflected in song, dance, art and ceremonies.

The vital importance of whaling led the Tribe to insist that it be guaranteed the right to continue harvesting these animals in its usual and accustomed waters when it negotiated a land cession treaty with the United States in 1855. As a result, the Treaty of Neah Bay, 12 Stat. 939 (1855), is the only treaty between the United States and an Indian tribe that expressly secures the right to hunt whales. That right continues, undiminished, to the present.

Despite the treaty guarantee, the Tribe voluntarily ceased whaling in the 1920s because of the overexploitation of gray whales by non-Indian commercial whaling operations. This decision was a direct consequence of both the mis-management of the resource by non-Indians and the Tribe's conservation values. Being dependant on its natural resources, the Tribe has always sought to live in harmony with the marine environment and utilize these resources sustainably.

When the gray whale was successfully removed from Endangered Species Act protection in the mid-1990s, the Tribe engaged in the complex international and domestic legal framework that had developed since it last harvested whales seven decades earlier. The Tribe worked closely with the United States delegation to the IWC to obtain an aboriginal subsistence whaling quota for the Eastern North Pacific (ENP) stock of gray whales. In 1997, the IWC approved a joint quota for ENP gray whales for the United States and the Russian Federation, which had long obtained quotas for use by the Chukotkan Natives of far northeastern Russia. Through a bilateral agreement with the Russian Federation, the United States was allocated 20 gray whales over a five-year period for use by the Makah.

In 1999, following authorization under domestic law, the Tribe successfully hunted a gray whale. The hunt was immensely significant for the Tribe as the culmination of years of effort to renew the Makahs' ceremonial and subsistence whaling tradition. The tribal community widely supported the hunt and participated in the community celebration and sharing of whale meat and blubber that followed. The rigorous training and spiritual preparation of the whaling crew also provided a focal point and positive connection to tribal history and cultural for these individuals and their families.

Since 2000, two lawsuits under domestic law have prevented further Makah whaling. These lawsuits involved challenges to the Government's compliance with the National Environmental Policy Act and the requirement of the Tribe and the Government to comply with the Marine Mammal Protection Act (MMPA). Although the Tribe strongly disagrees with the ruling that it must obtain a waiver of the MMPA's take moratorium prior to undertaking a ceremonial and subsistence hunt, in February 2005 the Tribe initiated the waiver process by submitting a waiver request to NOAA. In the past four years, the Tribe has provided NOAA with information necessary for the agency to prepare an environmental impact statement (EIS) and to determine whether to waive the take moratorium. A draft EIS was published and made available for public comment in 2008.

Although the domestic and international processes necessary to resume treaty whaling are complex and time consuming, the Tribe remains committed to following these processes through to their completion and has devoted substantial resources toward this end. Subsequent to the initial five-year quota approved by the IWC in 1997, the Tribe has coordinated with the United States IWC delegation and NOAA

to successfully secure renewals of the joint quota with the Russian Federation in 2002 and 2007. The Tribe is also actively supporting the preparation of the EIS and the ongoing MMPA waiver process.

The Tribe is actively engaged in the IWC process and the current effort to evaluate the future of this organization and develop a consensus on “the way forward.” The Tribe is concerned that the increasing polarization of the IWC in recent years will adversely impact future efforts of the United States to secure aboriginal subsistence whaling quotas and the corresponding ability of the Tribe to exercise its treaty-protected whaling rights. Unfortunately, it was only a few years ago when issues at the center of the current dispute over the future of the IWC resulted in the unjust (albeit temporary) denial of an aboriginal whaling quota.

The Makah Indian Tribe urges the Subcommittee and Committee, Congress and the United States to continue support for the joint gray whale quota with the Russian Federation and for Makah treaty-reserved whaling rights. The Tribe also urges the United States to strive to preserve an international forum where all nations may come to resolve whale conservation and scientific issues, including the limited, scientifically based subsistence harvest of whales by aboriginal peoples.

Statement submitted for the record by Nancy Sutley, Chair, Council on Environmental Quality, and Dr. Jane Lubchenco, Administrator, National Oceanic and Atmospheric Administration

We have submitted this written statement to the Subcommittee in order to respond to the request that the Obama Administration provide its views on the upcoming 61st annual meeting of the International Whaling Commission.

The Obama Administration began while the Future of the IWC process was well underway. The Administration fully understands the complexities of, and concerns regarding, this process and the key issues facing the IWC. The Administration has asked the current United States Commissioner, Dr. William Hogarth to hold over in his post through the June annual meeting so that he can remain Chairman of the Commission, a position that he holds as an individual. We appreciate Dr. Hogarth’s leadership as both U.S. Commissioner and IWC Chair and his success at bringing a respectful level of discourse among the IWC members as they discuss the difficult issues facing the IWC. We expect the President to appoint a new U.S. Commissioner to replace Dr. Hogarth following the end of this year’s IWC meeting.

As we have stated earlier, the Administration would like to see the International Whaling Commission (IWC) serve as the premier international forum to resolve current and emerging whale conservation issues and coordinate critical research. In this context, conservation of whales is of the utmost priority to the Obama Administration. Most importantly, the United States continues to view the commercial whaling moratorium as a necessary conservation measure because the abundance of most whale stocks are either too unknown, too low, or still recovering, and there is not yet an effective, comprehensive conservation scheme for whales that will guarantee their survival.

The Administration also strongly opposes lethal scientific whaling and considers it unnecessary in modern whale conservation management, and believes that the use of objections, reservations and an expansive interpretation of Article VIII (special permit scientific whaling) undermine the moratorium and the institution. The Administration moreover has significant concerns over the recent resumption of international trade of whale meat with imports by Japan, and exports by Iceland and Norway.

Nevertheless, the Administration is committed to furthering discussions of critical issues within the IWC because it is important for the IWC to function effectively. The IWC should be a model for international cooperation on the conservation and use of a shared global resource. It is important for us now to try to find common ground among IWC members, which are many of the same nations with whom we need to cooperate on even more urgent international environmental matters. However, we reserve judgment on various proposals regarding a way forward on the IWC until discussions are completed, which, in our view must occur before the annual meeting in 2010. The time to resolve these issues is now. It is our view that any resolution of outstanding issues, to be acceptable, must result in a significant improvement in the conservation status of whales and be based on sound science.

In closing, the failure to resolve these issues is not an acceptable outcome to the United States. We intend to use the Administration’s influence to achieve a resolution by 2010 that will ensure the long-term functioning of the IWC, and greater protections for the world’s great whales.