



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #MSP-15-017

**TITLE: Support Makah Treaty Whaling Rights Amendment to Prior Resolution #MOH-04-025**

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### NCAI HEADQUARTERS

1516 P Street, N.W.  
Washington, DC 20005  
202.466.7767  
202.466.7797 fax  
[www.ncai.org](http://www.ncai.org)

**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, the health, safety, welfare, education, economic and employment opportunity, and preservation of culture and natural resources are primary goals and objectives of NCAI; and

**WHEREAS**, the Makah Tribe of Neah Bay, Washington, has a treaty right to hunt whales under the Treaty of Neah Bay of 1855; and

**WHEREAS**, when the gray whale was removed from the Endangered Species List, the Makah Tribe notified the United States Government of its desire to exercise its whaling treaty right; and

**WHEREAS**, the Tribe successfully hunted a gray whale in May 1999; and

**WHEREAS**, since June 2000, the Tribe has been prevented from hunting whales by a series of federal court decisions; and

**WHEREAS**, the 2004 decision by the Ninth Circuit Court of Appeals in *Anderson v. Evans* (371 F.3d 247 (2004)) requires that, prior to exercising treaty whaling rights, the Makah Tribe must obtain a waiver of the take moratorium under the Marine Mammal Protection Act (MMPA), a process which was not tailored to address Indian treaty rights; and

**WHEREAS**, the ruling in *Anderson v. Evans* sets a dangerous precedent that threatens the Treaty hunting and fishing rights of Tribes across the United States and Alaska; and

**WHEREAS**, the Makah Tribe submitted a waiver request to the National Oceanic and Atmospheric Administration (NOAA) on February 11, 2005 seeking approval to harvest an average of four gray whales per year; and

**WHEREAS**, the first step to evaluate the waiver request is for NOAA to prepare a draft Environmental Impact Statement (EIS) in accordance with the provisions of the National Environmental Policy Act; and

**WHEREAS**, after the completion of the public comment period, the NOAA West Coast Regional Administrator will make an initial determination whether to waive the take moratorium, which would be followed by other procedures required by the MMPA, including formal on-the-record rulemaking involving a hearing in front of an administrative law judge.

**NOW THEREFORE BE IT RESOLVED**, that NCAI continues to fully support of the right of the Makah Tribe to freely exercise its treaty right to hunt whales without threats, intimidation, harassment, or interference, while supporting the rights of fishing tribes to engage in marine mammal management; and

**BE IT FURTHER RESOLVED**, NCAI the National Oceanic and Atmospheric Administration to grant the Makah Tribe's waiver request on the take moratorium; and

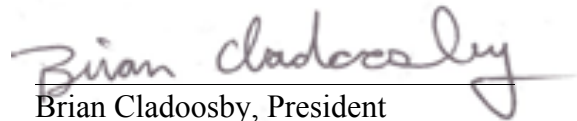
**BE IT FURTHER RESOLVED**, that NCAI supports the Makah Tribe in taking all necessary steps—judicial, legislative, and administrative—to expedite the waiver process to fulfill the federal government's trust responsibility to protect and support treaty whaling rights; and

**BE IT FURTHER RESOLVED**, that NCAI calls upon the United States government and all of its agencies to support the efforts of the Makah Tribe to restore its full treaty whaling rights; and

**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

#### CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2015 Midyear Session of the National Congress of American Indians, held at the St. Paul River Centre, St. Paul, MN, June 28 to July 1, 2015, with a quorum present.

  
Brian Cladoosby, President

ATTEST:



Aaron Payment, Recording Secretary