UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
West Coast Region
1201 NE Lloyd Blvd., Ste. 1100
Portland, Oregon 97232

MEMORANDUM FOR: THE FILE

FROM: Steve Stone
Protected Resources Division

DATE: February 19, 2015

SUBJECT: Staff Responses to Comments on the 2008 Draft Environmental Impact Statement on the Makah Tribe's Request to Hunt Gray Whales

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We developed this Memorandum for the File to capture staff consideration of the comments we received on the 2008 draft environmental impact statement (DEIS) regarding the Makah Tribe's request to hunt gray whales. Our consideration of those comments informed the development of the new 2015 DEIS and is an integral part of the record.

Background

In May 2008, pursuant to the National Environmental Policy Act (NEPA), the National Marine Fisheries Service (NMFS) released a DEIS concerning the Makah Indian Tribe's February 2005 request to resume limited hunting of eastern North Pacific (ENP) gray whales (*Eschrichtius robustus*) in the coastal portion of the Tribe's usual and accustomed fishing grounds (U&A), off the coast of Washington State, for ceremonial and subsistence purposes. Beginning May 9, 2008, NMFS made the DEIS available for public review (73 FR 26375) for 60 days. In response to multiple stakeholder requests, we extended the initial public comment period for an additional 38 days (73 FR 33814, June 13, 2008), making for a total comment period of 98 days. We also held three public meetings during that period.

We received more than 800 pages of comments on the 2008 DEIS, by mail, fax, and email. Individual commenters numbered more than 400 and included state and federal entities, tribal governments, and both nonprofit organizations and interested individuals from the United States and around the world. In the fall of 2008, after reviewing all the comments for substantive issues and new information, we began developing responses to them and considering whether we might need to include new alternatives to address some of the comments.

Soon after releasing the 2008 draft EIS, several substantive scientific issues arose that required an extended period of consideration for our NEPA analysis, including: (1) potential bias in population estimates for ENP gray whales (Laake et al. 2009); (2) genetic evidence of population substructure indicating that PCFG whales may warrant consideration as a separate management unit (Frasier et al. 2011; Lang et al. 2011); and (3) whale tracking and sampling data indicating that at least some individuals from summer feeding grounds utilized by the endangered western stock migrate across the Pacific and

into areas used by ENP gray whales (including the Makah U&A). This information is also under review at the IWC. Given these developments and the fact that it had been 7 years since the Tribe had submitted its initial request, on May 21, 2012, we announced we were terminating the 2008 DEIS and intended to prepare a new DEIS (77 Fed. Reg. 29967).

In developing the current DEIS, we carefully reviewed the comments on the 2008 DEIS and developed draft responses to those that provided new information or raised the most substantive issues. To capture that consideration, and aid reviewers of the current DEIS, we prepared this memorandum, which: lists the comments received on the 2008 DEIS, either summarizes the comment or repeats the comment verbatim, and includes the draft responses to a number of comments that we considered while developing the current DEIS. The memorandum does not contain responses to each individual comment, given the large number of comments simply raising support or lack of support for a hunt, the significant overlap among the comments provided, and the fact that the 2008 DEIS was terminated.

The more than 400 comments we received covered many different topics, ranging from specific biological, ecological, or legal issues to more general cultural, personal, or spiritual values. For example, a substantial number of the public comments were concerned with potential hunting impacts on Pacific Coast Feeding Group (PCFG) whales, while others raised questions about issues of precedence on the world stage or the cultural significance of the hunt to the Makah Tribe. Individual commenters typically addressed multiple topics in a single letter, and topics often were repeated from one letter to the next (although in different combinations). In some cases topics were outside the scope of the DEIS.

We are interested in sharing information about the content of the 2008 public comments and clarifying how we took those comments into consideration when developing the current EIS. However, given the extensive number of comments, the overlap among them, and the fact that the 2008 DEIS has been terminated, we have elected not to present each individual comment. Instead, we have selected a representative sampling of 10 comments that raise the most substantive issues and that show the wide range of issues brought up by commenters. These are presented in Attachment 1of this memorandum, while Attachment 2 identifies the remainder of the comments received (without responses). Attachment 3 includes information and tables that we referenced in the draft responses.

Attachment 1: Responses to Selected Comments
Australians for Animals International – Comments submitted August 14, 2008 by S. Arnold.

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AFA1	Australians for Animals Int. (AFA Int) makes the following formal objection to the 2008 Makah DEIS. In summary, AFA Int. believes there is no plausible evidence to suggest that any proper comprehensive review of the gray whale has been undertaken since the delisting in 1994. The five-year monitoring program as required under the ESA was never funded and many, if not most of the recommendations following delisting did not eventuate. '*The draft plan, dated October 1993 was not finalized by the NMFS Office of Protected Resources; however it has provided the framework and guidelines for research, monitoring and management over the past five years*.'[1]	On January 3, 1993, we issued a determination that the ENP gray whale stock had recovered and no longer required the protections of the ESA (58 FR 3121). On June 3, 1994 we announced the availability of a monitoring plan (59 FR, Issue 106). The monitoring plan was not finalized. Attachment 3 at the end of this memo presents a separate table showing the actions recommended by the team and the research and monitoring that has been completed or is ongoing relevant to each recommendation. On October 6, 1999 we published the completion of a status review in which we found that the ENP gray whale stock should not be re-listed (64 FR 54275). The status review team recommended that the stock be monitored for an additional 5 years and identified an extensive list of potential research projects to "further improve our understanding of the status of this whale stock" (Rugh et al. 1999). Attachment 3 to this memo presents a table showing the actions recommended by the team and the research and monitoring that has been completed or is ongoing relevant to each recommendation. The status review team concluded there was sufficient information available to reach a determination about the status of the stock.
AFA2	A recommendation for a second five-year research plan was never implemented. NMFS SWFSC has advised AFA Int. that no budget funding has been received for the gray whale since 2000.	It is difficult to respond to the representation of what a NMFS employee said in a phone conversation. Contrary to the representation, we have invested considerable resources in monitoring the ENP stock of gray whales and extensive monitoring continues at present. In addition to the 1994 draft monitoring plan, we included a monitoring plan in our 1999 status review. The monitoring and research conducted by NMFS and others is too extensive to list here. Attached to this comment letter are two tables detailing the recommendations from the 1994 and 1999 monitoring plans and describing the monitoring and research done since 1994 and 1999, respectively. More monitoring and research are being conducted than is captured in the 1994 and 1999 plans. The 2008 DEIS and new DEIS include references to most of the publications that have resulted from that research and monitoring.

[1] Status Review 1999

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AFA3	Without doubt the most critical factor facing gray whale survival is climate change. As the Arctic ice melts at a rate faster than any modeling or predictions, the fate of all marine mammals dependent on a functioning Artic ecosystem hangs in the balance. The rate of change is happening so rapidly that no agency can predict the outcome. At this time, the only possible management criterion must be adoption of the precautionary principle and immediate relisting of the gray whale under the provisions of the ESA.	In response to this and other comments, the new DEIS describes the potential impacts of climate change on ENP gray whales (Subsection 3.4.3.6.11, Climate Change and Ocean Acidification).
AFA4	Scientific research demonstrates a damning case of massive ecosystem changes in the Arctic and subarctic. Oil and gas leases in the Gray whale feeding grounds will impact all marine mammals which rely on these marine ecosystems.	In response to this and other comments, the new DEIS contains an updated discussion of the potential impacts of oil and gas leases on ENP gray whales (Subsections 3.4.3.6.4, Oil Spills and Discharges, and 3.4.3.6.5, Offshore Activities and Underwater Noise).
AFA5	As well, resident whale habitats such as the niches in Washington, Oregon, California and Canada need to be protected to ensure the survival of the species.	Comment noted.
AFA6	The PBR value from 2000-2005 was based on a minimum population estimate of 24,717, a figure that was completely inaccurate. The severe population crash of l999/2000 of one third and more was never reflected in the PBR.	Pursuant to statute, regulations, and agency guidance, PBR is calculated on the basis of the best available information, which includes the most recent abundance estimates and may include a weighted mean of recent abundance estimates (Wade and Angliss 1997; GAMMS 2005). The decreased abundance following the 1999/2000 die-off was reflected in the abundance estimate in Rugh (2005), accompanied by a lower PBR in the 2005 stock assessment report (Angliss and Outlaw 2005). The most recent stock assessment report (Carretta et al. 2014) contains information on minimum population estimates and PBR based on abundance estimates through 2006/2007 while the most latest *draft* stock assessment report reflects updated abundance estimates through 2010/2011 (Carretta et al. 2015). These most recent abundance estimates indicate that the ENP remains stable (Durban et al. 2013). In response to this comment, we developed a table that reflects PBR and human-caused mortality as reported in the stock assessment reports from 1998 through 2013, to ensure we considered the history of gray whale PBRs (refer to Table 3-6 in Subsection 3.4.3.3.4, ENP Status, Carrying Capacity, and Related Estimates).
AFA7	Given that the Recovery Factor for all large whales is set at 0.1, AFA Int contends there is no justification for any waiver as the PBR from	The new DEIS describes information available since the 2008 DEIS was published (Subsection 3.4, Gray Whales). The analysis by Laake et al. (2009) shows that the ENP

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	2000-2005 was grossly over-inflated and the population has had no time to recover from the major population collapse in 1999-2000. The ramifications of a PBR, which was 15 times higher than the more conservative estimate for large gray whales is unknown. But given the evidence of calf numbers; emaciated whales; toxic contamination; lowest gray whale numbers ever recorded in San Ignacio; totally inadequate surveys and studies, no funding; the population cannot be described as " *healthy* " and there is no justification for a PBR of 1.0 or 0.5. On those grounds alone, the waiver must be rejected and steps taken by NOAA to urgently relist the Gray Whale.	gray whale stock has recovered from the 1999/2000 die-off. The analysis by Punt and Wade (2012) shows that the ENP gray whale stock is within its OSP range. As reported in the 2014 stock assessment report (Carretta et al. 2014), a recovery factor of 1 is appropriate in calculating PBR for ENP gray whales. Updated abundance estimates by Durban et al. (2013) show that the abundance of ENP gray whales remains stable (Subsection 3.4.3.3.3, ENP Abundance and Trends; Table 3-5).
AFA8	The Makah DEIS has highlighted an appalling situation. It is clear that the Gray whale has not had the benefit of proper funding, current science and research and at the same time, the bias exhibited by NMFS and its Gray whale scientists is a violation of the agency's mandate. AFA Int. believes the status of the Gray whale is now critical and that a comprehensive scientific review of all factors impacting on the whales' survival needs to be undertaken. The Eastern North Pacific Gray Whale needs to be relisted under the ESA as a matter of urgency.	These paragraphs summarize points made and responded to above.
AFA9	**SPIRITUAL OBJECTION.** As an organization representing conscious and aware human beings, AFA Int. objects to the slaughter of all Whales. The notion that the Makah tribe has some kind of divine right to kill Gray Whales in the 21st Century is a giant step back to the Dark Ages. A dead whale is a dead whale. A sacrificial object at an altar that no longer has relevance in a world where protecting biodiversity and the web of life must take priority if we are to honor future generations. Gray whales are part of the natural heritage of humanity. **Of all humanity**. As the most ancient Baleen whale alive today, given the	Comment noted.

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	history of extinction of the Atlantic populations and the looming extinction of the Western Pacific Gray Whale, the only option for the Makah waiver proposal is a firm denial.	
AFA10	**GRAY WHALE – MIGRATION ROUTE** AFA commissioned a GIS of the known threats to the Gray Whale along its migration route. The GIS was undertaken by the GIS Laboratory of Southern Cross University, Lismore, NSW, Australia. Table 1. Threats to Gray Whales © Australians for Animals Int.	This comment and those that follow present extensive information, which we have incorporated in the new DEIS (Subsection 3.4, Gray Whales) as appropriate. We have also incorporated new information related to these comments and available since the comment was.
AFA11	**HISTORIC CONCERNS.** A Review of the Status of Gray Whales (Eschrichtius robustus), Final Report to the US Marine Mammal Commission edited by Steven L Swartz, June l986, sums up the plight of this majestic whale. *“ *As a coastal species gray whales are continuously exposed to human activities throughout their range from the northern feeding grounds, to the coastal migration routes and within the protected waters of the breeding lagoons. Because gray whales cannot avoid exposure to marine pollution, vessel traffic, industrial noise, and*	The 2008 DEIS described range-wide threats to ENP gray whales (Subsection 3.4.3.6, Known and Potential Anthropogenic Impacts) and the new DEIS expands on that information in the same Subsection.

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	activities associated with the development of outer continental shelf resources, it has been acknowledged that these activities pose very real threats." *" It is very clear that the responsible management of the coastal habitats of the gray whale are paramount to the survival of the species. The continued recovery of the California stock of the gray whales can only be assured by coordinated efforts between the governments of Canada, Mexico, the Soviet Union and the United States.* *' …human activities throughout their range are increasing, and habitat degradation and disturbance probably pose the greatest potential threat to the survival and continued recovery of the species today. '* Swartz MMC l986) Table 2. Threats to Gray Whale Southern California © Australians for Animals Int.	

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	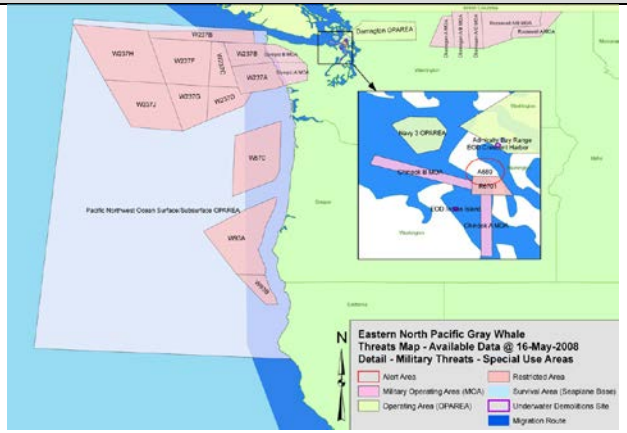 **Table 3. Military Threats to Gray Whale. © Australians for Animals Int.**	
AFA12	**BACKGROUND** There is a great deal of uncertainty in terms of knowledge of the Gray Whale. Lack of information on the true survivorship of any classes; the approximate age of reproduction or mortality inhibit proper management of the species. *The basic ecology of the gray whale is unknown*. (Chaloupka, 2003 Gray Whale lawsuit)[2]. The ENP Gray Whale is the last viable population of four to remain. The Makah DEIS fails to recognize the importance of ensuring the survival of this population.	The 2008 DEIS summarized the status of ENP gray whales (Subsection 3.4) and the potential effects of hunt alternatives individually (Subsection 4.4), and combined with other range-wide threats (Subsection 5.4, Gray Whales). The new DEIS contains updated information on the status of ENP gray whales (including PCFG whales) and WNP gray whales (Subsection 3.4); the potential effects of a new set of hunt alternatives on these whales (Subsection 4.4); and an analysis of the cumulative effect of a Makah tribal hunt combined with existing range-wide threats (Subsection 5.4, Gray Whales).
AFA13	NMFS scientists acknowledge that the Gray whale is an indicator species for the Arctic marine ecosystem and that massive ecological changes in the whales' feeding grounds is putting the future survival of the species at risk.	Moore (2008) describes six lines of evidence indicating that gray whales serve as sentinels of ecosystem transitions. Her conclusion is that "one important way to [broaden and integrate our research approach] is to use marine mammals as sentinels

2. Hawaii Green Party v. Evans Sec. Dept of Commerce

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	Dr Sue Moore has described gray whales, as "*sentinels of the sea because the creatures are sampling and responding to the marine environment from Mexico to Alaska, and like walruses and polar bears, are early indicators of ecological crisis*."	to ecosystems in transition." Moore (2008) draws no conclusions about the future survival of any species.
AFA14	Yet change, with the attendant looming ecological crisis, and virtually every major threat including growing industrialization of the feeding grounds have been excluded from the DEIS. A supplementary DEIS is urgently needed to cover the serious omissions in the current DEIS. The cumulative impacts of the plethora of threats facing the Gray Whale have been ignored. With evidence of the Arctic melting at a much faster rate than predicted presented to the public on a daily basis, a waiver to kill Gray whales makes no sense.	The 2008 DEIS reviewed numerous threats to ENP gray whales (Subsection 3.4.3.6, Known and Potential Anthropogenic Impacts), as well as the cumulative impact of the hunt alternatives when considered in the context of other past, present, and reasonably foreseeable future events (Subsection 5.4, ENP Gray Whales). In response to this and other comments, the new DEIS discusses the cumulative effect of hunt alternatives and range-wide threats, including climate change.
AFA15	The DEIS is a biased document. A consulting firm which already works for the Makah Tribe was hired by NMFS to do the DEIS, an action which in any other arena would be seen as a conflict of interest. Under its mandate, NMFS has an obligation to present objective and current scientific information. NEPA also demands objective information. Instead, critical facts relevant to Gray Whale survival have been ignored, censored, distorted or presented in a biased manner.	As is allowed by Federal law (40 CFR 1506.5c), we employed a contractor to assist in preparation of the 2008 DEIS, under the supervision of NMFS staff, and using a competitive and documented process to select Parametrix. At the beginning of the contract, the contractor disclosed that it also had a contract with the Makah Tribe to assist in the development of the Cape Flattery Tribal Scenic Byway Scenic Corridor management plan. After the unauthorized hunt in September 2007, members of the public raised questions about additional work Parametrix was performing for the Tribe. When questioned by NMFS about the additional work, Parametrix provided information on the details of the subsequent contract, and affirmed that it had obtained the work for the Tribe in a competitive process. Also as required by law, Parametrix and its subcontractors signed disclosure statements prepared by NMFS as affidavits that there is no conflict of interest by being employed by both the Tribe and NMFS (40 CFR 1506.5c). We accepted the disclosure statements in good faith, and conducted due diligence reviews of Parametrix's role as a contractor for the Tribe. We concluded that there was no potential for conflict to occur, and further, no biased information could be inserted into the DEIS under our sole supervision. Producing an EIS is the responsibility of the Federal action agency (40 CFR 1506.5(a)(c)). We are responsible for the content and process. We do not consider the relationship between Parametrix and the Tribe to have compromised the integrity of Parametrix's

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		work product, and in any event are confident that in exercising our oversight we have ensured the document is a product of our analysis. In preparing the new DEIS, we relied on a "blanket purchase agreement" between NMFS and Parametrix to fund discrete products, including updates to the background information about several of the resources, contained in the Affected Environment section.
AFA16	Although the DEIS has taken apparently two or three years to compile, the public, conservation groups, scientists and citizens have been granted an extremely short time in which to make substantive comments.	NOAA's regulations regarding NEPA require that the agency provide a 45-day comment period on all EISs (NOAA Administrative Order 216-6). In this case, NMFS provided 98 days to review the draft – an initial 60-day period and a 38-day extension. In response to request for comments on the draft, NMFS received more than 800 pages of comments from over 400 commenters, suggesting that the 98-day comment period allowed commenters sufficient time to read and to respond to the draft. The 98-day comment period is consistent with, or longer than, other comment periods for complex draft EISs prepared by NMFS. For example, for its 1,000 plus page draft EIS on Washington States' forest practices, NMFS provided a 90-day comment period. The nearly 1,200 page draft EIS on the Puget Sound Chinook harvest management plan had a 46-day comment period. Given the amount of review time offered to the public, and the substantial number of comments received during this period, we conclude there was adequate time to review and comment on this 2008 DEIS.
AFA17	Three hearings set down in the US have been organized in a highly undemocratic manner. Written questions only, inadequate responses and far too many rules for what are supposed to be public hearings. International organizations such as AFA Int. who cannot attend hearings in the US are deprived of the opportunity to put important questions to NMFS.	The commenter objects to the format for the public hearings, in which a facilitator took notes on flip charts. In addition to keeping notes, NMFS staff strongly encouraged all attendees to submit written comments, and those comments were carefully considered in developing the 2008 DEIS. We again solicited comments in 2012 and considered those comments in preparing the current DEIS. The public can and has communicated with us and commented via e-mail, phone, and web-based systems such as regulations.gov.
AFA18	Further, questions sent by email to NMFS North West office have not be properly addressed or answered. The failure to respond to these	We believe we answered all e-mailed questions prior to the close of the comment period.

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	questions seriously inhibits the extent of comment as we cannot obtain the relevant information.	
AFA19	For example, AFA Int. requested sources of legal opinions expressed in the DEIS. The list of references do not demonstrate names of law firms or lawyers and as the claims made in Chapter 4 are refuted by non-government lawyers, the source of the opinions expressed in the DEIS is relevant.	The 2008 DEIS and new DEIS were developed by NOAA staff. The purpose of the analysis in Section 4 is not to assert legal opinions or conclusions but to predict likely effects on the human environment of the Makah Tribe's proposed action and the alternatives.
AFA20	Given the controversy and extent of objections to any Makah hunt; ramifications to US domestic whale conservation policy and the flow on effects of US actions in allowing a waiver, NMFS has an obligation to carefully weigh up all sides of the issue. International ramifications as a result of the US setting up two more classes of whaling (cultural, ceremonial) at the IWC and beyond, are not dealt with in any substantive way. Sweeping generalizations which are not supported by any legal advice or research cannot be acceptable in an objective properly researched DEIS.	This comment presents no specific information that is missing from the 2008 DEIS analysis of potential national and international impacts on whales and other marine mammals of authorizing a Makah whale hunt (Subsection 4.17, National and International Regulatory Environment).
AFA21	In the opinion of AFA Int., the extent of omissions and misleading information contained in the DEIS are deserving of a Congressional enquiry	Comment noted.
AFA22	Climate change is wreaking havoc in the Arctic. Documented evidence of increased seawater temperatures, catastrophic disappearance of ice and the extent of oil and gas leases in the Gray Whale feeding grounds have been omitted from the DEIS.	In response to this and other comments, the new DEIS discusses climate change (Subsection 3.4.3.6.11, Climate Change and Ocean Acidification).
AFA23	Threats to Gray whale survival have significantly increased in the last 8 years. At the same time, Gray whale numbers are visibly decreasing, calf counts are down, significant numbers of emaciated whales are being sighted and the primary prey (benthic amphipods) is disappearing because of climate change. The indicators of major problems for the species survival are plain to see and supported by impeccable research by academics, government agencies and specialist groups such as the UNEP.	The points summarized here are included in more detail elsewhere in this comment letter, and we respond in detail to those.

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AFA24	**KEY FACTORS AFFECTING LONG TERM VIABILITY OF THE EASTERN NORTH PACIFIC GRAY WHALE STOCK.** 1. Health and availability of food (prey switching, benthic amphipod production.) 2. whaling. 3. habitat conservation. 4. ocean health (contaminants, drift nets etc.) 5. climate change 6. human activities around whales and habitat. 7. mortality factors (disease, pollutants, viruses) 8. carrying capacity, trophic competition. 9. human induced mortality (incidental capture, habitat modification – competing risks, migratory route.) 10. Long term changes in food resource (food quality). 11. natural toxins (dinoflagellate blooms) 12. food and long term oceanographic changes and influence on food- secondary site feeding behavior. 13. density-dependent behavior (feeding, dispersal) 14. anthropogenic stressors and intrinsic adaptive capacity. 15. loss of genetic diversity. 16. changes in abundance and composition of apex predators (e.g. orcas) 17. direct disturbance of breeding activities. 18. availability and access to breeding grounds. 19. climate change affects on demersal fish stock. 20. adaptability of dispersion and behavior. 21. adaptability of amphipod stock to ocean regime shifts 22. ability to monitor population and the appropriateness of legislation – need for more relevant status criteria. 23. assessments of benthic communities along Russian coast. 24. stock structure assessment (spatially distributed substocks) 25. cetacean inter-specific competition (e.g. humpbacks) 26. coastal distribution in comparison with other cetaceans. 27. impacts on toxicant concentrations in sediments in feeding areas- resuspension of toxicant by feeding activity. 28. intermingling of stocks in under-utilized feeding grounds.	The 2008 DEIS presented information regarding many of these factors. For example, Subsection 3.4.3.6, Known and Potential Anthropogenic Impacts, describes pollutants, harmful algal blooms, oil spills and discharges, and underwater noise, among others. Subsection 3.3, Marine Habitat and Species, describes the marine environment, including potential prey for grey whales, and Subsection 3.4.3.4, Current Status of the Gray Whale Population, describes numerous factors related to gray whale status, such as carrying capacity. In response to this and other comments, the new DEIS discusses the cumulative effect of hunt alternatives and range-wide threats, including climate change (Subsection 5.4, ENP Gray Whales).

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	29. synergistic impacts of all factors identified 30. willing and ability to prevent and reduce human factors that induce mortality 31. benthic community structure shifts. AFA Int. submits that with one of two exceptions, the entire list of key factors has been ignored in the Makah DEIS.	
AFA25	Arguments which support the suggestion that taking five (seven) whales per year will have a negligible impact on the population cannot be substantiated. Without a comprehensive scientific review of all the factors impacting on Gray Whale survival and the guestimates which pass for population estimates, any quota for the Makah tribe is an act of gross irresponsibility. The evidence below of rubbery figures, outdated population estimates and the setting of highly inflated PBR values at a time when one third or more of the population had collapsed is of great concern. In pursuing a waiver at this time, the Makah tribe demonstrates its unwillingness to consider the serious nature of the threats facing the gray whales.	This comment presents general statements, which are expanded on, and responded to, below.
AFA26	The illegal slaughter of a gray whale by five members of the Makah Tribe last year and the subsequent criminal charges do not augur well for any responsible management.	The new DEIS describes the Federal convictions of Makah tribal members involved in the illegal hunt (Subsection 1.4.2, Summary of Recent Makah Whaling — 1998 through 2014).
AFA27	The suggestion that somehow killing whales will assist in resolving problems of teenage pregnancy; drug and alcohol use etc etc is not supported by any research. AFA Int. knows of no studies that have demonstrated that killing whales restores social cohesion in any community.	The 2008 DEIS (Subsection 3.8.3.1, Makah Tribal Members) described the tribal view: “The Tribe believes it must revive these traditions to combat the social disruption resulting from the rapid changes of the last century and a half.” In the analysis, the 2008 DEIS concluded only that authorization of a hunt could increase social bonding, based on the expressed views of the tribal government and some tribal members (Subsection 4.8.2.1, Makah Tribal Members). That Subsection also noted that authorizing a hunt could increase tensions between hunt supporters and opponents within the Tribe.

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AFA28	There are a number of public records which indicate that the Makah Tribe has sought to begin commercial whaling and/or scientific whaling. As well, it is entirely unclear from the DEIS interpretation of Treaty language whether in the future more non-listed cetaceans will be targeted. The Makah Tribe also killed Humpbacks and ate the meat, which is, apparently, infinitely preferably to the bottom feeding Gray whale.	We are currently considering the Makah Tribe's request for a waiver to engage in aboriginal subsistence whaling for gray whales. The WCA and MMPA prohibit commercial whaling by U.S. citizens.
AFA29	Any waiver for the Gray whale will create precedents for future waivers if this current attempt is granted on the basis of out-dated science and research that has not been adequately funded at least since 2000. The 9th Circuit is certainly of the opinion that other tribes could seek the same rights. (See Legal section below). Questions remain as to whether adequate funding has been provided since delisting. A delisting which was the result of the Makah Tribe formal request.	The 2008 DEIS analyzed the possibility that authorizing a Makah hunt could have precedential effects (Subsection 4.17, National and International Regulatory Environment). Specific comments and responses below, and Attachment 3 to this memo, discuss gray whale research.
AFA30	Recommendations by the Marine Mammal Commission and the IWC for further important research on Gray Whale population have been resisted or ignored by NMFS. ".. *The Commission wrote to the Service on 7 August, 2001 and again on 15 January, 2002 recommending that the Service develop a second five year research plan, complete a stranding response plan to better coordinate gray whale stranding investigations, assess effects of the 1999-2000 die-off on the population's status, and review planned research to ensure that information is adequate to assess the population's status and conservation needs*." (MMC report 2002).	Attachment 3 to this memo describes most of the research completed and ongoing since 1993.
AFA31	NMFS conducted a review of the status of the EN Pacific stock at a workshop held by the National Marine Mammal Laboratory (NMML) in Seattle, Washington in 1999. It was determined that monitoring should continue for an additional 5-year period (1999-2004) and that research should continue on human impacts to critical habitats. (64 FR 54275 10/6/99). The research recommended was never adequately funded.	Attachment 3 to this memo discusses the research completed and ongoing since 1999.

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AFA32	Let's be clear about this fact. During the time a second 5 year monitoring program had been recommended, a third to almost one half of the population perished and the PBR was set at a highly inflated value. So not only did NMFS ignore the recommendations of the Status Review Workshop but it upped the threats and lack of protection by setting a highly inflated PBR value.	Attachment 3 to this memo discusses the research completed and ongoing since 1999. PBR values are based on the most recent estimates of minimum abundance (though in some cases it may be appropriate to use weighted averages over more than one year or season [GAMMS 2005]). In the stock assessment reports for 2001, 2002, and 2003, we continued to use the minimum abundance estimate based on the 1997/1998 southbound migration for calculating PBR. In the 2005 stock assessment report, we revised the minimum abundance estimate based on southbound counts from 1997/1998, 2000/2001, and 2001/2002. The minimum abundance estimated in the 2005 stock assessment report reflected the decline in population following the 1999/2000 strandings. As a result the PBR for the stock declined from 575 to 417. The purpose of setting a PBR is to alert the agency when human-caused mortality may cause a marine mammal stock to fall below OSP. In the case of ENP gray whales, the human-caused mortality reported for 2001, 2002, and 2003, was 83, 107, and 107, respectively, well below the PBR calculated for those years or for the lower PBR calculated in the 2005 stock assessment report, following the stranding event.
AFA33	S.117 of the Marine Mammal Protection Act requires comprehensive information in any Stock Assessment Review; the requirements of S. 117 as they relate to Gray Whale SAR have not been met for many years. An email from Jeremy Rusin, Deputy Director Protected Resources SWFSC, NOAA to Sue Arnold, Australians for Animals Int. dated 30 July 2008 reveals the serious lack of funding. ' *Regarding the funding question, it is our understanding that the last dedicated NOAA funding for gray whale monitoring was in 2000 ($17.2K). In 1999, $11K in funding was provided for gray whale monitoring. This information came from our national budget contacts.'* These are completely inadequate amounts which would prohibit any realistic monitoring or research. $11K would not cover a portion of a salary, nor would $17.2 K. AFA Int. believes NMFS should provide details of all funding allocated to the Gray whale by NMFS since delisting. But what we have is a situation where there is no financial support for the critically important monitoring and no recognition by the Agency of the even more critical factors facing Gray whale survival. Instead of recognisng the serious nature of the population	It is unclear what the comment or the NMFS employee means by "dedicated" funding. NMFS and others have funded substantial research and monitoring programs for gray whales. These programs are described in Attachment 3 to this memo.

COMMENT CODE	COMMENT	DRAFT STAFF RESPONSE
	collapse, NMFS merely ignored the bad figures and instead, relied on out of date population estimates. Stock Assessments 16 U.S.C. 1386 Sec.117 states (a) … *Each draft stock assessment, based on the best scientific information available, shall ….* Given that there has been no budget funding since 2000, and taking into account that the SARs for 2005 and 2007 relied on outdated information based on previous questionable data, NMFS cannot claim to have based any SARs since 2000 on the " *best scientific information available*".	
AFA34	Evidence from genetic research by Prof Stephen Palumbi et al and Clapham et demonstrate the original population was Eastern North Pacific whales was at least 60,000. This is new evidence that has been virtually ignored by NMFS although at least one of the research papers presented by a NMFS scientist at the Status Review acknowledges one set of modeling shows the original population may have been as high as 70,000.	The 2008 DEIS cited a study by Alter et al. (2007), which suggests the gray whale population may have been as large as 70,000 animals historically. It is unclear what the comment means by the references to papers by Clapham or Palumbi (although the latter is a co-author on the Alter et al. 2007 paper).
AFA35	Information about the status of sea ice; increased seawater temperatures; contamination; emaciation and other issues have not been acknowledged in SARs. Sec, 117 (1) states: _ " *describe the geographic range of the affected stock, including any seasonal or temporal variation in such range;* Massive changes in the Bering and Chukchi Seas and the entire Arctic region have not been acknowledged or described in any Gray Whale SAR. Climate change is having a drastic impact on the Arctic environment as demonstrated by satellite images and a wealth of research. On Gray whales, other marine mammals and invertebrates.	This comment appears to be about the adequacy of our stock assessment reports, not the information and analysis in the 2008 DEIS. The MMPA establishes the requirement that NMFS produce stock assessment reports, and dictates the procedures for reviewing them. They are based on the best available scientific information and undergo review by the statutorily created scientific review group as well as public comment.
AFA36	The extent of the population crash can be seen from the mapping carried out by Dr Sue Moore, NMFS scientist at:- http://www.beringclimate.noaa.gov/essays_moore_maps.html	The 2008 DEIS described shifts in gray whale foraging, likely in response to changes in sea ice (Subsection 3.4.3.3.1, Summer Range Distribution and Habitat Use). In response to this and other comments, the new DEIS discusses the cumulative effect of hunt alternatives and range-wide threats, including climate change (Subsection 5.4, ENP Gray Whales).

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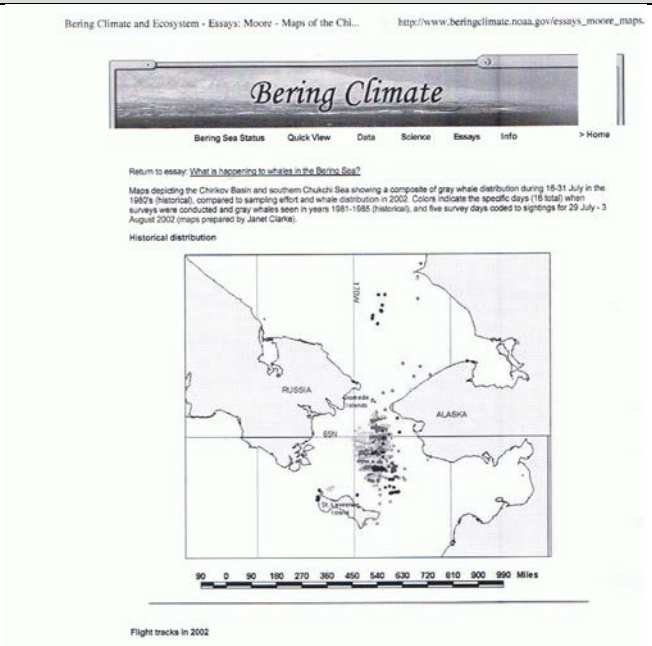
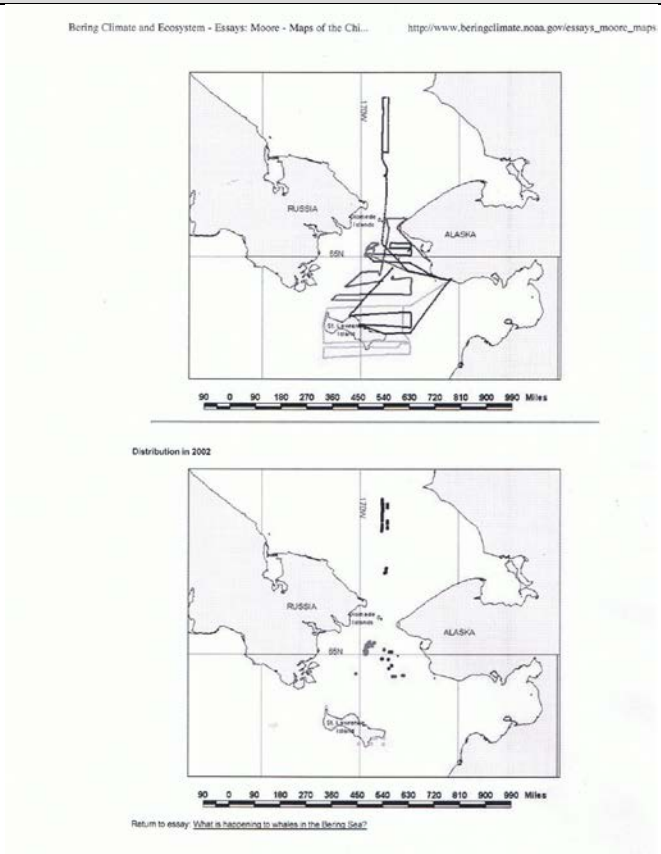
	 Table 4. Bering Sea Maps. NOAA Composite of gray whale distribution in l980's	

COMMENT CODE	COMMENT	DRAFT STAFF RESPONSE
	 Table 5. Bering Sea Maps. NOAA. Gray whale distribution 2002	
AFA37	Research which demonstrates changes in the gray whale migration route is given little focus, likewise delays in migration and anecdotal evidence that a greater number of whales are giving birth outside the Mexican Lagoons, thus putting calves at increasing risk of orca predation. Nor is there any adequate information relating to the high percentage of emaciated whales and increasing numbers of " stinky whales"; increased seawater temperatures; differences in migration	The 2008 DEIS, Section 3.4, Eastern North Pacific Gray Whale, discussed all information available on ENP gray whale life history. The comment cites no additional sources of data the agency failed to consider. The new DEIS contains new information available since publication of the 2008 DEIS.

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	timing; changes in behavior in Mexican lagoons; seriously low mother and calf counts in San Ignacio.	
AFA38	In a conference call between the Ocean Protection Council, California Assemblyman Pedro Nava, NMFS personnel from SWFC Wayne Perryman, scientist with NMFS SWFC, and AFA representative, Sue Arnold on behalf of the California Gray Whale Coalition, Perryman said: - **Wayne – it is hard to get parameters right – individual pieces of the puzzle – we don't have all the pieces and the picture keeps changing. The rate of change is changing. What is happening to the ice is happening fast and it's scary.** **We need to monitor population condition – it is the highest priority – but no funding.** **Don't know how change in food source is effecting population.** **Counts bounce around a lot – assumptions in their technique don't hold true.** **Absolute numbers could be off.** **1997-98 27K whales not a good estimate.**	The comment presents a unilateral characterization of a phone conversation with NMFS personnel, which we cannot verify. The comment cites no additional sources of data the agency failed to consider.
AFA39	Sec. 117 (2) *provide for such stock the minimum population estimate, current and maximum net productivity rates, and current population trend, including a description of the information upon which these were based;"* Charts and information below will demonstrate that no SAR since 97/98 has complied with (1) or (2). (3) *estimate the annual human-caused mortality and serious injury of the stock by source and, for a strategic stock, other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat and prey:"*	This appears to be a comment on the adequacy of the agency's stock assessment report and not on the 2008 DEIS. The MMPA establishes the requirement that NMFS produce stock assessment reports, and dictates the procedures for reviewing them. They are based on the best available scientific information and undergo review by the statutorily created scientific review group as well as public comment. The 2008 DEIS described gray whale life history and recent stock status in detail (Section 3.4, Eastern North Pacific Gray Whale). The comment cites no additional sources of data the agency failed to consider.

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	In the 2007 SAR (which was based on the 2001 population estimate) the following statement highlights the complete lack of scientific rigor which typifies the DEIS. *" In fact, it is expected that a population close to or at carrying capacity of the environment will be more susceptible to fluctuations in the environment. (Moore et al 2001). The recent correlation between gray whale calf production and environmental conditions in the Bering Sea (Perryman et al 2002) may be an example of this. For this reason, it can be predicted that the population will undergo fluctuations in the future that may be similar to the 2 year event that occurred in 1999-2000 (Norman et al, Perez-Coretes et al),*	
AFA40	Gray Whales suffered a major crash with an estimated loss of between one third and almost one half of the population. To describe this major collapse as a " *fluctuation*" is absurd and unscientific. In other scientific literature, the crash is described as an Unusual Mortality Event (UME). An unusual mortality event (UME) is defined under the Marine Mammal Protection Act as: "*a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response*." Down playing the language by not indicating in the SARs that the population had sustained a UME, and failing to recognize the seriousness of the UME is a violation of Sec. 117(3). There was no *" immediate response*" . NMFS continued to set PBR values against the l997/98 population estimate as though nothing had changed. According to Wayne Perryman, the l997/98 estimate *" was not a good estimate*." Baleen whales take at least 10 years to recover from a crash of this size. Another " *fluctuation* " of a similar size would take the population out according to the heuristic model developed for Australians for Animals. Further, there is no evidence in the records kept since 1967 of any population crash of this size.	The population losses of 1999 to 2001 were described in the 2008 DEIS (Subsection 3.4.3.4.2, Stranding data). The agency declared an unusual mortality event at the time and thoroughly investigated it (Gulland 2005). The classification of a mortality event as "unusual" under the procedures of the MMPA is not inconsistent with a conclusion that the population losses between 1999 and 2001 may have been a fluctuation in response to gray whales reaching the carrying capacity of their habitat. Even a small number of mortalities can lead to a declaration of an unusual mortality event – the only requirement is that the event be "unusual." Other possible explanations for the population losses in those years are discussed in the 2008 DEIS (Subsection 3.4.3.4.2, Stranding data).

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	NMFS needs to explain why the official recognition of the UME has been ignored in the DEIS. And provide research which would support the contention above that " *it can be predicted that the population will undergo fluctuations in the future that may be similar to the 2 year event that occurred in 1999-2000 (Norman et al, Perez-Coretes et al),* At the same time NMFS scientist should model the impact of another UME on a population which is demonstrably under stress and in decline.	
AFA41	Climate change alone is a sufficient reason to ensure the Gray Whales have all the legal protection available. Clearly, the effects of increased seawater temperature are having a major impact on the benthic community on which the Gray Whales rely. Research by Moore and Grebmeier indicate the Gray Whales are seeking new feeding grounds. There is no research to demonstrate any adequate prey base along the migration route or research to support the NMFS contention that Gray Whales are surviving principally on other sources. What we do know is that in 2007, according to reports, up to 13% of gray whales sighted were emaciated. As sightings appear to indicate adult whales are emaciated, the question arises as to the impact of starvation on reproduction. The DEIS fails to cover this matter which has profound ramifications. If the population is at 20,000 plus, and 13 % of the adult population are emaciated and incapable of reproduction, (and there currently is no evidence which supports the hypothesis that starving whales can have a normal pregnancy and feed a calf) effectively removing a major percentage of the reproduction capability of the population. Another factor which should be taken into account when assessing the PBR but is not because of the deficiencies of this model. Without current figures for stranding; unknown ship strike mortalities and/or injuries; extent of orca predation which appears to have increased; it is not possible to assert that the take will not impact on OSP. Indeed, the impact of the massive number of oil and gas leases in the Bering, Chukchi Seas and Southern California combined with 13 proposed LNG works, wave energy projects,	The 2008 DEIS provided a comprehensive review of the status of the ENP gray whale population (Subsection 3.4, Eastern North Pacific Gray Whale). The new DEIS updates that information and adds a discussion of the status of PCFG and Western North Pacific gray whales (Subsection 3.4, Gray Whale).

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	military training areas, increased industrialization along the migration route is unknown. The sheer extent of industrialization and activity along the migration route are grounds alone to decline the Makah waiver. Climate change provides a compelling injunction to immediately relist the Gray whales under the ESA.	

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AFA42	POPULATION ESTIMATES. 1874 30,000 – 40,0 Scammon 93/94 23,109 (20,80 Lake et al., 1994 – Status Review of the ENP Stock of G August 1999 NMFS (Rugh, Muto, Moore, DeMaster) 24,638 Lake et al 1994 97/98 26,300 (21,90 IWC 26,635 (21,87 Hobbs and Rugh (1999) Status Review of the ENP Stock Whales – August 1999 NMFS (Rugh, Muto, Moore, DeM 29,758 min. est. 24,4 Rugh et al (NMFS Gray Whale Stock Asses. 2/6/05) 25,130 to 30,1 http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2005whgr-en.p Federal register notice April 6,1998 Vol.63, No. 65 " Based on a revised Bayesian analysis of gray whale po dynamics, carrying capacity ranged from **25,130 to 30,14** upon the starting year of the trajectory." 1999 24,640 to 31,8 Status Review of Eastern North Pacific Stock. "Using a Bayesian statistical method to assess the stock to l995/96 data, point estimates of carrying capacity rang **24,640 to 31,840**." 00/01 18,761 NMML Gray Whale Census (Rugh) 19,448 Rugh et al (NMFS Gray Whale Stock Asses. 2/6/05) http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2005whgr-en.p 18,246 Rugh et al 2004 (From Marine Mammal Research: Cons Beyond Crisis (John Elliot Reynolds, Timothy J. Ragen) 01/02 17,500 NOAA 2002 Press Release (5/10/02) and NNML Quarter Report (Rugh) 16,840 IWC Rugh et al 2004 (From Marine Mammal Research: Cons 18,178 Beyond Crisis (John Elliot Reynolds, Timothy J. Ragen) Min. est: 17,7 Rugh et al (NMFS Gray Whale Stock Asses. 2/6/05) http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2005whgr-en.p 02/03 03/04 04/05 18,813 NMFS Gray Whale Stock Assessment 2/6/05 (based on t 14 Min. 17,752 the 2000/2001 and 2001/2002 abundance estimates) http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2005whgr-en.p 05/06 19,000 – 23,0 NOAA 2006-R114 Press Release – NOAA Reports Sign Increase in 2006 Whale Calf Numbers http://www.nmfs.noaa.gov/docs/GraywhalesMilbury.pdf 06/07 18,813 NMFS Gray Whale Stock Assessment 3/31/07 (based on Min. 17,752 the 2000/2001 and 2001/2002 abundance estimates) http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2007whgr-en.p 20,110 Rugh et al NMFS Report of the 2006-2007 Census of the Gray Whales (AFSC Processed Report 2008-03) http://www.afsc.noaa.gov/Publications/ProcRpt/PR2008- 07/08 18,178 Federal Register Notice - Vol. 73, No. 82/Monday, April 2 NOAA Incidental Takes of Marine Mammals during Spec Shallow Hazard and Site Clearance Surveys in the Chuk 2008. The population has "increased to a level that equ pre-exploitation numbers". Angliss and Outlaw (2007) re population to be 18,178	The new DEIS describes the abundance estimates developed since the 2008 DEIS was published, including Laake et al. (2009) and Durban et al. (2013) (Subsection 3.4.3.3.3, ENP Abundance and Trends).

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	Table 6. Chart of some of the conflicting population estimates since 1874-2008 various sources	
AFA43	**BAND WIDTHS OF POPULATION ESTIMATES.** Year / Bandwidth / Range / Pop. estimate / Who 93/94 / 20,800-25,700 / 4,900 / 23,109 / Lake et al. 97/98 / 21,900-32,400 / 10,500 / 26,300 / IWC 97/98 / 21,878-32,427 / 10,549 / 26,635 / Hobbs Rug 97/98 / 29,758-24,477 / 5,281 / 29,758 / Rugh et al 97/98 / 24,241-36,531 / 12,290 / 29,758 / Rugh Cet.R 97/98 / 25,130-30,140 / 5,010 / / Fed Reg.98 1999 / 26,640-31,840 / 7,200 / / Status Revi 00/01 / 26,635-24,477 / 2,158 / 26,635 / NMF 00/01 / / / 18,761 / NMML Cen 00/01 / / / 19,448 / SAR 2005 00/01 / 16,096-23,498 / 7,402 / 19,448 / Rugl 00/01 / / / 18,246 / Rugh et al 01/02 / / / 17,500 / NOAA P/R 01/02 / / / 16,848 / Rugh et al 01/02 / 18,178-17,752 / 424 / 18,178 / SAR 01/02 / 15,010-22,015 / 7,005 / 18,178 / Rugl 04/05 / 18,813-17,752 / 1061 / 18,813 / SAR 15 05/06 / 19,000-23,000 / 4000 / / NOAA 2006 06/07 / 18,813-17,752 / 426 / 18,813 / SAR 06/07 / 16,936-23,878 / 6942 / 20,110 / Rugl 07/08 / / / 18,178 / Fed Reg. 2	The new DEIS describes the confidence intervals associated with abundance estimates developed since the 2008 DEIS was published, including Laake et al. (2009) and Durban et al. (2013) (Subsection 3.4.3.3.3, ENP Abundance and Trends; Table 3-5).

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	Table 7. Chart of Bandwidths of Population Estimates	
AFA44	**RETROSPECTIVE MANAGEMENT?** In the 2001/2 SAR, NMFS states: - "*The l997/98 abundance estimate is the most recent and is considered the most reliable estimate of abundance for this stock. The most recent survey to determine abundance was carried out during the winter of 2000/01. An abundance estimate based on these data will be available in the 2003 SARs*." **NOTE**: There was no 2003 SAR, the next SAR did not appear until 2005 with an abundance estimate based on the mean of the 2000/01 and 2001/02 abundance estimates. The minimum population estimate is 17,752. * **NOTE**. In the conference call on 25th July, 2008 with Ocean Protection Council, NMFS, Assemblyman Pedro Nava staffers, Wayne Perryman, SWCFS NMFS said: - *1997-98 27K whales not a good estimate.*	We did publish a 2003 stock assessment report in August of 2004 (Angliss and Lodge 2004). We did not publish a stock assessment report in 2005. Table 3-6 in the new DEIS lists the stock assessment reports published for ENP gray whales.
AFA45	**PBR.** **PBR Equations for NMFS Stock Assessment Reports** PBR = N_{min} x 0.5R_{max} x F_R N_{min}=min pop. Est. R_{max}=maximum theoretical net productivity rate F_R = recovery factor 1997 PBR = 432 animals (21,597 x 0.02 x 1.0) 2000 PBR = 575 animals (24,477 x 0.0235 x 1.0) 2002 PBR = 575 animals (24,477 × 0.0235 × 1.0) 2005 PBR = 417 animals (17,752 x 0.0235 x 1.0) 2007 PBR = 417 animals (17,752 x 0.0235 x 1.0).	The abundance of marine mammal stocks fluctuates with environmental conditions. Our confidence in our estimates of abundance can also fluctuate as a result of variation in survey conditions, such as weather. The PBR method of calculating safe levels of human-caused mortality is based on the minimum abundance estimates, which takes into account our confidence in the estimates. It is also reasonable for PBR to vary over time as the minimum abundance estimate fluctuates. In response to this and similar comments, we developed a table that shows the stock assessment reports from 1995 through 2013, with the calculated PBR and the reported human-caused mortality (refer to Table 3-6 in Subsection 3.4.3.3.4, ENP Status, Carrying Capacity, and Related Estimates, attached). As the table shows, prior to 2005, reported human-caused mortality did not exceed 20% of the PBR. After 2005 human-caused mortality increased because of increased harvest in the Chukotka hunt, but even in the period 2005 through 2013, human-caused mortality was 35% or less of the PBR.

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	Table 8. PBR 1997-2007 This table illustrates the inconsistency and confusion created by NMFS data. In l997, the PBR was set at 432 animals with the minimum population cited at 21,597. In 2007, the PBR was set at 417 animals, 15 animals less than the l997 figure, with the minimum population estimate cited at 17,752. A difference of 3,845 animals. In l997/98, gray whale numbers were high with NMFS estimating the population between 25,130 and 30,140.	
AFA46	Setting the recovery factor (f) at 1.0 is highly questionable. Professor Stephen Palumbi, Stanford University in a letter dated March 28 to California Assemblyman Pedro Nava in support of Resolution AJR 49 writes: - "*The U.S. Marine Mammal Protection Act puts a limit on the number of human-caused deaths that are allowed for marine mammal populations in order to be confident of their continued population growth. This value, termed the Potential Biological Removal, is based on the current population growth rate and on a management term called the Recovery Factor. For all the large whales, except gray whales, the Recovery Factor is set at a very conservative 0.1. But the National Oceanographic and Atmospheric Agency set the factor at 1.0, allowing a ten-fold higher rate of human caused mortality than for any other whale in U.S. waters. This regulatory decision allows 417 gray whales to be killed by human causes each year without triggering agency concern. A shift in regulatory status for the gray whale could reduce this number to 42 whales.* *These calculations are supposed to be based on the current population growth rate, but without a new population census, the current population growth rate is not known, and the Potential Biological Removal levels now used are based on data from 2002. A new stock assessment would count the current gray whale population, and establish the growth rate of the population, if any, from 2002 to 2008. These new data are critical to our understanding*	The new DEIS reflects the conclusion of our 2013 stock assessment report (Carretta et al. 2014), which relied on the analysis of Punt and Wade (2012), concluding that the ENP gray whale stock is at OSP (Subsection 3.4, Gray Whale). As described in the new DEIS, we rely on current carrying capacity to determine OSP (Subsection 3.4.2.1.2, Calculating Marine Mammal Population Parameters).

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	of the gray whale population because the official population counts dropped by about 1/3 from 1999 to 2002. If this decline has continued, then the gray whale may be entitled to endangered status under International Union for the Conservation of Nature Red List criteria. Periodic review every 5 years of the population status of marine mammals is mandated under the Endangered Species Act, and an assessment of the gray whale would be due now if it were still listed as endangered by the U.S."	
AFA47	Dr Elizabeth Alter, Marine Mammal Fellow, National Resources Defense Council, in a letter of support for Resolution AJR 49, California Assembly, March 31,2008 writes: - " *The assumption of full demographic recovery has been built into the recovery factor used in marine mammal management, a number used to calculate the acceptable level of anthropogenic mortality. Whereas all other baleen whales in the US waters are assigned a recovery factor of 0.1, gray whales are assigned a recovery factor of 1.0 (Read and Wade 2000). This increase in the recovery factor effectively raises the annual acceptable mortality for gray whales and thus can slow population growth."* And further: - *"" Alter et al (2007) show that gray whales have likely not achieved full demographic recovery. Rather, this population may be at most at 28-56% of historical abundance, estimated to be between 76,000 and 118,000 whales. This analysis was based on genetic information gathered from 10 genetic markers from across the genome analyzed and incorporated the effects of migration from other populations (such as the western Pacific and extinct Atlantic population.) These data suggest that the recovery factor used to calculate potential biological removal should be changed from 1.0 to 0.5. This change would reduce allowable take from roughly 417 animals to 208 animals, a more appropriate number from a precautionary standpoint."*	Historical abundance levels may be relevant to determining OSP if they reflect the current carrying capacity of the habitat. Very old abundance estimates, such as those presented in Alter et al. (2007) are less relevant than abundance levels immediately prior to whaling in terms of indicating current carrying capacity. Even if the recovery factor used in calculating PBR for ENP gray whales were 0.5, as apparently suggested by Alter et al. (2007), the PBR would still be in excess of 300, well above the current level of human-caused mortality. The work of Alter et al. (2007) was described and considered in the 2008 DEIS (Subsection 3.4.3.2.1 Estimates of Historic Abundance). The new DEIS provides an updated discussion of relevant scientific literature regarding the historical size of the North Pacific gray whale population (Subsection 3.4, Gray Whales).

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<tr><td>AFA48</td><td>
In a paper published by Science Direct [3] the following cite in relation to the PBR is revealing.

'2.3 Selecting f

The value selected for f can be used to implement alternative management strategies. For example, a value of 0.1 can be used to provide a minimal increase in recovery time for a depleted population, to maintain a population close to its carrying capacity, or to minimize the extinction risk for a population with a limited range, while a value of 1 could be used to maintain a healthy, growing population at or above its maximum net productivity level (Wade, 1998: Taylor et al, 2000). Wade (1998) suggests a value of 0.5 for most healthy populations, as this provides protection against bias in population estimates, maximum growth rates, and mortality estimates. While this approach was designed to maintain a population at or above MNPL, a value of 1<f<2 could be used to control a population at a lower level, while f>2Nmin/N^ would be expected to reduce the population size no matter where it was in relation to its carrying capacity.'

If the three f values are put in a chart, the outcomes are significantly different.

<table>
<tr><th>Year</th><th>N</th><th>Rmax/2</th><th>f1</th><th>f2</th><th>f3</th><th>PBR1</th><th>PBR2</th><th>PBR3</th></tr>
<tr><td>1997</td><td>21597</td><td>0.02</td><td>1</td><td>0.5</td><td>0.1</td><td>432</td><td>216</td><td>43</td></tr>
<tr><td>2000</td><td>24477</td><td>0.0235</td><td>1</td><td>0.5</td><td>0.1</td><td>575</td><td>288</td><td>58</td></tr>
<tr><td>2002</td><td>24477</td><td>0.0235</td><td>1</td><td>0.5</td><td>0.1</td><td>575</td><td>288</td><td>58</td></tr>
<tr><td>2005</td><td>17752</td><td>0.0235</td><td>1</td><td>0.5</td><td>0.1</td><td>417</td><td>209</td><td>42</td></tr>
<tr><td>2007</td><td>17752</td><td>0.0235</td><td>1</td><td>0.5</td><td>0.1</td><td>417</td><td>209</td><td>42</td></tr>
</table>
Table 9. Comparison of Fr values.

The paper cites Wade 1998 ' 0.5 for most healthy populations, as this provides protection against bias in population estimates, maximum growth rates and mortality estimates'.
</td><td>
NMFS' guidance on preparing stock assessment reports generally recommends using a recovery factor of 0.1 for a depleted population, a recovery factor of 0.5 for a population of unknown status, and a recovery factor of 1 when the population is known to be stable and at OSP (NMFS 2005). Consistent with this guidance, NMFS' stock assessment reports have used a recovery factor of 1.0 in setting a PBR for ENP gray whales.

In the 2013 stock assessment report (Carretta et al. 2014), the authors concluded that the PCFG may warrant consideration as a stock in the future and used a recovery factor of 0.5 to calculate its PBR, as appropriate for a stock of unknown status.
</td></tr>
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[3] Estimating the ability of birds to sustain additional human-caused mortalities using a simple decision rule and allometric relationships P.W.Dillingham,

COMMENT CODE	COMMENT	DRAFT STAFF RESPONSE
	NMFS simply cannot claim the population is ' *healthy* '. No explanation for setting the recovery factor at 1 has been forthcoming from NMFS in spite of requests by AFA Int.	
AFA49	Lance Barrett-Lennard in an email to Sue Arnold, AFA Int. CEO, dated February 27 2007 writes: - ' *You are right that natural mortality (including predation mortality) is not an explicit parameter the PBR formula. In theory, it's encompassed in Rmax (=reproductive-mortality rates). Furthermore whenever there is reason to believe that the population is vulnerable for either extrinsic or intrinsic reasons, the recovery factory should be reduced. I just looked at the last gray whale SAR (2005) and was surprised to see that a recovery factor of 1 (the highest possible) is used…. I do agree with your main point, which is that the high level of killer whale predation that the eastern gray whale population experiences reduces its recovery potential, meaning that the calculated PBR is likely to high.'* And further. " ***we are in agreement that setting rf to 1 is wildly imprudent***."	The passage quoted in this comment relies on a single factor to support a conclusion that the recovery factor for calculating the PBR of ENP gray whales should be less than 1.0. The passage does not contain a complete analysis to support the conclusion. Moreover, all stock assessment reports undergo review by the statutorily created scientific review group, and are noticed for public comment. For the most recent stock assessment report (Carretta et al. 2014), there were no public comments questioning the conclusion that a recovery factor of 1.0 is appropriate for the ENP stock.
AFA50	Dr Milani Chaloupka, a research scientist who developed an heuristic model of the Gray whale for AFA Int. writes in relation to the PBR: - "'*the unfortunate thing about PBR is that Rmax is a constant value and doesn't vary over time. Hence, if orca predation is increasing (due to the whale cascade view) then the Rmax needs to change over time as well (i.e. Decrease as orca predation increases). Unless of course reproductive output increases as the population decreases due to increased predation by orcas.* *So PBR is a static concept and not a time-varying concept that is needed to reflect environmental and or demographic variability.* '[4]	For many stocks the maximum productivity level (Rmax) is a default value (NMFS 2005), but where there is sufficient evidence to measure maximum productivity, the agency uses that value instead. In the case of ENP gray whales, we recently adopted a new Rmax for the ENP stock, based on the work of Laake et al. (2009) and Punt and Wade (2012) (Carretta et al. 2014).
AFA51	The ramifications of setting a ' ***wildly imprudent***' rf need to be assessed urgently. The model below illustrates the fine line between	The comment provides no data or sources to support the contention that the ENP gray whale population has declined or is declining as a result of management decisions. To

[4] email from Dr Milani Chaloupka to Sue Arnold, Feb. 27, 2007

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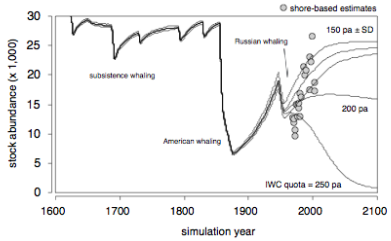
	survival and extinction for the Gray whales. AFA Int. notes that in 2003 when the model was commissioned, the facts that have now emerged in relation to the PBR, and the population estimates were not available. Given the new data, including the research by Professor Stephen Palumbi et al, it is highly likely that the so-called " management" of Gray whales in the last 8 years has led to a significant decline in the population. One can only hope that the decline does not lead to extinction.  **Figure 1** Expected California gray whale stock abundance derived from a stochastic sex- and ageclass structured simulation model that includes both environmental and demographic stochasticity as well as density-dependent compensatory and depensatory processes. Model based on best available scientific information reagrding gray whale ecology and demographic processes. Simulated gray whale stock was subject to a low level of indigenous whaling from 1600–1800 followed by the American whaling period from 1846–1874, the Russian whaling period from 1933-1946 and then by the IWC subsistence quota period from 1947- present. The fluctuations in the expected abundance evident during the subsistence whaling period (prior to the 1800s) result from the stock response to major ENSO events and the affect of such events on the major gray whale food stock (amphipod) abundance in the Bering Sea. ENSO = El Nino-Southern Oscillation, which relates to a major recurrent climate-ocean anomaly in the Pacific that can have a profound effect on marine ecological processes. The model suggests that both the American and Russian takes were grossly under-reported. Filled circles = shore-based stock abundance estimates. Three IWC quota scenarios shown with either a 150, 200 or 250 post-yearling take per annum (predominately larger females). The curves show the expected stock abundance from 1000 Monte Carlo trials. The 150 pa scenario also includes the expected ± 1 standard deviation curves --- not shown for the 2 other scenarios to avoid visual clutter. Given model assumptions, it is apparent that the current IWC quota of 150 whales pa would slow recovery. On the other hand, a take of 200 pa (i.,e 50 more than the current quota of 150) would stop the recovery and probably result in a slowly declining stock while a take of 250 pa (or 100 more than the current quota) would most likely result in a stock well on the way to extinction. Prepared January 10, 2003 for Australians for Animals by: Dr Milani Chaloupka Ecologica, PO Box 6150,University of Queensland, St Lucia, Queensland, 4067, Australia Email: m.chaloupka@mailbox.uq.edu.au.	the contrary, the population appears to be stable, based on the most recent abundance estimates (Durban et al. 2013).
AFA52	Email correspondence obtained through a FOIA in 2004 recommends using the PBR to avoid setting estimates of OSP boundaries. Tom Eagle wrote: …'*I'd recommend relying most heavily on the dynamic response to say it looks as if the stocks is within OSP. Then you could use the PBR approach to estimate the maximum number you could remove from the stock without pushing it below OSP. In fact if you calculate a PBR like number and use 0.1 in the place of the recovery factor, you'd*	In response to the Tribe's waiver request, we developed an analysis of the status of the ENP gray whale stock relative to OSP (Punt and Wade 2012).

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	have a number that would be the upper limit of harvest that would allow the stock to equilibrate within 95% of K (which we could say is a "negligible impact").' **It is noteworthy that the PBR recovery factor was set at 1.0.** Further emails demonstrate grounds for an investigation. Roger Eckert wrote: "*All I know is that in order to consider an MMPA waiver, the MMPA requires, among other things, " a statement of the expected impact of the proposed regulations on the optimum sustainable population of such species or population stock". MMPA s.103 (d) (2). We need a way to satisfy that requirement."* And the response from Tom Eagle: " *In that case, I would recommend not using the term PBR in the analysis because some parties could claim that PBR has explicit application only in section 118. (Mike Gosliner from the Marine Mammal Commission has made this point to me more than once and I'd use his statements as a warning that other parties may pick up on it as well.) Unless there is better (more recent) info available, Paul Wade's paper in the 1998 Marine Mammal Science on calculating allowable mortality limits is a good source for a starting point. (see p.18). Using a formula of Nmin * .5 Rmax *0.1 you'd get an upper limit of mortality that would allow the stock to equilibrate (95% of simulations) within 95% of K: and for a stock below OSP, such a mortality limit would delay recovery to OS by less than 10%.* " *The astute reader would quickly catch the similarity to PBR; but avoiding the term … avoid some conflict down the road – unless you want to assert the idea that P1 (unclear) has some application outside section 118 (I think this would be okay but avoiding PBR could be easier."* **AFA notes again that the recommendation for any recovery factor is 0.1 not 1.0.**	

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	Further, the question of whether the PBR has explicit application other than under s. 118 needs to be clarified in the DEIS.	
AFA53	**KEY PBR ISSUES.** * PBR does not acknowledge zero harvesting which is a plausible option. * PBR is no substitute for comprehensive assessments. * MSY is not a target but a limit. * Nm- highly dubious value * No adequate explanation for setting *f* at 1.0 * Harvest data isn't good. No one can fit underlying historical population to data. * PBR why is it constant when NMFS claims population is increasing * No papers that explicitly review methodology. * Methodology has changed at least twice with little explanation. * Changes in location of study. Changes are not well documented in literature or journals. * Calving figures do not show exploding population.	The new DEIS discusses the analyses completed on ENP gray whale abundance since the 2008 DEIS was published (Subsection 3.4, Gray Whale). These new analyses include, among others, Laake et al. (2009), Punt and Wade (2012), and Moore et al. (2013). These analyses address the issues raised in this comment.
AFA54	**In an article published in Misterios, April 2008, Steven Swartz writes:-** ***" The census of the population conducted in 2000 indicated that the population had declined from its 1996 peak size by 35% to 16,000-18,000 whales."*** **Yet in spite of the acknowledgement of the status of the population by a senior NMFS scientist and others with many years of research and expertise on the Gray Whale, NMFS set the Nmin value in 2000**	The comment is correct that our census of ENP gray whale abundance lags behind the actual fluctuations in abundance, with the result that the associated calculation of PBR also lags. This could be of concern if human-caused mortality were close to the PBR level and events occurred like the die-off in 1999/2000. That was not the case, however, for ENP gray whales. The stock assessment reports for 2000 and 2001 reflect human-caused mortality around the time the die-off occurred, which at that time was about 14% of PBR. Even in 2005, when the abundance estimates reflected the die-off and the PBR was reduced by 23% (from 575 to 442), and the Russian harvest had increased from 76 whales to 124 whales (as reported in our stock assessment report),

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	at 24,477. If Swartz is correct, then Nmin should have been set at 16,000. Nmin value of 24,477 remained until 2005. **Nmin 16,000 x 0.0235 x 1.0 PBR =376.** **Nmin l6,000 x 0.0235 x 0.5 (as recommended by Wade)[5], PBR = 188.** **Nmin 16,000 x 0.0235 x 0.1 PBR =37.6** **These figures need to be compared with the values set with a recovery factor of 1.0, 0.5 and 0.1 against a Nmin which had no validity and failed to take into account the major population crash in 199/2000.** year Nmin Rmax Fr-1.0 0.5 0.1 1997 21,597 0.02 432 215 43 2000 24,477 0.0235 575 287 57 2002 24,477 0.0235 575 287 57 2005 17,752 0.0235 417 208 41 2007 17,752 0.0235 417 208 41 **Table 11. Comparison of Fr values** **At a time when the population had collapsed by 35% according to NMFS own estimate, the PBR values were unsustainable, grossly irresponsible and a violation of the agency's mandate.** **The PBR was 575 up until 2005.** **In 2001/2 the minimum population was estimated at 15,010. (Rugh et al)** **Nmin 15,010 shows much the same picture.** 2001/2 15,010 0.0235 352 176 35 **Table 12. Fr Values at 15,010**	human-caused mortality was still only about a third of PBR, as shown in Table 3-6 of the new DEIS (Subsection 3.4.3.3.4, ENP Status, Carrying Capacity, and Related Estimates).

[5] Estimating the ability of birds to sustain additional human-caused mortalities using a simple decision rule and allometric relationships. Dillingham P, Fletcher D. Science Direct in press 208

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	As this minimum population estimate was ignored in the 2001/2 SAR and the next SAR was published in 2005, AFA Int. assumes that the Nmin for the years from 2001-2005-6 were set at 24,477.	
AFA55	In 2006/7, a field study census was undertaken. A Field report of the 2006/7 census was submitted to the IWC (SC/59/BRG1). No population estimate was given. Counts of gray whale pods were compared with pods counted in 2000/01 and 2001/2. The Field Report states : - *after two censuses (2000/1 and 2001/2) in which abundance estimates were well below the expected trajectory. (Rugh et al).* In spite of the obvious similarities of pod counts noted in the 2007 SAR and Field Report, the Gray Whale population has suddenly increased to 20,110 (over 2,000 animals) yet the Nmin remains at 17,752. The Nmin was obtained using the mean of 2000/01 and 200l/2 abundance estimates – in other words, using the Nmin of 24,477. An obvious conclusion is that, in the absence of an abundance estimate in the Field Report, based on the number of pods sighted, the population remains well below the expected trajectory.	The new DEIS describes census data available since the 2008 DEIS, improvements to the method of counting southbound whales, and improvements to the methods of estimating population abundance based on those counts (Subsection 3.4.3.3.3, ENP Abundance and Trends).
AFA56	**DEPLETION MODEL** We estimated the underlying time-specific trend in the NMFS gray whale abundance series over the 40 years (1968-2007) using a generalised smoothing spline regression approach implemented in the gss library for R (Gu 2002). This nonparametric approach uses the data to determine the underlying linear or nonlinear trend without having to assume any specific functional form. It is apparent from Figure 1 that gray whale abundance on the southbound migration at Granite Canyon (California) was generally increasing from the late 1960s until the mid-1990s and then has been decreasing steadily ever since. Gu C (2002) *Smoothing spline ANOVA models*. Springer-Verlag, New York.	We have not attempted to analyze the modeling results presented in this comment, but note that Laake et al. (2009) reviewed and revised the historic abundance estimates and provided updated plots of abundance including error bars. Durban et al. (2013) updated this analysis with new years of abundance surveys. These and other analyses are described in the new DEIS (Subsection 3.4.3.3.3, ENP Abundance and Trends).

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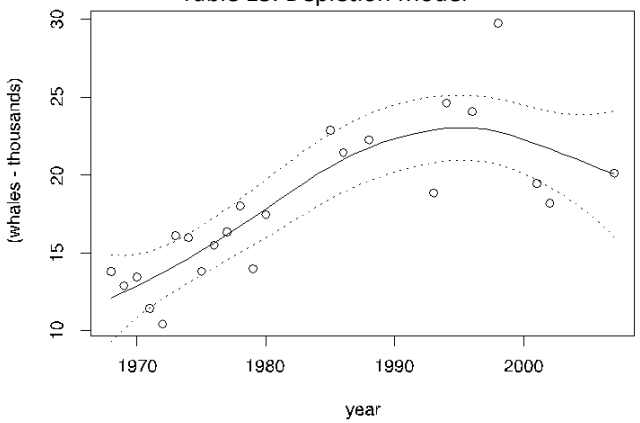
	Table 13. Depletion Model  **Figure 1** Time series plot of the estimated number of gray whales migrating each year since 1968 southward past the NMFS study site at Granite Canyon (California). Open circles show NMFS-estimated gray whale abundance, solid curve shows smoothing spline regression fit to the time-specific abundance series, dashed curves show 95% Bayesian confidence interval for estimated underlying smoothing spline trend. Note that there were no NMFS surveys in the following years: 1981-1984, 1987, 1989-1992, 1995, 1997, 1999, 2000, 2003-2006. © Australians for Animals Int. Model by Ecological Modelling Services Pty Ltd. Brisbane Australia.	
AFA57	**RUBBERY FIGURES .** In correspondence with Dave Rugh, AFA has attempted to clarify the questions relating to the PBR and abundance estimates for the last 10 years. His response via email does nothing to clarify the 2000 + increase in animals. Rugh's claim that the " *difference of 2000 is a function of*	Comment noted.

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	change across five years rather than a change in analytical procedures for any one year" provides zero clarity. Rugh email dated 18/7/08: - '*The abundance estimate of 18,178 was from counts made in 2001/02, as published in the Journal of Cetacean Research and Management. The abundance estimate of 20,110 was from data collected in 2006-2007 as presented in the AFSC Processed Report.* *Therefore the difference of 2000 is a function of change across 5 years rather than a change in analytical procedures for any one year. In fact, there is considerable effort to keep the counts and analysis standardized in order to allow for these inter-year comparisons. Then again the CVs (15,010 to 22,015 in 2001/02 and 16,936 to 23,878 in 2006/07) do mean there is some range around each of the point estimates*." The following graphs show the CVs show more than " *some range around each of the point estimates*.	
AFA58	**BACKGROUND.** An analysis of the status of the population estimates since from 1967/68 until 87/88 when they were consistently undertaken by Buckland et al.[6] follows:- The annual percentage increase over that period was estimated at 3.2% each year except for a 3.3% increase in 77/78. These figures are in line with projected increases for baleen whales.	As previously noted, Laake et al. (2009) reviewed and revised the historic abundance estimates and provided updated plots of abundance including error bars. Durban et al. (2013) updated this analysis with new years of abundance surveys. These and other analyses are described in the new DEIS (Subsection 3.4.3.3.3, ENP Abundance and Trends).

[6] Buckland et al Marine Mammal Science Volume 9. No 3 1993

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	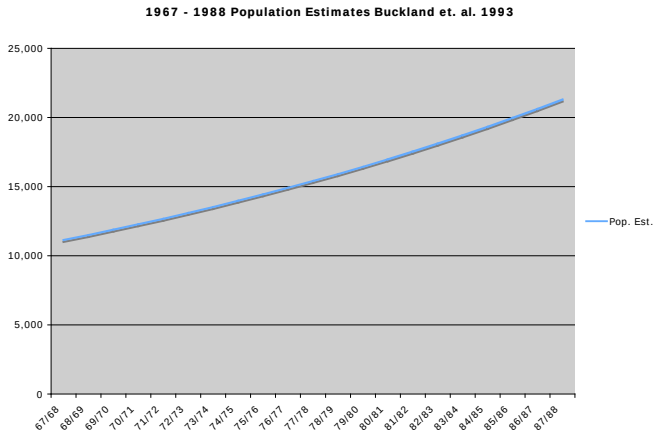 Table 14. Buckland estimates 1967-1988 However, once the delisting took place in 1994, the methodology changed and NMFS reported the following increases and decreases. 92/93 - 93/94 - 30.75% increase 94/95 - 95/96 - 3.66% decrease 95/96 - 97/98 - 18.13% increase 97/98 - 00/01 - 22.68% decrease 00/01- 02 - 6.72% decrease (Illustrated in the chart below)	

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	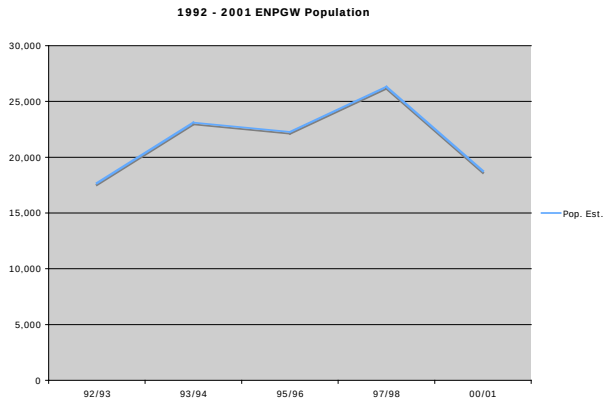 Table 15. 1992-2001 ENPGW Population Estimates. These increases are biologically impossible and highlight the growing concern over the methodologies used by NMFS and the substantial uncertainties in these NMFS estimates. The uncertainties of NMFS calculations can be further illustrated by the following graphs: Co-efficient variation (CV) is a measure of the uncertainty of the estimate. CV change from mid-1990's onward as analytical approach changed	

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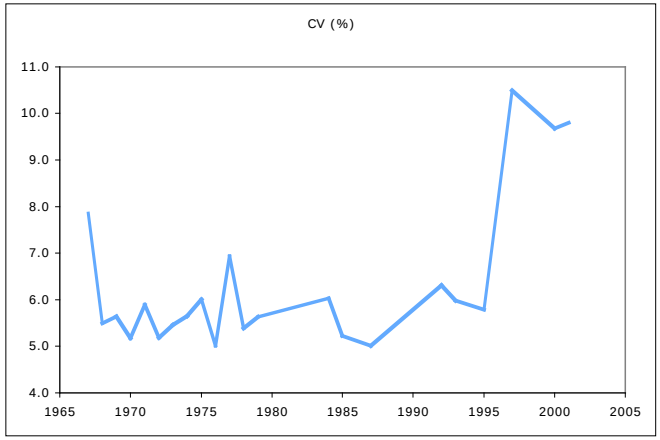
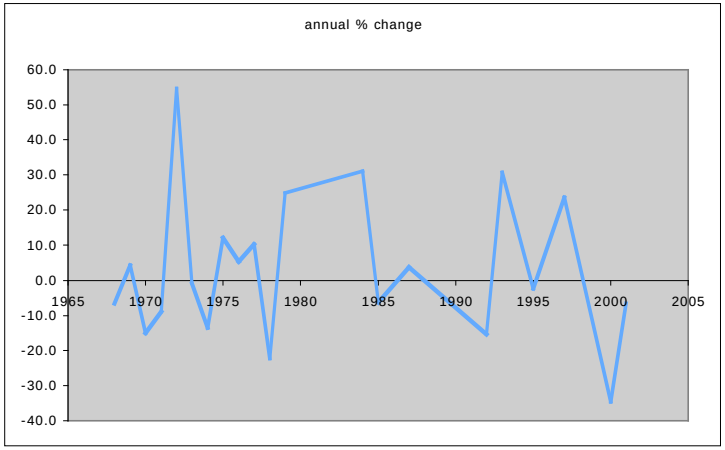
	 Table 16. CV change from mid 1990-s onward. Annual % change from mid-1990's onward as analytical approach changed  Table 17. Annual % of change. As a further example of the confusion created by NMFS changes in methodology, we chart the " corrected abundances" as outlined in	

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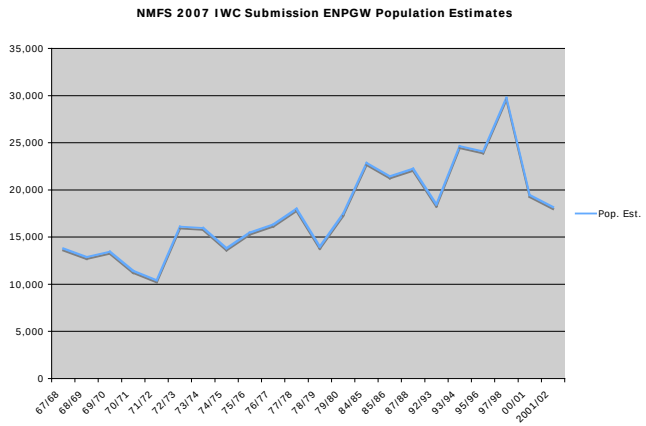
	the 2006/7 field report presented to the IWC Scientific Committee at the Anchorage meeting as compared with the abundances charted by Buckland et al from l967/1988.  Table 18. NMFS 2007 IWC Submission ENPGW Population Estimates. An IWC report states " Abundance and trend estimates from shore based censuses led to an estimated annual increase of 2.5% (S.E.=0.4%) "[7] The true status of the population is unclear. Canadian researchers suggest the population may be as low as 15,000 [8] Another email from Dave Rugh in relation to the increase of 2000+ animals now attributed to the field survey and 2007 AFSC Report further illustrates the confusion. *From Sue Arnold, AFA Int.* *I still cannot get my head around where the increase of 2000 plus whales comes from. There was an estimate done in 2006/7 but*	

[7] IWC Chairman's Report of 46th Annual Meeting, 1994
[8] pers.comm.Dr William Megill

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	where or how does the increase come from in the AFSC report ? There wasn't another count, so have you changed the CV or what ? *I would be very grateful for your patient explanation. I ve also emailed Paul and Jeff, thanks for their emails. With regards Sue* **On 16/7/08 8:51 AM, "Dave Rugh" <Dave.Rugh@noaa.gov> wrote:** **Hi Sue-** ***1) At the time of the publication of the attached file ("Gray Whale Abundance") in 2005, the most recent abundance estimate was 18,178 based on counts made in 2001/02 (CV=9.79%; 95% log-normal confidence interval=15,010 to 22,015). Perhaps the 18,313 that you noted came from an earlier draft of that report. However, since then we have a more recent abundance estimate of 20,110 from data collected in 2006-2007 (CV = 8.78%; 95% log-normal confidence interval=16,936 to 23,878). The latter estimate is from the AFSC Processed Report as you noted. Therefore, the Makah DEIS has the latest estimate correctly indicated (20,110 whales from counts made in 2006-2007), which - as you mentioned is about 2000 more than the estimate (18,178) from counts made 5 years earlier in 2001-2002."*** If the minimum population in 2001/02 was 15,010 to 22,015 as indicated by Rugh in his email and 16,936 to 23,878 in 2006/7, the PBR Nmin for the years 2000l to 2005 was not a reflection of minimum population. (See PBR section). Similarly, the PBR Nmin for 2006/7 is l7,752 although Rugh's minimum estimate is 16,936. Rugh fails to point out is that the US submitted a field report to the IWC at the meeting in Alaska in 2007 which contained no population estimate only the number of pods which the report compared to 2000/2001. It is worth repeating the cite from the Field Report :- The Field Report states : - *and after two censuses (2000/1 and 2001/2) in which abundance estimates were well below the expected trajectory. (Rugh et al).*	

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	There is no explanation as to how these censuses in 2000/1 and 2001/2 in which abundance estimates were well below the expected trajectory are now somehow transformed into an increase of 2000+ animals without a shred of evidence to support this alleged increase. In any event, according to an email from Roger Eckert, NOAA dated l9 April 2004 to Jeff Lake et al, Jeff Lake wrote – *the difference of 1000+ whales is not statistically significant.* <u>Given that the new population estimate of 20, 110 represents and increase of 1297 animals since the 2005 SAR which is based on 2000/1 and 2001/2 SARs, AFA regards the increase as neither statistically significant NOR an indication that the population is recovering. On the contrary, these statistics give a clear indication of a population in decline.</u> Other agencies claim the population in 2007 is 18,178. Federal Register Notice - Vol. 73, No. 82/Monday, April 28, 2008 – NOAA Incidental Takes of Marine Mammals during Specified Activities; Shallow Hazard and Site Clearance Surveys in the Chukchi Sea in 2008. The population has "increased to a level that equals or exceeds pre-exploitation numbers". Angliss and Outlaw (2007) reported the population to be 18,178. In the DEIS, the following statement is made:- " **.. NMFS CAN ONLY BE RELATIVELY CERTAIN THAT THE TRUE ABUNDANCE IN 2006/7 WAS PROBABLY SOMEWHERE BETWEEN 17,000 AND 24,000 WHALES**."	
AFA59	AFA Int. doubts that NMFS can be even vaguely certain of any population data given the lack of funding for any substantive research.	Attachment 3 to this memo describes the many monitoring efforts undertaken by NMFS and others.
AFA60	**CARRYING CAPACITY.** In 1990, the Scientific Committee of the IWC noted that " *either feeding or breeding limitations could determine the carrying capacity for this stock."*	Punt and Wade (2012) concluded that the ENP gray whale stock is at 85% of carrying capacity. These results were reviewed and accepted by the IWC Scientific Committee (IWC 2011) and the statutorily mandated scientific review group (Allen and Angliss 2011). The new DEIS includes a discussion of NMFS' approach to establishing carrying capacity (Subsection 3.4.2.1.2, Calculating Marine Mammal Population Parameters),

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	AFA Int. believes that both factors are at play with the Gray whale population. The feeding limitations caused by climate change in their primary feeding grounds are impacting on breeding as evidenced by the lowest count ever recorded in San Ignacio Laguna and by the SAR's since 2000. As well, the impact of contamination of Gray whales on reproduction has not been researched. With the rapidly diminishing ice in the Arctic feeding grounds and no research to indicate the location and sustainability of alternative prey, the carrying capacity of the Gray whale is unknown. This fact is supported by comments made by Wayne Perryman in a conference call between NMFS SWFC, Ocean Protection Council, Assemblyman Pedro Nava's office and Sue Arnold from AFA Int. on behalf of the California Gray Whale Coalition. Wayne Perryman acknowledged that :- " *the large picture keeps changing, the carrying capacity almost impossible to estimate because doesn't stay in the same place. Rate of change is changing. It is a rapidly changing environment.* " Cites from 1874 below indicate the instability of any measure of the carrying capacity. 1. **1874** Scammon, **30,000 to 40,000.** **2 * October 1993** Gray Whale Monitoring Task Force, NMFS, NOAA, A 5 Year plan for Research and monitoring the eastern north pacific population of gray whales. NMFS estimates population is approximately **21,000 animals** " *close to pre-commercial population size and will soon begin to decline because they are approaching their ecosystem's carrying capacity*." 3**. 1998** " *Based on a revised Bayesian analysis of gray whale population dynamics, carrying capacity ranged from **25,130 to 30,140** depending upon the starting year of the trajectory, with the upper 95th percentile of 43,950 and 59,160* " [9]	and the conclusion that the ENP stock is at OSP (Subsection 3.4.3.3.4, ENP Status, Carrying Capacity and Related Estimates).

[9] Federal register notice April 6,1998 Vol.63, No. 65

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	4. **1999**. " *Using a Bayesian statistical method to assess the stock with 1996/67 to l995/96 data, point estimates of carrying capacity ranged from* ***24,640 to 31,840****."* [10] 5. **2000/01 19.448** Journal of Cetacean Research . David Rugh et al. (CV=9.67%; 95% log-normal confidence interval=16,096 to 23,498) **6. 2001/02 18,178** Journal of Cetacean research David Rugh et al (CV=9.79%; 95% log-normal confidence interval=15,010 to 22,015). The abundance in 1997/98 was the highest estimate made since this project began in 1967/68. It was followed by two much lower estimates – probably related to the high mortality rates observed in 1999 and 2000. This whale population appears to be approaching the carrying capacity. **7. 12 January, 2004** Declaration of Roger Gentry (head of Acoustics Program in the Office of Protected Resources NMFS) in Australians for Animals et al v. Donald L. Evans. " *The gray whale population is not in decline. Mr Rugh's declaration concludes that the population underwent a brief reduction but is now stable. Professionals in population dynamics agree that the population has reached carrying capacity of its environment and should no longer be expected to grow at pre 1997 rates but it is not declining*. * Note: AFA Int. has serious concerns over this evidence given that the population crash had been identified as a UME and no action had been taken as required under the MMPA. We believe Roger Gentry mislead the Court. 18. *Retrospective analyses of abundance estimates suggest that the ENP gray whale population was approaching carrying capacity by the late 1980's (P.Wade pers.comm..). If so, and if the population remained near carrying capacity through the late 1990s, a sudden decline in marine ecosystem productivity caused by the 1997-1998 El Nino could have contributed to whale mortality. A drop in ENP gray whale abundance estimates from a high of 27,958 (CV=0.1) for 1997-*	

[10] Status Review of Eastern North Pacific Stock.

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	*1998 migration to **18,246** (CV=0.9) for the 2000-2001 season and to **16,848** (CV=0.9) for the 2001-2002 season (Rugh et al 2004) supports this view.*[11]	
AFA61	**CURRENT ABUNDANCE** *" Gray whales have been taken as part of aboriginal hunts since before European arrival and have been exploited commercially on both sides of the North Pacific for the last two centuries. ….. However, the basic density-dependent model and its variants cannot reconcile the current abundance and continued increase of this population with the historical catch records; the population seems to have overshot its historical K by 200-300%. A consistent trajectory can be achieved only be assuming large historical " adjustments", such as under-reporting historical catches by a half to a third or by assuming density dependent selection on life-history parameters resulting in long-period oscillations in abundance.* *As an alternative to backward extrapolation using uncertain historical records, Wade considered only the " known" catch data available since the start of shore-based surveys during 1966-67 (ignoring all catches before this time), and the trend in the 21 years of abundance surveys. Using several modifications of the basic model and incorporating Bayesian statistical estimators, Wade concluded that the variance of the time series of abundance estimates was greater than was estimated previously. As a consequence, previous models have derived estimates for K and other population parameters (e.g. rates of increase) that were overly precise. Taking this additional variance into account, the 95% confidence intervals of predicted current carrying capacity (K) were much wider than calculated in previous models, extending from **19.980 to 66,720**. Consequently, there was a moderately large probability (>0.20) that*	The response to the previous comment addresses the points raised here.

[11] *Marine Mammal Research: Conservation Beyond Crisis. John Elliott Reynolds, John E. Reynolds III, William F. Perrin, Randall R. Reeves 2005*

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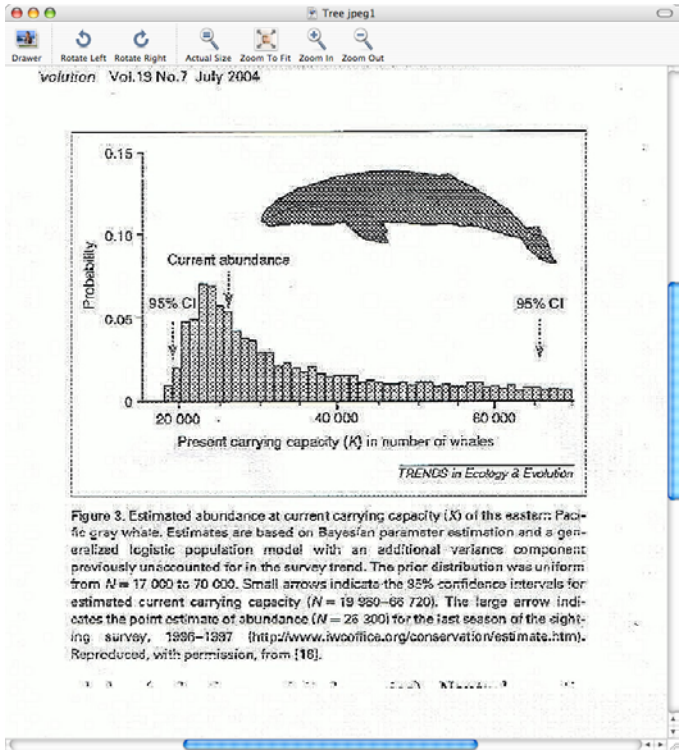
	the current population is still below 50% of K." Trends in Ecology and Evolution Vol.19.No.7 July 2004 [12]  Figure 3. Estimated abundance at current carrying capacity (K) of the eastern Pacific gray whale. Estimates are based on Bayesian parameter estimation and a generalized logistic population model with an additional variance component previously unaccounted for in the survey trend. The prior distribution was uniform from N = 17 000 to 70 000. Small arrows indicate the 95% confidence intervals for estimated current carrying capacity (N = 19 960–66 720). The large arrow indicates the point estimate of abundance (N = 26 300) for the last season of the sighting survey, 1996–1997 (http://www.iwcoffice.org/conservation/estimate.htm). Reproduced, with permission, from [16]. Table 19. Modelling the past and future of whales and whaling. Scott Baker, Clapham *" Alter et al (2007) show that gray whales have likely not achieved full demographic recovery. Rather, this population may be at most at 28-56% of historical abundance, estimated to be between 76,000 and 118,000 whales. This analysis was based on genetic information gathered from 10 genetic markers from across the genome analzyed*	

[12] Modelling the past and future of whales and whaling. Scott Baker & Clapham.

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	and incorporated the effects of migration from other populations (such as the western Pacific and extinct Atlantic population.) " [13] At the l999 Status Review, a paper by Wade & DeMaster [14]' *supports the possibility of an historical abundance as high as 70,000.'* " *Point estimates of the equilibrium population size ranged from 24,000 to 32,000 depending upon which model was used, but values as high as 70,000 still had some probability."*	
AFA62	**REPRODUCTION.** " *Given the relatively low estimates of Rmx that exist for cetaceans, it is obvious that cetacean populations can decline much more rapidly than they can increase, and this should be reflected in the kind of environmental variance term that is incorporated into a population dynamic model*." [15] Unquestionably, the rate of reproduction has changed. Female reproduction rate was about 2 years (Lankester & Beddington SC/37/PS21). 'Report of the Special Meeting of the Scientific Committee on the Assessment of Gray Whales, 23-27th April, 1990 – Biological Parameters for Gray Whales' identifies the pregnancy rate as 0.46 per year. Swartz, Urban et al, 2008, Jones (1990) estimated the calving interval for female gray whales at 2.11 + SD 0.403 years during the period l977 to l982. The estimated calving interval of 2.48 + SD 0.607 from this study suggests that fewer females are reproducing every other year which has been typical in the previous decade, and suggests that the reproductive rate of the ENP population may be slowing. Low calf counts could be indicators that some gray whale females are unable to obtain sufficient energy resources to conceive,	Comment noted. The 2008 DEIS discussed gray whale reproduction (Subsection 3.4.3.1.5, Reproductive Physiology and Calf Birth, Growth, and Development). The new DEIS discusses gray whale reproduction in Subsection 3.4.3.1.5, Reproduction and Calf Production.

[13] Letter from Dr E. Alter in support of AJR 49.
[14] A Bayesian Analysis of Eastern Pacific Gray Whale Population Dynamics. (unpubl)
[15] P. Wade. " Estimates of population parameters for the eastern Pacific gray whale, (Eschrichtius Robustus) using a Bayesian method. 1994 SC/46/AS16

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	or if pregnant to bring calves successfully to term. Brown and Weller (2002) suggest that resource limitations may result in a three year rather than the normal two year reproductive cycle in western pacific gray whales. Steve Swartz pers.comm. Sue A. Feb. 2008 Mexico. *Calving cycle has increased to 2.4 years suggesting that some females are reproducing every three to four years on average.* **Calving Interval increasing.** According to the report of the IWC Scientific Committee in Shimonoseki, Japan, the mean length of the calving interval was estimated at 2.50± 0.29 years. This interval is, according to the report, significantly higher than 2.11 years estimated for the period 1977-l982.[16] In an article in the Seattle Post Intelligencer, 18 May, 2007 Swartz is quoted saying:- "*We know that the primary feeding ground is in the Bering Sea, north of the Gulf of Alaska. We know that has been going through some severe changes associated with climate change, warming of the water and changing of the oceanography. Where the whales used to congregate in large numbers to feed, they don't any more. They may be suffering from not enough food, or they may have become vulnerable to parasites or diseases from having to switch to different food sources. They can survive this for a period of time, but not forever.* *" The biggest concern is if they are nutrition-stressed, the females may not be able to bring their calves to term or give birth to those that are hardy enough to survive."* Wayne Perryman is quoted in an article " *Lactating and fasting at the same time is very challenging* " Perryman said. (As if he would know.) " *If a female is not putting on weight rapidly, she kicks into*	

[16] IWC SC repne doc. Page 37. IWC Japan, 2002)

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	miscarriage." Perryman has noted the pattern for five years. [17] In the DEIS, Urban and Swartz are quoted saying that 11-13% of animals in San Ignacio were emaciated. The Report of the IWC Scientific Committee IWC/54/4 Annxes F-G. 2002 in relation to the Western North Pacific Stock Gray Whales stated:- " *The three year calving interval observed in western gray whales is hypothesised to be due to nutritional stress and compounded by ongoing anthropogenic disturbance while on the feeding ground. If western gray whales have increased their calving interval from two years, as typically reported for eastern gray whales, to three years, the change will decrease overall calf production by at least 20%. This change, if persistent, will have a major impact on the potential of the population to recover from its depleted state*." In 2002, the IWC Scientific Committee reported that calving intervals were estimated to range from 2-4 years.[18]	
AFA63	**STRESS IMPACTS** Dr Albert C. Myrick Jr. in his declaration in the lawsuit Hawaii Green Party versus Donald Evans January, 2003 San Francisco District Court asserts that a steep decline in population size, accompanied by a steep decline in yearly calf production is indicative of a population subjected to unusually strong chronic stressors. Dr Myrick adds that ' *although various natural and human-caused chronic stressors that could potentially affect the gray whale population can easily be identified, none has been studied from a physiological standpoint*.' In his declaration Dr Myrick explained that (5a) ' *stress increases the levels of glucocorticosteroids (cortisols) in the blood. Chronically*	If chronic stress were reducing the fitness of ENP gray whales to the extent of increasing mortality or reducing productivity, that effect would be reflected in the status of the population. The 2008 DEIS described our basis for concluding that the ENP gray whale population is at OSP (Subsection 3.4.3.4.5 Estimates of Carrying Capacity (K), OSP, and PBR. The new DEIS contains an updated discussion of information on ENP status (Subsection 3.4.3.3.4, ENP Status, Carrying Capacity and Related Estimates).

[17] A Whale of a Food Shortage. Usha Lee McFarlane, Kenneth R. Weiss LA Times 25 June, 2002

[18] Report of Scientific Committee, IWC Japan. IWC54/4/Annexes F-G. 5/14/02

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	elevated levels of cortisols, i.e., persistently elevated levels over time, suppress luteinizing hormone. This hormone is essential to female ovulation and maturation of the ovum (unfertilised egg). Elevated blood cortisols result in fewer eggs and in fewer eggs reaching maturity. Thus, low calf production would be resultant from a population under strong chronic stress. *Elevated levels of cortisols in the blood also suppress growth hormone. This would result in slower growth in growing animals and thus would delay sexual maturation. The protaction of time between birth reproductive readiness could mean a lower reproductive rate for the population and a reduction in the annual production of calves.* *Chronically elevated blood cortisols tend to destroy nuclear DNA of lymphocytes, cells that play a major role in the immune response. The result of large scale destruction of lymphocytes would be the increase of susceptibility to disease and infection.* *Each source of stress (stressor) is a potentiator. Multiple stressors may act synergistically to impact an animal's physiology at a level that would be greater than the sum of the individual stressors.* *The introduction of additional stressors in the population, presumably already under (unstudied) multiple chronic stressors, could compound the putatively pathological responses, such that further, more rapid deterioration of the population may occur.* *Considering the very serious decline both in the population size and calf production of the Eastern Pacific gray whale and the likely possibility that the population is under strong chronic stress, the reasonable governing principle should be one of non-interference, ie; we should avoid the introduction of additional (especially human generated) factors that may further promote the further deterioration of the remaining numbers of this once great whale population.* These factors have been completely ignored in the Makah DEIS.	
AFA64	**MALE BIAS IN POPULATION.**	Comment noted.

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	Another factor which could have serious implications for the Gray whale population is the growing evidence of a male bias. No research has been undertaken in spite of considerable evidence including the historical female bias in the Russian kill. Harvest data obtained from the IWC for gray whales for years 1966-1993 shows a much higher ratio of female kills. 1626 males and 2989 females were [19]killed in that period. Research on Western gray whales in 2002 demonstrates an overall male biased sex ratio of 59.1% males and 40.9% females. The sex ratio for calves was 68.0% male and 32.0% female. With the evident collapse of the population in 1999/2000 and evidence of the female bias in the Russian kill, it is critical that NMFS undertake studies to determine the sex ratio of the Eastern Gray Whale. Similar male bias percentages in the Eastern Gray whale population would have serious implications for reproduction.	
AFA65	**MEXICO.** The DEIS has conveniently ignored the data from Mexico and the results of a recent paper by Swartz, Urban et al. [20]*San Ignacio Laguna represents one of the best series of baseline data which cannot be ignored.* *" Overall counts in 2008 were the lowest ever recorded in LSI winter during. The 2008 arrival and occupation of LSI was the latest and shortest ever recorded for gray whales in the lagoon. Comparison of these trends with other breeding lagoons is needed to determine if these decreasing counts, shortening and shift in timing of the winter lagoon occupation by gray whales reflect actual population declines or changes in gray whale distribution to other areas within their winter range."*	Perryman et al. (2011) found that annual calf counts vary considerably, and identified a correlation between artic sea ice and calf counts. While persistent low calf abundance could be a concern, the ultimate indication of adequate calf production is the population abundance trends.

[19] Table 2. SC/46/AS p.12 Wade, 1994
[20] Preliminary comparison of winter counts of gray whale in Laguna San Ignacio, B.C.S, Mexico from 1978 to 2008.

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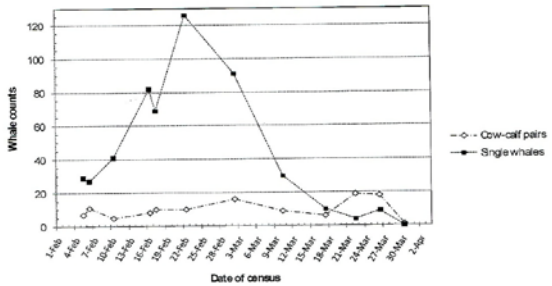
	Mother calf pairs were the lowest recorded during the post die-off period from 2003-2008. The following graph of cow calf pairs and single whales is insightful.  Figure 9. Number of cow-calf pairs (black mark with single line) and single gray whales (white mark with dotted line) counted in census surveys of Laguna San Ignacio in the LOWER ZONE during the 2007 winter season. **Photographic Identification - Residency** A total of 815 usable photographs of gray whales were obtained from 2428 digital exposures. From these, 615 different individual whales were identified from 1156 right-side photographs and 735 left-side photographs. Only 121 whales were photographed from both sides. The analysis of left-side photographs yielded 181 single whales, 58 females with calves, and 11 unknown whales (individuals that for some reason could not be assigned to one of the previous group classes), or 250 individuals (Table III). The analysis of right-side photographs yielded 272 single whales, 79 females with calves, and 14 unknown whales, for 365 individuals. The minimum number of individual whales (single and females with calves) identified from the photographs is equal to the larger number of individuals identified from the left or right side, or 365 whales identified from the right side photos (this includes the 121 individuals identified from both left and right side photographs). If we assume that the whales identified from only their left side photos are distinct from those identified from right-side photos (none are of the same individual), the maximum number *Report of the 2007 Gray Whale Studies at Laguna San Ignacio B.C.S. Mexico* 12 Table 20 – Review of 2007 Gray Whale Studies at Laguna San Ignacio.	
AFA66	*" Low gray whale calf counts in Laguna San Ignacio and during their northward spring migration are especially troublesome as they could indicate a reduction in the reproductive potential of the population. Perryman et al (200) observed that gray whale calf production appears linked to summer ice conditions in the Arctic which may limit pregnant female whales' access to prey resources in some years and subsequently lower calf survivorship. Their observation suggest that short-term annual changes in oceanic sea ice conditions along with longer-term basin scale changes may ultimately affect gray whale productivity. Our observations of " skinny" gray whales in Laguna San*	See response to previous comment.

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	Ignacio also suggest that prey resource limitation is a factor in the health and status of the population. Vulnerability to parasites and disease associated with prey switching and overall stress could affect gray whale productivity and survivorship. (F. Gulland, S.E. Moore and T. Rowles, pers.Comm.) :"	
AFA67	In February, 2008, Australians for Animals CEO, Sue Arnold, had a meeting with Steve Swartz at San Ignacio Laguna. He reported that :- *'the reproduction rate of the whales has extended from one calf every 2.4 years to one every 3- 4 years.'* ** 2007 - 12% skinny whales* ** 2007 - lowest calf count in 30 years* ** water temperature 2 degrees cooler in lagoon* ** experts postulate that the cooler temperature might be keeping whales out of lagoons. Whales are being seen coming up the Sea of Cortes, Acupulco, Loreto, Cabo, and other places where not usually seen* ** big drop in lagoon numbers. Usually 2000 in Guerrero Negro, so far around 600. usually 300 in San Ignacio -so far, around 120.* ** whales spending more time underwater* ** calves smaller* ** not much sexual activity* ** few juveniles* ** fishermen see whales trying to feed on lagoon bottom, may be sucking up some slugs and shrimp.* ** everyone spoke of food shortages causing problems for whales.*	See response to previous comment.
AFA68	In the light of the information presented by Swartz, Urban et al, 2008, NMFS assertions that the population is healthy and recovering can be taken with a grain of salt.	See response to previous comment.

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	The importance of conditions in the San Ignacio Lagoon cannot be ignored. Swartz is quoted in a web article, Journey North Gray Whales saying:- " *The San Ignacio Lagoon, one of four gray whale breeding grounds off the Pacific Coast of Mexico, can be used as a litmus test for the reproductive rate of the species*.." 2007 AFP AFA Int. notes that according to Swartz and Urban [21] 17.50% of cow calf pairs in 2007 were 'skinny.' If San Ignacio Lagoon is an indicator of the status of the population, this figure is a cause of major concern.	
AFA69	In an article written by Swartz in Misterios de Laguna Baja Enero – Abril de 2008, the following insightful comments are made:- " *In the past, large numbers of gray whales gathered in the northern Bering Sea's Chirikov Basin which was known as a primary Arctic feeding ground for gray whales. Spring time and summer plankton blooms resulted in rich colonies of amphipods, a nutricious gray whale food source, on the sea floor. However, dramatic changes in the oceanography of the Arctic associated with global climate change have occurred in recent decades and specifically in the Bering Sea. During the 1990's the Arctic air and water temperature warmed, polar sea ice began to melt faster than any other time in history, and the ocean currents that supported the rich communities of amphipods changed. One result was that the former productivity of the Chirikov Basin declined severely and there is now less food available for gray whales and other species to feed on.* *" Some scientists believed that the gray whale population grew too large and overgrazed the amphipod communities, while other scientists point to climate change effects on the oceanography of the Bering Sea that resulted as the cause of a less productive system or perhaps some combination of factors. With the loss of this important*	See response to previous comment.

[21] Preliminary comparison of winter counts of gray whale in Laguna San Ignacio, B.C.S, Mexico from 1978 to 2008.

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	feeding area, scientists reported in 2003 that aggregations of feeding gray whales were further north in the southern Chukchi Sea and whales are now travelling to new areas and spending more time looking for their primary food sources. Recent sightings of " skinny " gray whales at Laguna San Ignacio suggest that food limitation is a factor in the health and status of individual whales and of the population. Stress resulting from having to find new food resources and to work harder to get them could make the whales more vulnerable to parasites and disease. *Disruption of the gray whales' food chain can also have implications for gray whale calf production and their survival. Counts of newborn clves in Laguna San Ignacio in 2007 were the lowest ever recorded, as were counts of female gray whales with calves passing Punta Pedras Blancas in California Norte during the northward spring migration.* ***Low gray whale calf counts are especially troublesome because they could indicate a reduction in the reproductive capacity of the population.*** *(our emphasis). Gray whale females can birth birth to a calf every two years -12-13 months for gestation, followed by the birth of a calf and then 6-9 months nursing before the calves can feed on their own. Scientist Mary Lou Jones used photographic identification data to estimate the calving interval for female gray whales that were seen during a 5-year period in Laguna San Ignacio. Her estimate based on re-sightings of these female whales was 2.11 years during the period 1977 to 1982. Biologist Sergio Gonzales of the UABCS whale research team developed a new estimate for calving interval of 2.48 years for the period 1996-2000 suggesting that fewer females are reproducing every other year and that the reproductive rate of the gray whale population is slowing down. These lower calf counts could indicate that some gray whale females are unable to obtain sufficient energy resources to conceive, or if pregnant to bring calves successfully to term, or their claves do not survive after birth.*	
AFA70	**CALVING STATISTICS.**	Note: The table supplied by the commenter does not display properly here. However, the 2008 thoroughly dealt with, and the current DEIS thoroughly deals with,

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	Table 21. Calf Abundance	information about population dynamics, including calving data (e.g., 3.4.3.1.5, Reproduction and Calf Production)
AFA71	*The calf count in 2007 was the lowest mid point count in 30 years in the San Ignacio Lagoon according to Mexican and US scientists.* *The annual count of northbound whales by the American Cetacean Society demonstrates the current situation.*[22] *A joint research and education project of UCSB's coal oil point reserve, Goleta + American Cetacean Society – Channel Islands + Cascadia Research Collective, WA + Marine Physical Laboratory, Scripps Institution of Oceanography, UCSD, La Jolla cites:-* *" In 2007 we observed a troubling, estimated drop-off of 46.8% in calves from the previous year, 2006. A similar percentage was reported from other primary, survey stations along the migration route. The confirmation has alerted scientists who are investigating climate changes and access to prey in the primary feeding regions off Alaska. Observed stress on the population points up the importance*	See response to previous comment.

[22] *http://www.learner.org/jnorth/images/graphics/gwhale/ACSLA_020408.gif*

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	of consistent monitoring and close collaboration between survey sites. [23]" AFA Int. does not intend to debate the calf statistics as there is no research done by NMFS on the extent of orca predation and no way of ascertaining the status of calves once they reach Russian waters. The pod sizes have changed and require in depth investigation as estimates appear to have been pushed upwards by fiddling with correction factors and size of pods.	
AFA72	**ORCA PREDATION.** The extent of orca predation has been ignored in the DEIS. Yet scientists from Monterey and Alaska are documenting mortality rates of up to 30% in the Gray Whale population in some years. Orcas are predating on juveniles as well as calves. Russian scientists details attacks on two and three year olds. California whale watching captains have seen fatal attacks on adult whales. Killer whales from Puget Sound have turned up in Monterey Bay for the sixth season in a row. Many observers believe this is an ominous sign that killer whale behaviour is changing. Matkin and Barrett-Lennard have identified three distinct lineages of killer whales. Marine mammal eating transient killer whales predate on gray whales. Heavy predation occurs in Monterey Bay and Unimak Pass. In their paper, [24] they document 18 observed kills observed at False Pass in 2003 and 2004 (May to early June). The paper documents a total of 165 mammal-eating transient killer whales were identified and the majority (70%) were encountered during spring (May and June). The diet of transient killer whales in spring was primarily gray whales.	In response to this and other comments, the new DEIS includes a discussion of predation range-wide (Subsection 5.1.3.8, Natural Mortality).

[23] http://www.acschannelislands.org/2008ProjectDescrp.pdf
[24] Fish.Bulletin 105:74-87 (2007) Ecotypic variation and predatory behavior among killer whales (Orcinus orca) off the eastern Aleutian Islands Alaska

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	At the 2005 Puget Sound/Georgia Basin Region Conference, Priority Conservation Areas (PCA) were identified on the border between British Columbia – Washington. The Strait of Juan de Fuca was identified as a key habitat for killer whales. Although no hunting will be permitted if the waiver is granted in the Strait of Juan de Fuca, nevertheless the number of transient orcas likely to be present in the area and their impact on the resident gray whale population has been ignored in the DEIS The DEIS is particularly deficient in any estimation of the extent of orca predation on gray whales. A project entitled:- *Determining the role of killer whales as apex predators is central to understanding the function and dynamics of marine ecosystems of the Aleutian Islands (AI), Bering Sea (BS), and Gulf of Alaska (GOA).* Wade et al. focused on Steller sea lions, not gray whales. Collaborative studies with the North Gulf Oceanic Society (NGOS) have identified a hot spot in distribution and abundance of transients around the western end of the Alaska Peninsula and in the eastern Aleutians, coinciding with the northbound migration of gray whales into the Bering Sea in late spring. Migrating gray whales have increased in abundance over the past three decades, providing a predictable seasonal food source which may have indirectly increased predation pressure on pinnipeds and other marine mammal species later in the summer. " *In the coastal waters of the Chukotski Peninsula, during the ice-free seasons of the years 1990 to 2000, Inuit hunters reported all of their observations of killer whale predation on marine mammals.(Melnikov & Zagrebin, 2005) Of 92 attacks on marine mammals, 66% were on gray whales, of these 23 resulted in successful; kills, 6 were unsuccessful and the outcome was unknown of the other 32.* [25] *" Killer whales may kill multiple gray whales. For example, when a pod of 12 killer whales were hunting in the area off Inchoun village on 5-10 August 1999, hunters noted six carcasses of gray whales killed by killer whales and beached after a storm.*	

[25] Mizroch 2006 MarEcoProgServ.

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	Of the killer whale attacks on gray whales reported by hunters when the result was known, nearly 80% of the gray whales were killed and 20% escaped."[26] *There is a reported loss of about 30% of the calves between the breeding lagoons and central California (Swartz, 1986). This needs to be investigated.*[27]	
AFA73	**STINKY WHALES**. The historic record demonstrates that contamination of gray whales has been recognised as a major problem at least since 1990. At the 1990 meeting – Report of the Special meeting of the Scientific Committee on the Assessment of Gray Whales, the following statement was made:- *" The Committee recommends that all strandings of gray whales throughout their range should if possible be investigated and samples collected to determine contaminant levels, including particularly animals from the Kodiak Island area. Schweder and Fleischer believed that such studies should investigate the effect on reproductive capacity where possible.'* IWC Ulsan, 2005 Plenary Agenda Item 4.3 and 15.2 [28] Table 5 documents the number of sightings, harassments and observed kills of known marine mammal prey species. In May-June 18 there were 18 observed kills of gray whales. Ac **Proposal.** A more comprehensive investigation should be taken for a number of reasons: The following is relevant to the Makah DEIS.	The 2008 DEIS discussed stinky whales with respect to human health (Section 3.16.3.2, Environmental Contaminants in Gray Whales). The new DEIS includes an updated discussion of stinky whales in the same subsection.

[26] Killer Whale Predation in coastal waters of the Chukotka Pensinsula. Marine Mammal Science 21(3) 550-556 July 2005 Melnikov & Zagrebin.

[27] Urban et al Review of Gray Whales in Mexican waters. J. Cetacean Res. 5(3) 281-295, 2003

[28] IWC/57/17

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	There is a compelling need to determine the cause of this phenomenon, as it could threaten both cetacean and human health, and could be an indicator of habitat degradation. Russian veterinarian Gennady Zelensky, head of the Chukotka Science Support Group says the phenol is the toxin which makes the whales stink. Phenol is carbolic acid, a highly toxic industrial solvent that smells distinctly like disinfectant. It is used and dumped in vast quantities throughout Siberia by oil refineries and diamond mines, in natural gas exploration and extraction and a host of other heavy industries that operate in the former Soviet Union's far eastern hinterlands with little oversight and nowhere to safely dispose of toxic industrial waste. *" Last summer, Zelensky participated in a study of phenol contamination in the salmon, sturgeon and whitefish of the great Amur River in eastern Siberia. For several years, the fishermen who ply the Amur have complained that their catches are dwindling and that many of the fish in their nets disgorge a chemical smell when cut opn. Every fall, when the brown water of the Amur begins to freeze, an eye-watering medicinal reeks sets in along the ice. The fishermen describe the smell as like the inside of a drugstore or health clinic.* *" Tests showed the fish of the Amur are heavily contaminated with phenol. That was no surprise, as the Amur is loaded with phenol, same as most major rivers that flow through the Russian Far east.* *" Zelensky says in August he tested for phenol in the blubber and livers of five freshly killed gray whales in Chukotka. Though none of them were stinky whales, all five tested positive for the solvent."*[29]	
AFA74	**RUSSIA –CONTAMINANTS – MEXICO – CONTAMINANTS ?** *" The Chukotka Science Support Group sampling is in the first phase of a study of contaminants in the Eastern North Pacific Stock of gray*	See response to previous comment.

[29] Survival, David Holthouse. New Times Inc. 2005

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	whales. The study was funded by the National Marine Fisheries Service to investigate the causes and potential human health effects of stinky whales. *" The situation is quite severe," says Dr. Vladimir Orlov, the Russian Federation's Minister of Natural Resources. " This is the region (Siberia and the Far East) where our industrial development is the heaviest. Sixty-nine per cent of Russian oil exploration is being conducted in this region, along with 78% of natural gas exploration, and 90 per cent of our natural gas extraction efforts. There is also heavy mining, timber and other chemical waste producing activities. Unfortunately, there are no special sites for hazardous chemical storage in this region that are well equipped."*[30] " *You look at the level of chemicals in most of our rivers in Siberia and it can be seen there are more toxins in the river than water*, " says Mikhail Krykhitin of the Amur Inland Basin Laboratory, an affiliate of the Russian Federation's Pacific Fishery and Oceanography Institute."[31] NMFS has not revealed, published or provided any information on the study funded by the agency. Phenol and other forms of industrial toxic waste, including PCBs, act as endocrine disrupters creating havoc with hormones resulting in greatly decreased rates of reproduction. NMFS has failed to carry out any studies which would identify whether the consistently low calf count is related to toxic contamination of the Russian waters.	
AFA75	**RUSSIAN NEEDS STATEMENT IWC 2007 ABORIGINAL SUBSISTENCE WHALING ANNEX D.**	Note: The graphic provided with the comment did not reproduce in this format but we considered the information provided and the associated comments.

[30] Ibid.
[31] Ibid

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	QuickTime™ and a TIFF (LZW) decompressor are needed to see this picture.	
AFA76	IWC Aboriginal Subsistence Whaling report 2006 indicates '*in relation to the ' stinky whale'* issue, there is a related gray whale study started in Mexico in March 2006 to obtain breath samples for chemical analyses from free swimming whales. Samples will also be obtained from free swimming gray whales in the fall, offshore the State of Washington (feeding grounds). The results of these studies will be made available to the Scientific Committee next year. ' No such information is available in the DEIS. Given that samples were to be obtained in Washington state, this research is particularly relevant and should be included in the DEIS. The same report states:- " *Mexico said that in the 2005 IWC Annual Report on page 102, the Russian Federation indicated that there is information that the winter habitat areas of gray whales in Mexico are chemically polluted."* None of this information has been provided in the DEIS. If, in fact, there is chemical pollution along the entire migration route then not	The 2008 DEIS discussed stinky whales with respect to human health (Section 3.16.3.2, Environmental Contaminants in Gray Whales). The new DEIS includes an updated discussion of stinky whales in the same subsection.

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	only should the cumulative impacts of the toxic load be investigated but any consumption of the Gray whale should be viewed as a potential health risk pending proper published studies.	
AFA77	**CHUKOTKA/MAKAH RELATIONSHIP.** In September 2005, Makah tribe biologist, Nathan Pamplin, visited Chukotka on a *" scientific exchange"* to evaluate the type of data they collected on landed whales and to evaluate the logistics of studying the *" stinky whale*" phenomenon that was raised during both the Aboriginal Whaling sub-committee and the Conservation sub-committee at IWC 57 in Ulsan, Korea. During the visit, a member of the Makah tribe took part in whaling which was claimed to have occurred in Russian territorial waters. Pamplin writes in an email to John Arum, lawyer, dated September 13, 2005 that " *the information that I learned will be shared with other US delegates to the International Whaling Commission. At IWC 58 I plan to discuss ways that the Russian Federation can increase the amount of data collected from landed whales, both in terms of understanding more about gray whales, in general, and to address specific concerns about " stinky whales*." No such data is evident in the DEIS. Although several studies by Pamplin are cited, none of the papers refer to *" stinky whales*" or any data collected by the Russian Federataion. The failure to provide information gained by the Tribe's biologist in the DEIS is a gaping hole in the document. As the Makah propose to consume any slaughtered whale, the concern surrounding Gray whale contamination must be discussed comprehensively in any DEIS. That the Tribe's own biologist, after visiting Chukotka on a " *scientific exchange*" has no research or information to contribute to the " *stinky whale* " issue is of major concern. Samples which were supposed to have come back from Russia to the US are not mentioned. Acivist groups who attempted to find out if NOAA had actually issued a permit to bring back samples have not been able to obtain relevant information.	Comment noted. The 2008 DEIS included all data available regarding stinky whales (Subsection 3.16.3.2, Environmental Contaminants in Gray Whales). The new DEIS includes updated information in the same subsection.

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	These samples are important research which should be documented in the DEIS.	
AFA78	***Pesticides, toxic contamination.*** The gray whale feeds primarily on benthic prey using suction to engulf sediments and prey from the bottom, then filtering out water and sediment through their baleen plates and ingesting the remaining prey. This feeding strategy often results in exposure to sediment associated contaminants. *Tilbury et al (1999) studied contaminants in gray whales. During migrations, prolonged fasting may alter the disposition of toxic chemicals within the whales' bodies. Gray whales feeding in coastal waters may be at risk from exposure to toxic chemicals in some regions. The higher concentrations of PCBs found in stranded animals compared to harvested animals may be due to the retention of organochlorines in blubber during fasting rather than increased exposure to these contaminants.* *The elevated concentrations of certain trace elements (e.g., cadmium) found in some tissues, such as kidneys, of stranded animals and the high levels of aluminium found in the stomach contents and tissues of harvested whales, compared to other marine mammal species is consistent with the ingestion of sediment by gray whales.* [32] Organochlorine (OC) pollutants are among the most widespread and persistent chemical contaminants present in the marine environment. (Tilburny et al/Chemosphere 47) 2002 555-564). These pollutants bioaccumulate in lipid rich tissues of marine mammals. Males cannot eliminate OC's as females do through gestation and lactation. (Wagemanna and Muier, l984. . Tilbury paper) Toxic and essential elements found in gray whales are of concern because of their toxilogical significance and possible accumulation in certain organs (eg. Kidney, brain) of marine mammals. Mercury is	Comment noted. The 2008 DEIS contained available information regarding contaminants in gray whales (3.16.3.2 Environmental Contaminants in Gray Whales). The new DEIS contains updated information in the same subsection.

[32] Status Review 1999

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	pephrotoxic in mammals, it has been suggested that aluminium may alter brain function. (Goyer, l986). (Tilbury paper). In the Tilbury et al study, tissue samples were collected from juvenile gray whales in their Arctic feeding grounds in the western Bering Sea, a relatively pristine area according to the authors. Concentrations of Ocs (PCBs, DDTs, hexachlorobenzene) selected non essential, potentially toxic elements (eg . mercury, cadmium) and essential elements (selenium) along with per cent lip were determined in tissue samples and stomach contents of these animals. Wolman and Wilson (l970) reported the presence of DDT's in 6 of 23 gray whales that stranded off San Francisco, California during both their northern and southern migrations. Schaffer et al (l984) reported concentrations of DDTs in blubber of a gray whale stranded in southern Claifornia in l976. Varanasi et all (l993, l994) reported chemical contaminant data for 22 gray whales that stranded along the west coast of the US from l988 to l991. The Tilbury paper compared OC levels in the juvenile subsistence whales with juvenile whales that stranded from l988 to l991 and found that the juvenile stranded animals had significantly higher mean concentrations of PCBs and DDTs than the juvenile subsistence animals. Researchers conclude that they would expect to find higher concentrations of OCs in gray whales that feed near urban areas than OC levels in animals that feed in more pristine waters. In l985, nine gray whales died within Puget Sound, Washington. Although the cause of death was not determined conclusively, there was speculation that the deaths were due to toxic chemical contamination. (Swartz l986 MMC) Washington Department of Fish & Wildlife in their Status Report for the Killer Whale, March 2004 cites studies which establish the transient and southern resident populations of the northeastern	

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	Pacific as among the most chemically contaminated marine mammals in the world (Ross et al 2000, Ylatalo et al 2001). " *This conclusion is further emphasized by the recent discovery of extremely high levels of SPCBs in a reproductively active adult female transient that stranded and died on Hugeness Spit in January, 2002. While alive, this whale was recorded most frequently off California thus its high contaminant load may largely reflect pollutant levels in prey from that region*. " According to the report, a primary factor in the decline of killer whales in the northeastern Pacific may be exposure to elevated levels of toxic chemical contaminants, especially organochlorine compounds. *'.. many organochlorines are highly fat soluble and have poor water solubility, which allows them to accumulate in the fatty tissues of animals, where the vast majority of storage occurs. (0'Shea 1999, Reijnders and Aguilar 2002). Some are highly persistent in the environment and resistant to metabolic degradation. Vast amounts have been producted and released into the environment since the l920s and l930s. The persistent qualities of organochlorines mean that many are ultimately transported to the oceans, where they enter marine food chains. Bioaccumulation through trophic transfer allows relatively high concentrations of these compounds to build up in top level marine predators such as marine mammals (O'Shea, 1999). … Organochlorines enter the marine environment through several sources, such as atmospheric transport, ocean current transport,. And terrestial runoff (Iwata et al.1993. Grant and Ross 2002)… Much of the organochlorine load in the northern Pacific Ocean originates through atmospheric transport from Asia (Barrie et al. 1992, Iwata et al. 1993, Tanabe et al 1994)."* The report recognizes the vulnerability of marine mammals to biotoxins. *" Killer whales are candidates for accumulating high concentrations of organochlorines because of their position atop the food chain and*	

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	long life expectancy. Their exposure to contaminants occurs only through diet. " Since Resident gray whales feed in Washington state on mysids and benthic organisms, the lack of any tests to establish levels of contaminants in these whales should not be considered grounds for asserting that eating the meat of gray whales is " *safe*" for the Makah tribe. As bottom feeders, gray whales are particularly susceptible and vulnerable to the exponentially growing contamination of the North Pacific, Bering, Chukchi, Beaufort Seas.	
AFA79	**RESIDENT WHALES.** The importance of protecting resident whales and their habitat/prey is highlighted by Earthwatch Institute in an article by Dr William Megill who has studied the gray whales for many years. He says " *the observed shift in the Bering Sea benthos, which may be due to long-term global warming induced effects, may now have begun to push whales further into secondary habitat in the Arctic and possibly into tertiary or even quaternary habitat in Baja California. If this is the case, then it is more important than ever to determine the significance of these new feeding niches if the grey (sic) whale is to remain off the Endangered Species List*." " *The degree to which seasonal resident gray whales should be managed as a unit separate from the overall gray whale population is unclear. The animals that feed in Pacific Northwest waters appear to make the southern migration to Mexico each year and therefore are part of the larger breeding population of gray whales. Depending on the stability of this group and how animals are recruited to this strategy, they may represent a unit that should be managed separately.* *" The management implications of seasonal resident whales has become controversial recently due to the resumption of whaling by the Makah tribe in northern Washington (Quan 2000). The management plan for the Makah hunt calls for targeting migrating*	In response to this and other comments, new research has been completed since 2008 on the PCFG. The results of that research and analysis of data are reported in the new DEIS (Subsection 3.4.3.4, Pacific Coast Feeding Group (PCFG) of Gray Whales).

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	whales but it is unclear how effectively current strategies would be in avoiding takes of seasonal resident whales. (Quan 2000). This study shows that many gray whales identified as early as March during the gray whale migration were animals that had been seen in previous years and stayed through the summer and fall. This would make it more difficult to effectively target whales that were not part of this small season resident group." [33] At the 2005 Puget Sound Georgia Basin Research Conference, biologist John Calambokidis of Cascadia Research said gray whales that ventured inland were more likely more vulnerable to shore-based hunters than those that swam farther offshore. He said the ones that stop in the Northwest tend to not have as many young as the larger population. This comment is important as there is no easy way that Makah hunters can determine whether a whale is a resident or a non-resident. Of primary importance in commenting on the resident whales is the following cite from the 9th Circuit [34] :- '*The crucial question, therefore, is whether the hunting, striking, and taking of whales from this smaller group could significantly affect the environment in the local area. The answer to this question is, we are convinced, both uncertain and controversial within the meaning of NEPA. No one, including the government's retained scientists, has a firm idea what will happen to the local whale population if the Tribe is allowed to hunt and kill whales pursuant to an approved quota and Makah Management Plan. There is at least a substantial question whether killing five whales from this group either annually or every two years, which the quota would allow, could have a significant impact on the environment.'*	

[33] Final report – Range and movements of seasonal resident gray whales from California to Southeast Alaska. Calambokidos et al, December 2000.
[34] Anderson v Evans, 9th Circuit.

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AFA80	**STRANDING DATA.** " Reports from a portion of the stock's range indicate that only 5 and 6 strandings were reported in 2002 and 2003, respectively. (C. Allen, NMFS-National Stranding Database pers.comm) " CITE SAR 2007 Stranding data is not current and therefore comment cannot be made without current data. The PBR value should not be set without this information and is a violation of s. 118 f the MMPA.	The stock assessment reports include stranding data from NMFS' stranding network and other sources as it is collated an analyzed. Similar to abundance data, the process of collating and analyzing data may result in a lag time.
AFA81	**PREY.** Although NMFS is strident in its efforts to persuade the public that the Gray whale is now a " *generalist feeder*" There is no current research to support the contention. 80% of their primary prey comes from the benthic biomass in the Bering and Chukchi Seas. The amphipods on which Gray Whales predate are severely affected by increased seawater temperatures and resulting loss of ice. Carl Safina, president of the Blue Ocean Institute explains the system with exquisite simplicity. Noting research that shows how diminished sea ice may be forcing gray whales to swim hundreds of miles farther north to find food Safina is reported in the Orange County Register saying: - ' *Sea ice in the northern Bering Sea formerly melted in April, releasing nutrients that fed single-cell plankton that bloomed, died and fell to the ocean bottom because it was too cold for animal plankton to graze on it. That created a rich biomass on the ocean bottom, feeding creatures eventually exploited by gray whales, walruses and diving ducks.* *'With sea ice melting sooner there is not enough sunlight to fuel the initial plankton bloom so early in the season. A lesser bloom of single-cell plankton comes later and the water is warm enough for zooplankton to come and graze off that plankton. Those zooplankton are eaten by fish that can thrive in the warmer water- and there's less to eat by the animals eaten by gray whales.*	In response to this and other comments, the new DEIS includes a discussion of the potential effects of climate change, including potential effects on benthic prey in the arctic (Subsection 3.4.3.6.11, Climate Change and Ocean Acidification).

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	" The food chain has shifted from one that created dense bottom fauna foraged by certain marine mammals and diving ducks to one foraged by fish. *" And the warming water also allows other fish to move in like Pollock to eat those smaller fish. So it goes from that top down, bottom-dominated system to a pelagic or ocean-water column, fish-dominated system."*[35] Dr. Liz Alter adds her concerns to the status of benthic prey and the changes in the marine ecosystem. " *Nearly all marine mammal species that depend on Arctic resources for prey will face impacts from climate change in the near future, and gray whales will be no exception. Gray whales feed on benthic amphipods and other small prey along shallow continental shelves in the Arctic by scooping up mouthful of benthic matter. Significant ecosystem-level changes in gray whale feeding grounds in the Bering Sea have already been documented (e.g. Grebmeier et al 2006). The feeding range of gray whales has also changed significantly since the l980's (Moore et al 2003) moving from feeding grounds in the Bering Sea to more northward areas above the Bering Strait. Unfortunately, there is currently no way to predict how the prey base that gray whales depend upon will change as the climate in the Arctic warms due to complex interactions between projected changes such as reduced ice cover, increased freshwater input, and changing ecological dominance. However, this uncertainty serves to emphasize the importance of continued and vigilant monitoring of the gray whale population as well as the Pacific ecosystems upon which they depend*."[36] Although the recent paper by Coyle et al [37] suggests that the decline in amphipod biomass is coincident "*increasing gray whale*	

[35] The Orange County Register September 1, 2007 Dan Joling Associated Press
[36] Dr S. E. Alter, Marine Mammal Fellow, NRDC, letter of support for Resolution AJR 49 to Assemblyman Pedro Nava, California Assembly, March 31, 2008
[37] Amphipod prey of gray whales in the northern Bering Sea: Comparison of biomass and distribution between the 1980s and 2002-2003. Coyle et al. Science Direct, Deep-sea Research Part II, March 7, 2007.

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	populations and were probably the result of top down by gray whales on the amphipod populations", an alternative hypothesis is also possible given that Gray whale population is not increasing but in decline. The study focuses on a comparison of the mid 80's and 2002-2003. 2002-3 was the post die-off period following a major population crash that removed at least 30% of the population. There was no SAR in 2003 or 2004. The 2005 SAR put the 2002-3 population at around l8, 000. So the hypothesis that " *increasing gray whale populations*" had caused the decline is questionable. According to Highsmith Coyle (1992) " *a similar if not greater decrease in amphipod biomass was documented from 1986 to l98*8." Both scientists claim that the amphipod biomass can take five to 100 years to recover. '*Specifically Highsmith and Coyle 1992 showed that the abundance and biomass of the amphipod community decreased during the 3 year period from l986-l988, resulting in a 30% decline in production. They noted that high-latitude amphipod populations are characterized by low fecundity and long generation times, and that large, long-lived individuals are responsible for the majority of amphipod secondary production. Therefore, a substantial reduction in the density of large individuals in the population will result in significant long term decrease in production'*[38] Bottom trawling has also been implicated in major changes in the benthic community. Gray whale population estimates in 1986 –l988 were 21,444 and 22,250 respectively. In 2004, the US Geological survey's Dr Hans Nelson reported that certain environmental stresses in the Chirikov Basin would negatively impact gray whales. " *Knowledge of the feeding habits of gray whales and the geological framework of which the habitat of amphipods depends suggest that any disturbance to the ecosystem could significantly reduce the gray*	

[38] Status Review, 1999

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	whale population within a few years. Calculations suggest that the Chirikov Basin provides a minimum of 6 per cent of the food supply for the California Gray Whale. Gray whales feed here for about 5 months before migrating south as Arctic sea ice advances; loss of the amphipod ecosystem would substantially reduce the whales' food supply. Such a loss of amphipod habitat could occur, for example, if sand is removed to support construction in Alaska or if the sand sheet is contaminated by petroleum spills. ' Ken Weiss, LA Times journalist, writes in an article July 6, 2007: - *' Scientists first thought that the gray whale population, which had been hunted nearly to extinction in the 1930s, had simply grown too large for its primary food source and eaten more than nature could provide. Such overgrazing was thought to have been responsible for the mass die-off in 1999 and 2000 that saw the population drop from 26,600 to about 17,400.* *' Now scientists suspect that the climatic changes in the Bering Sea played a role in the population plunge by reducing the whale's primary food; amphipods that appear to be affected by warming temperatures and vanishing sea ice.* *' These amphipods grow in tubes on sandy or muddy seafloors and cannot move around like many sea creatures. They count on bits of algae to come to them, or at least close enough so they can use their antennae to pull the food into their mouths.* *' One source is a confetti that rains down from shaggy mats of algae that grow on the underside of ice sheets at the ocean's surface. Another is brought by ocean currents, carrying a soupy mix of algae or plankton.* *' Both sources have diminished or been cut off as the northern Bering Sea has undergone a shift from a seasonally ice-dominated region to more of an open ocean dotted with thin ice that is quickly broken up by storms. And the basin's waters have warmed enough to allow new types of fish to migrate north, gobbling up the amphipods or competing with them for food.*	

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	" Whales are not the only animals struggling to adapt to these rapid changes. Researchers have also noticed dramatic declines in other species that feed on the bottom such as walruses and sea ducks.' In their paper detailing genetic research on the Gray whale,[39] Alter, Rynes and Palumbi say the Gray whales play a key ecological role in their Arctic feeding grounds, stirring up sediment that increases nutrient cycling in the ecosystem. ' *At previous levels, gray whales may have seasonally re-suspended 700 million cubic meters of sediment, as much as 12 Yukon Rivers, and provided food to a million seabirds,'* the authors write. ' *Decreased sediment reworking could dramatically change nutrient recycling, and create shifts in benthic species dominance.'* NMFS scientists acknowledge that a reduction in primary food supply was the cause of the population crash in 1999/2000. ' *We agree that the symptoms observed in this population in 1999 and 2000 are likely related to an overall reduction in nutritive condition of individuals within the population. We suspect that the dramatic nature of these events are the result of a synergistic interaction of lower overall food availability and reduced access to this already depleted resource caused by extensive seasonal ice."*[40]	
AFA82	**OIL AND GAS EXPLORATION**	In response to this and other comments, the new DEIS includes an updated discussion of oil and gas exploration throughout the range of ENP gray whales (Subsections 3.4.3.6.4, Oil Spills and Discharges, and 3.4.3.6.5, Offshore Activities and Underwater Noise).

[39] DNA evidence for historic population size and past ecoystem impacts of gray whale. S. Elizabeth Alter, Eric Rynes and Stephen R. Palumbi (2007)
[40] Marine Mammal Science Vol. 18, No. 1 2002 Gray whale calf production 1994-2000; are observed fluctuations related to changes in seasonal ice cover. Perryman et al.

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	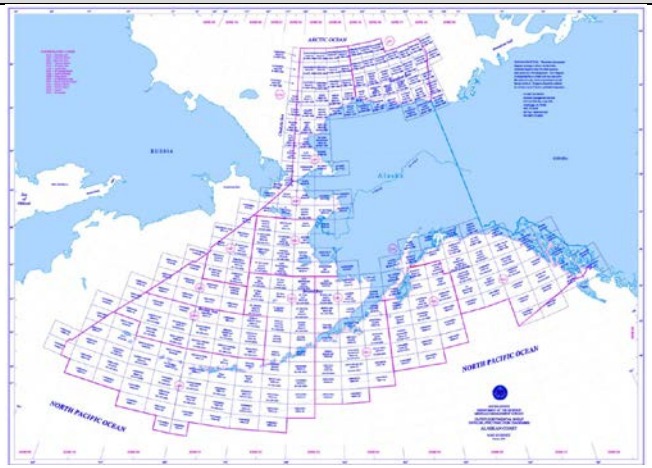 Table 22. Minerals Management Service Map " *Because of the potential for human-related impacts along migratory corridors and calving grounds off the south- eastern coast of Asia, as well as on the feeding grounds, project scientists expressed serious concern for the future survival of the population. They noted that the proximity of whales to seismic surveys, drilling, ship traffic, and other activities associated with offshore development could displace gray whales from essential feeding areas, and that oil spills, dredging, and other forms of pollution and construction could impact gray whale prey resources.* "[41] There is no difference in the risks that threaten the Eastern Pacific Gray Whale with similar consequences. The US Geological Survey estimates the Arctic has as much as 25 per cent of the world's undiscovered oil and gas. Russia reportedly sees the potential of minerals in its slice of the Arctic sector approaching $2 trillion. The US Government has recently sold 29.4 million acres in the Chukchi Sea for oil lease sales.[42] Within this lease sale is critical feeding habitat for the Gray Whale.	

[41] Marin Mammal Commission – Annual Report for 2002.
[42] http://www.mms.gov/ld/Offshore_Cadastre/Alaska/pdf/akindex.pdf

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	According to the US Minerals Management Service Environmental Impact Statement there is a 33 to 50 per cent chance of a 1000-barrel spill in the area. **MMS Alaska OCS Developed Leases** According to MMS are 173 operating leases in the Alaska OCS Region. See attached maps showing the locations of existing leases. **Chukchi Lease Sale 193** The Federal Government has recently sold 29.4 million acres in the Chukchi Sea for oil lease sales. Within this lease sale is critical feeding habitat for the ENPGW. There are two other lease sales scheduled for the Chukchi Sea in the MMS Artic Region 5 year plan for 2007-2012. The Chukchi Sea is the most productive high latitude ocean system in the Arctic. Its shallow and highly productive sea floor (benthic system) allows bottom-dwelling prey (crustacea, mollusks, etc) to flourish, creating a buffet for wildlife specialized to feed off the ocean floor, such as the gray whale. Gray whales are particularly at risk with the proposed development, yet the National Marine Fisheries Service (NMFS) has failed to accurately document those impacts in their DEIS. They fail to acknowledge the critical feeding habitat of the gray whale and the significant impact of seismic, drilling and other operations. Major changes in recent decades from arctic to subarctic conditions in the northern Bering Sea ecosystem has resulted in the loss of tight benthic pelagic coupling that previously supported high benthic standing stocks is resulting in the decline in prey of gray whales and other benthic feeders. Gray whales have responded by relocating their primary feeding area northward. Their calls have been recorded throughout the winter near Barrow, and local hunters report that gray whales are more numerous along the Alaskan North Slope than in the past. Gray whales moving north through the Bering Strait in June, following leads in the pack ice northward. Gray whales have been observed feeding off Barrow until well into October. (Annex K-Report of the Environmental Concerns SWG and Chairman's Report of the SC, 2005).	

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	One of the highly used feeding areas for the gray whale is the Hannah Shoal in the northeast corner of the leasing area, just off of the Barrow Point. (Moore S.E., DeMaster D.P., 1999) This is also the central location to be developed by industry. This critical feeding area was not discussed in the DEIS, or was an analysis done regarding the impact to gray whales of the loss of this primary feeding area. Disastrous impacts to Gray whales are bound to occur, particularly given the extensive pipeline infrastructure planned for the area. Look no further than the WP Gray whale and the consequences of similar infrastructure. Both gray whales and walrus are at great risk from pipeline development in the Hannah Shoal area (COMIDA Meetings, Nov. 2006). Both marine mammals are bottom feeders that rely on benthic species populations. The impact from pipeline infrastructure displacement is greatly minimized by the government. The impact to gray whales from infrastructure disturbance to feeding area may result in movement away from the area. If the whales continue to feed in the area, a greater risk is assumed with the impacts of bioaccumulation. For example, "drilling muds probably would not kill benthic organisms, but any heavy metals in them might be accumulated by benthic organisms, adding to the body burden in vertebrate consumers." 5-year plan DEIS at IV-65. The Hannah Shoal area is known to have annual ice keels (deep gouges into the sea floor). The impact of these on pipelines are not discussed in the DEIS. There is a risk for chronic, undetected oil leaks. Undetected leaks from underwater pipelines could impact gray whales by contaminating the benthic communities they feed on and subsequently accumulating in the whale. Additionally, if the whales continue to choose to feed in this area, then traffic and other impacts would be realistic. **Chukchi Lease Sales 212 and 221** **Beaufort Lease Sales 209 and 217** The MMS is also in the process of preparing an EIS for two Beaufort Sea and two additional Chukchi Sea oil and gas leases. The area to be evaluated for Beaufort Sea Sales 209 and 217, slated for 2009 and 2011 respectively, encompasses approximately 33 million acres, 3 to 205 statute miles off the northern coast of Alaska. The area stretches	

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	east from Barrow to the Canadian border. The area for sales proposed for the Chukchi Sea, Sales 212 and Sale 221 slated for 2010 and 2012 respectively encompasses approximately 40 million acres located 25 to 275 miles off the coast of Alaska. The proposed sale area stretches from north of Point Barrow to northwest of Cape Lisburne **Seismic Testing Chukchi and Beufort Seas** Given concerns about esonification affecting important life history functions for a large portion of a population in areas of special concern[43], the IWC Scientific Committee recommends that further research be undertaken to quantify the exposure and potential impact of noise from seismic surveys within these areas and their effect on important life functions. (Annex K- Report of the Environmental Concerns SWG and Chairman's Report of the SC, 2005). The Working Group recommended that impacts of seismic testing to bowhead, gray and Beluga whales must be determined. The group noted that the eastern North Pacific gray whales have a significant presence in the Beaufort and Chukchi Seas and should be considered when assessing seismic activities. (Annex K- Report of the Environmental Concerns SWG and Chairman's Report of the SC, 2005). MMS-permitted seismic surveys have been conducted in the Federal waters of the Beaufort and Chukchi seas since the 1960's with a peak in the 1980's. The seismic exploration program now under way in the Arctic Ocean originally incorporated standards requiring companies to shut down their seismic shoots when whales are exposed to dangerous sound levels, which can extend 50 miles from the vessel. After first agreeing to this, Conoco Phillips went to court in 2007 and had this requirement suspended – an ominous sign of things to come. They continued their testing without monitoring the 120db exclusion zone for cow/calf pairs that was required to mitigate impacts to the bowhead whale. Conoco argued, in part, that aerial monitoring of the Chukchi was too difficult.	

[43] Include restricted migratory routes, feeding grounds, breeding/nursery areas, resting ares, designated protected areas.

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	Conoco Phillips Alaska will be conducting shallow hazard and site clearance using acoustic equipment and airguns from August to October this year. The Arctic Slope Regional Corporation (ARSC) Energy Services (AES) – will be conducting shallow hazard site surveys between July and November 2008. Shell Offshore Inc. will also be conducting seismic testing from July to November 2008. **MMS OCS Oil and Gas Leasing Proposed Program for 2007-2012** The DEIS does not address the effects of the MMS OCS 2007-2012 five year plan on gray whale habitat. This is a shortsighted plan sacrificing America's Arctic. The 5-year plan proposes 21 sales nationwide, nine of which are off Alaska: two in the Beaufort Sea, three in the Chukchi, two in the North Aleutian Basin (Bristol Bay), and two in Cook Inlet. The Alaska OCS, with its infamous stormy seas, sea ice and remoteness, is one of the most difficult working environments in the world. Clearly, the risks of offshore oil are greater in Alaska than anywhere else in the nation. Marine ecosystems and marine mammals are at risk from oil spills, noise and other disturbance and habitat impacts, which would inevitably occur during exploration and development. Devastating spills that cannot be cleaned up in broken ice risk endangered bowhead, gray and other whales. Because of adverse conditions present in the Chukchi and Beaufort Seas most of the year, there is no oil spill response technology available to remediate an oil spill. Oil pollution causes direct mortality, increases susceptibility to diseases in fishes, inhibits phytoplankton productivity, and interferes with reproduction, development, growth, and behavior of many species. In addition to the dangers of oil pollution, a number of other potential pollutants are common in offshore oil operations, including the dumping of toxic drilling muds and other chemicals involved in drilling. An oil spill, regardless of its cause or the probability of such an accident, could adversely impact ENPGW and ENPGW habitat. While the impacts of such a spill are undoubtedly higher on the	

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	feeding and calving/breeding grounds, migrating whales may also be subject to the adverse effects of an oil spill. Such effects may: 1) Kill or debilitate marine mammals by matting and reducing the insulating quality of fur, by acute or chronic poisoning due to inhalation or ingestion of toxic compounds or ingestion of contaminated food, by irritation of skin, eyes, or mucous membranes, or by fouling of the feeding apparatus of baleen whales; 2) Kill, debilitate, or otherwise reduce the abundance or productivity (Availability) of important marine mammal prey species and/or species lower in the marine food web, and cause acute or chronic nutritional deficiencies including starvation; 3) Stress animals making them more vulnerable to disease, parasitism, and/or predation; 4) Interfere with formation of mother/young bonds and cause mothers to abandon their young; 5) Cause animals to abandon or avoid contaminated breeding areas, feeding areas, etc. and/or to concentrate in unaffected areas; 6) Attract animals to debilitated prey making them more vulnerable to contact with harmful compounds and oil and ingestion of contaminated prey (Swartz and Hofman 1991; Albert 1981; Geraci and St. Aubin 1990). Oil spills result in high mortality in benthic amphipods on which the ENPGW relies for its primary prey. According to the Minerals Management Service Environmental Impact Statement there is a 33 to 50 per cent chance of a 1000-barrel spill in the area. The estimated probability of an oil spill of greater than 10,000 barrels within the range of the ENPGW, for example, is 14% in southern California, 21-27% in the Bering Sea, 18-34% in the Gulf of Alaska, and 96% in the Chukchi Sea assuming commercially productive amounts of hydrocarbon are found in those areas (NMFS 1993). Similarly, the probability of one or more pipeline or platform spills of 1000 bbl and greater, and 10,000 bbl and greater in the Chukchi Sea	

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	as 92 and 57 percent, respectively (NMFS 1993). Furthermore, because Chukchi Sea oil will be transported by tanker, MMS (1992) predicts a 93 and 81 percent probability of one or more tanker spills of 1,000 bbl or greater and one or more tanker spills of 10,000 bbls or greater, respectively occurring outside of the Chukchi Sea. MMS (1992) also predicts additional tanker and oil spills along the western coast of North America.	
AFA83	**GRAY WHALES AND NOISE.** SC/A90/G5 (IWC Scientific Committee document) summarized the potential impact of offshore activities on gray whales. *" Considerable research on the possible effects of noise associated with offshore oil and gas development on gray whales has been conducted since the mid-1980's. Noise from oil and gas sources occurs at frequencies that overlap gray whale calling (and assumed) hearing frequencies, and therefore can probably influence whale behavior.* *In general, gray whales exhibited a 0.5 probability of avoidance to continuous noise levels that exceeded 120dB, and to intermittent noise levels that exceeded 170 dB re 1 u Pa. The distance at which whales responded to noise, and the type of response elicited, varied with the noise source, the locale and ongoing whale behavior.*[44] Gray whales are particularly sensitive to noise. Noise associated with industrial development, including oil and gas exploration, and other activities may adversely impact whales by: • interfering with or disrupting communications, feeding, breeding, or other vital functions; • causing animals to avoid or abandon important feeding area, breeding areas, resting areas, or migratory routes; • causing animals to use marginal habitat or to concentrate in undisturbed areas which in turn may result in crowding, over-	The 2008 DEIS included a section examining the impacts of noise on ENP gray whales (Subsection 3.4.3.6.5, Offshore Activities and Underwater Noise). The new DEIS includes a similar discussion in the same section.

[44] Report of the special meeting of the Scientific Committee on the Assessment of Gray Whales. 1990

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	exploited food resources, increased mortality, and decreased reproduction; • stress animals and make them more vulnerable to parasites, disease, and/or predation; and • attract animals making them more vulnerable to oil spills, hunting, or harassment In 1994, the US Marine Mammal Commission said: - "*noise associated with coastal development and related activities could cause whales to avoid and, if exposure to the noise is prolonged, to abandon areas that may be essential to calving, nursing, and breeding.* *Noise impacts can also interfere with mother/ calf communication and may cause whales to abandon their feeding grounds moving to less productive areas where the prey does not provide sufficient food for their energy needs.* In the California Coastal Commission staff report and recommendation in relation to the BHP BiIliton proposed LNG Terminal, [45] and the issue of noise cites a NAA Fisheries (2007) Reports that: - ' *Bryant et al (1984:in Polefka 2004) recorded the abandonment by gray whales of a calving lagoon in Baja California, Mexico following the initiation of dredging and increase in small vessel traffic. Following the termination of the noise-producing operations, the cow-calf pairs returned to the lagoon. Underwater noise associated with extensive vessel traffic has been documented to have caused gray whales to abandon some of their habitat in California for several years (Gard 1974; Increasing levels of anthropogenic noise have been identified as a habitat concern for whales and other marine mammals because of its potential effect on their ability to communicate (Carretta et al 2001; Jasney et al 2005).* The IWC Scientific Committee has stated that " *noise producing activities (such as seismic surveys or sonar operations) should not be conducted in critical habitats at certain times of the year, which could*	

[45] CC-079-06 BHP Billiton Staff Report and Recommendation

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	greatly reduce exposing mothers and calves or breeding animals to high sound levels." IWC Scientific Committee meeting in Japan received evidence of behavioral disturbance from seismic surveys on the Piltun Feeding Ground – Western Pacific Gray Whale habitat. This evidence noted that whales appeared to have moved away from the region where seismic surveys were conducted, reoccupying the region from which they had been displaced when the surveys ceased. In 2001, the Scientific Committee strongly recommended that no seismic work be conducted while whales were present on their feeding ground. SC/54/BRGl4 provides strong empirical evidence in support of the Committee's concerns last year that seismic activities can have a major impact on gray whales. (IWC, 2002j, p.l82). The Committee also recommended that acoustic monitoring and behavioral observations be conducted to examine noise-related disturbance of these whales; it reiterated that this recommendation should be implemented. Further, the Committee was concerned to hear that additional seismic work is planned for 2002, 2003 and the future. It again **strongly recommended** (their emphasis) that no seismic work be conducted on or near the Piltun Feeding Ground while whales are present because: - • Gray whales in this area have shown strong avoidance responses to seismic survey activities during which they were displaced from important feeding habitat; • this region is the only known feeding ground for the population and is therefore critical to the continued survival of the population. • ' skinny ' whales including many reproductive females with calves have been observed in the area between l999 and 2001 and require maximum food intake during the summer feeding season;	

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	• the cumulative impacts of seismic operations on the health and survival of these whales, especially ‘ skinny ‘ animals, are unknown and of great concern. • All of the above recommendations should apply to the Eastern Pacific Gray Whale which has shown demonstrable avoidance to sonar pollution. The IWC Scientific Committee in Japan also recommended that the following additional research items be pursued in terms of the Western Pacific Gray Whale. • Benthic sampling and prey resource assessment in known foraging locations and in areas outside of the feeding ground. • simultaneous theodolite based behavioral observations and acoustic monitoring of industry related noise to examine possible disturbance. • satellite and radio telemetry work to determine movements on the feeding ground, migration pathway(s) and location of the wintering grounds (tag design and attachment protocols, however should first be assessed on eastern gray whales to evaluate safety and effectiveness *** Note . once again Eastern Pacific Gray Whales to be used for experimental purposes. • obtain DNA and photos to match to existing catalogues of such materials of any stranded or living animals. These same provisions should apply to the Eastern Pacific Gray whale. Swartz l986 MMC. page l3. G. Reetz *‘discussed the Minerals Management Service (MMS) concern for the possible cumulative effects of human industrial activities on gray whales during their migration along the California coast. At this time MMS is considering funding a program to estimate the abundance of migrating whales in the Los Angeles area over time and methods to correlate population trends with human activities in the area.’* Swartz l986 MMC. Page l4. G Reetz summarized studies by Bolt, Beranek and Newman Inc. (Malme et al. l984) to investigate the	

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	potential effects of underwater noise from petroleum industry activities on migrating gray whales off central California. The researchers employed underwater playback of biological and non-biological (industrial) noise during the l983 migration to determine the reaction of migrating whales. '*Shore based observers, unaware of the playback schedule, tracked the movements of the whales past the playback site. The results indicate a correlation between the playback of industrial and some biological sounds (e.g. killer whale calls) and changes in the behavior of whales. Additional experiments included the use of a single seismic air-gun as a source of industrial noise. The whales responded to this disturbance as well*.'	
AFA84	**CLIMATE** According to a Survey on Ice Dependent Marine Mammals in Alaska [46] ' *Warming of the earth's climate is forecast to be greatest at the poles and the arctic region. In the Arctic, the challenge for species to accommodate such change is increased because of its large scale, the rapid rate at which the warming is predicted to occur, large inter-annual variation in climate, and the accelerated pace of human development. As a result, Arctic climate change is expected to have large effects. Higher ocean temperatures and lower salinities, contraction of seasonal ice extent, rising sea levels, and a host of other effects are certain to have significant impacts on marine species. For marine mammals adapted to life with sea ice, the effects of reduction in ice are likely to be reflected initially by shifts in range and abundance. Demographic changes associated with shifts in geographic range will likely e observed as decreased recruitment in areas of reduced sea ice.* *' Climate change will have substantial and possibly irreversible consequences on sea ice and ice-dependent marine mammals. The most serious threats to Arctic marine mammals are the loss of sea ice habitat and the unique ecosystem with which it is associated, and the*	In response to this and other comments, the new DEIS includes a discussion of the effects of climate change on ENP gray whales (Section 3.4.3.6.11, Climate Change and Ocean Acidification).

[46] Alaska Oceans Program, November 2004

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	related increasing human activities that result from easier access to the region. *' The ecosystem will likely be profoundly affected by the loss of sea ice because the presence of ice probably boosts the productivity in the Bering, Chukchi and Beaufort seas.* ***' Because ice habitat is so integral to the existence of the marine mammal species discussed in this paper (note not gray whales but the paper is obviously relevant to the population) the rapid loss of sea ice and the cumulative effects of other factors appear to set the stage for drastic reductions in population and ultimate extinction of marine mammal species**."* Gray whales are entirely dependent on climatic factors. Their prey, (amphipod *macrocephela)* needs very cold water to grow and survive. In 1999/2000, a third to almost half the Gray whale population died. Starvation appeared to be the major cause. *'Changes in the extent and concentration of sea ice in the Arctic Ocean over the past 20-30 years, coincident with warming trends, may alter the seasonal distributions, geographic ranges, patterns of migration, nutritional status, reproductive success, and ultimately the abundance and stock structure of some species (Tynan and DeMaster 1997a). Effects of climate warming on Eastern North Pacific Gray Whales are unknown, but studies of benthic-pelagic coupling in the Arctic and sub arctic (e.g. Grebmeier and Barry 1991) suggest depression of production in surface waters that may lead to reduced availability of gray whale prey in primary feeding areas of Alaska.'*[47] Research by Dr Elizabeth Alter et al (2007) identifies climatic shifts in the Bering Sea as a possible cause. Her paper indicates an historical abundance of gray whales between 76,000 and 118,000 whales. According to Dr Alter - " *the results of this study also strongly imply that the population crash observed in 1999-2001 was not a result of the population*	

[47] Status Review 1999

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	reaching a natural demographic plateau, but may have been caused by other forces such as climatic shifts in the Bering Sea."[48] The status of the benthic community on which the Gray whales depend is in decline. According to a recent study [49] a decline of nearly 50% from maximum values in the 1980s was measured. Amphipods feed on algae dropping from sea ice or carried by ocean currents. When the sea ice is diminished, the food web is disrupted. Whales are forced to feed on smaller amphipods which do not provide enough energy to complete the massive migration. Gray whales have one of the longest migrations of any whale. Females need enough food to sustain the 12,000-mile migration; to give birth and to feed their young. In their feeding grounds, the Bering and Chukchi Seas, El Nino events combined with global warming have increased the seawater temperature and ensured that sea ice is disappearing fast.	

[48] letter in support of AJR 49

[49] Amphipod prey of gray whales in the northern Bering Sea: Comparison of biomass and distribution between the 1980s and 2002-2003. Coyle et al Science Direct Deep-Sea Research Part II 7 March, 2007

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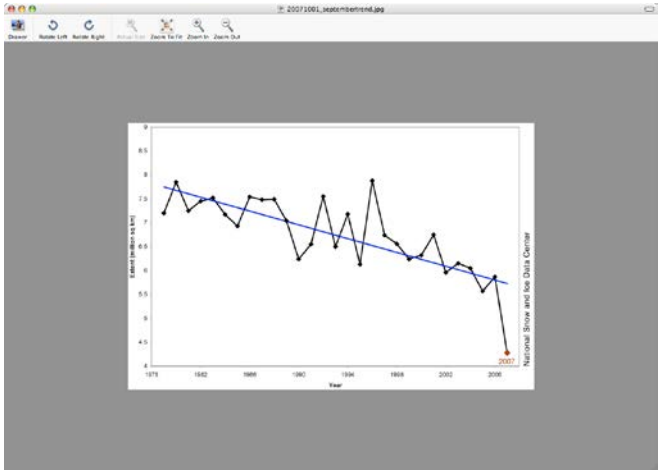
AFA85	QuickTime™ and a TIFF (LZW) decompressor are needed to see this picture. Table 23. Annual Sea Ice Minimum	Note: The graphic provided with the comment did not reproduce in this format but we considered the information provided and the associated comments.
AFA86	 Table 24. National Snow and Ice Data Center Graph.	

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AFA87	The extent of ice melt is so dramatic that the current decline exceeds the past records for the lowest ice periods in the 1930s and 40s. In 2005, scientists estimated the decline in ice amounted to approximately 1.3 million square kilometres – an area roughly twice the size of Texas. In 2007, an additional 180,000 square kilometres, an area roughly the size of Florida, had disappeared. A secondary warming effect is caused by the oceans absorption of a great deal of the sun's energy. As the sun begins to set in autumn, the heat stored in the ocean is released back into the atmosphere which increases air temperatures, thus decreasing sea ice. 2007 is the sixth consecutive year of melting sea ice in the Arctic with scientists predicting a new and steeper rate of decline. Gray whales are specialist feeders. With no adequate substitute prey, their future survival is grim.	
AFA88	**COMPARISONS BETWEEN DEMISE OF WESTERN PACIFIC AND EASTERN PACIFIC WHALES.** Tow NMFS gray whale scientists, Robert Brownell and David Weller (Southwest Fisheries Science Center in La Jolla) submitted a paper to IWC 2002 arguing against the carrying capacity theory. Both men have worked extensively with the Western Pacific Gray Whale. They claim that overgrazing of feeding grounds is not the reason for the drop in numbers as with less than l00 whales, there is unlikely to be any lack of prey. They suggest that more global or ocean wide changes may be influencing the availability of, or access to primary prey for numerous large whale populations. At a meeting of l0 other whale experts of the Society of Marine Mammology in Hawaii in l999, photographs of skinny whales from both Eastern and Western populations were shown. These photos demonstrated protruding shoulder blades, depressions behind the head, and a pronounced ridge or visible bulge along the lateral flank.	The 2008 DEIS examined the mass strandings of ENP gray whales in 1999-2000 and the various theories regarding the causes, including the relationship to prey and sea ice (Section 3.4.3.4.2, Stranding Data).

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	The scientists concluded these whales were starving. The two scientists hypothesized that changing weather patterns may be affecting sea ice, which would mean that feeding grounds are not as accessible to the whales. They suggested that some sort of " large scale ocean basin" climatic event affected both sides of the North Pacific Ocean in the late 90's and changed the availability of food for both Eastern and Western Pacific gray whales in the same way. ++++++++++++++++++++ One of the first casualties of climate change in the Arctic is likely to be the Gray whale. It is vitally important that the habitat of resident whales in Canada, Oregon, Washington and California be protected to ensure survival of the species. On 25th July, a telephone conference call between NMFS scientists from SWFC, members of the Ocean Protection Council, California Assemblyman Pedro Nava and two representatives of the California Gray Whale Coalition, revealed key facts in relation to climate change. Wayne Perryman, a scientist with NMFS made the following comments which are contained in an email from Ben Turner, staffer to Assemblyman Pedro Nava: - Email from Ben Turner, 26/7 *' It was a really interesting discussion and it raised a number of issues. One of the important things that I think came out of it was the emphasis on climate change, changing food sources and associated differences in habitat.* *Aside from the economic impact that you mentioned, I'm not sure if we were all still on the phone or not, but Wayne emphasized that the gray whale is a keystone species in terms of reflecting the health of sub arctic ecosystems especially in regard to the benthos. Additionally, the gray whales feeding on benthic amphipods has important beneficial side effects in terms of bringing smaller invertebrates to the surface for feeding by marine birds, and adding nutrients to the system by defecating at various levels in the water*	

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	column. The gray whale's behaviors and obviously their survival, has serious implications throughout the food web.' Professor Stephen Palumbi, Stanford University, in a letter to California Assemblyman Pedro Nava, in support of Resolution AJR 49 states: - *"A return to endangered status is reasonable for gray whales for another reason - the future of this population is thrown into doubt by the impact of global warming. Gray whales feed almost exclusively on cold-water bottom-dwelling crustaceans in the Bering Sea and northward. In the last 15 years, substantial changes in Arctic ecosystems have changed the feeding grounds of the gray whale, driving them further north than in past decades. These shifts have been correlated with observations of emaciated, starving whales and high calf mortality in some years, and have been linked to the wash of warm water from the Pacific into former gray whale feeding areas. Gray whales have been moving north as a result, having to migrate further from Mexican calving grounds each year. As they seek to feed in more northern waters where sea ice is retreating, gray whales may find themselves intersecting large oil and gas leases proposed in the shallow water Chuckchi and Barents Seas. The combination of climate change and petroleum industrialization may pose strong limits on gray whale feeding in the future. The lack of protection as an endangered marine mammal may limit efforts to ensure access of the gray whale to adequate feeding grounds as the Arctic climate changes. "* Dr Elizabeth Alter, Marine Mammal Fellow, Natural Resources Defense Council in a letter to California Assemblyman Pedro Nava, in support of Resolution AJR 49 writes: - *" In addition to threats along the migratory route, gray whales also face an uncertain future with regard to their prey base or food supply. Nearly all marine mammal species that depend on Arctic resources for prey will face impacts from climate change in the near future and gray whales will be no exception. Gray whales feed on benthic amphipods and other small prey along shallow continental*	

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	shelves in the Arctic by scooping up mouthfuls of benthic matter. Significant ecosystem-level changes in gray whale feeding grounds in the Bering Sea have already been documented (e.g. Grebmeier et al 2006). The feeding range of the gray whales has changed significantly since the l980s (Moore et al. 2003) moving from feeding grounds in the Bering Sea to more northward areas above the Bering Strait. Unfortunately, there is currently no way to predict how the prey base that gray whales depend upon will change as the climate in the Arctic warms due to complex interactions between projected changes such as reduced ice cover, increased freshwater input, and changing ecological dominance. However, this uncertainty serves to emphasize the importance of continued and vigilant monitoring of the gray whale population as well as the Pacific ecosystems upon which they depend."	
AFA89	**LEGAL** AFA Int. is an IWC NGO. Since 1996 when the US delegation first brought the request for a quota on gray whales to the IWC, this organization has lobbied and taken legal action to stop any slaughter by the Makah Tribe. AFA Int. believes that if a waiver is granted under the MMPA, at the domestic level other tribes could seek the same rights (see Judge Franklin Burgess opinion below) and a precedent will be set internationally which will see the opening up of new categories of whaling. Excerpt from judgment of United States District Court Western District of Washington at Tacoma. No: C98-5289FDB Order Granting Defendant's Motion for Summary Judgment. Metcalf et al v. Daley et al. " ***Precedent.*** *The plaintiffs make a good point. The EA concedes that approval of the Makah hunt could encourage other Tribes to seek to exercise aboriginal rights to hunt whales. While the EA notes (and relies heavily upon) the fact that the Makahs are the only tribe in the United States with a treaty expressly guaranteeing the right to*	Consistent with this comment, and the ruling in *Anderson v. Evans*, the 2008 DEIS examined the potential for authorization of a gray whale hunt to have precedential effects on hunts for marine mammals in the United States and whaling world-wide (Section 4.17, National and International Regulatory Environment). The musings of a NMFS employee in a 1996 e-mail regarding the legality of commercial sale of whale products by the Makah Tribe are hardly dispositive. The Whaling Convention Act prohibits commercial whaling by U.S. citizens, as does the MMPA.

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	whale, it glosses over the fact that whale hunting may be deemed protected under less specific treaty language. " Email sent to Chief, General Counsel Fisheries on May 30, l996 Mhayes.hq.noaa.gov. Cc Kevin Chu@hq.noaa.gov, Elizabeth.R. Mitchell@hq.noaa.gov Scott_Keep@-interior-cmm@ios.doi.gov from Sandra Ashton sashton@ios.do.gov headed subject: Makah. Message reads: " Well the real question here is whether we can reassure the opponents of Makah whaling that their treaty prohibits them from ever engaging in international commerce. THIS IS PROBABLY NOT SOMETHING WE CAN SAY (their emphasis). From what you say, members of the tribe could (if the moratorium were lifted and the CITES list revised THESE ARE BIG IFS) export whale meat and products to a foreign country. LIKELY SO. Or the tribe could sell meat to an intermediary in the US for export. IF THEY COULD SELL DIRECTLY, THEY COULD SELL THROUGH AN INTERMEDIARY.	
AFA90	Internationally, It is highly probable that Japan will declare its coastal people " *indigenous*", seeking the same rights as the Makah Tribe to kill whales for cultural and ceremonial purposes under domestic legislation. AFA Int. notes there is no legal advice in the DEIS which indicates any likely scenario internationally as a result of any waiver. Given that the implications of a waiver for the Makah have been a topic at IWC for some years, the omission of any in-depth legal advice in the DEIS which supports the Government's claim there will be no impacts can be taken with a grain of salt.	The 2008 DEIS examined this possibility and found insufficient evidence to support the expectation that the IWC would grant an aboriginal subsistence whaling quota to Japan's coastal people (Subsection 4.17, National and International Regulatory Environment). The new DEIS describes subsequent deliberations in the IWC regarding Japan's request (Subsection 4.17, Regulatory Environment Governing Harvest of Marine Mammals).
AFA91	The DEIS fails to detail the fact that IWC Scientific Committee is constructing an Aboriginal Subsistence RMS which is focused on the Gray whale as the target species. The Scientific Committee relies on the evidence provided by member governments in making assessments and setting quotas.	In response to this comment, the new DEIS describes efforts of the IWC to develop an aboriginal subsistence whaling scheme (Section 3.17.1, Introduction).
AFA92	It is abundantly obvious from the research undertaken in this comment document that the Gray whale cannot sustain any Aboriginal RMS or the current quotas which are unsustainable. The US government has an obligation to inform the IWC Scientific	All of the assertions and concerns raised in this comment are raised and addressed elsewhere in this comment letter.

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	Committee that the NMFS agency has received no funding for Gray whale research since 2000 and that the PBR is highly inflated and population estimates are not worth the paper they're written on. It is of grave concern to AFA Int. that the IWC Scientific Committee has not been informed of the true state of the population. The lack of any serious attempt to address the impact internationally is a major flaw in the DEIS. AFA Int. notes the judgment in the Ninth Circuit[50] in relation to the precedent which a waiver may create. *" The 1997 IWC gray whale quota, as implemented domestically by the United States, could be used as a precedent for other countries to declare the subsistence need of their own aboriginal groups, thereby making it easier for such groups to gain approval for whaling. If such an increase in whaling occurs, there will obviously be a significant impact on the environment.* *" The EA does not specifically address the impact of the quota on any IWC country besides the United States.* *" … we cannot agree with the agencies' assessment that because the Makah Tribe is the only tribe that has an explicit treaty-based whaling right, the approval of their whaling is unlikely to lead to an increase in whaling by other domestic groups. And the agencies' failure to consider the precedential impact of our government's support for the Makah Tribe's whaling in future IWC deliberations remains a troubling vacuum. "* The '*troubling vacuum* ' continues with the current Makah DEIS. Page 5 of the Tribe's Feb. 11, 2005 application notes the Makah hunted grays "*as well as other species*." Several other sources mention the tribe's traditional interest in humpbacks and one notes its preference (see PBS interview available at http://www.pbs.org/newshour/bb/environment/july-dec98/whaling_10-21.html).	

[50] No. 02-35761 D.C. No. CV-02-00081-FDB Anderson v. Evans

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	It is discomfiting that the DEIS reviews the status of ESA listed animals, including humpbacks, in section 3.5.3.2.1. There are no clear undertakings in the DEIS that any Makah waiver or the precedent created will not lead to waivers for other whale species. The same judgment states: - *' An EIS weighs any significant negative impacts of the proposed action against the positive objectives of the project. '* AFA int. contends there has been minimal attempt in the DEIS to portray the significant negative impacts of any waiver. Circuit Judge Gould with whom Judge Hill and Berzon concurred writes in his judgment: - *' The Defendants (government) argue that, because the IWC was given the power to adopt quotas in 1946, the Tribe's quota approved in 1997 should be considered a right under the 1946 Convention that pre-dates the MMPA.* *' We disagree. The 1997 Schedule was adopted more than twenty-four years after the MMPA became effective. Section 137(a) (2) exempts only international treaties that pre-date the MMPA, without also exempting amendments to those treaties. If Congress wanted to exempt subsequent amendments, then Congress could have done so explicitly. But Congress did not do so. That Congress did not intend to exempt subsequent amendments is clear when s.1372 (a) (2) is considered alongside the mandates of s. 1378 (a) (4). Section 1378 (a) (4) requires " the amendment of any existing international treaty for the protection and conservation of any species of marine mammal to which the United States is a party in order to make such treaty consistent with the purposes and policies of this (Act)." 16 U.S.C. s.1378 (a) (4). Far from intending amendments of international treaties to escape the restrictions of the MMPA moratorium by relating back to the treaties' pre-MMPA inception, Congress mandated that existing treaties be amended to incorporate the conservation principles of the MMPA. It would be incongruous to interpret s. 1372 (a) (2) to exempt the amendments that were mandated by s. 1378 (a) (4). And, if we accepted the defendants' view, then we would read the MMPA to disregard its conservation*	

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	principles whenever in the future the IWC made unknown decisions for unknown reasons about the killing of unknown numbers of whales. We do not believe that Congress subordinated its goal of conservation in United States waters to the decisions of unknown future foreign delegates to an international commission. ' ***And on the critical question: - ' If the MMPA's conservation purpose were forced to yield to the Makah Tribe's treaty rights, other tribes could also claim the right to hunt marine mammals without complying with the MMPA. While defendants argue that the Makah Tribe is the only tribe in the United States with a treaty right expressly guaranteeing the right to whale, that argument ignores the fact that whale hunting could be protected under less specific treaty language. The EA prepared by the federal defendants notes that other Pacific Coast tribes that once hunted whales have reserved traditional " hunting and fishing" rights in their treaties. These less specific " hunting and fishing " rights might be urged to cover a hunt for marine mammals Although such mammals might not be the subject of " fishing", there is little doubt they are " hunted."*** AFA Int. emphasis. And further in the judgment: - *'.. the Tribe asserts a treaty right that would give the Tribe the exclusive ability to hunt whales free from the regulatory scheme of the MMPA. Just as treaty fisherman are not permitted to " totally frustrate… the rights of the non-Indian citizens of Washington " to fish, Puyallup Tribe v Dept. of Game of Wash., 433 U.S. 165, 175 (1977) (Puyallup III) the Makah cannot, consistent with the plain terms of the treaty, hunt whales without regard to processes in place and designed to advance conservation values by preserving marine mammals or to engage in whalewatching, scientific study and other non-consumptive uses. See Wash.v.Wash. Commercial Passenger Fishing Vessel Ass'n, 433 U.S. at 658. The Supreme Court has recognized that regulation for the purpose of conservation is permissible despite the existence of treaty rights.* *" The MMPA will properly allow the taking of marine mammals only when it will not diminish the sustainability and optimum level of the resource for all citizens. The procedural safeguards and conservation principles of the MMPA ensure that marine mammals like the gray*	

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	whale can be sustained as a resource for the benefit of the Tribe and others.'	
AFA93	A recent Resolution in the California Assembly and Senate (AJR 49) underlines the value of the gray whale to all Americans, not just the Makah Tribe. According to the 9th Circuit judgment, it is a NEPA requirement that the wishes of the people of California and all Americans must be taken into account by NMFS in this DEIS.	The purpose of a DEIS is to examine the effect on the human environment of a proposed action and alternatives. The 2008 DEIS examined impacts of the authorization or denial of the Tribe's request on social relations (Section 4.8, Social Environment)
AFA94	**CALIFORNIA ASSEMBLY AND SENATE PASS RESOLUTION** **From:** Mann, John **Sent:** Tuesday, July 15, 2008 3:21 PM **To:** Mann, John **Subject:** California Legislature Sends Strong Message to President Bush & Congress Calling for Increased Protection for California Gray Whale-Resolution by California State Assemblymember Pedro Nava **For Immediate Release Contact**: John Mann July 15, 2008 (805) 483-9808 **California Resolution Calling for Increased Protection for California Gray Whale** **Submitted to President Bush and the United States Congress** **SACRAMENTO** – Assemblymember Pedro Nava, Chair of the Joint Committee on Emergency Services and Homeland Security and the	We recently considered a petition to list ENP gray whales under the Endangered Species Act and concluded that a full status review was not warranted (75 FR 81225, Dec. 27, 2010). Notwithstanding the state assembly resolution cited here, we have not received a subsequent petition to list ENP gray whales under the ESA. In any event, we have continued to intensively research and monitor the status of the ENP gray whale population (see Attachment 3 to this memo for a detailed list of research and monitoring activities) and contribute to and participate in evaluations of ENP gray whale status through annual IWC Scientific Committee deliberations.

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	legislature's representative on the California Ocean Protection Council announced today that his Assembly Joint Resolution 49 calling on the United States Congress, the President, and the National Marine Fisheries Service to take action to protect the California Gray Whale cleared its final hurdle by passing the California State Assembly yesterday on a bi-partisan 56 to19 vote. The resolution has been sent to President Bush, the Congress of the United States and the National Marine Fisheries Service. "I am pleased that my colleagues in the Assembly and Senate have joined me in asking Congress, President Bush, and the National Marine Fisheries Service to take immediate action to protect the California Gray Whale," said Nava. "This magnificent marine mammal is again facing a number of threats to its existence and it is imperative that we act to provide it with as much protection as possible so that it will be here for future generations." AJR 49 requests the United States Congress and the President of the United States to call upon the National Marine Fisheries Service to undertake an immediate and comprehensive assessment of the California Gray Whale, and requests that they change its status to endangered. This revised listing will provide comprehensive protections for the Gray Whale as it travels from its breeding grounds in Mexico to its feeding grounds in the Arctic. The California Gray Whale was placed on the endangered species list in 1970, but was removed in 1994 after it was believed that the population had recovered. However new scientific evidence indicates that historic populations were up to five times their current numbers. The Gray Whale experienced a population collapse in 2000 in which up to 1/3 of the population died off and recent observations indicated that they may be in the midst of another die off. Current threats to the Gray Whale's survival include climate change, oil and gas exploration and leases in the Bering and Chukchi Sea feeding grounds, noise from seismic operations, military and non-military sonar, liquefied natural gas terminals planned along the whale's	

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	migration route, bottom trawling, pollution, and other changes in ocean conditions that have drastically reduced their food supply. “California’s coastline and the marine environment are precious and need to be protected for our children and grandchildren. This resolution will send a strong message to Congress and the President that we need to take action now to save the Gray Whale,” said Nava. #### **RESOLUTION TEXT.** WHEREAS, Each year, the California gray whale (Eschrichtius robustus of the Eastern North Pacific stock) migrates along the California coast to feeding grounds in the Arctic, a journey of 8,500 to 11,000 miles; and WHEREAS, The California gray whale is important for public education, recreational value, aesthetic appeal, economic significance, and scientific interest to the people of California; and WHEREAS, Whale watching contributes to local economies in direct revenues and in the overall economic well-being of coastal communities, including the creation of jobs; and WHEREAS, Whale watching generates tens of millions of dollars in California annually; and WHEREAS, The California gray whale migrates past one of the most heavily industrialized coastlines in the world, exposing the California gray whale to marine pollution, marine vessel traffic, industrial noise, activities associated with the development of the outer continental shelf resources, fishing entanglements, bottom trawling, industrial development, and military and nonmilitary sonar activity; and WHEREAS, Marine mammals, including the California gray whale, are vulnerable to underwater sound, including high-intensity mid-frequency sonar systems used off the California coast; and WHEREAS, These sonar systems blast across large areas with levels of underwater noise loud enough to have resulted in deaths of marine mammals in incidents around the world; and	

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	WHEREAS, The significant threats posed by global warming, melting sea ice, and the impact of increased sea water temperature in the Arctic feeding grounds of the California gray whale have very serious implications for the species; and WHEREAS, The federal government placed the gray whale on the endangered and threatened species list in 1970 when its estimated population was approximately 12,000 and removed it in 1994 when the population rose to 23,000; and *WHEREAS, Prewhaling population estimates used as a factor in determining species recovered status of the gray whale are now known to be erroneous and account only for a fraction of actual historical populations; and* WHEREAS, A major collapse in 1999 and 2000 is estimated to have wiped out one-third to almost one-half of the population; and WHEREAS, There has been no proper population estimate published by the National Marine Fisheries Service since 2001; and WHEREAS, There is no habitat protection for the Pacific Coast Feeding Aggregation in California, Oregon, or Washington State; and WHEREAS, There are inconsistencies in the protection states give to gray whales; and WHEREAS, Oregon lists the gray whale as endangered; and WHEREAS, Washington lists the gray whale as sensitive; and WHEREAS, California *, by law, defers to the federal government and* lists the gray whale as recovered; now, therefore, be it Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature respectfully requests the United States Congress and the President of the United States to call upon the National Marine Fisheries Service to undertake an immediate and comprehensive assessment of the California gray whale. This assessment should include all current research covering the migration routes, population dynamics, and mortality of the California gray whale, and the impacts of threats to the California gray whale, including the	

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	impact of global warming on critical feeding grounds; and be it further Resolved, That the National Marine Fisheries Service publish, and make available to the public, the results of the comprehensive assessment of the California gray whale; and be it further Resolved, That, if the results of the comprehensive assessment or the body of scientific evidence warrants it, the *National Marine Fisheries Service* is requested to change the status of the gray whale to endangered; and be it further Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the *National Marine Fisheries Service* , the President and Vice President of the United States, the Speaker of the House of Representatives, the Majority Leader of the Senate, and to each Senator and Representative from California in the Congress of the United States.	
AFA95	********** Anderson v Evans notes the NEPA standards for determining the "intensity" of the action under review (pages 487-488). The 6th enumerated criteria are "*The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration*." Clearly, the 6th criteria of NEPA is highly relevant in this matter and has not been adequately dealt with in the DEIS.	The 2008 DEIS examined the potential precedential effect of authorizing a Makah gray whale hunt (Subsection 4.17, National and International Regulatory Environment).
AFA96	NEPA "Intensity" criteria number 9 which is "*The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the ESA'* must be taken into account. Although Gray whales are no longer listed under the ESA, the northern portion of the Gray whales' migratory route is under constant and increasing serious threat due to climate change. These factors introduce enough uncertainty to invoke the precautionary principle in a US court.	As the comment acknowledges, ENP gray whales are not listed under the ESA. The new DEIS examines the potential for a Makah hunt to affect endangered WNP gray whales (occurs throughout Section 4).

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AFA97	In relation to the Treaty of Neah Bay, Article 4 raises questions which NMFS has not answered in spite of written questions from AFA Int. *ARTICLE 4* *The right of taking fish and of whaling or sealing at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the United States.* Article 4 does not specify gray whales and therefore, the question arises. Will a waiver for gray whales set a precedent for other whale species, as the Treaty language is not specific? These questions were asked by AFA Int. of NMFS and we received a response which did not attempt to address the question.	The request currently being considered by NMFS is a hunt only by the Makah Tribe and only of ENP gray whales (Subsection 2.3.2.2, Gray Whale Hunt Details). Hunting by anyone other than Makah tribal members or of any marine mammal species other than gray whales would require a separate rulemaking process.
AFA98	**SEADUCKS AND GRAY WHALES.** When commercial whalers in the 19th century radically reduced the number of gray whales migrating up and down the California coast, other species suffered from their loss, sometimes in surprising ways. One such species was the California condor, which historically fed upon the occasional dead beached whale. It was a feast no less welcome than whale falls are to abyssal sea life. With most grays falling to harpoons rather than nature, the birds lost a key source of food. It was just one more factor that helped push the condor to the brink of extinction. *' Feeding by gray whales provides nutrient subsidies from benthic marine communities to terrestrial ones, including food subsidies for at least four species of seabirds that feed on benthic crustaceans brought to the surface by gray whale feeding'; say Alter, Rynes and Palumbi. ' We calculate that a population of 96,000 whales could provide food subsidies to 1.03 million birds. In addition, gray whales*	The purpose of an EIS is to develop information for the decision-maker and the public, in particular information about the difference in impacts on the human environment between the proposed action and the alternatives, including no action. There are no alternatives considered in the 2008 DEIS, nor has anyone suggested there could be an alternative, that would increase the gray whale population to 96,000 individuals. The 2008 DEIS explored the potential direct effect of a Makah whale hunt on seabirds (Subsection 4.5, Other Wildlife). It did not explore the potential for indirect effects through a reduction in prey (whale carcasses) or changes in benthic disturbance (from feeding gray whales). This is because the 2008 DEIS concluded there would be a negligible change in the numbers of whales (and hence whale carcasses) under any of the alternatives (e.g., Subsection 4.4.2.1, Change in Abundance and Viability of the ENP Gray Whale Stock), and there would be a negligible change in the benthic environment under any of the alternatives (e.g., Subsection 4.3.3.2.2, Benthic Environment).

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	may have provided an important food source for predators and scavengers such as orcas and California condors. '[51] AFA Int. believes the ecological link between Gray whales and diving sea birds must be explored. With catastrophic declines in benthos feeding sea birds documented, it is highly probable that there is a relationship between the declining population of Gray whales and major declines in the bottom feeding bird populations.	
AFA99	In their paper,[52] Anderson and Lovvorn suggest that gray whale feeding may have increasing influence on the foraging patterns and trophic relations of a range of bottom-feeding vertebrates. The paper is the first report of a feeding association between a cetacean and bottom-feeding birds, namely a migrating gray whale and diving sea ducks. Gray whales have been observed returning annually in Washington State to feed mainly on ghost shrimp. " *Suction sieving by gray whales creates elliptical pits in bottom sediments that are typically 10cm deep and up to 5 m2 in area. Such excavations likely enhance short-term foraging profitability for avian benthivores by exposing or dislodging infauna, and by attracting invertebrate scavengers that are also eaten by birds. …. Although gray whales remove much of the prey biomass within feeding its, the fraction of infauna that is dislodged and not consumed by gray whales is typically valuable to marine birds. (Obst & Hunt 1990).* *"Foraging profitability for avian benthivores may be altered for prolonged periods after feeding by gray whales. In the Bering Sea and coastal British Columbia, invertebrate colonists settled in organic debris trapped in whale feeding pits and remained at elevated densities for weeks to months. (Liver & Slattery 1985). Populations of some infaunal invertebrates may also increase over longer periods because sediment suspension by gray whales exports finder particles*	The 2008 DEIS compared the effect of the Tribe's proposal and five other alternatives on potentially affected marine habitat in the project area. Because none of the alternatives would have more than a negligible effect on overall abundance of ENP gray whales, there would be no effect on the marine environment outside the project area (Subsection 4. 4.3.2.2.2, Changes in Disturbance-dependent Benthic Communities).

[51] DNA evidence for historic population size and past ecosystem impacts of gray whales. S. Elizabeth Alter, Eric Rynes, Stephen R. Palumbi (2007)

[52] Gray whales may increase feeding opportunites for avian benthivores. Anderson, Lovvorn, MEPS pre press abstract. 2008

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	and releases nutrients (Johnson & Nelson l984). Longer-term changes in benthic communities may explain why, after the typical arrival in March of gray whales in Puget Sound, we observed scoter numbers increase in a habitual feeding area for whales. The period for which feeding pits are valuable to avian benthivores will depend on various factors affecting foraging profitability, such as colonization rates and thus localized biomass of prey (Oliver & Slattery 1985) use pits as visual cues, and feeding rates of other predators. *" Recent episodes of high mortality for gray whales during migration and winter may have resulted from observed declines of their main prey in the Bering Sea (Le Boeuf et all 2000)… Gray whales that feed throughout the summer south of the Bering Sea are known as the Pacific Coast Feeding Aggregation, and likely account for just 1 or 2% of the -18,000 gray whales in the eastern Pacific Ocean (Calambokidis et al 2002a, Anglliss & Outlaw 2007). However, foraging during migration occurs along the entire Pacific coast……. At the scale of decades, gray whales may feed along all suitable sections of coast, shifting foraging locations as profitability changes among diverse foods. (Darling et al. 1998). These impacts can alter prey availability for several months and thus we suggest that longer term effects on many bottom feeding animals may be important, even if direct feeding associations with gray whales are rare.* *" Moreover, feeding by gray whales during their northward migration coincides with increasing energy needs of marine birds as they prepare for migration and reproduction, at the same time that typical winter foods may have declined. (Lewis et al.2007)."*[53] The impact of a hunt of gray whales on bottom feeding birds has not been assessed in the DEIS. The impact caused by the loss of whales on birds has not been assessed. Given that sea ducks and bottom feeding birds have experienced major declines in the last decade; the synergistic and cumulative effects of any whale slaughter have not been adequately examined. If resident gray whales desert their	

[53] Anderson & Lovvorn: Gray Whales and bottom feeding birds. MEPS prepress abstract.

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	Northwest feeding grounds, sea diving birds will have diminished prey.	
AFA100	Professor James Lovvorn says that the contamination levels in seabirds are " *through the roof*" (pers.comm) but that the birds seem to be able to deal with these levels. Unquestionably gray whales do not. The evidence of toxic contaminants in sea ducks and diving birds which share the same habitat as gray whales is an injunction to urgently investigate the contamination levels in whales.	Comments regarding contaminants are raised and responded to elsewhere in this comment letter.
AFA101	**TOURISM** The DEIS contains some extraordinary statements in relation to the Makah hunt and its impact on whale watching. ***'Current revenues of whale-watch operators are unknown,*** *and there is no information available or that could be obtained that would allow an estimation of how much revenues might decrease if ENP gray whale behavior were altered by a Makah hunt. DEIS 4-109'* Professor Linwood Pendleton, UCLA, in his paper " Understanding the Potential Economic Impact of Marine Wildlife Viewing and Whale Watching in California provides details of the value of whale watching and wildlife viewing along the California coast. He estimates the value in the order of tens to hundreds of millions of dollars annually. " *Clearly, the economic value of protecting and enhancing near shore marine wildlife populations in California is non-trivial."* It is extremely doubtful that Washington State would be any different from California. Professor Pendleton cites in 1999 and 2000, more than 43% of all Americans participated in some form of marine recreation. ' *Americans flock to beaches and shores to swim, fish, boat, and view the natural scenery. Overall, the total number of people participating*	The comment cites information about the value of whale watching but no data on the current revenues of whale-watch operators. The 2008 DEIS concluded there could be an effect on whale-watching revenues, but that such an effect was unlikely, citing several factors. The comment does not cite any relevant information we failed to consider in the 2008 DEIS.

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	in all forms of marine recreation is expected to increase. (Leeworthy et al 2005). *‘ Wildlife viewing represents an important part of marine recreation. Bird watching and other wildlife viewing constitute the fifth and seventh most popular marine recreation activities in the United States, with more than 15 million people spending nearly 650 million person days watching birds at the shore alone. (Leeworthy, Wiley, 2001). Leeworthy et al (2005) predict that by 2005, the number of people participating in coastal bird watching activities was expected to have grown by 6% to more than 16 million participants; by 2010 the figure is predicted to be just under 17 million. Other forms of wildlife viewing, including whale watching, are also expected to grow in overall numbers of participants. Using the same models, Leeworthy et al predict that by 2005, almost 14.5 million people can be expected to participate in some other form of wildlife viewing nationally with this number growing to 15 million by 2010.* *‘ Whale watching has grown to become an industry with gross receipts of over $%150 million (in US$1999) in the United States alone. By the early twenty first century, whale watching business operated in 87 countries and served more than 9 million whale watchers. (Hoyt, 2001). At the end of the twentieth century, nearly 270 whale watch tour companies were in operation in the United States generation over $158 million (the writer’s emphasis) in direct revenues.* *‘ Within the United States, whale watching is concentrated most heavily in New England, Alaska, California and the Pacific Northwest. ‘* NMFS has no excuse for not including this information in the DEIS. Millions of Americans and tourists who go to the Pacific Northwest to watch birds, whales and recreate in the marine environment will take their recreation somewhere else. No one in his or her right mind wants to watch a whale being hunted, harpooned and butchered in the midst of the Olympic Sanctuary. Professor Pendleton’s paper continues: -	

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	‘ wildlife viewing, including whale watching, contributes to local, regional and national economies in two important ways. First, wildlife viewing and whale watching generate gross revenues that create jobs, support salaries, and generate tax revenues for local and state governments. While these gross revenues do not reflect economic value, they do indicate a measure of the economic impact of these activities, economic impact includes the support of jobs, wages, and multiplier effects. Further gross revenues form the base of taxes that are generated by whale and wildlife viewing. Second wildlife viewing and whale watching generate values beyond what people spend in the market. These non market values represent a larger part of the total value that people place on the opportunity to see marine and coastal life.” There has been NO attempt in the DEIS to assess the value of whale and wildlife watching in Washington state; to assess the impact of a Makah slaughter of five to seven whales on the tourist industry; to assess the economic impact of Washington becoming a whale killing state; to assess the loss of gross revenues which rely on whale and wildlife watching. No attempt to assess the multiplier effect. Instead, the DEIS seeks to mislead again by failing to investigate the true cost of a Makah slaughter. Questions of discrimination arise given that taxpayers would have to bear the cost of the “ cultural and ceremonial” slaughters of Gray whales and the resulting impact on tourism to Washington State. Yet another violation of NEPA. NMFS is unable to demonstrate any support by tourists, tourist operators, wildlife or whale watching companies who believe that allowing the Makah to kill Gray whales will encourage tourism to the Pacific Northwest.	
AFA102	**WAVE ENERGY PROJECTS** AFA Int. has identified at least 26 wave energy projects along the West Coast. The cumulative effects of this new source of energy are unknown. AFA cites some of a summary of a Scientific Workshop on Ecological Effects of Wave Energy Development in the Pacific Northwest.	The 2008 DEIS examined the potential effect of wave energy projects on ENP gray whales (3.4.3.6.10, Marine Energy Projects). The new DEIS contains updated information in the same subsection.

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	A steering committee at the Hatfield Marine Science Center in Newport, Oregon, organized the workshop. According to the report, the proceedings were to be published in a NOAA Technical Memorandum available early 2008. There is no reference to any such Memorandum in the DEIS. Some of the key issues are worth dealing with in these comments. “ Marine Mammals. Significant concern about mooring cables (slack v taut; horizontal v vertical; diameter) and entanglement issues. Very basic baseline data is needed (mammal biology, presence/absence/species diversity; information on prey species) to understand the projects’ impacts It is critical to monitor cetaceans (e.g. videography, beachings, tagging, vessel surveys) to understand how they interact with wave energy facilities. Benthic Habitat. Wave energy development can have a large effect on water circulation and currents. Current changes would effect larval distribution and sediment transport (both on benthos and on beaches). Fouling community growth on buoys, anchors and lines may adversely affect benthic environment if deposited and accumulate on seafloor. “ Acoustics. Understanding noise coming from buoys/cables and how fish and marine Mammals will/could react is critical. It is possible to model noise from buoy/cables and use that information to Assess impacts from various scales of wave energy facility build out.	

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	The synchrony of noise from buoys could exacerbate/create noise not previously considered (this could be modeled.) Wave energy facilities, depending on their size and layout, could create a sound barrier that mammals would avoid. " System View/Cumulative Effects. It is important to understand/evaluate what we don't know. As projects scale up, risks become a function of the extent, density and duration of the project operation. In order to understand effects, impact thresholds need to be established. As projects scale up in location or implementation, new risk end points Come into play that were not initially part of the assessment. Therefore, Adaptive management is critical to address long-term impacts. **As projects scale up, other activities can be displaced (e.g. fishing ….May force whales to alter migration paths etc.)** **It is important to think broadly about cumulative effects when** **Assessing impacts. (Our emphasis)**	
AFA103	**LIQUIFIED NATURAL GAS TERMINALS (LNG)**	The potential effect of liquefied natural gas terminals on gray whales are from construction, ship strikes, or contaminants. The 2008 DEIS examined all of these threats (Section 3.4.3.6, Known and Potential Anthropogenic Impacts).

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	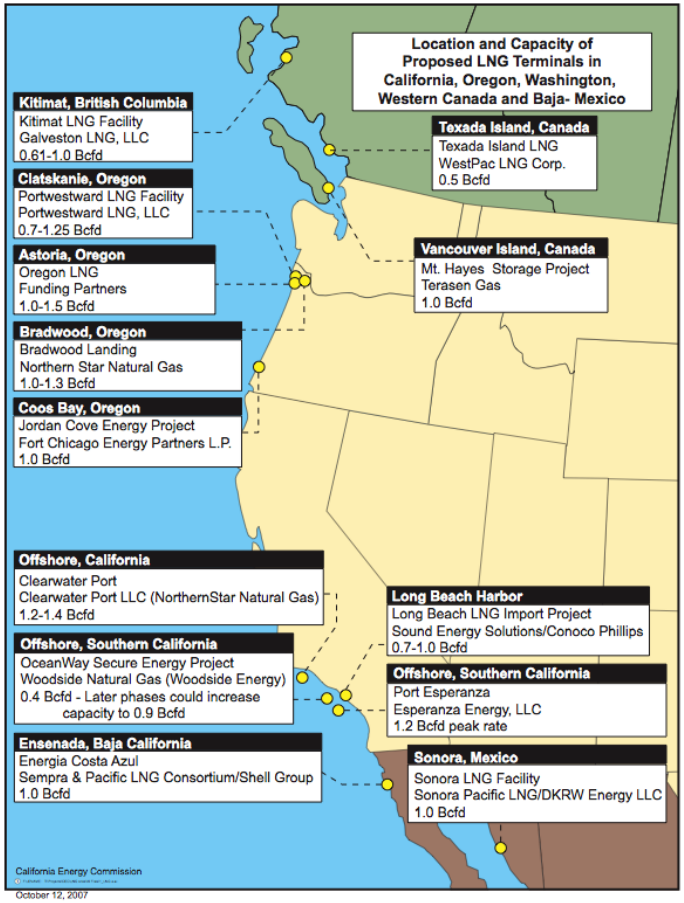 Table 25. LNG Terminals. FERC With at least 13 proposed LNG Terminals along the migration route, the DEIS is deficient in taking into account the impact on the population.	

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	According to a Staff Report, California Coastal Commission [54] potential marine resource impacts of LNG Terminals include the following: - • Entrainment of planktonic and larval organisms due to the use of seawater. • impingement of marine life on intake screens on LNG carrier vessels; • disturbance to nocturnal seabirds due to safety, operational and construction lighting requirements • disturbance and injury of marine mammals due to underwater noise associated with construction and operational activities • disturbance and loss of benthic organisms and habitat due to placement and installation of mooring systems, the excavation of exit pits in the seafloor and installation of pipelines and protective devices • risk of tankers and support vessels colliding with marine mammals • disturbance and entanglement of migratory whales during pipeline installation • destruction of marine habitat and mortality to marine life associated with accidental interactions with unexploded ordnance during pipeline construction and installation. WATER POLLUTION AND MARINE WILDLIFE Discharges will degrade ocean water quality. LNG Terminals intake millions of gallons of seawater per day to cool their generators and discharge water more than 28. Degrees Fahrenheit hotter than ambient ocean temperatures. Billions of gallons per year of intake and thermal waste would cause serious harm to the surrounding ecosystems, killing zooplankton and small fish critical to the survival of marine mammals and fisheries. LNG terminals will discharge sewage and ballast water, and heated wastewater from LNG regasification operations.	

[54] CC-079-06 BHP Billiton Staff Report and Recommendation

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	Construction of gas pipelines could cause harmful spills of drilling fluids and even contaminated sediments into near shore marine environments. Increased vessel traffic resulting from LNG Terminals also increases the likelihood of hazardous diesel, oil or sewage spills. According to marine mammal experts, endangered blue and humpback whales and federally protected gray whales migrating north from the calving lagoons of Baja, commonly feed and travel along the route where the proposed LNG Terminals will be sited. Consequently, these endangered marine mammals will be threatened with asphyxiation and burns from surface fires in the event of significant LNG releases, increased chance of injury or death from collisions with ship traffic, and habitat degradation from water pollution. Noise from the tankers, the terminals and pipeline construction will be audible above and underwater for miles around these activities. The underwater noise could harm these marine mammal species and many others, reduce their ability to communicate and find food, or cause them to abandon these traditional habitats and migration routes. The cumulative impacts of the proposed LNG Terminals along the gray whale migration route have not been assessed in the DEIS. **MEXICAN DEVELOPMENT IMPACTING ON GRAY WHALES.** Five different energy consortiums have announced plans to build Liquified Natural Gas (LNG) Terminals at different locations along the northern Baja coast. [55]	
AFA104	**SHIP STRIKES**	The 2008 DEIS considered the impact that ship strikes may be having on ENP gray whales (Subsection 3.4.3.6.6, Vessel Interactions). It also examined "the cumulative effect of each alternative on each resource, in the context of the effects of past actions,

[55] Urban et al Review of Gray Whales in Mexican waters. J. Cetacean Res. 5(3) 281-295, 2003

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	The cumulative impact of increasing numbers of cruise ships and industrial shipping traffic have not been taken into account by the DEIS.	current conditions, and reasonably foreseeable future actions and conditions" (Subsection 5.1, Context for Analysis). Ship strikes are not currently a concern for ENP gray whales and the comment points to no information suggesting they would have cumulative effects on the whales.
AFA105	**GLARING DEFICIENCIES IN THE MAKAH DEIS.** The term **UNCERTAIN** has been used over and over again in describing the potential impact of a Makah slaughter. AFA Int. provides a list of some of the items which are **UNCERTAIN** or **UNKNOWN**. Without **CERTAINTY**, the Precautionary Principle should be applied. AFA Int. draws the attention of NMFS to NEPA in relation to the above. " *(5) the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks*." **Uncertain -**Long term effects of number of visitors – Alternative 2 and 3 * 'It is ***uncertain***, *but possible, that a decision not to authorize a Makah whale hunt could discourage future requests for a waiver of the MMPA.* * *The Coast Guard specifically found that "the* ***uncertain*** *reactions of a pursued or wounded whale and the inherent dangers in firing a [.50 caliber] hunting rifle from a pitching and rolling small boat are likely to be present in all future hunts, and present a significant danger to life and property if persons or vessels are not excluded from the immediate vicinity of a hunt" (64 FR 61212, November 10, 1999). 3-10 DEIS* * *Sound exposure may also induce physical trauma to non-auditory structures (Jepson et al. 2004; Fernandez et al. 2005), although much remains* ***uncertain*** *regarding the exact mechanisms. Because marine mammals in the project area rely on underwater*	The purpose of an EIS is to provide information to the decision-maker and the public, including identifying areas where potentially relevant information is unknown or uncertain. This comment does not cite information that we failed to consider in the 2008 DEIS. It also does not appear to be a comment about the adequacy of the analysis in the DEIS but rather about the ultimate decision of whether to grant or deny the Tribe's request.

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	sounds for various purposes, any strong anthropogenic sounds at relevant frequencies might have an effect. 3-174 DEIS ** It is **uncertain** whether penthrite grenades would be readily available for a Makah Tribe gray whale hunt. 3-296 DEIS* ** The future of the moratorium on commercial whaling remains **uncertain.** 3-327 DEIS* ** While slight majorities within the IWC have thus succeeded in adopting contradictory resolutions regarding the commercial whaling moratorium, (resolutions are nonbinding) definitive action on the commercial moratorium (or the revised management scheme) is **uncertain** because neither the pro-commercial-whaling or anti-commercial-whaling sides of the debate have the three-fourths majority necessary for action (Henderson 2005; Hogarth 2006). DEIS 3-327* ** It is possible that fewer rifle shots or grenade explosions would be necessary to kill whales under Alternative 3 because of the opportunity to hunt during the summer, when better weather and sea conditions might improve hunter accuracy. Due to **the uncertainty** associated with such a prediction, however, the analysis makes the conservative assumption that there would be the same number of weapons discharges regardless of the hunting season. DEIS 4-10* ** It is reasonable to expect that whales approached by Makah whale-hunting vessels would react in a similar, temporary manner. It is **uncertain** what the longer-term effects would be on whales exposed to repeated approaches. DEIS 4-39* ** It is **uncertain** how whales would react to unsuccessful harpoon* *attempts, but the reaction may be similar to that observed in whales that are tagged or biopsied. Such reactions are likely to be dramatic but temporary changes in behavior (Section 3.4.3.6.6, Vessel Interactions). Whales may be less likely to habituate to unsuccessful harpoon attempts than to approaches of vessels. It is unknown whether whales in the vicinity of successful harpoon attempts will*	

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	develop an association between vessel approaches and harpoon strikes and over time begin to avoid vessels. DEIS 4-39 * *During migration, it is **uncertain** what factors affect gray whale distribution and habitat use. While there is evidence that gray whales will alter course or swimming speed in response to disturbances, there is no evidence that the disturbance is more than temporary (Section 3.4.3.6, Known and Potential Anthropogenic Impacts). Clarke and Moore (2002) found there was little evidence that gray whales disturbed by human activities travel far in response or remain disturbed for long. DEIS 4-39* (* Note – this is yet another example of selective quotes from NMFS scientists without also citing the research which clearly indicates whales ARE disturbed by human activities and change their migration route in response to disturbance. As well, the whales have abandoned lagoons in Mexico because of disturbance by human activity.) * *It is **uncertain** whether the use of an explosive projectile could reduce time to death. DEIS 4-42* (Outrageous stuff) * *It is **uncertain** what the average time to death would be for gray whales killed in a Makah gray whale hunt using explosive projectiles as the striking and killing weapon, though it is possible that average time to death would be lower than with the alternative method (toggle-point harpoon and rifle), because the striking weapon has the potential to quickly kill the whale or render it insensible. DEIS 4-43* * *It is **uncertain** whether other whales would take the place of killed Makah U&A whales or ORSVI whales during the year in which they were killed. DEIS 4-46* * *It is **uncertain** whether the intensity of unsuccessful harpoon attempts* *would result in more than a temporary disturbance of Makah U&A whales and cause them to avoid portions of the Makah U&A either for a short period (days to weeks), or a longer period (for example, over a period of years). Makah DEIS 4-49*	

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	* *If seven whales were killed under Alternative 3, it is* ***uncertain*** *whether other whales would take their place during the year in which they were killed. Seven whales are more than the observed annual recruitment to the Makah U&A. So it is possible that there would be a decrease in abundance under this alternative compared to the No-action Alternative. DEIS 4-52* ** Note: This issue was raised in the 9th Circuit, Anderson v. Evans. The Court found that this question could not be answered adequately and ruled against the Government.* * *It is also* ***uncertain*** *how quickly whales removed under Alternative 3 would be replaced in subsequent years. As described in Section 3.4.3.3.1, Summer Range Distribution and Habitat Use, Calambokidis et al. (2004a) propose that whales likely recruit to the Makah U&A or other parts of the PCFA survey area from the migratory population randomly, as feeding habitat becomes available along the migration route. Thus it appears likely that at least some of the removed whales could be replaced in subsequent years. DEIS 4-52* * Although the precise number of Makah U&A and ORSVI whales removed cannot *be predicted, as many as seven could be killed each year. Given the numbers of whales available to replace them, it is unlikely all seven would be replaced during the year in which they were removed. It is* ***uncertain*** *whether seven would be replaced in the subsequent year. Compared to Alternative 2, Alternative 3 represents a potential seven-fold increase in the risk to abundance of whales in the Makah U&A and ORSVI survey areas, because of the potential for seven of these whales to be killed per year compared to about one whale per year under Alternative 2. DEIS 4-52* * *It is* ***uncertain*** *whether the intensity of unsuccessful harpoon attempts would result in more than a temporary disturbance of Makah U&A whales and cause them to avoid portions of the Makah U&A either for a short period (days to weeks), or a longer period (for example, over a period of years). It is also uncertain whether such disturbance in the Makah U&A would cause PCFA whales to change*	

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	their distribution or habitat use in the larger PCFA survey area. As described in Section 4.4.2.3, Change in Distribution or Habitat Use, availability of prey may be the factor most strongly affecting gray whale distribution during feeding. If prey is available in the Makah U&A or PCFA, hunting by the Makah Tribe might not result in either a short- or long-term response from summer-feeding whales. Many new whales are seen in the Makah U&A every year (Section 3.4.3.3.1, Summer Range Distribution and Habitat Use). Thus even if some whales do abandon the area as a result of hunting disturbance, new whales that had not previously been exposed to hunting might come into the area, suggesting that gray whale distribution and habitat use will not change compared to the No-action Alternative. DEIS 4 – 54 * *If three Makah U&A and ORSVI whales were killed under Alternative 5, it is **uncertain** whether other whales would take their place during the year in which they were killed. Whales identified in the PCFA survey area could take the place of whales removed from the ORSVI, and whales identified in the ORSVI survey area could take the place of whales removed from the Makah U&A. DEIS 4-57* * *It is also **uncertain** how quickly Makah U&A and ORSVI whales removed under Alternative 5 would be replaced in subsequent years. All three whales killed under this scenario could be Makah U&A whales, which is higher than the average annual recruitment of 4.66 whales described under Alternative 2. DEIS 4-57* * *It is **uncertain** whether the intensity of unsuccessful harpoon attempts would result in more than a temporary disturbance of Makah U&A whales and cause them to avoid portions of the Makah U&A either for a short period (days to weeks), or a longer period (for example, over a period of years). It is also **uncertain** whether such disturbance in the Makah U&A would cause PCFA whales to change their distribution or habitat use in the larger PCFA survey area. As described in Section 4.4.2.3, Change in Distribution or Habitat Use, availability of prey may be the factor most strongly affecting gray whale distribution during feeding. If prey is available in the Makah U&A or PCFA, hunting by the Makah Tribe might not result in either a short- or long-term response from summer-feeding whales. Many*	

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	new whales are seen in the Makah U&A every year (Section 3.4.3.3.1, Summer Range Distribution and Habitat Use). Thus even if some whales do abandon the area as a result of hunting disturbance, new whales that had not previously been exposed to hunting might come into the area, indicating that gray whale distribution and habitat use will not change compared to the No-action Alternative. DEIS 4-59 * *Under current conditions, NMFS' annual budget for marine mammal management in the Northwest Region ranges from zero to $500,000 per year. The overall budget for monitoring the ENP gray whale population is approximately $65,000. Within the ENP gray whale budget, funding has been provided for photo-identification studies of gray whales in local survey areas with one purpose, among others, being management of a potential Makah gray whale hunt. It is **uncertain** whether NMFS would continue to fund the photo-identification program if a hunt was not authorized. Because no gray whale hunting currently occurs, there are no NMFS observers associated with a hunt. DEIS 4-105* * It is ***uncertain*** whether a hunt would result in a long-term increase in tourism. Publicity about the whale hunt could generate interest in the Makah Reservation as a cultural tourism destination, while some individuals might not visit the project area due to negative publicity about the whale hunt. DEIS 4 – 108 * It is ***un*certain** whether four whales annually would meet contemporary Makah needs. DEIS 4-145 * *Based on the information available for this analysis, all of the alternatives would have a reasonably foreseeable potential to affect human health both positively and negatively. **There are too many uncertainties**, however, to quantify either type of effect or to predict whether any of the alternatives would result in a net positive or negative effect on human health. DEIS 4-193* * *The outcomes of any future processes would depend on facts not presently known, but it is possible that implementation of Alternatives 2 through 6 could lead to increased federally authorized take by other Indian tribes. With respect to the No-action Alternative, **it is uncertain** whether a decision by NMFS to deny the Makah Tribe's*	

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	request would result in less harvest of marine mammals by Indian tribes in the future. DEIS 4-198 ** NMFS considers it unlikely that publishing a WCA gray whale quota for the Makah's use under Alternatives 2 through 6 would influence other Indian tribes to seek WCA quotas, eventually leading to the harvest of other whale species in other aboriginal subsistence whaling operations. In any event, any WCA quota issued would be subject to the IWC catch limit. And before NMFS could publish a WCA quota, it would also be required to present a needs statement to the IWC. The outcome of that process would depend on facts not currently known and **the outcome is therefore uncertain.** DEIS 4-199* ** **It is uncertain** whether NMFS' action to authorize a gray whale hunt would increase whaling worldwide by emboldening pro-whaling countries. While such an outcome is possible, it is speculative given the variety of issues and dynamics that drive the decisions of the IWC or of countries party to the IWC. DEIS 4 – 206* ** In addition to future actions in the project area, future actions along the entire coast have the potential to affect gray whales because of their migration patterns. Projections for the future of shipping coast wide are **uncertain** due to concerns about fuel prices and the capacity of west coast ports to accommodate increased volumes (White 2008). There are several proposals by various entities to develop ocean energy projects all along the Pacific coast (Section 3.4.3.6.10, Marine 14 Energy Projects). At this time these projects are in the preliminary stages of study and design, and it is difficult to predict how many will ultimately be deployed and in what configuration. Consequently, an analysis of the impact of the action alternatives on gray whales or other wildlife, when added to the effects of future ocean energy projects, would be speculative, or not possible without project details available to analyze. DEIS 5-2* ** At this time it is **uncertain** how overall gray whale abundance and viability will be affected by global climate change (Weiss 2007). As described above, the Scientific Committee of the IWC annually monitors the status of the ENP gray whale stock, and the IWC has a process to adjust catch limits. DEIS 5-6*	

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	Unknown * The cause of such large-scale starvation remains ***unknown*** (Gulland et al. 2005). Some scientists think that the starvation was related to a climatically based decline in prey availability, especially related to the 1997 and 1998 El Nino events in the winter range and the Pacific Decadal Oscillation and Arctic Oscillation in the summer range (LeBouef et al. 2000; Moore et al. 2001; Moore et al. 2003). DEIS 3-103 **(Note: Nevertheless, the UME was not acted upon as required under the MMPA and no hypothesis which makes any sense other than starvation as a result of El Nino and regime shift makes sense)** * Most of the 2002 to 2005 dead whales that biologists examined died of ***unknown causes***. In a few cases, biologists found evidence of ship strikes (propeller cuts) or entanglement in fishing gear (Gulland et al. 2005). DEIS 3-104 * During the unauthorized hunt in 2007, at least 16 shots struck the whale, but it is **unknown** what caliber rifle was used. DEIS 3-116 * The long-term effects of repeated ingestion of sub-lethal quantities of petroleum hydrocarbons on marine mammals are also ***unknown***. DEIS 3-128 * Generally, the concept for most of these proposed projects is to take wind turbines and place them under water to use the energy from tidal currents to generate electricity (WDFW 2006b). The actual impacts of these types of projects **are unknown** because very few exist in the world, but WDFW (2006b) has identified preliminary potential impacts to birds, fish, and marine mammals. They include, but are not limited to, direct mortality or injury from turbine blade strikes, interference with migratory patterns, measures to protect equipment from marine growth, direct habitat loss from equipment and infrastructure placement, impacts on currents, changes in water surface elevations, effects on commercial and recreational fishing areas and equipment, changes in sediment transport, and other issues not yet identified. The WDFW will design studies to assess effects on fish, birds, marine mammals, and their habitats (WDFW	

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	2006b). DEIS 3-135 * Number of PFCA, ORSVI and Makah U & A Whales that may be killed under each alternative: * Likely number ORSVI – Alternatives 3, 5 and 6 - –**Unknown** * Likely number Makah U & A – Alternatives 3, 5 and 6 – **Unknown** DEIS 4-35 * It **is unknown** whether whales in the vicinity of successful harpoon attempts will develop an association between vessel approaches and harpoon strikes and over time begin to avoid vessels. DEIS 4-39 (Note: the Russian data documents Gray whales fleeing the catcher vessels.) * With the potential for 140 approaches and 28 unsuccessful harpoon attempts over 40 days, it is mathematically possible that every Makah U&A whale could be approached by tribal hunting vessels on multiple occasions, and that every Makah U&A whale could be subject to harpoon attempts. For PCFA whales, the number of whales present in any year is also likely larger than the number observed, although the actual number **is unknown**. DEIS 4-53, 54 * It is **unknown** how far away a hunt could occur without interfering with pelicans' foraging activities. DEIS 4-71 * It is **unknown** how murrelets react to gunfire, helicopters, and other loud disturbances to which these birds are unaccustomed, although helicopters and gunfire would probably cause them to either dive or fly away from the area completely (Nelson 1997). DEIS 4-71 * Some marine mammals, specifically those in the coastal environment (e.g., harbor seals, California sea lions, Steller sea lions, and sea otter), and most birds and turtles would continue to encounter noise and vessel traffic from sport and commercial fisheries vessels, sight-seeing boats, and other sources such as military vessels. ***Effects on these species at current levels are***	

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	unknown. DEIS 4-80 * If a Makah gray whale hunt were to alter gray whale behavior, it is not possible to estimate the amount of decrease that might occur in revenues of whale-watch operators. **Current revenues of whale-watch operators are unknown,** and there is no information available or that could reasonably be obtained that would allow an estimation of how much whale-watching revenues might decrease if gray whale behavior were altered by a Makah hunt. The extent to which a Makah hunt had an effect on gray whale behavior, and a subsequent indirect effect on whale- watching revenues, would depend primarily on factors that could cause whales to avoid boats, including the number of whales that could be struck and the estimated number of whales with harpoon attempts and approaches. DEIS 4-103 * **Current revenues of whale-watch operators are unknown,** and there is no information available or that could be obtained that would allow an estimation of how much revenues might decrease if ENP gray whale behavior were altered by a Makah hunt. DEIS 4-109 (**Note: Professor Linwood Pendleton has done a published study which estimates the whale watching industry is worth hundreds of millions of dollars.)** * Some level of hunting currently exists but **the number of injuries associated with weapons accidents in hunting is unknown**. Under any of the action alternatives, hunters and other participants would be at the greatest risk of injury from weapons because they would be handling weapons; protesters and bystanders would experience a lesser risk. DEIS 4-186	
AFA106	DEFICIENCES OF PARAMETRIX CONTRACT **#30. No consultations will be required with other countries, including Canada or Russia.** **(This instruction is extraordinary, given that the Gray whale is a migratory species and the information, which Canada, Mexico and Russia can provide, is critical to the management of the Gray Whales. AFA Int. doubts that the Mexican government or Mexican**	This is a comment about the contract with the consultant hired to assist in preparation of the 2008 DEIS and not a comment about the DEIS itself. Relevant investigations and analysis not conducted by the contractor and subcontractors were conducted by NMFS staff.

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	and Canadian tourist operators would be supportive of any Makah kill). Resource Scope of Work **Items NOT to Include:** Water Quality Quantitative analyses on oceanic water quality, either generally or locally General water quality and quantity conditions in the upland area surrounding the immediate hunt, such as watershed or stream conditions Lengthy background information on shellfish beds in general Construction impacts to water quality and quantity Identification and listing of valid water rights Water conservation Reclamation and reuse facilities Potable water supplies Field surveys Fish Species and Habitat Lengthy background information on ocean habitats Aspects of fish life histories unless they are pertinent to the effects analysis (e.g., time spent at sea feeding). Summarize relevant information in table format. No population modeling No field surveys Lengthy information on salmonid consumption, including dietary benefits Wildlife – ESA species	

COMMENT CODE	COMMENT	DRAFT STAFF RESPONSE
	No field surveys Do not describe aspects of life histories unless they are pertinent to the effects analysis. For example, do not include information on feeding or other behavior in portions of the range other than off the Washington coast. No population modeling Non-Listed Birds No field surveys Do not describe aspects of life history unless they are pertinent to the effects analysis. Summarize relevant information in a table format. No population modeling. Marine Mammals Do not describe aspects of life histories unless they are pertinent to the effects analysis. Information on population stocks of marine mammals not likely to be in the hunt area during the hunting period. No population modeling No field studies. General Vegetation Economic values of kelp beds Quantification of kelp bed destruction or impairment Land based vegetation ESA or State listed vegetation in the vicinity **Socioeconomics/Tourism** **State-wide economic or tourism data, and state-wide impacts** **Commercial shipping**	

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	Background data or impacts on other natural resources such as the timber industry. **The instruction to refrain from identifying any statewide impacts to tourism or the economy is a significant omission.** **Cultural Resources** **Information on structures or artifacts not related to whaling** **Historic information on tribes, Euro-settlements, or Northwest history prior to 1920** **Importance of whales to other populations besides the U.S. population (e.g. Russians, Canadians, Japanese, etc.)** **Detail regarding the International Whaling Convention Act beyond information necessary to characterize tribal whaling history.** **The instruction to refrain from recognizing the importance of whales to other populations besides the US population is outrageous. The whales are a migratory species and have major economic and spiritual value to Mexico, to the Mexican economy. As well, the thousands of tourists who have gone to Mexico to see gray whales have a major interest in their survival.** Noise Noise modeling Quantification of helicopter or gunfire noise levels Aesthetics Land-based aesthetic information **Graphics of any kind depicting the carcass or kill** **Why should graphics of dead whales be censored?** Transportation County-wide traffic data Public Services	

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	County-wide traffic and incident response data (unless localized information is unavailable or cannot be estimated via personal communications with reliable sources) Regional Coast Guard incident response data (unless localized information is unavailable and cannot be estimated via personal communications with reliable sources) State-wide data or effects Human Health/Safety Exposure to health risks from activities other than those directly involved in the hunt or butchering the carcass or from consuming the resulting whale products. County-wide data on arrests and traffic incidents County-wide or localized data on firearm injuries	
AFA107	**CONCLUSION.** The Makah DEIS is an appalling document. It is lacking in any objectivity, fails to encompass the vast array of threats facing the Gray whale and the cumulative impact of those threats. The ramifications of a waiver will impact internationally. It is difficult to believe that any Native American Indian Tribe would attempt to assert Treaty rights to kill vulnerable whales at a time when the population urgently needs the full protection of the law. On ecological grounds alone the Eastern North Pacific Gray Whale population merits relisting. The Eastern North Pacific Gray Whale is the last viable population of the species. It is time the US government took its responsibility towards this whale seriously. 14th August, 2008 Author : Sue Arnold, CEO AFA Int.	

Animal Welfare Institute – Comments submitted August 20, 2008 by D. Schubert.

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AWI1	On behalf of the Animal Welfare Institute (AWI), Cetacean Society International (CSI), and the Earth Island Institute's International Marine Mammal Project (EII) the following comments are submitted in response to the Draft Environmental Impact Statement for Proposed Authorization of the Makah Whale Hunt (Draft EIS). Though its girth is impressive, the content of the Draft EIS is woefully inadequate. While the National Marine Fisheries Service (NMFS) may be attempting to insulate itself from a successful lawsuit by crafting a 900+ page document, even an expedited review of the analysis contained therein reveals stark weaknesses and deficiencies that render the Draft EIS in violation of federal law. Based on its careful review of the Draft EIS, AWI supports Alternative 1 (the no-action alternative) and asserts that, given the deficiencies in the NMFS analysis of environmental impacts, Alternative 1 is the only option available to NMFS that will not trigger litigation by animal protection/conservation interests.[56]	Comment noted.
AWI2	Footnote 1. Appended to this comment letter and hereby incorporated by reference are all of the previous comments/report authored or coauthored by D.J. Schubert relevant to this issue. AWI/CSI expects that NMFS will review the attached documents in their entirely and provide responses to all substantive comments contained therein.	Attached to this comment letter was a letter dated February 16, 2001, providing comments on our 2001 EA. Many of the comments in that letter pertain to alleged inadequacies in the 2001 EA, which are not relevant here. Our review of the 2001 comment letter concluded that all of the comments that might be relevant to the 2008 DEIS have been raised in the present comment letter and are addressed in this response.
AWI3	For over ten years, NMFS has been attempting to force a square peg into a round hole through its ongoing efforts to both secure an aboriginal subsistence whaling (ASW) quota of gray whales from the International Whaling Commission (IWC)	Comment noted.

[56] [This footnote is placed above in the table to facilitate response.

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	and in its attempts to comply with its domestic legal obligations in order to allow the Makah to whale. In addition to an inordinate amount of personnel time and energy spent on this single project, NMFS has expended considerable tax-payer funds in its efforts. For its part, the Makah has consistently held that its "treaty rights" are not subject to IWC approval but has, nevertheless, worked with the U.S. government to secure the necessary international and national approvals.	
AWI4	This cooperative spirit, however, was shattered in September 2007 when 5 members of the Makah tribe, including four who were members of the 1999 Makah whaling crew and one who had been a whaling captain during that hunt, engaged in the illegal and brutal slaughter of a gray whale largely because they had lost patience with the process. In that case, the reported spiritual and cultural importance of whaling to the Makah was tossed aside as these individuals tried to make a statement. The Makah tribe was quick to condemn the killing as an act of "rogue" whalers, to proclaim its intent to prosecute the individuals to the fullest extent under tribal law, and rapidly dispatched a cadre of representatives to Washington D.C. to perform damage control with apparent allies in Congress and within NMFS. Instead of using this incident to permanently end its more than a decade long effort to facilitate the Makah's resumption of whaling given the tribe's clear inability to control its own members, NMFS, apparently satisfied with the excuses given by tribal leadership for the actions of its whalers, has proceeded with its efforts to facilitate Makah whaling as evidenced by the publication of the Draft EIS.	Comment noted.

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AWI5	Shortly after the September 2007 incident, local whale protection advocates began to hear rumors and gather evidence that there was more to the incident than disclosed by either the defendants or by the Makah Tribal Council. This evidence suggested that the Tribal Council and/or individual council members were not only aware of the pending illegal hunt but that they may have sanctioned or authorized the hunt. Then Makah Tribal Council Chairman Ben Johnson conceded in a September 10 article published in the Peninsula Daily News that those involved talked about killing a whale days before the incident (see Makah Leaders Promise to Punish Whale Hunters, Peninsula Daily News, September 10, 2007). While Mr. Johnson may claim that this was just talk, there is no evidence that he intervened to warn those making such statements that such a hunt would be illegal, would not be endorsed or supported by the tribal council, and must not be conducted until and unless the Makah have been given the green light by the U.S. government. In addition, Makah Whaling Commission Chairman Keith Johnson admitted to authorizing one of the perpetrators of this crime access to the large caliber weapon used during the incident (see Seattle Post-Intelligencer, September 11, 2007, "Makah on 'damage control' mission.). NMFS reportedly heard similar rumors and allegedly investigated whether the Tribal Council did countenance the illegal hunt but did not find enough evidence to prove such collusion (pers. comm. with Bill Giles, NMFS law enforcement, Seattle WA). The NMFS investigatory report on the September 2007 hunt, however, remains secret and protected from public release preventing AWI or any other interested parties (except the Makah itself, NMFS, the U.S. Department of Justice, and defense counsel in *Gonzales v. United States*) from reviewing	NOAA's office of law enforcement investigated the illegal 2007 hunt, and found no evidence that the Makah Tribal Council had authorized the hunt or Council members had participated in the planning of the hunt. To receive a copy of the enforcement report, the commenter may submit a request to NOAA Office of Law Enforcement under the Freedom of Information Act.

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	the evidence and evaluating its conclusions. Efforts to obtain a copy of the report from the U.S. Attorney's office in Seattle, WA have only recently been answered in the negative suggesting that the report may remain protected given the ongoing appeal of the convictions by two of the defendants in *Gonzales v. United States*. Despite the fact that NMFS has turned over the report to the U.S. Attorney's office which has subsequently given it to the defense counsel, a representative of NMFS has indicated that a Freedom of Information Act (FOIA) request would be required to access the report assuming it is even available for public release. Even then, NMFS, like the U.S. Attorney's office, has suggested that since two of the defendants have appealed the court's decision, it may be barred from releasing the report pending completion of the legal proceedings.[57]	
AWI6	Such logistical or procedural obstacles serve only to prevent interested stakeholders from understanding the nature and extent of the investigation and from assessing whether the investigation was objective or, as is feared, entirely subjective given the clear conflict of interest that exists between NMFS and the Makah tribe. Indeed, considering the long-term efforts of NMFS to facilitate the Makah's resumption of whaling, its role as both an advocate for the Makah's interests on the international and national stage as well as being tasked to investigate the Makah in response to the illegal hunt demonstrates the absurdity of its involvement in this case. Thus, the fact that NMFS reportedly found no evidence of Makah Tribal Council collusion or complicity in the illegal hunt may be nothing more than a political determination designed to ensure that its past 12 years of effort have not been entirely wasted.	The comment raises procedural issues regarding NMFS' actions and not substantive matters analyzed in the 2008 DEIS or the new DEIS. In response to this and similar subsequent comments, we note that we describe costs associated with monitoring and enforcement in the event a tribal hunt occurs in the 2008 DEIS (Subsection 4.6.2.5, Management and Law Enforcement) and the new DEIS (Subsection 4.6.2.5, Management and Law Enforcement).

[57] Since the government has released the investigatory report to the attorneys representing the defendants in *Gonzales v. United States*, it can't withhold release of the document from the public.

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AWI7	The evidence of Tribal Council complicity and collusion in the September 2007 hunt was ultimately disclosed to the public in the sentencing memoranda filed by two of the five defendants who either pled guilty or were found guilty of violating federal law for their role in the illegal whale hunt. The evidence presented did not simply consistent of claims by the defendants that they were given permission and even encouraged to kill the whale by the Tribal Council and/or by one or more council members, though such claims were made. Rather, the sentencing memoranda included several eyewitness statements attesting to various facts or statements that provide compelling evidence of Tribal Council involvement in the illegal hunt. The mere fact that NMFS reportedly couldn't prove such complicity or that the court was not moved by such claims when sentencing the five Makah whalers is not proof that the claims are not true. If, as AWI suspects, the claims of Tribal Council complicity in the hunt are true it would undermine the entire basis for the U.S. government to continue to process the tribe's waiver application and/or to continue with the present National Environmental Policy Act (NEPA) process.	The comment raises procedural issues regarding NMFS' decision to continue consideration of the Tribe's waiver request and not substantive matters analyzed in the 2008 DEIS or the new DEIS. We decline to accept the suggestion that a claim should be considered true unless it can be disproved.
AWI8	NMFS published the Draft EIS weeks before the defendants in *United States v. Gonzales* disclosed their evidence demonstrating Tribal Council complicity in the illegal hunt. Whether the timing of the release of the Draft EIS was intentional to avoid having to address the claims of council collusion is unknown. Nevertheless, the evidence has now been made public, requiring NMFS to address such claims by conceding that they are true, demonstrating that they are false, or engaging in or, preferably, requesting a new investigation of the illegal hunt by an objective third party. At a minimum, NMFS must suspend the current NEPA process pending: 1) the immediate release of its investigatory report of	The new DEIS describes the NMFS investigation of the illegal hunt, including allegations of tribal council endorsement (Section 1.4.2, Summary of Recent Makah Whaling – 1998 through 2014).

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	the September 2007 incident; and 2) the completion of an independent and objective investigation of Tribal Council collusion or complicity in the illegal hunt.	
AWI9	While the conviction of two of the five defendants is currently on appeal, all five defendants were sentenced for their crimes. Two received jail terms, yet three went virtually unpunished for their crime receiving sentences of probation and community service with a recommendation that they participate in marine mammal counts (i.e., whale watching) near Neah Bay to fulfill their community service obligations. In tribal court, despite the council's early rhetoric about fully prosecuting the defendants under tribal law, no tribal penalty was imposed. Instead, the judge deferred prosecution of the five defendants if they can successfully complete the sentences imposed by the federal court.[58] The judge blamed the lack of tribal prosecution on the inability to empanel a fair and impartial jury given strong opinions among Makah tribal members as to the defendants' actions. Regardless of the reason for the lack of tribal prosecution, the outcome conclusively demonstrates that the Makah are not able to control the actions of its people and, in this case, its whalers and that its tribal justice system is not sufficient to ensure the full and fair prosecution of individuals who violate multiple tribal laws.	The new DEIS describes the current tribal enforcement and judicial system (Subsection 3.1.2, Makah Management of Reservation and U&A Areas). Regardless of the efficacy of that system, the convictions of Makah tribal members involved in the unauthorized hunt demonstrate that the United States has mechanisms in place that are effective in enforcing the MMPA.
AWI10	The Draft EIS only briefly mentions the September 2007 illegal whale hunt largely in the context of the weapons used to wound the whale and the whale's considerable time to death. At the time of publication, however, NMFS was well aware of the allegations that the Tribal Council may have played a role in authorizing the hunt (pers. comm. with Bill Giles, NMFS law	The new DEIS describes this incident in more detail, including allegations regarding tribal council involvement (Subsection 1.4.2, Summary of Recent Makah Whaling – 1998 through 2014).

[58] At least one of the three defendants' who were sentenced only to probation and community service, recently violated his probation by committing a crime on tribal lands. The U.S. Attorney is reportedly aware of this incident and a hearing date has been set for the court to determine if this particular defendant will be further penalized for violating the terms of his probation.

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	enforcement, Seattle, WA) and, though such information had not been disclosed to the public yet, NMFS should have provided more substantive discussion of such allegations in the Draft EIS. Such a deficiency, however, was certainly not the only oversight in the Draft EIS.	
AWI11	Indeed, as the remainder of this letter will demonstrate, NMFS has failed to disclose or adequately analyze many critical issues inherent to the proposed action, the alternatives, the environmental impacts associated with granting of the Marine Mammal Protection Act (MMPA) waiver requested by the Makah tribe, and the tribe's resumption of whaling.	We respond below to the comments summarized in this paragraph.
AWI12	Beyond failing to even satisfy the basic NEPA requirements of including a valid purpose and need statement, considering a reasonable range of alternatives, and disclosing all relevant information about the affected environment, NMFS has failed to adequately evaluate the impact of the proposed action on resident whales, has (at the request of the Makah) concocted a series of whale quotas and subquotas that do not make sense or that won't work, has relied on information (much of which is inaccurate or biased) provided by parties (e.g., Parametrix Inc., Ann Renker, Jennifer Sepez) with a clear conflict of interest, and has grossly failed to disclose or evaluate the cumulative impacts of granting the waiver or allowing the Makah to resume whaling. It is particularly disconcerting that despite preparing an EIS as ordered by the court in *Anderson v. Evans*, NMFS failed to disclose critical information about threats to gray whales and their habitat throughout the species migratory range (i.e., oil and gas development in Alaska and along the coastline of the Pacific mainland, extensive wave energy projects proposed for the mainland coast, existence and expansion military activities in Northwest Washington and along the entire mainland coast,	We respond below to the comments summarized in this paragraph.

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	global warming, and anthropogenic noise impacts on gray whales).	
AWI13	Had it objectively and fully evaluated the impacts of this proposal as required under NEPA, NMFS would have concluded, among other things, that: 1) the Treaty of Neah Bay has been abrogated and/or cannot be relied on to allow the resumption of Makah whaling; 2) the IWC has never recognized the alleged "subsistence" need of the Makah tribe and that, therefore, past and present quotas cannot be allocated under U.S. law; 3) that the current gray whale population estimate is inaccurate and a considerable overestimate of actual numbers; 4) that the current gray whale population estimate is not at or near the historic "carrying capacity" of gray whale habitat and that, in fact, gray whales should be designated as a depleted species; 5) that the species and its habitat are under considerable threat as a result of the combined effects of global warming, ocean noise, coastal development and pollution, and ship strikes, prey depletion, and entanglements in fishing gear and that such threats, particularly the impact of warming oceans on gray whale food supplies in its arctic feedings areas, will result in a substantial decline in the species; 6) that the proposed mechanism for regulating the killing of "resident" whales is not workable and could lead to the slaughter of up to 20 "resident" whales in five years; 7) that the Makah's health, language, ceremonies, or culture have not been adversely affected by the termination of whaling over the past eighty years; 8) that the Makah were not forced to give up whaling by actions of the U.S. government but rather, voluntarily ceased whaling in order to partake in the more lucrative sealing industry; and 9) that the Makah cannot meet the IWC's definition of "aboriginal subsistence whaling" and, therefore, cannot be allowed to whale under U.S. law.	We respond below to the comments summarized in this paragraph.

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	Such deficiencies merely scratch the surface of the legal inadequacies inherent in the Draft EIS. Consequently, as will be demonstrated in this comment letter, NMFS must, preferably, select the no-action alternative permanently ending its efforts to placate the desires of those members of the Makah tribe who have an interest in whaling.	
AWI14	These efforts should be replaced by a concerted undertaking to enhance the conservation of gray whales in light of the existing and increasing anthropogenic threats to the species and its habitat, including the disastrous consequences of global warming. While the causes of global warming may not be under the immediate control of NMFS, in the marine realm NMFS has the ultimate responsibility to understand and predict such impacts and to adjust their management measures (e.g., for fisheries and/or marine mammals) accordingly to minimize, mitigate, or compensate for such impacts. Such mitigation, in this case, would be to prevent the intentional killing or harassment of gray whales by selecting the no-action alternative and prohibiting the Makah from whaling. While NMFS may attempt to downplay such impacts by claiming that the Makah would be permitted to slaughter only 20 whales over the course of five years, considering the dramatic ecosystem-wide changes being documented in the Bering Sea, the potential precedential impacts of granting the Makah's waiver request on other tribal and non-tribal interests, and the potential for "resident" whales to become increasingly important for the survival of the species, such an excuse simply has no merit.	Comment noted.
AWI15	While the critical content and analysis contained in the Draft EIS is deficient, its length complicates the process of preparing substantive comments. In an attempt to provide some order to this comment letter, AWI splits its comments into two	We respond below to the comments summarized in these paragraphs.

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	sections. The first section deals with overarching deficiencies in the Draft EIS providing a substantive analysis of each in the order in which the issue appears in the Draft EIS. The second section address more specific errors, omissions, or questions about the information contained (or not contained as the case may be) in the Draft EIS. The issues addressed in the second section are presented in no particular order. AWI provides references to individual pages when referring to certain claims or facts contained in the Draft EIS. While efforts have been made to avoid duplication between the two sections, some is inevitable. As a preface to its substantive and specific comments on the Draft EIS, comments on the process used to complete the Draft EIS, particularly the lack of sufficient opportunity for the public to participate in this decision-making process, are in order.	
AWI16	**<u>Inadequacy of Existing Comment Deadline:</u>** As an initial matter, NMFS has failed to provide the public, including interested non-governmental organizations, tribes, and scientists sufficient opportunity to review and prepare substantive comments on the Draft EIS. While the existing 90+ day comment period may be considered sufficient for most environmental documents prepared pursuant to NEPA, said documents are not normally over 900 pages in length and they don't routinely contain reference to over 700 documents. To further complicate matters, the Draft EIS references numerous legal opinions, addresses the ICRW and changes in the treaty over time, and covers (albeit inadequately) a wide range of issues from gray whale population estimates to a wave energy project in Makah Bay and from the impacts of whaling on tourism in Clallam County to the precedential impacts of	NOAA's regulations regarding NEPA require that the agency provide a 45-day comment period on all EISs (NOAA Administrative Order 216-6). In this case, we provided 98 days to review the draft – an initial 60-day period and a 38-day extension. In response to request for comments on the draft, NMFS received more than 800 pages of comments from over 400 commenters, suggesting that the 98-day comment period allowed commenters sufficient time to read and to respond to the draft. This comment period is consistent with, or longer than, other comment periods for complex draft EISs prepared by NMFS. For example, for its 1,000 plus page draft EIS on Washington States' forest practices, we provided a 90-day comment period. The nearly 1,200 page draft EIS on the Puget Sound Chinook harvest management plan had a 46-day comment period.

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	granting a waiver to the Makah Tribe. While AWI is critical of the content and quality of analysis in the Draft EIS, the amount of information disclosed and discussed along with the amount of information that was left out of the analysis warrants an extended comment period far in excess of the given 90+ days. The original comment deadline was July 8, 2008. The original 60-day comment period encompassed the nearly month long meeting of the IWC held in Santiago, Chile. For some organizations such as AWI and the Humane Society of the United States (HSUS) their representatives to the IWC Scientific Committee meeting and to the subcommittee/ plenary meetings are the same individuals responsible for crafting comments on the Draft EIS. In addition to the time spent at the meeting itself, IWC meetings require considerable preparation meaning that the AWI and HSUS representatives were unable to use at least three to five weeks of the original comment period due to their attendance at the IWC meeting. Whether the scheduling of the original comment period was intentionally planned to overlap with the IWC meeting is not known (though it is difficult to imagine that NMFS staff in Seattle/Portland could have been unaware of the dates of the IWC meeting). To address the inadequacy of the original comment deadline, requests were made to NMFS to extend the deadline by 90-days until October 8, 2008. To its credit, NMFS agreed to extend the deadline until August 15, 2008 though its reasons for providing only a 5-week extension when 90-days was requested is not known. A second request for an additional 30-day extension in the comment deadline was submitted by AWI and other organizations on July 22, 2008. This request was in addition to similar requests submitted by other organizations.	

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	On August 5, NMFS officially denied the second request for an extension claiming that the 98-day comment period was sufficient. AWI believes NMFS was in error for failing to grant an additional 30-days for the public to comment on the Draft EIS for reasons articulated in its two request letters. AWI along with several other organizations subsequently submitted yet another request for an extension in the comment deadline on the Draft EIS to Secretary of Commerce Gutierrez and NOAA Administrator Lautenbacher on August 8, 2008. To date, no response to that request has been provided. As explained in the various letters seeking an extension in the comment deadline, there were a number of credible reasons why NMFS should have granted the original request of an additional 90-days or, at a minimum, agreed to the second deadline extension until September 15, 2008. In addition to the length of the Draft EIS, the large number of references included in the Draft EIS required additional time for the public to both obtain, review, and rely on that information in their substantive comments. While NMFS has made efforts to provide copies of the requested references to a number of organizations, including organizations signed on to this comment letter, providing the documents and ensuring that there is sufficient time to review said documents prior to the comment deadline are two very different propositions. Similarly, additional time is necessary so that the public can obtain and review the many legal citations included in the Draft EIS and/or conduct independent legal research to determine the accuracy of the legal analysis contained in the document. There are a number of legal issues relevant to	

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	Makah whaling including the legal interpretation of the Treaty of Neah Bay and, in particular, the "in common with" language contained in Article IV, the legal boundaries of the Makah Usual and Accustomed grounds and stations; whether the Treaty of Neah Bay was abrogated by Congress upon its promulgation of the MMPA which includes specific exemptions for Alaskan natives, and the interpretation of the MMPA and WCA as they relate to Makah whaling. Had NMFS provided an additional 30-days for public comment, such analyses could have been completed and presented for consideration by NMFS. The decision by NMFS to deny the request for an additional 30-day extension in the comment deadline was also particularly surprising since there is no compelling reason to complete this NEPA process within a specified time period and because NMFS would benefit from providing the extra time. The Makah have killed a single whale (in a 1999 hunt the basis of which was subsequently found to be in violation of the law as held in *Anderson v. Evans*) in over eighty years. Thus, allowing an extra 30-days for the public to comment on the Draft EIS would cause absolutely no harm to the Makah or to the NMFS staff who have been assigned to work on this project. Unlike NEPA review of a proposed change in a federal fisheries quota, for example, where a decision may be necessary before a fishery season is set to begin, there was/is no specific urgency in completing this NEPA review. Indeed, as specified in the Draft EIS, the present NEPA review is only one step in a multi-step process required by the court in *Anderson v. Evans* which includes a decision on the issuance of the Makah's requested MMPA waiver. While NMFS is acting as if it is	

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	attempting to complete this entire process before the tenure of the Bush administration is over, given the complexity of the MMPA waiver process, it is highly likely that a final decision about Makah whaling will be made by the next administration. As a consequence, providing an additional 30-days to ensure that the public had an adequate opportunity to review and comment on the Draft EIS should not have been denied. Ultimately, had NMFS granted the second extension, all interested stakeholders and NMFS would have benefited. AWI and the other organizations were not seeking an extension in the comment deadline solely for their own benefit but rather, for the benefit of all interested stakeholders, including the Makah, its allies, and those who choose to support the Makah whaling. The benefit to NMFS would be from the more complete record to be reviewed by its decision-makers and which would help inform their decision. This is not to say that the ultimate decision would have been supported by AWI or its allied organizations but, at least, NMFS would have had a more complete record on which to base its decision. Finally, as addressed in each of the request letters, the role of the public in the NEPA process is crucial to the process. The Council on Environmental Quality's NEPA implementing regulations make clear that public scrutiny of NEPA documents is "essential to implementing NEPA," 40 CFR §1500.1(b), and that federal agencies are to "encourage and facilitate public involvement in decisions which affect the quality of the human environment." Id. at §1500.2(d). Unlike NMFS which has access to experts on various issues on its own staff and/or can afford to hire various consultants to address a wide range of issues under consideration in an EIS,	

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	few if any organizations have access to such specialists on staff or externally particularly when dealing with a limited comment opportunity. Certainly, AWI does not have ready access to experts in gray whale population biology, gray whale ecology, oceanographers, benthic invertebrate ecologists, global climate change specialists, and/or alternative energy specialists requiring existing staff to do their best to study and become familiar with a vast amount of information in order to provide substantive comments on NEPA documents like the Draft EIS. Had NMFS provided an additional 30-days to facilitate public review and comment on the Draft EIS, a larger amount of material could have been reviewed and integrated into the comment letter thereby improving the quality and value of the comments to the benefit of the NMFS decision-makers. For the foregoing reasons, AWI requests that NMFS immediately publish a notice reopening the comment period on the Draft EIS for, at a minimum, 30-days to provide interested stakeholders with additional time to analyze the Draft EIS, research issues of concern, and submit informed and substantive supplemental comments. While AWI hopes NMFS will reopen the comment period for the benefit of all interested stakeholders, AWI intends, regardless of the NMFS response to this request, to submit a supplement to this comment letter to provide more detailed analysis of certain claims/conclusions included in the Draft EIS.	
AWI17	**<u>Substantive and Specific Comments on the Draft EIS:</u>** The remainder of the comment letter identifies substantive and specific comments on the Draft EIS. The substantive comments are no more or less important than the specific comments but the latter reflect detailed criticisms of the	This is an introductory paragraph. Responses to specific comments appear below.

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	content or analyses in the Draft EIS while the former address broader deficiencies in the document. The order in which substantive or specific issues/criticisms are discussed does not reflect the importance or relevance of the issue. Some overlap is inevitable between these two categories of comments though efforts have been made to reduce repetition. **<u>Substantive Comments:</u>**	
AWI18	**1. The Makah cannot meet the IWC's definition of aboriginal subsistence whaling and, therefore, under both the provisions of the ICRW and pursuant to national law, the Makah cannot be allowed to whale:** The IWC regulates two types of whaling; commercial and aboriginal. The ICRW (the treaty that established the IWC) contains no explicit reference to aboriginal whaling. Similarly, the IWC's Schedule contains no specific definition of aboriginal subsistence whaling nor does it define the criteria that must be met to qualify as an aboriginal subsistence whaling group. Rather, the Schedule sets forth the aboriginal subsistence whaling quotas ostensibly accepted by the IWC. Over time the IWC has agreed on both criteria to determine who can qualify to conduct aboriginal subsistence whaling and to a definition of subsistence use. The basic criteria that any group desiring to engage in aboriginal subsistence whaling must meet are to demonstrate a continuing traditional dependence on whaling and on the use of whales. The Makah cannot meet this standard. The Draft EIS claims that a combination of factors led to the suspension of Makah whaling in the 1920s. Draft EIS at 3-233.	The position of the United States is that the Tribe's proposal "constitutes 'aboriginal subsistence whaling' within the meaning of the 1946 International Convention for the Regulation of Whaling" (IWC/48/28, 1996). Regarding the description in the draft EIS of the Tribe's reasons for ceasing whale hunts, the comment offers no evidence to support the assertion that one cause alone led to the suspension of Makah whaling.

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	These factors allegedly included the dramatic reduction in the number of whales available to the Makah due to the impacts of commercial whaling on the stocks, the decimation of the Makah themselves as a result of smallpox and other infectious diseases, a reduction in the demand for whale oil, the increased profitability of sealing, and the U.S. government's failure to provide promised assistance to help the Makah retain its whaling practices during the government's efforts to assimilate the Makah into western society. Draft EIS at 1-5. While all of these issues may have occurred, only one, the increased profitability of sealing, led to the Makah's abandonment of whaling so that the tribe could benefit from the lucrative trade in seal products. Draft EIS at 3-235. Thus, contrary to the claims made by the Makah and NMFS, the tribe was not compelled or forced to give up whaling but voluntarily elected to forego whaling in order to take advantage of the more profitable sealing industry. NMFS has attempted to use this combination of factors argument to claim that it was, in effect, the fault of the U.S. government that the Makah gave up whaling for over seventy years before killing a whale in1999. By presenting the argument this way, the U.S. government was taking the blame for the Makah's extended hiatus from whaling while allowing the Makah to gain sympathy for its alleged mistreatment. In reality, neither the devastation of gray whale stocks by commercial whaling or U.S. government policies involving the Makah had anything to do with the Makah's decision to forego whaling. Instead, the potential for profits from the sealing industry led to the Makah's decision to abandon its whaling tradition. Since the decision was voluntary and not forced, the Makah must solely shoulder both the burden and blame for failing to continually engage in whaling and, therefore, for not	

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	meeting the IWC criteria to qualify for aboriginal subsistence whaling. The fact that the Makah may continue to sing songs about whaling, conduct whaling ceremonies, and engage in cultural events relevant to whaling does not satisfy the IWC's criteria of a "continuing traditional dependence on whaling and on the use of whales." See 1981 Ad Hoc Technical Working Group's definition of "aboriginal subsistence whaling." The key here is the word "continuing" and the phrases "on whaling and on the use of whales." The term "continuing" clearly means that the use of whales or practice of whaling has occurred on a regular basis over time. While it is inevitable that there could be years when an aboriginal group would not or could not engage in whaling due to a sufficiency of stored food supplies, a focus on collecting other food stuffs, due to injury to the whaling captain or crew members, or because of weather, an eighty-year hiatus in whaling does not meet the standard of "continuing." Moreover, the phrase "on whaling and on the use of whales" means that the group must demonstrate a continuing traditional dependence on both whales and whaling. The fact that an aboriginal group may have a traditional dependence on whales based on various songs, ceremonies, or dances about whales performed over decades is not sufficient to meet this definition as the group also has to demonstrate a dependence on whaling and on the use of whales. The Makah cannot demonstrate such a dependence. It is clear that the primary intent of this standard is to ensure that aboriginal groups who have a legitimate subsistence need for the products of whales obtained through whaling can meet those needs. NMFS concedes this intent when it indicates that the Ad Hoc Technical Working Group's definition of "aboriginal	

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	subsistence whaling" "refers to a 'continuing traditional dependence' on whale products for subsistence." Draft EIS at 3-330. Thus while songs and ceremonies about whales may have persisted within Makah culture even after whaling was discarded as a routine practice, neither can satisfy a subsistence need for whale products. Moreover, if whaling was as culturally important to the Makah as the tribe suggests then its songs, ceremonies, and other practices relevant to whaling would have been passed down from generation to generation even though whaling itself was no longer practiced. If that is the case, as the Makah suggest it is, this demonstrates that the Makah are more than capable of preserving its cultural connections to whales without slaughtering and eating them. The Makah can't use the gray whale's listing under the Endangered Species Act (ESA) as a defense for it hiatus of whaling. First, the Makah's decision to voluntarily stop whaling occur some forty-years before the precursor to today's ESA was passed by Congress. Second, even if such a gap did not exist, the Makah can't use the ESA as an excuse for not resuming whaling if, in fact, whaling is of such significant cultural importance to the tribe. Alaskan natives, for example, consistently (with limited exceptions) killed bowhead whales even after the bowhead was listed as an endangered species (which remains the bowheads' designation). Similarly, the international protections afforded the gray whale in the 1930s and in 1946 under the ICRW and its Schedule cannot be relied on to justify the Makah's whaling hiatus since both laws permitted some level of aboriginal subsistence whaling. NMFS may attempt to claim that the reasons for the Makah's decision to forego whaling are irrelevant since the IWC has	

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	issued an ASW quota for gray whales which is shared between the U.S. and Russia. This too would be in error. Indeed, an examination of the history of the Makah whaling issue within the IWC demonstrates that the IWC has actually never approved the Makah's statement of need. In 1996, the first year that the U.S. sought a quota for the Makah, the U.S. withdrew the proposal when it became clear that it did not have the required votes. The following year, the U.S. and Russia submitted a joint request for a quota as both countries claimed to have aboriginal groups who had a legitimate subsistence need to slaughter gray whales.[59] The verbatim record from the discussion of the joint quota during the meeting in which a minimum of 17 countries questioned the Makah's alleged subsistence need provides compelling evidence that the tribe's need was never accepted or recognized. Instead, the IWC debated the addition of language to amend the introductory portion of the aboriginal subsistence whaling portion of the IWC Schedule (paragraph 13(b)(2)) to add the language "whose traditional subsistence and cultural needs have been recognized by the International Whaling Commission." Draft EIS at 1-34. The U.S. rejected the "by the International Whaling Commission" clause claiming that the "IWC had not established a mechanism for recognizing such needs, other than adoption of a catch limit … ." Id. Subsequently, the IWC supported the U.S. approach and accepted the joint request for a gray whale catch limit. While the U.S. touted this vote as IWC approval of the Makah gray whale hunt, the Australian delegation countered that the	

[59] Though the U.S. and the Russian Federation were proposing to allow aboriginal subsistence whaling on the same gray whale stock, a joint request was not required by IWC rules. The U.S. and the Russian Federation should have filed individual requests so that each request could have been judged on its own merit.

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	IWC did not recognize the traditional subsistence and cultural needs of the Makah as required by the amended Schedule language. Clearly, the U.S. efforts to remove any reference to the IWC having a role in determining subsistence need was based on its long-term efforts to unilaterally decide whether its aboriginal groups have a legitimate need. In the end, the IWC only approved the joint request by consensus because the majority, while rejecting claims of the Makah's subsistence needs, did not want to penalize Russia's Chukotkan natives for their government's decision to submit a joint request with the U.S. In 2004, after the Russian delegation complained that its Chukotkan natives were being treated differently than other aboriginal groups, it was eventually decided to entirely eliminate the "whose traditional subsistence and cultural needs have been recognized" from the Schedule. This decision, which of course the U.S. supported, furthered the U.S. effort to create an environment whereby it and other countries that allow aboriginal subsistence whaling could unilaterally decide if their aboriginal groups had a legitimate subsistence need. The U.S. now claims that it, not the IWC, has the unilateral authority to recognize the needs of the Alaskan Inupiats and the Makah. For example, even before the "have been recognized" language was removed from the Schedule in 2004, the U.S. interpretation of that language was that "each IWC party was free to recognize the subsistence and cultural needs of its aborigines." Draft EIS at 4-202 citing IWC 1998. Yet, there remains confusion over the role of the IWC versus the role of individual IWC-member governments in assessing the need of aboriginal groups. For instance, NMFS asserts that	

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	in order to seek IWC approval for an aboriginal subsistence whaling catch limit, a contracting government must "submit a proposal to the IWC based on cultural and nutritional needs documented in a needs statement." Draft EIS at 1-21. If individual government's can recognize the aboriginal needs of their subsistence groups then the submission of so-called need statements to the IWC would seemingly be unnecessary. Instead, countries should just submit to the IWC's Scientific Committee a document delineating the number of whales it would like to allow its aboriginal groups to kill so that the Scientific Committee can determine if such a quota would be sustainable or not. While this may or may not reflect the U.S. interpretation of the current requirements for the IWC to review and accept or reject a needs statement, it is clear that, largely due to U.S. supported alterations to the relevant language in the Schedule, there is no clear understanding of what is or is not required to obtain IWC approval for aboriginal subsistence whaling. NMFS must clarify precisely how the U.S. interprets the IWC's Schedule provision pertaining to aboriginal subsistence whaling.	
AWI19	**2. NMFS has failed to demonstrate that the Makah's whaling "rights" contained in the Treaty of Neah Bay have not been abrogated by Congress:** NMFS briefly discusses the case law relevant to treaty abrogation in the Draft EIS. It concludes that the Supreme Court has required "clear evidence that Congress actually considered the conflict between the intended action on the one hand and Indian treaty rights on the other, and chose to resolve the conflict by abrogating the treaty" citing *United*	The legal issues raised in this comment have been raised in court briefings and proceedings and were most recently addressed by the court in *Anderson v. Evans*. They are beyond the scope of the 2008 or the new DEIS. The purpose of an EIS is to analyze impacts of a proposed action and alternatives on the human environment, not resolve legal issues in response to the Tribes' 2005 waiver request, filed with the agency in compliance with the 9th Circuit *Anderson v. Evans* decision.

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	States v. Dion 1986, Draft EIS at 1-11. NMFS failed, however, to discuss whether the whaling provisions contained in the Treaty of Neah Bay were abrogated when Congress promulgated the MMPA despite the fact that this issue has been raised by many stakeholders groups over the years and has been referenced in past lawsuits. The court in Anderson v. Evans addressed the treaty abrogation issue ruling that "[w]e need not and do not decide whether the Tribe's whaling rights have been abrogated by the MMPA." Draft EIS. Thus, though it remains an open legal question as to whether Congress has or has not abrogated the treaty rights of the Makah in regard to whaling; the evidence suggests that Congress has, indeed, done so. Despite whatever federal trust responsibility the U.S. government may have to the Makah tribe, it also has an obligation to ensure that any tribal treaty remains in full force and effect before engaging in efforts to enforce or authorize specific treaty articles. In other words, NMFS is obligated to determine if a treaty or a provision within a treaty has been abrogated as a first step before expending time and resources attempting to enforce or authorize the treaty or a particular provision contained therein. The MMPA, promulgated in 1972 by Congress, includes a specific exemption for Alaskan natives to permit them to continue to kill marine mammals despite the prohibitions against such killing contained in the Act. See MMPA Section 101(a)(3). No such exemption was created for the Makah tribe or any other native group inhabiting the U.S. mainland. Considering the alleged importance of marine mammals, including whales and seals, to the cultural, spiritual, and economic history of the Makah tribe it is inconceivable that tribal members or tribal leaders were not aware of efforts	

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	underway within Congress in 1972 to pass a law to protect marine mammals. Not only were such efforts likely reported in local newspapers, on the radio, or on television but surely the Makah's elected Representative or Senators at least informed the Makah of said deliberations and/or actively sought the tribe's input into such legislation. Perhaps the Makah were even advised of the exemption being crafted for the Alaskan natives and asked if they too would desire such a special condition to be contained in the legislation to protect its interests. The fact that Congress did not carve out a specific exemption for the Makah or for any Native American tribe in the lower 48 states as it did for Alaskan natives demonstrates that Congress, which had to be aware of the Treaty of Neah Bay, explicitly elected to abrogate the whaling and sealing provisions of that treaty either with or without concurrence of the Makah tribe. AWI has initiated an extensive search of all relevant documents and legislative history associated with the promulgation of the MMPA in order to locate any document or reference to the Makah tribe if such a reference exists. Even if this analysis finds nothing of relevance, this does not obviate the fact that Congress only exempted Alaskan natives from the MMPA. If the whaling and sealing "rights" of the Makah have been abrogated as the evidence suggests, then there is no compelling treaty "right" to whaling and NMFS has no unique responsibility to attempt to secure a treaty "right" that does not exist. If this is the case, it offers compelling evidence for NMFS to terminate this entire process. Presumably, the Makah Tribe could still apply for an MMPA waiver and permit and the U.S. government could still seek an ASW quota for the Makah	

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	at the IWC. The Makah could no longer use its "treaty" as a justification for the waiver nor would the treaty be relevant within the IWC. It should not be the responsibility of AWI or any other interest group to prove that the Makah's whaling (and sealing) "rights" embedded in the Treaty of Neah Bay have been abrogated by Congress. Rather, NMFS should have engaged in such an analysis and/or required the Makah to provide compelling evidence that its treaty "right" had not been abrogated in its MMPA waiver and permit application. Until and unless this is done, the current process must be terminated since the treaty's abrogation is of such critical importance to the fundamental issue at the heart of this controversy.	
AWI20	**3. The Treaty of Neah Bay does not provide the Makah with the exclusive right to hunt whales and specific treaty articles cannot be implemented independently of the entire treaty:** For nearly fifteen years, some within the Makah Tribe have relied on the language contained in its 1855 Treaty of Neah Bay as the primary justification for their desire to resume whaling. NMFS has also used that language to defend its ongoing efforts to secure the opportunity for the Makah to engage in whaling by claiming that the Makah is the only tribe to have explicitly preserved their right to whale in their treaty with the U.S. government. The treaty language pertaining to whaling is contained in Article IV which states that "[T]he right of taking fish and of whaling or sealing at usual and accustomed grounds and stations is further secured to said Indians in common with all	The comment seems to take issue with what the commenter believes is an inaccurate interpretation of treaty language by the Ninth Circuit Court of Appeals in its *Anderson v. Evans* decision. The legal issues raised in this comment are beyond the scope of the 2008 or the new DEIS. The purpose of an EIS is to analyze impacts of a proposed action and alternatives on the human environment, not to debate the meaning and intent of legal decisions.

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	citizens of the United States." In referencing this language, the Makah and NMFS all too frequently neglect to include the "in common with" language either because they believe it is irrelevant to the question of whether the Makah have a treaty right to whale or because it creates a potential problem with using the treaty language to permit the Makah to whale. The court in *Anderson v. Evans* addressed the "in common with" language. It said: We have recognized that the "in common with" language creates a relationship between Indians and non-Indians similar to a cotenancy, in which neither party may "permit the subject matter of [the treaty] to be destroyed." *United States v. Washington,* 520 F.2d 676, 685 (9th Cir. 1975). *See also United States v. Washington*, 761 F.2d 1404, 1408 (9th Cir. 1985) (recognizing that "in common with" has been interpreted to give rise to cotenancy type relationship). While this "in common with" clause does not strip Indians of the substance of their treaty rights, see *Washington v. Washington Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 677 n. 22 (1979), it does prevent Indians from relying on treaty rights to deprive other citizens of a fair apportionment of a resource. *See id*. at 683-84. The court went on to explain that the "in common with" language in the treaty ensures that both sides (Indians and non-Indians) have "right, secured by the treaty, to take a fair share of the available fish." Recognizing that the case law on interpreting the "in common with" language dealt largely with the apportionment of salmon and other fish stocks between Indians and non-Indians, the court explained that in the context of gray whales, "the Makah cannot, consistent with	

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	the plain terms of the treaty, hunt whales without regard to processes in place and designed to advance conservation values by preserving marine mammals or to engage in whalewatching, scientific study, and other nonconsumptive uses." Citation omitted. While we don't dispute the court's finding, we do believe that the court has misinterpreted the intention of the "in common with" language contained in Article IV of the Treaty of Neah Bay by failing to consider the historical context at the time the treaty was signed. In 1855, both the Makah and non-Indians were engaged in whaling, fishing, and sealing. Thus, when the Treaty of Neah Bay was signed both groups had a desire to continue to have access to whales without one group being given preference over the other. The "in common with" language provided that balance to ensure that both groups had equal opportunity to slaughter whales for use or trade in whale products. At the time, whale conservation was not an issue of concern. The fact that the court interprets the "in common with" language as involving disputes over salmon and other fish species is not surprising. The "in common with" language in the Treaty of Neah Bay also pertained to fishing which, like whaling, was practiced by both Indians and non-Indians in 1855. Thus, the "fair share" rulings ensuring balanced apportionment of the fish, seal, and whale stocks between Indians and non-Indians made sense given the historical context in which the Treaty of Neah Bay was signed. Unlike whaling, however, fishing for salmon and other species persisted without any significant disruption from well before 1855 to the present day. Whaling, on the other hand, was not	

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	consistently practiced by either the Makah or non-Indians since 1855. As the vast stocks of whales, including gray whales, were devastated by commercial whaling operations such operations began to shut down. For the Makah, as evidenced in the Draft EIS, they abandoned whaling in order to take advantage of more the more lucrative sealing industry. The last gray whale killed by the Makah was allegedly killed in 1928. Given the historical context during the time when the Treaty of Neah Bay was signed, it is clear that the intent of the "in common with" language was to ensure that both Indians and non-Indians would continue to have access to the whales for slaughter. Whale conservation was not an issue at that time and didn't become relevant or of concern for several more decades. The court in *Anderson v. Evans* introduced a modern interpretation of this "fair share" standard by suggesting that the Makah's interest in slaughtering whales must be balanced against the interests of non-Indians in gray whale conservation, scientific study, and other non-consumptive uses. What the court did not consider, however, is that the "in common with" language guarantees a non-Indian the same opportunities to use gray whales as that granted a Makah. Thus, if the Makah were allowed to whale then NMFS could not simply reject out of hand any request made by a non-Indian who may desire a similar opportunity. While the non-Indian would have to comply with the same standards as the Makah, including the submission of a waiver of the MMPA's marine mammal killing prohibition and/or request for a permit to kill a whale, NMFS would be obligated based on the "in common with" language in the treaty to give equal	

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	consideration to such a request as that it has given to the Makah's application.[60] Thus, the potential precedential impact of a decision by NMFS to grant a waiver to the Makah permitting the tribe to whale extends beyond other Native American tribes or to how other countries may respond to their own indigenous groups but must include the possibility that any citizen could request permission to kill a gray whale. While NMFS could claim that it would never countenance such a waiver application or permit request from a non-Indian, this would be a rather simplistic response to a far more complex issue. Indeed, considering that the treaty language was signed well before any protective legislation was promulgated to protect the gray whale, that an ancestor of a non-Indian whaling captain may have as much of a cultural connection to whales as a modern day Makah tribal member who hasn't killed a whale for some eighty years, and since NMFS repeatedly claims that there are more than enough gray whales for over 400 to be killed without harming the stock, applicants could make plenty of arguments to support such a request. Consequently, NMFS must provide a more detailed explanation as to the legal interpretation of the "in common with" language in the Treaty of Neah Bay and expand its analysis of the precedential impacts of its decision, if made, to grant the Makah a waiver from the MMPA.	

[60] Admittedly, the terms of the Whaling Convention Act and, in particular, its requirement that any whaling be conducted in compliance with the International Convention for the Regulation of Whaling may provide grounds for NMFS to reject such an application. However, this does not mean that one or more individuals could submit an application seeking the authority to kill a gray whale using the potential U.S. decision to permit the Makah to whale and the "in common with" language in the Treaty of Neah Bay as support for his/her/their request.

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	Furthermore, if NMFS and the Makah are going to rely so heavily on the Treaty of Neah Bay to justify the whaling by the tribe, then all provisions of the treaty must be equally enforced. The U.S. government should not and cannot pick and choose what provisions of the treaty it deems acceptable and worth pursuing and which provisions it can ignore. For example, Article 10 of the Treaty specifies that the Makah are "desirous to exclude from its reservation the use of ardent spirits, and to prevent its people from drinking the same, and therefore it is provided that any Indian … who shall be guilty of bringing liquor into said reservation, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her … ." Sadly, it is well known and reported that some member of the Makah tribe have difficulties associated with the consumption of alcohol and other illicit drugs. These issues are no different than those that afflict far too many American households. The difference is that the Makah have a treaty provision that forbids the presence of ardent spirits on its reservation. While NMFS does not have the legal authority to enforce this provision, other federal agencies may have such authority and/or may be able to work with the Makah to enforce this provision of its treaty. For either NMFS or the Makah to ignore this important treaty provision while so heavily relying on Article 4 in their attempt to justify whaling by the Makah is inappropriate.	
AWI21	**4. NMFS has failed to disclose all relevant information about threats to the gray whale throughout its range, has focused its analysis too narrowly on the project area, and has failed to adequately evaluate the cumulative impacts of the proposed project:**	In response to this and similar comments, the new DEIS contains an expanded evaluation of the cumulative effect of threats to gray whales throughout their range (Subsection 5.4, Gray Whales). The new DEIS continues to consider the Makah Tribe's U&A as the project area, because that is where the effects of the action would occur. Activities that take

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	The Draft EIS defines the project area or proposed action area as the Makah's Usual and Accustomed grounds (U&A) excluding the Strait of Juna de Fuca. Draft EIS at 1-3. This area was delineated by the Makah in its waiver application. The tribe elected to exclude the waters within its U&A within the Strait of Juan de Fuca based on "concerns about public safety and the effects of hunts on gray whales in the local area." Draft EIS at 1-3. NMFS makes a significant yet fundamental error in the Draft EIS by focusing its analysis nearly completely on the so-called project area. As a result, nearly the entirety of Chapter 3 in the Draft EIS describes the affected environment within the project area. While this description (as discussed throughout this comment letter) is neither complete nor sufficiently detailed as required by NEPA, NMFS largely fails to describe the affected environment outside of the project area. NMFS fails to provide any explanation as to why it elected to limit the primary scope of its analysis to the project area and/or why it believes this is consistent with NEPA. The reality is that it's not. Regardless of the focus of the opinion in *Anderson v. Evans* on resident whales, the court ordered the preparation of an EIS. The court did not specify that the EIS should only focus on a small portion of the gray whales' entire range nor did it limit the scope of the analysis to only resident whales. Rather, NMFS must have made this determination and, by doing so, has failed to comply with NEPA and has failed to provide any substantive disclosure or discussion of the affected environment and threats to the gray whale outside of the project area.	place outside the project area are considered in Chapter 5, Cumulative Effects, to the extent they may have effects on the resources examined in the EIS.

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	Thus, while NMFS briefly mentions, among other things, the existence of the California Current, El-Nino and La-Nina weather patterns, the Pacific Decadal Oscillation[61] and the potential impact of these physical and climatic phenomena on currents, habitats, fauna, and flora within the project area, it entirely fails to disclose or only briefly mentions a whole host of issues and threats that impact the gray whale and its habitat throughout the species range from the arctic to Mexico. The same focus is found in the discussion of biological resources (i.e., phytoplankton, zooplankton, fish and invertebrates, and other species) and their presence, productivity, and ecological role within the Pacific Northwest despite the significance of these resources to gray whales throughout the species range. Similarly, in the discussion relevant to the benthic environment in the Draft EIS, the information is limited to the benthic characteristics and processes within the project area. See Draft EIS at 3-45 and 3-46. Indeed, this entire section of the Draft EIS is focused on the project area with only a general reference to, for example, the gray whale benthic feeding in the northern portion of the summer range in Section 3.4.3.3.1 of the Draft EIS. Draft EIS at 3-48. For reasons articulated below, this largely myopic concentration on the project area avoids the disclosure and discussion of a whole range of issues that directly, indirectly, and cumulatively impact the gray whale and the species habitat.	

[61] The focus of NMFS on the project area is evident in its description of these phenomena. In discussing upwelling and down-welling, NMFS highlights how strong winter storms and southerly winds from late-November to mid-March creates large waves in the Pacific Northwest which result in intense vertical mixing. Draft EIS at 3-35. In its discussion of eddies and fronts, NMFS focuses on the Juan de Fuca Eddy (or Tully Eddy) which develops offshore of northern Washington. Id. Similarly, when discussing El Nino and La Nina events, NMFS focuses on how these events affect the climate in the Pacific Northwest. Draft EIS at 3-37.

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	This is not to suggest that there is no discussion of the ecology or biology of gray whales beyond the project area. The Draft EIS includes sections, for example, summarizing the feeding ecology of gray whales (see Draft EIS at 3-61) including information on their unique attribute of suction feeding, the type of prey consumed, the fact that they don't solely feed during the summer on their arctic feeding grounds but may feed opportunistically along the migratory route, that resident whales consume a variety of prey including pelagic species, and that their feeding behaviors provide benefits to other species, including seabirds. Similarly, general information about the gray whales summer distribution and ecology north of the Alaska peninsula including very brief descriptions of prey types and density, impact of oceanographic changes on both prey species and gray whales, impact of gray whales on benthic invertebrates, and changes in gray whale distribution over time is included in the Draft EIS (see page 3-74) though the analysis is far from comprehensive or complete. NMFS cites certain investigators who propose that the allegedly increasing number of gray whales has led to the overexploitation of amphipods in the Bering Seas potentially leading to a permanent localized loss of amphipod or other prey communities forcing the whales to expand their summer range to locate alternative forage (citing Highsmith and Coyle 1992, Weitkamp et al. 1992). While there is compelling evidence that gray whales have expanded their summer range, the explanation for this shift provided by NMFS is only one possible cause. NMFS fails to disclose the other potential factors (discussed below) forcing such a shift preferring to articulate only those reasons that best support the NMFS claim that gray whales have reached or exceeded the carrying capacity of the habitat and now are causing impacts that not	

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	only adversely impact the species itself but disrupt the ecology of the arctic food web. The Draft EIS also includes information (see Draft EIS at 3-63) about the seasonal migrations of the species identifying the timing of southbound and northbound migrations, explaining the phased pattern of migrations among different groups of whales (i.e., near-term pregnant whales, non-pregnant females, mature males, and immature whales of both sexes (southbound migration); adult and juvenile whales, whales with calves (northbound migration)), and migratory routes in relation to shore (northbound whales generally migrate closer to shore than southbound whales). What is missing from the Draft EIS is of the greatest concern and demonstrates that NMFS has failed to meet the legal requirements imposed by NEPA in regard to the content and analysis mandated in an EIS. Again, inexplicably, the vast majority of the information and analysis contained in the Draft EIS is focused on the so-called project area as NMFS has failed to disclose critical information about the gray whale, the species habitat, and threats to both that exist outside the project area. Such full disclosure is required under NEPA. In addition, since NMFS evaluates the impacts of its proposed action on the ENP gray whale stock as a whole, one gray whales using the Makah U&A or ORSVI areas, and in terms of distribution changes within the Makah U&A and the PCFA, it is obligated to disclose all information about the gray whale throughout the species migratory range. Draft EIS at 4-31. Without such information its analysis of the impacts of the proposed action on the entire ENP gray whale population is incomplete.	

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	Gray whales, including gray whales that may be killed by the Makah (if the tribe is allowed to whale) occupy an area ranging from the arctic to Mexico. Throughout that range there are an abundance of threats to the gray whales and their habitat. The disclosure of all information about gray whales throughout their range including an analysis of all threats, both within and outside of the project area, was required to be included in the Draft EIS. NMFS simply cannot legally justify excluding such information from the Draft EIS and must, assuming it has any interest in complying with federal law, terminate the current process and (assuming it chooses to go forward with an effort to evaluate the impacts of Makah whaling) prepare a new EIS or supplement to the existing Draft EIS. A new EIS or supplement to the Draft EIS is required both by the plain language of NEPA and its implementing regulations to address this serious deficiency in the current document. In such a supplemental EIS, NMFS must disclose and analyze information in the following subject areas. These subjects either were not addressed at all in the Draft EIS, were only addressed (albeit inadequately) within the project area, or were incompletely evaluated. These subjects are not listed in any particular order of importance as all must be included in a supplemental EIS. A. Algal blooms. This issue is briefly discussed in the Draft EIS (see page 3-124) but is largely limited to the project area. Though NMFS concedes that the frequency of such blooms is increasing off the coast of Washington, it must disclose the frequency and severity of such blooms throughout the migratory range of gray whales and discuss how such blooms	

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	may adversely impact gray whales and their habitat, including any of their prey species. B. Oil and gas exploration activities. Remarkably, NMFS did not disclose or discuss oil and gas exploration activities and their potential direct, indirect, or cumulative impacts on gray whales anywhere in the Draft EIS. While there may presently be no oil and gas exploration activities within the project area or off the coast of Washington, there are extensive exploration activities (including seismic testing, drilling, and production) within the summer range of the gray whale in the arctic. While the Minerals Management Service (MMS) is primarily responsible for the regulation of such activities, NMFS is intimately involved in reviewing potential impacts of such activities on federally protected species and/or in issuing various permits to allow for the take (mainly through harassment) of marine mammals protected under both the ESA and MMPA. A review of the MMS website reveals that there are substantial areas within the arctic that have been or could be leased for oil and gas exploration activities. The range of the gray whale, which is expanding as the species searches for additional prey resources, overlaps with the offshore lease areas. Moreover, as evidenced by the multitude of NEPA analyses, biological assessments, biological opinions, and other analyses required under the relevant laws, there is no question that oil and gas exploration activities can and do directly and adversely impact gray whales and their habitat. Furthermore, the recent decision by President Bush to rescind the presidential order prohibiting offshore oil and gas development in the mainland U.S. and the increased attention to this issue within Congress raises the possibility that, in the	

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	not too distant future, oil and gas exploration activities could commence off the coasts of Washington, Oregon, and California which would add to the increasing threats already plaguing the gray whale. NMFS must consider and analyze the potential impact of all such oil and gas exploration activities, including such activities occurring or planned in the coastal waters of Canada and Mexico, in a supplemental EIS. Such an analysis also must include a more comprehensive assessment of the potential adverse impacts of oil spills on gray whales. This is essential both because of the increased risk of such spills if the analysis area includes the entire range of the gray whale versus only the project area and because the existing analysis in the Draft EIS is entirely inadequate. While the existing analysis includes a summary of potential impacts of oil spills on gray whales including impacts to their swimming speeds, time submerged, direction of movement, impacts to their eyes and epidermis, and the risks associated with consuming tar balls or breathing oil vapors, it discounted such impacts as slight and short-term. This apparent disregard for the potential adverse impacts of oil spills on gray whales is particularly alarming since NMFS concedes that the "volume of shipping traffic (entering and exiting Puget Sound) puts the region at risk of having a catastrophic oil spill." Draft EIS at 3-126. It goes on to conclude that "the proposed removal of the current moratorium on oil and gas exploration and development off the British Columbia coast may increase the danger of a major accident in the region" and that "the possibility of a large spill is one of the most important short-term threats to coastal organisms in the northeastern Pacific." Draft EIS at 3-127 citing Krahn et al. 2002. The fact that shipping accidents were responsible for	

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	the largest volume of oil discharged in Washington from 1970 to 1996, Draft EIS at 3-127, and that it is predicted that there will be an annual 4 percent increase in ship traffic into and out of Puget Sound in the future only adds to the significance of this potential threat to gray whales. C. Wave energy. NMFS mentions in the Draft EIS that there are ten marine energy projects currently proposed in Washington State. Draft EIS at 3-134. Wave energy technologies are relatively new and untested. There are various prototypes available including some that are largely submerged and some that float on the surface of the ocean or are only partially submerged. Though legislation specific to the regulation of wave energy development is either non-existent or incomplete, the Federal Energy Regulatory Commission (FERC) has taken the lead in attempting to regulate the development of this industry. Other agencies, including NMFS, the MMS, and the U.S. Army Corps of Engineers also play a role in regulating this growing industry. NMFS identifies a single wave energy project for construction in Makah Bay, located in the Makah U&A, which received a license from FERC in December 2007. Draft EIS at 3-135, 5-1. This project involves the installation of four buoys about 3.7 miles from shore in 150 feet of water. Each buoy would be tethered by cables to four surface floats while each float will be connected by a cable to a subsurface anchor buoy just above the seafloor. An analysis of the environmental impacts of the project concluded that there would only be minor or localized risks to gray whales. This analysis is, however, suspect considering the growing body of documents, reports, and other assessments suggesting that wave energy projects may pose greater threats to the environment, including to	

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	cetaceans, than anyone has revealed. Even NMFS reports that wave energy projects "have the potential to result in serious injury or death of migrating or summer-feeding whales." Draft EIS at 5-5. NMFS adds that "ocean energy projects could have a greater impact on summer-feeding whales in the PCFA survey area than on the ENP gray whale stock as a whole because the summer-feeding whales spend more time along the west coast." Draft EIS at 5-6. Considering the novelty of wave energy projects, the diversity of designs, and the vagaries of the current permitting process, the severity of many of the potential impacts of such projects are uncertain. As a result, the precautionary principle is particularly relevant here since it is important to identify and comprehensively address all impacts before significant funds are invested into the development of this technology. Of particular concern are the potential impacts of the sound or noise produced by such wave energy units to cetaceans, the impacts of any electromagnetic field produced by the units, and the possibility of injury, mortality, or disturbance of cetaceans as a result of entanglements with the buoy mooring system and transmission cable or from collisions with the mooring and anchor lines/cables used to attach these machines to the sea floor. Draft EIS at 5-5. While the Makah Bay project will likely have an impact on gray whales, it is the cumulative impact of all potential wave energy projects that is of greatest concern. Beyond the ten potential projects that NMFS identified in Washington State, a review of the FERC website identifies several other projects, currently in various steps of the planning and permitting process, for California, Oregon, and Washington. Though NMFS mentions "several proposals by	

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	various entities to develop ocean energy projects all along the Pacific coast," Draft EIS at 5-2, it fails to evaluate the cumulative impact of said project because it claims that they are "in the preliminary stages of study and design, and it is difficult to predict how many will ultimately be deployed and in what configuration" making any analysis of their impacts "speculative" or "not possible." Id. Yet, while attempting to avoid any analysis of the cumulative impacts of these projects, NMFS concedes that the "additional ocean energy projects proposed along the gray whales' migration route … if developed could affect migrating gray whales." Draft EIS at 5-5. Moreover, despite acknowledging that "ocean energy projects arrayed along the west coast could negatively affect the abundance of the gray whale population as a whole," NMFS reasserts that "there is insufficient information at this time to evaluate potential cumulative effects." Id. Considering the sheer number of such projects, the fact that there is considerable pressure on the government, including state government, to identify alternative sources of energy, and because of the potential adverse impacts of these projects, both individually and cumulatively, on the marine environment including whales, NMFS cannot avoid full disclosure and analysis of these projects. While not all of these projects have been given the green light by the relevant state or federal regulatory agencies, they are reasonably foreseeable and, therefore, must be included in any cumulative impact analysis. Without such an analysis the Draft EIS is incomplete and violates NEPA. D. Ocean noise: NMFS includes a very limited and superficial analysis of the impact of ocean noise on cetaceans and other marine species in the Draft EIS. Considering the	

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	ubiquitous problem with ocean noise throughout the world's oceans, all of the uncertainty regarding the full range and severity of threats posed by ocean noise to marine mammals and their prey species, along with the growing evidence of such adverse impacts, however, NMFS is obligated to provide a far more comprehensive analysis of this issue and its potential impacts on gray whales throughout their range. The world's oceans are polluted more than ever with noise. Noise levels in some areas of the gray whales range have doubled every decade for the past six decades. While some noise is from natural sources, most is human generated emanating from boats/ships/ vessels (of all sizes), from undersea exploration activities (i.e., for scientific research and for oil and gas exploration and exploitation), and from military operations (i.e., active sonar use, explosive detonations). While our knowledge of the impacts of such anthropogenic noise sources on cetaceans is improving, our understanding of such affects remains rudimentary at best. The lack of certainty in defining such impacts is due to a number of variables including, but certainly not limited to, not understanding the auditory thresholds of the species in question, the difficulty in study noise impacts on cetaceans in a wild environment, a lack of knowledge about the physiology of the auditory process in gray whales, the fact that affected whales may never be seen or monitored, and since proving cause and effect (to the degree that certain agencies may desire) is impossible. We know that ocean noise impacts marine mammals including cetaceans and that such impacts can range from behavioral disturbance to mortality. This is based on behavioral studies that have documented changes in whale behavior, swimming speeds, direction of movements, breathing frequencies,	

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	cessation of or changes in vocalizations, and active avoidance or escape from the vicinity of the anthropogenic noise source. Draft EIS at 3-174. We have some understanding as to how the frequency, duration, and intensity of ocean noise may affect certain species resulting in no impact, temporary loss of hearing, permanent damage to the auditory system, or non-auditory tissue and organ damage though our understanding of the long-term impacts of repeated or constant exposure of cetaceans to noise remains very limited. We do, however, understand the importance of sounds to cetaceans. Whether sounds are used to communicate with pod members or relatives, used to detect prey, used for navigation, or used to identify the approach of a predator, the ability to hear is of critical importance to marine mammals including cetaceans. Perturbations to these abilities can have grave consequences. We also understand, as conceded by NMFS, that baleen whales are thought to be most sensitive to low-frequency sounds, Draft EIS at 3-173, and that responses to noise can vary by sex and age as cow-calf pairs of gray whales are considered more sensitive to disturbance by whale-watching vessels than other age or sex classes. Draft EIS at 3-175 citing Tilt 1985. Despite the significance of this issue to gray whales, NMFS has largely glossed over the subject providing some very basic analysis of noise sources and impacts to cetaceans but then downplaying the impact of noise on the gray whale within the project area. See e.g., Draft EIS at 3-166. Moreover NMFS has failed to exhaustively document the full range of anthropogenic noise sources potentially affecting gray whales throughout the species range. It also failed to provide a comprehensive review of all of the relevant research, much of	

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	which NMFS funded or been closely involved with, on the general subject of ocean noise impacts in marine ecosystems to the more specific subjects of ocean noise impacts on cetaceans or gray whales. It is of particular importance (as well as being required by law) that NMFS consider the cumulative impact of ocean noise on gray whales including the impacts associated with oil and gas exploration activities in the arctic, the military's use of active sonar within and outside the project area, and the constant din of ship/vessel engines that gray whales are subject to as they traverse some of the most crowded shipping lanes in the world during their southward and northward migrations. E. Military activities: Northwest Washington and the Puget Sound area is home to a number of military installations.[62] The range of military activities that occur in the area is substantial and include, but is not limited to, the operation of submarines, flight training, explosive testing and training, and ship operations. Despite the number of military facilities in the area and the military's extensive use of Puget Sound, the Strait of Juan de Fuca, and the northwest Washington coast, NMFS provides no information about the military use of the project area and/or its use of areas throughout the migratory range of the gray in the Draft EIS, how such use may impact gray whales and their habitat, and whether the military is planning to alter, expand, or augment its activities in the area in a manner that will or could adversely impact gray whales. Indeed, in 2007 the U.S. Navy proposed a new plan to expand its testing and training activities in the water of Puget Sound, Hood Canal, and the	

[62] According to a fact sheet from the Commander of the United States Pacific Fleet in regard to the Northwest Training Range Complex Environmental Impact Statement/Overseas Environment Impact Statement, the Puget Sound is home to the third largest concentration of Naval forces, including more than 30 Navy shore commands, two aircraft carriers, 24 ships and submarines, and 31 aviation squadrons.

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	Washington coast through the deployment of more unmanned vehicles, including submersible and aerial weapons platforms, and an increase in war games off the coast, partly in a marine sanctuary. See BreakingNews.com, "Proposed Navy Expansion Could Bring More Undersea Explosions to Washington Waters," September 5, 2007 (http://www.seattleweekly.com/content/printVersion/350097). Such information must be disclosed and analyzed since it is highly likely that many of the activities that the military engages in within and outside the project area will impact gray whales and their habitat. F. Global warming: Of all the threats to the gray whale and its habitat, global warming is by far the greatest. The far-reaching direct, indirect, and cumulative consequences of global warming are adversely impacting gray whales throughout their range, including within the project area. That impact is most significant in the arctic where the warming climate is resulting in a substantial decline in sea ice, the early retreat of sea ice in the spring, an alteration in underwater currents, and changes in storm patterns, frequency, and severity leading to changes in the entire ecology of the region. The physical and temporal changes in sea ice are causing drastic and long-term impacts on the benthos and benthic invertebrates including amphipods that comprise the gray whale's primary prey species. The early retreat of the sea ice leads to a later spring bloom which results in significant alterations to the arctic food web including a chance in species existence, abundance, and composition, altering and/or expanding the numbers of pelagic species, increasing pelagic species consumption of primary and secondary production, reducing availability of prey to benthic invertebrates, and	

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	reducing the diversity and abundance of amphipods and other benthic creatures that are the primary prey consumed by gray whales.[63] The dynamics of these changes are complex but the consequences have significant implications for gray whales and other species that rely on the benthos to survive as all either have to switch prey or expand their range to find locally abundant patches of benthic invertebrates. These changes are not only resulting in alterations to the species assemblages in various areas within the Bering and Chukchi Seas (which represent gray whale summer habitat), but they favor species that occupy the pelagic system versus those that rely on the benthos like gray whales. As a consequences, gray whales are forced to emigrate further north in search of the necessary prey species in sufficient quantities to meet their energetic needs. As the ocean continues to warm, these impacts will only expand further harming gray whales and other species that depend on benthic invertebrates for survival. In addition, the increasing water temperatures allows for new species, including invasive species, to expand their range and potentially to compete with gray whales for what's left of the benthic invertebrates. Warmer sea temperatures also facilitate the direct invasion of novel disease organisms or parasites that may adversely impact benthic invertebrates. Such impacts are ecosystem wide and, in time, will only escalate. Because of such substantial changes to the entire ecosystem, it is of no surprise that gray whales are being seen further north than ever before. These whales are attempting to locate alternative feeding sites. The expansion in the range	

[63] Any trawling activities that are permitted within the summer feeding areas utilized by gray whales would also have to be considered as part of any analysis as such activities would also directly and adversely impact benthic invertebrates reducing the amount of prey available for gray whales.

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	of the gray whale is not without consequences as the further north the whales are the longer it takes them to migrate to Mexico. Thus, the increased sightings of newborn calves off the coast of California is entirely expected given the changes in the movements, distribution, habitat use patterns, and general ecology of the gray whales in their arctic summering areas.[64] Though the Draft EIS contains a section on cumulative impacts, NMFS has failed to adequately evaluate all relevant cumulative impacts associated with the proposed action. Wind energy projects, oil and gas exploration and exploitation activities, algal blooms, military use of gray whale migratory habitat, and ocean noise issues are just a few of the impacts that must be evaluated in a more comprehensive assessment of cumulative impacts. The existence, expansion, and impacts inherent to these issues are not speculative. Either they are ongoing at the present time and/or are planned for the future. As a consequence they all qualify as reasonably foreseeable and, therefore, must be evaluated in a cumulative impact analysis.	
AWI22	**5. NMFS assessment of the status of the gray whale and is inadequate and incomplete:** For well over a decade, NMFS and its biologists have consistently claimed that the ENP gray whale population had recovered to meet or exceed its original, pre-exploitation population size. Though the current gray whale population estimate of 20,110 (Rugh et al. 2008) is much lower than the maximum estimate of 29,758 estimated in 1997/98, Draft EIS at 3-98, NMFS believes that the declining numbers and decreasing rate of productivity is reflective of a species that	We continue to conclude that the ENP gray whale population is at OSP, as described in the new DEIS, Subsection 3.4.3.3.4 ENP Status, Carrying Capacity, and Related Estimates. See responses to specific points below. The new DEIS discusses all available data regarding the status of the ENP population (Subsection 3.4, Gray Whales). Both the 2008 and the new DEIS thoroughly discuss the 1998-2000 strandings of ENP gray whales (Subsection 3.4.3.1.7, Stranding Data).

[64] Due to the inadequate opportunity for public comments on the Draft EIS a more detailed analysis of the impacts of global warming on the gray whale and its habitat is not possible at this time. Such an analysis is being prepared and will be submitted in a supplemental comment letter.

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	has hit or exceeded its so-called carrying capacity and whose numbers are modulating to be consistent with what the habitat can support. NMFS largely downplays the importance of the significant increase in gray whale strandings in 1999 and 2000 when at least one-third of the population disappeared just as it largely ignores the recent increase in reports of "skinny" whales, claiming again, that these adjustments are evidence of gray whale numbers exceeding the carrying capacity of their range.	
AWI23	In addition, instead of conceding the significance of the findings on pre-exploitation gray whale populations presented by Alter et al. (2007), NMFS attempts to discount these findings (which concluded that the pre-exploitation size of the gray whale (western and eastern) may have numbered up to 117,700 whales or nearly six times the current estimated number of ENP gray whales by either raising questions about the validity of Alter's analysis or claiming that the lowest population size estimate presented by Alter of 30,000 whales is close to the upper estimate of gray whale abundance calculated by NMFS.[65] Draft EIS at 3-61, 3-71. The findings of Alter et al. (2007) pose a unique dilemma for NMFS since it demonstrates that: 1) the current gray whale population is nowhere close to the historical "carrying capacity" of the habitat making previous NMFS claims that gray whales have met or exceeded the carrying capacity inaccurate; 2) that the gray whale is nowhere close to recovered potentially requiring relisting under the Endangered Species Act and a complete recalculation of the PBR using a reduced recovery factor; and/or 3) that the carrying capacity of gray whale habitat has	The new DEIS discusses the issue of carrying capacity of the ENP gray whale stock, referencing Alter et al. (2008), Alter et al. (2012), and other relevant publications subsequent to the release of the 2008 DEIS. We kept these comments in mind as we developed that discussion. As explained in the 2008 and new DEIS, we consider carrying capacity to be the current carrying capacity of the habitat (Subsection 3.4.3.4.5, Estimates of Carrying Capacity (K), OSP, and PBR).

[65] The argument by NMFS that Alter et al. (2007) lower population estimate of 30,000 is close to the upper estimate calculated by NMFS is incorrect. Alter et al. reported, based on their genetic analysis, that the long-term effective population size of gray whales is between 31, 175 and 38,084 breeding adults but that, when the effective size is adjusted to include non-reproductive adults and juveniles they determined a total historical population of 78,500 to 117,700 gray whales.

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	been reduced substantially due largely to anthropogenic impacts (i.e., global climate change and its considerable wide-ranging impacts to Arctic ecosystems, arctic food webs, and the benthic community) which are ongoing and which pose immediate and long-term threats to the gray whale. The reality is that there has been a significant regime shift in the Arctic which has had direct, indirect, and cumulative impacts on gray whales, their habitat, and their primary food source (i.e., benthic invertebrates and specifically amphipods) and which has led to dramatic changes in gray whale ecology, biology, behavior, and productivity. These changes are not merely anomalies of short-term significance but, rather, will have long-term consequences to the survival and viability of gray whales. Indeed, though the polar bear has become the image of the impacts of global warming, the gray whale could easily occupy that role as its future is as tied to the ravages of climate change as is that of the polar bear. The concept of "carrying capacity" is highly controversial because of its immense variability. In terrestrial ecosystems, though carrying capacity is frequently used in the management of wild animals, it is a constantly moving target since it can be so easily influenced by so many factors (e.g., climatic events such as rainfall amount, ambient temperatures, drought, snow depth or snow-water equivalent). Marine ecosystems, including the Bering Sea, can also experience rapid change altering the "carrying capacity" of any marine environment for any species from amphipods to whales. Therefore, though NMFS continues to rely on the concept of carrying capacity in its management (or mismanagement) of gray whales, it must concede that the concept is controversial and not particularly meaningful given its significant variability.	

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	More importantly, though NMFS has consistently held that the ENP gray whale population is recovered and is at or in excess of its historical pre-exploitation population size, there is considerable reason to question these assertions. Fundamentally, the results of Alter et al. (2007) demonstrate that the actual historic population size of gray whales was several times larger than the current combined estimate of ENP and Western North Pacific gray whales. Alter's finding also call into question the legitimacy of Rugh et al. (2008) claim that the ENP gray whale carrying capacity is 23,686. Draft EIS at 3-70. Either that estimate is far too low or the impacts of global warming have so altered the habitat of the gray whale, particularly its arctic summering areas, that it can't sustain the number of gray whales that existed prior to commercial exploitation of the species and which now threatens the existence of the remaining gray whales. In the Draft EIS, NMFS fails to accurately present the findings of Alter et al. by claiming that they estimate the pre-exploitation size of the gray whale population to be only two to four times larger than the current estimate, when in reality their estimate of up to 117,700 gray whales historically is nearly six times the present estimate. Moreover, besides downplaying the significance of this estimate by suggesting that Alter's lower confidence interval range of 30,000 is within the confidence limits for current gray whale estimates of carrying capacity reported by Wade (2002), Draft EIS at 3-61, 3-71 (but see footnote 10), NMFS then claims that Palsboll et al. (2008) have questioned the results reported by Alter et al. (2007). Beyond simply providing this reference, NMFS fails to include any summary of what Palsboll et al. concluded, how	

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	they reached their conclusion, and whether NMFS concurs with said conclusion. Instead, NMFS completely circumvents any substantive analysis of Alter et al. by claiming that "it intends to address the findings of Alter et al. (2007) and other researchers as part of the next update of the stock assessment report for the ENP gray whale stock." Draft EIS at 3-64. Palsboll et al. (2008) was not a published peer-reviewed study nor did it contest the evidence or methods used by Alter et al. Rather, it was a letter to the editor of the Proceedings of the National Academy of Sciences suggesting that there could have historically been gene flow into the North Pacific via gray whales in the Southern Hemisphere which would mean that the pre-exploitation abundance estimates of Alter et al. (2007) are applicable to globally rather than in the North Pacific. Thus, Palsboll et al. do not question the results of Alter et al. but suggest that their results may be applicable to a global population of gray whales and not to the number of gray whales in the North Pacific. Palsboll et al. indicate that subfossil records of gray whales have been limited to the North Atlantic and offer no proof that gray whales occurred historically in the Southern Hemisphere. The mere fact that the existence of gray whales in the Southern Hemisphere may be "plausible" as suggested by Palsboll et al. is not sufficient to ignore the findings and implications provided by Alter et al. Given the significance of the findings of Alter et al. (2007) to the management of gray whales including whether the ENP gray whale should be designated as a depleted species and considering the legal requirements inherent to the development of an EIS, NMFS cannot avoid subjecting this issue to substantive analysis in the Draft EIS simply by claiming that it will address it in another, separate document. NMFS is	

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	free to include any analysis it may choose in its 2008 gray whale stock assessment report but it can't use that report as an excuse not to provide an analysis of this issue within the pages of the Draft EIS. Thus, not only did NMFS err in failing to discuss the findings of Palsboll et al. (2008) but it also erred in failing to disclose and discuss all relevant information pertaining to the findings of Alter et al. (2007) and its analysis of that study in the Draft EIS.	
AWI24	While the findings of Alter et al. (2007) merit far greater analysis in the Draft EIS given their significance to many NMFS assumptions about gray whales, NMFS gray whale population estimates also deserve scrutiny. Rugh et al. (2008) estimate that there are currently approximately 20,100 ENP gray whales. Such estimates are a product of data collected during shore-based counts conducted in California. Such data is manipulated to compensate for several correction factors (e.g., to compensate for whales missed by observers, whales traveling during the night, whales traveling too far offshore to be observed, errors in pod size estimates, whales missed due to poor visibility conditions) to produce abundance estimates with confidence intervals. There is, of course, the potential for serious error in the methodologies used to count whales and estimate gray whale abundance including the experience level of observers, their attentiveness, visibility conditions, ability to see migrating whales, inaccurate recording of count/distance data, and the validity of the correction factors used to determine abundance estimates. Despite its use of multiple correction factors, NMFS only disclosed one correction factor (used to correct for the number of whales passing the observation points at night) in the Draft EIS (see page 3-97). Though the other correction factors may be contained in one or more of the studies cited	The new DEIS describes the 2009 estimates of ENP gray whale abundance (Laake et al. 2009) and the updated estimates of Durban et al. (2013). It also describes updated information on calf counts (Perryman et al. 2011; Perryman and Weller 2012). There are always uncertainties inherent in estimating abundance and other population parameters. Laake et al. (2009) and Durban et al. (2013) describe the confidence values associated with their estimates. We use the minimum population estimate (Nmin) in calculating PBR. As described in more detail in the new DEIS, there is a 95% probability that the true abundance is greater than Nmin (Subsection 3.4.2.1.4, Defining and Calculating PBR), based on the 3-year average abundance. In contrast, Laake et al. (2009) and Durban et al. (2013) use a single year abundance estimate and a 90% confidence value.

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	by NMFS, it fails to disclose in the Draft EIS these factors and fails to provide any summary of the methodology used to calculate such factors and the assumptions inherent to said factors. It would appear therefore, that NMFS is so confident in its abundance estimates and its associated correction factors that it expects all interested stakeholders to accept its estimates without question or critical analysis. The population estimates along with northbound counts of gray whales calves are used to determine population productivity rates. According to data collected by NMFS, such rates have declined over time. Again, whether these calf counts and productivity rates are accurate depend on a number of assumptions inherent in the methodologies used by NMFS.	
AWI25	While NMFS has produced gray whale population estimates for many years over the past several decades, it is these very estimates that raise concerns and questions about the validity of the methodologies used by NMFS to produce such estimates. A number of these estimates are provided below in Table 1 which was taken from the Draft EIS at page 3-98. A review of these data demonstrate, in some years, significant estimated increases in gray whale abundance above and beyond what is likely to be biologically possible based on what is known about the gray whale's reproductive characteristics. Table 1: Gray whale population estimates from 1967 to 2007: Table 1: Gray whale population estimates from 1967 to 2007: Year Population Estimate	The commenter observes that there are some years without abundance counts. This is because no counts were completed in those years, as described in Laake et al. (2009) which reports a new set of abundance estimates conveyed in the new DEIS.

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	1967/68 13,776 1968/69 12,869 1969/70 13,431 1970/71 11,416 1971/72 10,406 1972/73 16,098 1973/74 15,960 1974/75 13,812 1975/76 15,481 1976/77 16,317 1977/78 17,996 1978/79 13,971 1979/80 17,447 1984/85 22,862 1985/86 21,444 1987/88 22,250 1992/93 18,844 1993/94 24,638 1995/96 24,065 1997/98 29,758 2000/01 19,488 2001/02 18,178 2006/07 20,110 An initial review of this table reveals several things. First, and most obvious, NMFS has not disclosed population estimates for every year from 1967/68 to the present. Either the estimate doesn't exist or NMFS simply chose to exclude that estimate from disclosure in the Draft EIS. Considering that gray whale counts have been conducted annually since 1967, Draft EIS at 3-97, data should theoretically be available to develop a population estimate for each year.	
AWI26	For the purpose of this analysis, where there are large gaps in population estimates (e.g., between 1979/80 and 1984/85) it is assumed that the gray whale population increased by a fixed amount (calculated by subtracting the smaller estimate from the larger and dividing by the number of missing years) each year. So, for example, the gray whale population increased by 1,354 whales each year from 1980/81 through 1983/84. The same formula was used if the population declined between two estimates (e.g., between 1987/88 and 1992/93). Thus, in	The commenter is correct that the ENP gray whale population declined by nearly a third during 1998-2000, as described in the 2008 and new DEIS (Subsection 3.4.3.1.7, Strandings). A new set of abundance estimates was developed by Laake et al. (2009) and these area conveyed in the new DEIS.

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	those years the gray whale population declined by 851 whales each year from 1988/89 through 1991/92. The substantial decrease in the estimated size of the gray whale population from 1997/98 to 2001/02 reflects a period when there was a considerable spike in documented gray whale strandings which some attributed to the impacts of starvation caused by the gray whale population exceeding their carrying capacity though there is considerable evidence (as discussed in this comment letter) that starvation is not an adequate explanation for this decline. If these estimates are accurate, then over a third of the gray whale population was lost between 1998 and 2001.	
AWI27	Finally, the variability in the gray whale population estimates over time is rather stunning suggesting that the gray whale population is subject to significant increases and decreases. This, of course, assumes that the estimated population sizes are accurate which, as explained below, remains in doubt. While any decrease, even of several thousand animals between years, is biologically possible given the multitude of threats to gray whales and their habitats, not all of the documented increases would appear to be biologically possible based on what is known about gray whale reproductive biology.	The variability in abundance estimates is likely a combination of actual fluctuations in abundance over time in response to environmental variables and also the confidence intervals around each year's estimate (Laake et al. 2009).
AWI28	There are at least two ways to check the validity of these estimates. First, if one assumes the corrected calf counts are accurate then, given information about the reproductive characteristics of gray whales (average age at sexual maturity, calf birth interval) one can determine the population structure needed to produce that number of calves and compare that to the total population estimate to see if the structure is feasible. This methodology requires that the direct calf counts and the formulas used to correct such counts are accurate. NMFS failed to disclose in the Draft EIS the corrections factors for calf	The 2008 DEIS cited several sources of scientific information regarding calf counts, including Perryman et al. (2002), a published paper that describes in detail the methods, assumptions, and calculations used to estimate calf abundance (Subsection 3.4.3.4.3, Calf Production Data). The paper describes the standard scientific methods used to account for probability of detection. The new DEIS includes updated calf counts presented to the IWC in Perryman et al. (2011), which relies on the methods reported in Perryman et al. (2002) (Subsection 3.4.3.1.5, Reproduction and Calf Production).

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	counts and/or the assumptions inherent in such factors. It also failed to acknowledge the difficulty in counting new born calves due to their small size, sea conditions, presence of their mothers (making direct observation difficult), and the small size of their blow. Alternatively, if sufficient biological information about gray whales was known and disclosed, one could create a simple model to calculate the expected demographics of the population over time and then compare those results to the population estimates produced by NMFS.[66]	
AWI29	Unfortunately, NMFS has failed to disclose in the Draft EIS (either purposefully or because it does not have such data) the various biological characteristics necessary to develop a simple model to estimate population abundance. Some of these elements are disclosed such as age of first reproduction in female gray whales (average of 8 years of age), Draft EIS at 3-68,and the frequency of calving (one calf every other year), Id. What's missing includes the estimated age of reproductive senescence, the population's sex-ratio, the population's age structure (i.e., percent calves, percent non-reproductive juveniles, percent in reproductive prime, percent older-aged animals that are not productive), age and sex-specific mortality rates, and the number and sex of gray whales killed per year as a result of aboriginal whaling and other human-caused mortality factors.[67]	The most straightforward method of estimating abundance is to count individual animals. This is the method employed since gray whale counts began in the 1960's. The gray whale migration close to shore offers a unique opportunity to monitor abundance of the population. The methods of estimating abundance were described in the 2008 DEIS (Subsection 3.4.3.4.1, Abundance Data). The new DEIS relies on Durban et al. (2013) which presents a thorough description of the updated method for estimating abundance.

[66] In regard to the second method to assess the validity of the NMFS population estimates, the insufficient opportunity to submit comments on the Draft EIS do not permit the further development and use of that methodology at this time. An amended or supplemental comment will be submitting providing that analysis in the near future.

[67] Had NMFS provided a sufficient opportunity for the public to comment on the Draft EIS, AWI would have attempted to scour the gray whale literature to determine if such characteristics have been estimated by gray whale researchers.

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	A list of those biological/reproductive characteristics that would need to be disclosed in order to undertake a more critical examination of the validity of the NMFS population estimates include: 1) a female gray whale becomes reproductively mature at 8 years of age (Draft EIS at 3-68); 2) reproductively mature gray whales produce a calf every two years under ideal habitat/environmental conditions (Draft EIS at 3-68); 3) age-specific productivity rates for female gray whales; 4) the sex-ratio of the ENP gray whale population; 5) the proportion of reproductively mature ENP gray whales in the population; 6) gray whale age-specific mortality rates; and 7) number and sex of gray whales killed annually as a result of anthropogenic impacts. Using the first method of assessing the accuracy of these population estimates requires information about calf production. This information is provided in the Draft EIS (see page 3-107). For example, in 2005 the corrected calf count was 945. If we assume this estimate is accurate, that there is no calf mortality, and that reproductively mature gray whales give birth every other year then in 2005 there were 945 pregnant whales and a total of 1,890 reproductively mature female gray whales. Considering that the estimated total gray whale population in 2005 was, based on the data in Table 1 (corrected for the lack of estimates provided for each year), approximately 20,000 whales that would mean that less than 10 percent of the total population consisted of sexually mature female whales. If there is a 1:1 sex ratio in the population this would mean that only approximately 20 percent of the	

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	population or slightly less than 4,000 whales are adult whales. Conversely, this would mean that 80 percent of the gray whale population were calves or juvenile whales who have not yet reached sexual mortality. Such a small percentage of adult whales in the population just doesn't seem possible or reasonable unless far more adult whales are being killed or are dying (through natural causes) each year than are being reported and/or estimated. A more reasonable explanation for the relatively small number of adult whales is that the overall population estimate is too high since, if the total population estimate was lower, then the proportion of the population consisting of adult whales would be higher. Even if we assume that 10 percent of calves are killed each year before being observed during the northbound migration, this would mean that there were approximately 1,040 pregnant whales in 2005 and a total of 2,080 reproductively mature female gray whales in the population or 4,160 total adult whales (approximately 21 percent of the total estimated population). In 2004, with a corrected estimate of 1,527 gray whale calves, assuming no calf mortality, this would correspond to 1,527 pregnant whales and a total of 3,054 reproductively mature female whales or 6,108 total adult whales (or nearly 32 percent of the total estimated population based on the data presented in Table 1 (as corrected)). If a ten percent calf mortality rate is included, this would increase the proportion of sexually mature whales in the population. While the percentage of adults in the overall population was, based on this analysis, slightly higher in 2004 compared to 2005, it is difficult to explain how 1,527 calves were estimated in 2004 while only 945 were estimated in 2005. Considering that adult	

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	female whales allegedly produce a calf every other year, this significant difference in calf production estimates suggest that there was either a significant decline in the number of pregnant whales between the two year, a smaller proportion of the adult females were pregnant in 2005 versus 2004, the calf production estimates are incorrect, or that there was significantly more calf mortality in 2005 compared to 2004. If NMFS had provided an adequate opportunity for the public to comment on the Draft EIS, additional analysis of calf production compared to overall gray whale population estimates could have been provided at least going back to 1994. Suffice it to say that if such an analysis was conducted it would generate similar questions about the accuracy of the overall population or calf production estimates. Based solely on the analysis provided above, it is clear that NMFS must provide a more detailed analysis of its calf production estimates, how they correspond to the overall population estimates, and whether a relationship between calf production and overall population estimates is feasible or possible. In regard to the second methodology, the information contained in the Draft EIS is not sufficient to develop a simple model to calculate expected gray whale productivity. Said information either may exist but was not disclosed in the Draft EIS or some or all of it does not exist and is unavailable for use in developing such a model. NMFS should, however, disclose all relevant biological and reproductive data on the gray whale to permit the development of a model to test the validity/accuracy of its population estimates. This analysis also suggests that there are significant deficiencies and/or inaccuracies in the methodology used by	

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	NMFS to estimate population sizes. Ultimately, the NMFS estimates do not appear to be accurate or reliable and, indeed, seemingly overestimate the size of the gray whale population. Whether this is done intentionally to mask a population decline that may justify relisting the gray whale under the ESA or to mask serious threats to the gray whale and its habitat posed by global warming (to avoid creating another iconic victim of global warming to be used to generate increased pressure on the Bush Administration to seriously address the issue in ways that may impact the lucrative and influential oil and gas industry) is unknown. Regardless, it is clear that these estimates are not reliable and that NMFS must provide a more detailed analysis of its population estimation methodologies, potential deficiencies in the methodologies, provide explanations for how the gray whale population can possibly demonstrate annual increases that are biologically impossible, or concede that its estimates are too large and develop a new series of more reasonable estimates.	
AWI30	Finally, as previously mentioned, NMFS documented a significant spike in gray whale strandings in 1999 and 2000. Indeed, according to NMFS's gray whale population estimates, at least one-third of all ENP gray whales disappeared between 1998 and 2001. Remarkably, of the 651 stranded gray whales documented in 1999 and 2000, only 3 stranded whales were examined thoroughly enough to determine a cause of death. Draft EIS at 3-103. Of these three whales, one was diagnosed with a viral infection (equine encephalitis), one had an unusually intense infection of parasites, and the last was intoxicated with domoic acid which apparently is a product of algal blooms. Id. Despite failing to document the cause of death for the majority of stranded whales, their emaciated condition, evidence of low lipid concentrations, and decreases in calf production during the same time frame led many	The die-off of ENP gray whales between 1998 and 2000 remains a concern, though the recovery of the population from that event is encouraging. The 2008 DEIS described that event and reviewed the scientific literature analyzing that event (Subsection 3.4.3.4.2, Stranding Data). The new DEIS includes that discussion and relevant information since 2008 (Subsection 3.4.3.1.7, Strandings). It is difficult to draw inferences about future abundance trends based on the die-off. Both the 2008 DEIS and the new DEIS evaluate potential scenarios for the future of the population in the discussion of cumulative effects (Subsection 5.4, Gray Whales).

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	researchers to identify starvation as the likely cause of the strandings and deaths. Id. This led to two theories for the cause of such massive starvations. One was that some factor or factors affecting climate (i.e., the 1997 and 1998 El Nino, Pacific Decadal Oscillation, and Arctic Oscillation) led to a decline in prey availability. The other theory was that the gray whale had exceeded the carrying capacity of its habitat and the die-off was a product of a declining prey base caused by intense intraspecific competition. Id. NMFS concedes that both theories are imperfect due to the suddenness of the demographic change and the relatively larger amount of adult whales that stranded. Id. In addition, according to Gulland et al. (2005) some of the stranded animals were actually in good to fair nutritional conditions raising questions about the starvation theory. Considering the findings of Alter et al. (2007) that the pre-exploitation size of the gray whale population was up to six times higher (117,700) than the present estimate and given the documented impacts of the ecosystem regime shift affecting the arctic (including the Bering and other seas that provide gray whale habitat) reported by a number of scientists (as discussed in this comment letter), it is more likely that the increase in stranding was related to a significant decline in the abundance and density of prey in the gray whales' summer feeding areas and a possible delay in the whales locating alternative prey. Unfortunately, as global warming continues to adversely affect arctic ecosystems, such massive gray whale mortality events will likely become more common as benthic production declines and as lightly or non-exploited patches of benthic prey are found and consumed. This is entirely consistent with the increased observation of "skinny" whales (11 to 13 percent	

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	of whales observed in 2007 in Laguna San Ignacio) observed in the calving-breeding lagoons in Mexico. Draft EIS at 3-104. Given the specific substrates necessary for amphipods to survive and thrive, the availability of amphipod prey is finite since their range is finite. Additional discussions of these threats are provided in other sections of this comment letter.	
AWI31	**6. NMFS has failed to consider a full range of reasonable alternatives:** Chapter 2 of the Draft EIS describes each of the alternatives subject to serious consideration in the Draft EIS and those alternatives that were ostensibly considered but rejected. NEPA requires an agency to consider a range of reasonable and feasible alternatives. NMFS has blatantly failed to meet this standard. Before identifying specific alternatives that NMFS rejected from consideration without merit and/or alternatives that NMFS completely failed to consider, a few comments on the alternatives included in the Draft EIS are warranted. In regard to the proposed action (Alternative 2), it is important to note that the proposal to photograph gray whales in order to determine if they are resident whales only applies to "harvested" whales. Thus, any whale that is struck and lost would not be photographed since they would never be landed. The geographic limitations contained in Alternative 2 only prevent whaling within the Strait of Juan de Fuca but allow whaling within the remainder of the Makah's U&A with the exception of the month of May during which time the Makah would not hunt whales within 200 yards of Tatoosh Island and White Rock to minimize disturbance to feeding and nesting sea birds. Draft EIS at 2-15. Tatoosh Island and White Rock are only two of many islands that exist off the western coast of	The commenter is correct about the Tribe's proposal. The 2008 DEIS evaluates the potential impact of this aspect of the Tribe's proposal (e.g., Subsection 4.1.2, Alternative 2), as does the new DEIS (e.g., Subsection 4.1.2, Alternative 2). Alternative 2 is the Tribe's proposed action. It is therefore reasonable to analyze. Regulations of the Council on Environmental Quality require federal agencies to analyze alternatives even if there is no authority to take actions contemplated. Analysis of alternatives provides information for the decision-maker. Inclusion of an alternative for analysis does not mean the alternative and all its elements can or will be implemented. The new DEIS does not include an alternative that would restrict hunting around all islands. This alternative was considered but not analyzed in detail because Alternative 3 would require hunting to occur at least 5 miles from shore. Alternative 3 therefore adequately presents an analysis of a hunt that would avoid hunting around the islands (Subsection 2.4, Alternatives Considered but Eliminated from Detailed Analysis).

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	Washington. Many of these islands within the Makah U&A are part of the Washington Island National Wildlife Refuge managed by the U.S. Fish and Wildlife Service (FWS). In its 2007 Comprehensive Conservation Plan for the refuge the FWS recommends the establishment of a boat-free zone 200 yards around each island to protect island wildlife. Consequently, Alternative 2, unless amended to prevent whaling within 200 yards of all FWS-managed coastal islands throughout the entire whaling season, would be inconsistent with management measures recommended by another federal agency to protect wildlife that utilize said islands.[68]	
AWI32	Alternative 2 includes provisions ostensibly to improve the safety of any hunt for the whalers, those who may protest the hunt, and others who may be working/recreating in the vicinity of the hunt (including on land). Such provisions include a requirement that the barrel of the rifle be above or within 30 feet from the target area of the whale, that a .50 caliber or .577 caliber rifle be used as the primary rifle, that a rifleman should only fire at a downward angle, that the rifleman's proficiency in using rifles used in the hunt should be documented, that there must be a minimum visibility of 500 yards in all directions when a whale is harpooned, the rifle must be pointed away from the shoreline where highway 112 closely parallels the shoreline, and that the rifleman's view be clear of all persons, vessels, building, vehicles, highways, and other objects or structures that, if hit, could result in an injury to a person or damage to property. Draft EIS at 2-16, 3-293, 3-	We note the recommendation to add a safety provision that the hunt be suspended if visibility is less than 500 yards. The new DEIS treats this recommendation as a recommendation for an additional alternative (Subsection 2.4, Alternatives Considered but Eliminated from Detailed Analysis).

[68] While such an amendment to Alternative 2 would make it identical to Alternative 4, as written, Alternative 2 cannot be considered reasonable or feasible since it would allow whaling to occur within 200 yards of various FWS-managed islands in violation of a FWS recommendation for a boat-free zone designed to protect wildlife, including birds, that use those islands as nesting, resting, or breeding habitat. While the FWS restrictions may only be voluntary (since the OCNMS and not the FWS manages the waters surrounding the islands), NMFS cannot or should not identify as its proposed action an alternative that would allow any activity that the FWS has recommended be prohibited around the islands to protect refuge wildlife.

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	294. Additional safety criteria would include the suspension of the hunt if visibility is less than 500 yards in any direction. Id.	
AWI33	Despite these precautions, the Makah Department of Fisheries Management intends to work with the Coast Guard to close off the designated whale hunting area to recreational and commercial vessel traffic during the hunt, Draft EIS at 2-16, suggesting that the proposed hunt would still pose a considerable threat to public safety. Indeed, it is difficult to consider a more dangerous mixture of elements than what would be present in any whale hunt including a moving boat, rolling seas, a moving and likely injured target, a high-powered rifle and/or explosive device, within an area that can, at time, be heavily used by people including tourists, commercial and recreational fishers, and others. This concern is the alleged primary reason for the U.S. Coast Guard's establishment of a regulated navigation area in the Strait of Juan de Fuca and adjacent coastal waters of northwest Washington. Specifically, the Coast Guard found that "the uncertain reactions of a pursued or wounded whale and the inherent dangers in firing a [.50 caliber] hunting rifle from a pitching and rolling small boat area likely to be present in all future hunts, and present a significant danger to life and property … ." Draft EIS at 3-10 citing 64 FR 61212, November 10, 1999.	The public safety aspects of the Tribe's proposed hunt and alternatives is analyzed in the 2008 DEIS (Subsection 4.15, Public Safety) and the new DEIS (Subsection 4.15, Public Safety).
AWI34	Finally, NMFS states that under Alternative 2, Makah whaling team members "may also partake in spiritual preparations." Draft EIS at 2-16. While it would be impossible for NMFS to ensure that any and all members of any Makah whaling team partake in the traditional spiritual preparations for the hunt, considering that the Makah have consistently pushed for this hunt both based on an alleged treaty "right" and to revitalize its culture, spiritual interests, and ceremonies, all Makah whaling team members and, frankly, their family members should be required, to the extent possible, to engage in all	The recommendation to require hunters to participate in spiritual ceremonies is noted. The new DEIS treats this recommendation as a recommendation for an additional alternative (Subsection 2.4, Alternatives Considered but Eliminated from Detailed Analysis).

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	traditional spiritual preparations. If the Makah were permitted to whale without requiring it to engage in both physical and spiritual preparations for the hunt --- as done by its ancestors – then this entire exercise is not about restoring traditional practices but, rather, is only about killing whales. The Makah cannot have it both ways. It cannot, on the one hand, claim that it must be allowed to whale in order to revitalize its culture and to restore its spiritual connections to the whales while, on the other hand, allow any member of the whaling team and/or their family members to unilaterally decide whether they will or will not partake in such spiritual preparation both before, during, and after the hunt. The Draft EIS suggests that each whaling family engaged in different spiritual preparations for a hunt. This may be true but at least traditionally and historically each whaling family prepared both physically and spiritually for the hunt; it wouldn't have been acceptable for any whaler or his family to simply choose not to engage in such preparations since it was believed that there was a direct link between said preparations and the success of the hunt. Though enforcement of any permit condition requiring Makah whalers and their family members to partake in traditional physical and spiritual preparations for any whale hunt (if permitted) would be difficult, NMFS should include such a requirement in any permit and/or whaling management plan created to implement a hunt given the tribe's stated reasons for desiring to hunt whales.	
AWI35	Among the alternatives subject to consideration in the Draft EIS, several alternatives cannot meet the test of being feasible and/or reasonable and, therefore, must not be considered as viable alternatives in the NEPA process.	These comments are addressed above.

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	For example, Alternative 2 is not reasonable because it does not include a prohibition on hunting whale within 200-yards of the coastal islands managed by the FWS (see discussion above). In addition, Alternative 2 can't be considered reasonable because the provisions intended to ostensibly minimize the killing of resident whales will not work because: photographs will only be taken of landed whales; it is unclear who has access to or maintains the resident gray whale photographic identification catalog; the inevitable delay in updating that catalog given time and financial constraints; the logistics of determining if a gray whale killed by the Makah is a resident whale have not been divulged; and for other reasons.	
AWI36	Finally, as NMFS concedes, Alternative 2, if implemented, could result in a maximum of four resident whales being killed by the Makah in excess of the calculated PBR of 2.4 whales based on the estimated number of previously seen residents whales in the ORSVI in 2005. Draft EIS at 2-29. NMFS goes on to admit that if a maximum of four residents whales were killed, they would not be replaced in a subsequent year.[69] Id. In reality, since both the Makah and NMFS are assuming for the purpose of management and the evaluation of environmental impacts, that all seven potentially struck whales in a single year are considered to be killed (whether landed or not), all seven of the whales struck in any one year under Alternative 2 could be resident whales. If this occurred, the PBR for resident whales (as specified in the Draft EIS based on the number of resident whales in the ORSVI in 2005) would be exceeded by 4.5 whales with nowhere near that many resident whales likely to be replaced the following year within the Makah U&A.	The 2008 DEIS described a 'worst case scenario' in which two PCFG whales are struck and lost and two are killed (Subsection 4.1.2, Alternative 2). This comment posits an even worse scenario for PCFG whales, which is that PCFG whales are killed and landed but are not counted against the bycatch limit because they had not been previously identified (either because they had not been photographed or because they were newly recruited). The new DEIS acknowledges the possibility that this could happen, with the result that seven PCFG whales could be killed in a year. The footnote to this comment asserts there is an inconsistency in the analysis in the 2008 DEIS because the analysis finds that if four whales were killed per year this would exceed PBR (2.4) but not exceed the observed rate of replacement (4). PBR and rate of replacement are not the same thing, particularly for a group of whales with high levels of immigration.

[69] However, in other sections of the Draft EIS NMFS claims that the loss of four resident whales could be replaced in the following year given the alleged average annual increase in resident whales in the Makah U&A. Such conflicting statements must be addressed.

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AWI37	Alternatives 3, 4, and 6 also are not reasonable as required by NEPA as each could result in an excessive slaughter of resident whales with no likelihood that the lost whales would be replaced the following year. Draft EIS at 2-29. If NMFS and the Makah are serious about protecting resident whales and if NMFS believes (and can prove which it hasn't done yet) that establishing a resident whale subquota by setting an ABL using the PBR formula will provide sufficient protection for resident whales then it should only consider alternative management actions where it can ensure that the PBR will not be exceeded. Any alternative that allows for the resident whale PBR to be exceeded is, therefore, not reasonable since it would undermine the entire purpose/reason of establishing a resident whale subquota.	The new DEIS presents a different set of alternatives than the 2008 DEIS. In developing the alternatives for the new DEIS (as with the 2008 DEIS) we did not pre-judge the outcome of the analysis. Rather, we selected alternatives based on a variety of considerations. Subsection 2 of the new DEIS describes our process for selecting alternatives.
AWI38	Alternative 5 would, according to NMFS, allow up to 3 resident whales to be killed annually. While this amount would still exceed the resident whale PBR (based on the estimated number of whales in the ORSVI in 2005) by one-half a whale per year it is much closer to the PBR quota than any of the other alternatives. This is not to say that Alternative 5 is acceptable though its potential impacts to resident whales are less than the other alternatives (with the exception of the no-action alternative (Alternative 1)). A more precautionary approach, assuming the U.S. intends to grant the Makah's waiver request and issue it a permit to kill whales, would be to establish a resident whale subquota that is one-half the PBR calculated based on the estimated number of previously seen resident whales within the ORSVI or to set the PBR for resident whales based on the estimated number of resident whales within the Makah U&A. If this were done the resulting ABLs would be lower than those provided in the Draft EIS.	The commenter recommends alternatives to setting mortality limits on PCFG whales, including setting the limit at one-half of the PBR of whales in the ORSVI area, or the PBR of whales in the Makah U&A. The new DEIS alternatives use various approaches for setting mortality limits on PCFG whales, including an alternative that would set the mortality limit at 10% of PBR. The new DEIS also includes different approaches to accounting for mortalities.
AWI39	Given the fact that none of the five action alternatives are reasonable, NMFS, based on the information contained in the	The commenter recommends that the EIS analyze alternatives that eliminate or greatly reduce the potential for killing a PCFG whale. The new DEIS includes

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	Draft EIS, can only select the no-action Alternative (Alternative 1) unless it develops and analyzes new alternatives that either completely eliminate the potential for the killing of a resident whale or ensures that no more than approximately 1 or fewer resident whales can be killed in a single year. For example, one alternative that NMFS failed to adequately consider is to only permit whaling far off the northwest Washington coast within the western portions of the Makah U&A where the great preponderance of whales are likely to be migratory and not residents. NMFS rejected such an alternative by claiming that "there is no area within the Makah U&A that is not potentially frequented by identified (resident) whales." Considering the size of the Makah U&A which, based on the scale of the map on page 3-3 of the Draft EIS,[70] extends some 80 nautical miles into the Pacific Ocean from the northwest Washington coast, it is impossible that resident whales have been found throughout this area given their proclivity to occupy coastal areas where prey is more available. Based on all of the resident whale studies and reports, a general rule of thumb to use to distinguish migratory from resident whales is that the further off shore one goes the greater the likelihood than any whale will be a migratory whale and that whales observed purposefully swimming in a single direction (usually north or south corresponding to the northward or southward migration) versus those circling, floating, or milling about are more likely to be migratory versus resident whales.	Alternative 3, which would restrict hunting to offshore waters within the Makah Tribe's U&A (similar to but not exactly as recommended in this comment). The remainder of the recommendations in this comment are treated in the new DEIS as alternatives not analyzed in detail (Subsection 2.4, Alternatives Considered but Eliminated from Detailed Analysis).

[70] It is possible that the scale of the map included in the Draft EIS (page 3-3) is wrong and that the Makah U&A does not extend as far into the Pacific Ocean as the map suggests. If that is the case, NMFS must provide a more accurate map, describe how far the western border of the Makah's U&A extends into the Pacific Ocean, and provide evidence that so-called identified (or resident whales) have been found throughout that area in order to substantiate its rejection of this potential alternative.

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	A so-called "migratory whale" alternative could be crafted to both minimize (if not entirely eliminate) the potential killing of a resident whale while also imposing additional restrictions on the Makah to both regulate and yet facilitate their whaling effort while also protecting public safety. For example, such an alternative could require that: ● any whale hunt only occur beyond the 12 nautical mile limit off the coast of northwest Washington with the Makah's U&A; ● that only whales (without calves) who are observed purposefully swimming in a northwardly or southwardly direction depending on the season of the year be targeted; ● that Makah initiate the hunt from their traditional canoes but that powered chase boats can be use to tow the Makah to the whaling areas and to tow any killed whale back to shore; ● to mandate that all pursued whales be photographed prior to or during pursuit; ● to require that the safety measures included in Alternative 2 be followed; ● to require the routine and unannounced drug and alcohol testing of all tribal members selected to participate in whaling teams including anyone designated as a whaling captain; ● to require that family-specific traditional physical and spiritual preparation be undertaken before, during, and after any hunt; ● to require that all whale products be consumed only within the boundaries of the reservation; ● and to prohibit the sale of native handicrafts made from any non-edible part of a whale.	

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	While AWI would still oppose such an alternative, it would minimize (if not eliminate) the potential killing of a resident and would address many of the other controversial elements of a Makah whale hunt while still allowing the Makah to whale.	
AWI40	There are, of course, reasonable alternatives that do not involve the killing of any whales (in addition to the no-action alternative) that NMFS should have but did not consider. These alternatives are offered as examples of options that NMFS should have considered and may or may not be supported by AWI, CSI, or EII. In some cases, NMFS considered but rejected such alternatives while, in other cases, NMFS failed to even seriously consider such alternatives. Such alternatives, which should have been seriously considered in the Draft EIS, include but are not limited to: ● Facilitating the development of one or more Makah whalewatching operations by providing government-backed low or no interest loans, training, equipment, and other assistance. In addition to standard whalewatching (or marine mammal watching) ventures, the Makah could be encouraged to offer traditional whalewatching excursions where the non-tribal participants are permitted to be part of a Makah whaling team utilizing traditional dugout canoes to approach gray whales in a manner mimetic of a hunt. No harpoon or other weapon would be carried on the canoe and no direct harm would come to the pursued whale. Unlike the non-hunt alternative considered but rejected by NMFS in the Draft EIS (see page 2-20) because its impacts were similar to the impacts of the no-action alternative, this proposed alternative would not include any mock attack on any whale and would provide a source of revenue for the Makah tribe that could	The recommendations in this comment are treated in the new DEIS as alternatives considered but not analyzed in detail (Subsection 2.4, Alternatives Considered but Eliminated from Detailed Analysis).

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	be used to address the many social, employment, training, and health needs of the Makah people. ● Negotiating with the Makah the development of a package of government-offered and supported incentives in exchange for its temporary or permanent suspension of its effort to exercise its alleged treaty right to whale.[71] Such a package may include: government acquisition and donation of lands of historical, traditional, economic, or spiritual importance to the Makah; government funding for the construction of schools, health clinics, mental health facilities, elder-care facilities, and other facilities to provide short and long-term benefits to the Makah people; government funding to support any professional selected by the tribe to oversee such facilities (in the event that there are no qualified Makah tribal members available to oversee such operations); government funding and assistance to provide job training for unemployed and/or underemployed Makah tribal members; government assistance in securing low or no-interest loans to accomplish other infrastructure improvements on the reservation for the benefit of the Makah people; and any other assistance deemed appropriate to include in such a package. In exchange, the Makah would agree to temporarily (for 20-30 years) or permanently suspend its efforts to exercise its alleged treaty right to whale. That right would not be revoked or abrogated but efforts to	

[71] A review of the "2006 Update to the 2005 Comprehensive Economic Development Strategy (CEDS) – Makah Tribe," prepared by Dr. Sue Wolf and dated December 6, 2006 reveals a number of important projects for which the Makah require funding, training or other services. Such projects include providing adequate health and elderly care services to Makah tribal members, counseling and substance abuse services, providing potable water for drinking, and other critical infrastructure needs that would benefit the entire Makah tribal community. Including funding and training in a government negotiated package to assist the Makah with completing and maintaining such projects for the betterment of the residents of Neah Bay would be an appropriate outlay of federal resources in exchange for a temporary or permanent ban on hunting whales. Moreover, considering such important needs of the Makah community, decisions made by the Tribal Council to spend any of the tribe's funds on its ongoing efforts to engage in whaling would seem to be inappropriate.

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	exercise the right to whale would be suspended. There is precedent for such an agreement as recently a tribe in Canada signed such a deal with a provincial government. NMFS considered but rejected an alternative that included a private party offering compensation to the tribe in exchange for the tribe to forego whaling claiming that such an effort was made in the past but failed. The difference with the proposed alternative is that the government, not a private party, would attempt to negotiate a package deal with the Makah that would provide unique benefits to the entirety of the tribe's people. Simply stated, NMFS has failed to consider a reasonable range of alternatives in the Draft EIS. All of the action alternatives considered are not reasonable by virtue of their potential significant impact on resident whales and for other reasons. Reasonable alternatives that NMFS considered but rejected were ignored for reasons that have little merit or justification. Other reasonable alternatives were completely ignored though they would minimize potential environmental impacts while allowing the Makah to engage in limited whaling or providing generous compensation to the Makah in exchange for their temporary or permanent suspension of whaling.	
AWI41	**7. NMFS discussion and analysis of resident gray whales is incomplete, biased, and confusing:** Considering the emphasis on resident whales contained in the court's ruling in *Anderson v. Evans*, NMFS attempts to more fully and accurately report on the status of resident whales in and outside of the project area. As discussed, below, NMFS' efforts leave much to be desired.	Comment noted.

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	Resident whales are those whales who, for any number of potential reasons, elect not to continue the northward migration to and beyond the Bering Sea preferring to remain in an areas stretching from Northern California to Southeast Alaska during the spring/summer/fall months. The earliest reports of resident whales off the coast of California were from the 1920s. Draft EIS at 3-78 citing Clapham et al. 1997 and Moore et al. 2007. Over time, research efforts to learn more about the number, distribution, movements, behavior, and ecology of residents whales has expanded significantly. As a result, while we know more about resident whales than ever before, much remains unknown. In the Draft EIS, resident whales are separated into three groups based largely on the need to define resident whale habitat geographically for management purposes. The largest group is the PCFA, a slightly smaller group has been defined as occurring within the ORSVI, while the smallest group inhabit the Makah U&A. Though these areas are defined geographically, there is no specific geographical or other barrier between these three different areas and whales are free to move into and out of each area. Photographic identification methodologies are the primary tool used to document, catalog, and monitor resident whales. Over the years, hundreds of resident gray whales have been photographed and cataloged. As new pictures arrive for inclusion in the gray whale catalog maintained by Cascadia Research, efforts are made to match the photographs to exiting photographs. Through such monitoring and matching, scientists can assess resident whale movements, distribution patterns, and habitat use patterns over time.	

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	Admittedly, there are not enough scientists, vessels, or funds to locate, identify, and document every resident gray whale within the entire PCFA every year and though survey methodologies have improved it remains unclear if specific survey transects are run each year, if they are run at the same time each year, if they are run multiple times each year, if the training level of the observers are similar each year, and how or if other variables that would influence the monitoring of resident whales are standardized. It is known, as disclosed in the Draft EIS, that the survey effort varies each year. Each of these factors (and others not mentioned) impact the comprehensiveness and robustness of the data collected on resident whales. So, while data on resident whales has increased over the years and survey/monitoring methodologies have improved, we still don't have any way of identifying and monitoring every resident whale within the PCFA, ORSVI or Makah U&A.	
AWI42	The discussion of resident whales in the Draft EIS is misleading and confusing. Whether this is intentional to distract those reviewing the document or to downplay the potential significance of this unique group of whales is unknown. When the extraneous information is removed from the critical data as is done below,[72] both the importance of the resident whales and the deficiencies in the analysis become more obvious. Of particular importance in this analysis is the estimated number of resident whales, how the abundance estimates changed over time, the distribution and movements patterns of resident whales, and evidence of site fidelity demonstrated by resident whales.	Comment noted.

[72] This analysis assumes that the information about resident whales contained in the Draft EIS accurately reflects the data as presented in various published and unpublished reports and studies. If NMFS had provided an adequate opportunity for the public to review, analyze, and comment on the Draft EIS, AWI would have undertaken its own independent review of the relevant data. AWI intends to undertake such a review and will provide the results of its analysis to NMFS in a supplementary comment letter to be submitted in the near future.

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	In resident whale research conducted off the west coast of Vancouver Island, British Columbia from 1972 to 1981, a maximum of 34 resident whales were documented in any one summer. Sixty-three percent of these whales were seen in more than one-summer while 37 percent were seen only once. These data were used by Darling (1984) to estimate that only 35 to 50 resident whales were present off the coast of Vancouver Island from 1972 to 1981. Draft EIS at 3-79. More recent research, conducted by Cascadia Research from 1984 to 1993, involved surveys for resident whales in the inland waters of southern, central, and northern Puget Sound and Hood Canal, the Strait of Juan de Fuca, and the outer Washington Coast, including Grays Harbor. By 1993, a total of 76 individual photo-identified whales had been cataloged with only 17 being resighted in more than one year during the survey effort. Between year resightings were most common in northern Puget Sound. See Draft EIS at 3-80 citing Calambokidas et al. 1994). The lack of whale resightings during these survey efforts may be due to the whales not returning to the surveyed areas each year or because of the variability in survey effort.	
AWI43	These early efforts, as summarized by NMFS, demonstrated that some resident gray whales remain in the southern portion of their summer range for extended periods of time with some returning to the same general feeding area in multiple years, though not necessarily every year. The studies also documented the arrival of new resident whales every year and a difference in the areas inhabited by the same whales in different years. Despite the variability in survey effort inherent to these studies and other methodological issues that likely affected survey efforts, NMFS concludes that these studies	A considerable amount of scientific information regarding PCFG whales has been developed since the 2008 DEIS was released, which is one of the reasons we terminated the 2008 DEIS (77 FR 29967, May 12, 2012). The new DEIS describes the new scientific information, including information regarding site fidelity of PCFG whales (Subsection 3.4.3.1.2, Global Distribution and Population Structure).

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	demonstrate "a lack of strong site fidelity among resident gray whales" suggesting a lack of uniqueness of this group of whales compared to the larger migratory portion of the population. This conclusion is simply not consistent with the evidence. Darling (1984) documented that 63 percent of his identified whales were seen in more than one summer while Calambokidas found that 22.3 percent (almost one-quarter) of the resident whales in his study were resightings of whales documented in previous years. Depending on how one defines the size of the site for which fidelity is being measured, if the site is broadly defined then these studies, particularly given their methodological flaws, demonstrate a rather high level of site fidelity.	
AWI44	NMFS then became more engaged in the study of resident whales. In 1996 it initiated photo-identification studies of resident gray whales off the coast of Washington focusing on the Strait of Juan de Fuca, the northern Washington Coast, and southern Vancouver Island. These survey areas were eventually expanded to extend south to Grays Harbor and north to west Vancouver Island to increase the probability of sighting gray whales in Washington and British Columbia. See Draft EIS at 3-81. Inexplicably, NMFS fails to summarize the data obtained during these studies in the Draft EIS.	The 2008 DEIS describes NMFS increased involvement in the photo identification studies, as the comment notes. The paragraph cited and the next several pages summarize the results of research conducted by NMFS and others.
AWI45	Most recently, from 1998 to the present, NMFS has funded and collaborated with Cascadia Research and other scientists to expand research efforts on resident whales. The resulting survey area ranged from southern California to Kodiak Island with the most intensive survey coverage in areas along the southern and western coast of Vancouver Island and just north of Vancouver Island. See Draft EIS at 3-81. While NMFS concedes that the survey effort within the larger survey area was variable, a total of only 477 individual resident whales were identified between California and Kodiak, AK. Of these	Calambokidis et al. (2004) describe why they excluded whales cited in Puget Sound from the PCFG. While NMFS researchers participated in developing this scientific paper, the paper itself represents a report to NMFS by a contractor.

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	477 whales, 408 occurred in what NMFS described as the "core survey region" from California to northern British Columbia. The whales in this area were described as the Pacific Coast Feeding Aggregation of PCFA. Suspiciously, NMFS concedes that whales sighted in northern and southern Puget Sound were rarely seen in other feeding areas so they were excluded in the analysis in Calambokidas et al. (2004). While it's unclear why such whales were excluded, the fact that these whales were rarely seen in other survey areas suggest a high degree of site fidelity.	
AWI46	Of the 408 whales in the core survey area, 51 percent were seen every year or at least in two or more years within the survey area. Again, depending on how the geographic boundaries of a site are defined, this is a fairly significant indication of site fidelity in resident whales. While some individuals whales occasionally were documented outside of the core survey area such as in Kodiak, AK most were repeatedly seen (though not necessarily in every year) within the core survey area. See Draft EIS at 4-81. Conversely, for the 49 whales reportedly seen in each of the six survey years, none were seen exclusively in any one of the six survey areas though they did regularly visit the same areas across years. Of particular note is the fact that 71 percent of the whales (or approximately 35 whales) were seen in at least one of the areas during five or more of the six years. Draft EIS at 3-82. This is yet more evidence of increasing fidelity, as would be expected, as the size of the site under study is enlarged. Yet more evidence of fidelity is provided by Calambokidas et al. (2004a) who found that for resident whales in the survey areas there was decreasing movement between survey areas within season for each survey area farther to the north or south. Draft EIS at 3-82. NMFS concedes that "this pattern	As described above, the new DEIS discusses the issue of site fidelity in detail (Subsection 3.4.3.1.2, Global Distribution and Population Structure).

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	demonstrates that whales do focus on specific areas within the summer season, but they will move in search of food, most likely to neighboring areas." Id. More than likely these findings suggest, as reported by Darling et al. (1998), that resident whale distribution and movement patterns are probably related to gray whale foraging patterns and behavior, prey distribution, abundance, and predictability. Draft EIS at 3-83. Gray whales have to eat and will, logically abandon a previously used area, if there is not sufficient prey available to meet at least their minimum biological needs. Since gray whale prey species, including benthic and pelagic organisms, can be affected by any number of environmental, climatic, and oceanographic variables, to suggest that the movements of resident whales to access food is indicative of a lack of site fidelity demonstrates that NMFS has failed to appropriately define the boundaries of the site in question. It is simply not reasonable to suggest that site fidelity can only be demonstrated if a group of gray whales consistently returns to the same site year in and year out without considering the status of their prey and the multitude of factors (i.e., ocean warming, coastal pollution, stochastic events like an oil spill or other chemical contamination, development, abrupt changes in recreational use or ship traffic) that may affect the status and density of the prey species. In addition, the energy needs of gray whales must be compared to the availability of different prey species recognizing that not all prey are energetically equal; some species provide a greater proportion of the daily energetic needs of a gray whale than others. Thus, even though one or more potential gray whale prey species may be available in an area, gray whales still may not exclusively or extensively use that area unless they can benefit energetically from doing so.	

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	Recognizing these needs, site fidelity should be defined as the frequency with which resident whales occupy annually or interannually areas that contain appropriate and sufficient resources required for their survival. This is consistent with the finding of Calambokidas et al. (2004a) who found that nearly 35 of his 49 whales who were seen within his survey area in six straight years were seen in at least one of his six smaller survey areas during five or more of the six years. Draft EIS at 3-82.	
AWI47	A subset of the PCFA is the ORSVI. NMFS claims that Calambokidas et al. (2004a) identified the ORSVI as a management area that "was most appropriate for managing a Makah gray whale hunt." Draft EIS at 3-84. While this may be true, by utilizing the ORSVI as its analysis area, NMFS has failed to abide by the specific findings of the court in *Anderson v. Evans* which called into question the impact of a Makah whale hunt on the "summer whale population in the local Washington area." Draft EIS at 3-84. The court went on to specifically refer to the whales who frequent the Strait of Juan de Fuca and the northern Washington Coast. Id. NMFS attempts to justify the use of the ORSVI as its management area by claiming that there is sufficient overlap between resident whales seen in the ORSVI and in the Makah U&A (i.e., more than 50 percent of the resident whales seen in the ORSVI during the six year survey project conducted by Cascadia Research were also seen in the Makah U&A) that it is reasonable and logical to "use the ORSVI as the region for abundance estimation in setting quotas for a harvest of whales from the [Makah U&A] region." Draft EIS at 3-84 citing Calambokidis et al. (2004a). Considering that approximately 50 percent of the resident whales seen in the ORSVI were	In its request for an MMPA waiver, the Makah Tribe proposed that we rely on the recommendation of Calambokidis et al. (2004) to establish the appropriate area for estimating PCFG abundance to avoid local depletion of gray whales. The 2008 DEIS analyzed this proposal as well as the impacts of the proposal on PCFG whales within the ORSVI. The 2008 DEIS also analyzed the impact of the Tribe's proposal and alternatives on PCFG whales within the Tribe's U&A, consistent with the court decision in *Anderson v. Evans* (for example, 4.4.3.2.2 Change in Abundance of Gray Whales Using the Makah U&A and ORSVI Survey Areas).

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	never seen in the Makah U&A this conclusion seems rather arbitrary particularly considering the emphasis of the court on the local area.	
AWI48	The PCFA and ORSVI abundance data presented in the Draft EIS which is attributed to Calambokidis et al. (2004a), though unclear, is quite relevant to the discussion of site fidelity. For example, Calambokidis et al. estimated that resident gray whale abundance in the PCFA increased from 129 whales in 1998 to 225 whales in 2002 with the abundance of returning whales increasing from 102 in 1999 to 176 in 2003. In other words, 102 of the 129 whales documented in the PCFA in 1998 (or 79 percent) returned in 1999 while only slightly less (78 percent) of the whales documented in 2002 returned in 2003. Draft EIS at 3-87. In this case, if the PCFA was site under consideration, there was a high percentage of whales demonstrating site fidelity. For the smaller ORSVI, using the figures provided in the Draft EIS (page 3-87), the percentage of whales demonstrating site fidelity between 1998 and 1999 was nearly 73 percent while 81 percent of the whales identified in 2002 returned in 2003. NMFS does not disclose such statistics preferring instead to only report on the average annual increase in returning whales. Updated statistics on the number of resident whales for the 1998-2005 period were also disclosed in the Draft EIS (see page 3-87). During this period, 464 unique whales were seen in the PCFA with 67 percent or 311 of the whales seen within the ORSVI and approximately 25 percent or 115 whales seen within the Makah U&A. Draft EIS at 3-88. NMFS does not disclose the percentage of whales documented in the ORSVI which were seen in the Makah U&A. The average number of	Comments noted.

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	resident whales identified in any one year was 160, 87, and only 22 for the PCFA, ORSVI, and the Makah U&A, respectively.	
AWI49	The annual average number of newly seen whales was reported as 47.9, 32.4 and 11.4 for the PCFA, ORSVI, and Makah U&A, respectively, while the average annual number of recruited whales (seen in a subsequent year) for each area was 21.7, 15.3, and 4.7. In other words, of the 32.4 new whales seen on average in the ORSVI nearly 50 percent or 15.3 whales were seen in a subsequent year (but not necessarily the next year) within the ORSVI. Though reported in the text of the Draft EIS, these numbers do not correspond to the information contained in Tables 3-2, 3-3, and 3-4 in the Draft EIS (at 3-89 and 2-90). While these may suggest that new whales are both appearing and subsequently being recruited into these resident whale groups, these increases may also reflect an increase in survey effort resulting in a larger number of whales observed for the first time even though they may have been present in previous years. Moreover, these statistics are presented as averages; the actual data suggest that there is great variability in the number of new whales and number of previously seen whales reported each year. Though Tables 3-2, 3-3, and 3-4 in the Draft EIS (pages 3-89 and 3-90) are extraordinarily difficult to interpret (particularly the meaning of the newly seen and seen again column), it is worth noting the relevant resident whale statistics recorded for the Makah U&A. In that specific area, between 1998 and 2005, an average of 22 resident whales were observed each year ranging from 8 in 2002 to 35 in 2005. The number of "new" whales seen each year ranged from 1 in 2002 to 20 in 2001. NMFS attempts to mask the variability in the number of new whales seen in the Makah U&A by using an annual average of 4.66 new whales seen and recruited in this area	The new DEIS describes the range of annual PCFG observations in addition to the averages. We have attempted to ensure that numbers reported in tables match numbers described in text.

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	(i.e., seen again) between 1999 and 2005. Draft EIS at 4-47. It then claims that even if a maximum of four resident whales were slaughtered by the Makah if Alternative 2 (the proposed action) were implemented "the observed level of recruitment is greater than the likely and maximum number of removals from the entire PCFA." Id. This statement is inaccurate in a number of ways.	
AWI50	For example, the Makah can only hunt (if allowed at all) within the Makah U&A and therefore they can't kill any whales in the larger PCFA. NMFS can't predict the number of resident whales removed from the PCFA as a result of human actions since it can't predict if a resident whale will be killed as a result of a ship strike, net entanglement, or by another human cause. Finally, even if 4.66 new whales are recruited into the Makah U&A annually, this is an average meaning that in many years the new recruits will number fewer than 4 (and possibly as low as 0) as a result of which those resident whales slaughtered by the Makah may not be immediately replaced.	While we cannot predict how many PCFG whales would be killed in future years, the abundance of PCFG whales measured from year to year reflects whales lost from the population through human causes. The commenter is correct that average annual recruitment may not reflect annual fluctuations.
AWI51	While the statistics referenced above reveal that the number of resident whales and so-called new resident whales fluctuate widely within the Makah U&A, they also demonstrate just how few resident whales have been observed within the Makah U&A and, therefore, how the slaughter of even a small number of resident whales by the Makah (if allowed to whale) could adversely impact this group of whales. It should also be emphasized, as is explained in the Draft EIS, that those whales identified as "newly seen" may not, in fact, be new resident whales at all but may have simply not been documented in previous years. If even a third of "newly seen" whales were in fact resident whales that had simply not been identified in previous years, this would change the interpretation of these statistics considerably.	Comment noted.

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AWI52	Contrary to the evidence presented in Table 3-4 regarding the number of resident whales documented in the Makah U&A, NMFS claims that 67 unique whales were seen in the Makah U&A before June 1 during 1998 to 2005. Draft EIS at 3-95. NMFS provides no citation or reference for this claim so it is unclear where the number originated and/or how it was determined. It then claims that if the Makah were allowed to whale in the northern Washington coast area from December 1 through May 31, 17.9 percent, 17.9 percent, and 12.5 percent of whales slaughtered could have been expected to be later seen between June 1 and November 30 in the PCFA, ORSVI, and Makah U&A. Draft EIS at 95. These percentages were based on the a claim that only 17.9 percent (10 of 56) of resident whales identified in the northern Washington coast survey area prior to June 1 were seen in the PCFA in one or more years from 1998-2005. Id. Once again, it is not at all clear where these statistics originate and NMFS provides no reference or citation to a study, report, or even to a table contained in the Draft EIS. Moreover, this entire claim which NMFS has inserted in order to downplay the potential that the Makah will kill a resident whale raises a number of questions.	Table 3-4 in the 2008 DEIS refers to whales identified in the Makah U&A during June 1 through November 30. Table 3-5, which appears immediately following the text on page 3-95 referenced in this comment, reports on whales seen in the Makah U&A <u>before</u> June. The commenter is correct that the text does not refer to the table and the table does not provide a citation to the source of the information it reports. We have made an effort in the new DEIS to ensure that the text clearly refers to the tables containing the relevant information.
AWI53	For example, what is and where is the Washington coast survey area? Is it the same as the Makah U&A? Is it larger than the Makah U&A but smaller than the ORSVI? There is no previous reference to this particular survey area within the Draft EIS. Does the percent of whales seen in the Washington coast survey area prior to June 1 reflect an average of sightings over time, a snapshot in time for a particular month over a multi-year period, or is it related to the number of whales seen over a particular year? What about whales seen in other survey areas either south or north of the Washington coast survey area prior to June 1 and whether they were resighted	The 2008 DEIS describes where survey areas are located, and which survey areas occur within the Makah Tribes U&A (see, for example, pages 3-80 to 3-81; Table 3-4; page 3-84; Figure 3-4; and Figure 3-5). Regarding PCFG whales seen in the Washington coast survey area prior to June 1, the information contained on page 3-95 answers the series of questions presented in this comment.

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	within the broader PCFA in one or more years from 1998 to 2005.	
AWI54	Since it is known that residents whales can and will move outside of core areas to locate potential prey (with diminishing movements as the distance from the core areas to the south or north increase), clearly some whales documented in other survey areas prior to June 1 could have been in the Makah U&A and susceptible to a tribal hunt between December 1 and May 31 thereby increasing the percentage of resident whales susceptible to slaughter. Finally, assuming the data presented by NMFS is accurate, it is not at all clear how it determined that only 12.5 percent of whales within the Makah U&A were likely to be resident whales. This entire section of the Draft EIS must be written both to better explain the origin of the statistics used and to clarify what it is that NMFS is trying to claim and how these statistics substantiate that claim.	There could certainly have been more PCFG whales in the Makah U&A prior to June 1 than those that were sighted, just as there could have been more ENP gray whales in general. What's important is the proportion of PCFG whales relative to ENP whales in general. We have attempted to make this discussion more clear in the new DEIS.
AWI55	While claiming, in one paragraph that 12.5 percent of the whales within the Makah U&A could be resident whales, see Draft EIS at 3-95, in another paragraph on the same page NMFS claims that if the identified (resident) whales within the Makah U&A are randomly mixed with the migratory whales then "less than one percent of the encounters between whales and Makah hunters during that time would be with one of these identified whales." As an initial matter forgetting the clear contradiction between these two arguments, neither statistic appears to be accurate. As documented in the Draft EIS, the northward migration of gray whales occurs in two phases with the second phase (ninety percent of which are cow-calf pairs) departing the wintering areas between late March and May and arriving in their summer feeding range from May to June. Draft EIS at 3-65. Thus while migratory whales may be traversing through	On the page cited in the comment, the 2008 DEIS states that <u>if</u> PCFG whales occurred in the Makah U&A in proportion to their numbers in the overall population, only 1% of whales in the Makah U&A prior to June 1 would be PCFG whales. The discussion on the same page notes, however, that <u>this is not the case</u>. The evidence shows they are <u>not</u> randomly mixed and in fact 17.9% of all whales present in the Makah U&A during May are PCFG whales. This discussion in the new DEIS has been modified to reduce potential confusion. The new DEIS also explores the concern raised in this comment regarding the large number of mothers and calves in the northward migration at the time the Tribe would be most likely to hunt.

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	the PCFA, ORSVI, and Makah U&A in April and May, the vast majority would seemingly be mothers with calves who cannot be legally killed by the Makah. Thus, if the Makah are allowed to whale from December 1 to May 31 but elect to only whale during the latter stages of that season due to more favorable ocean and climatic conditions then the majority of their potential target whales will either be resident whales or migratory mother whales with their calves. The former are whales that the Makah claim that want to try to avoid while the latter are whales that the Makah cannot legally pursue or kill. Consequently, if the Makah were indeed committed to avoiding or eliminating any chance of killing a resident whale and since they can't kill a mother or calf, any whaling (if allowed at all) must be conducted in the far western portion of the Makah U&A, must only target whales that are demonstrating behaviors consistent with migration, must be restricted to the southbound migration of whales, or must be completed before April 1 of each year. Furthermore, NMFS has provided no evidence that migratory and resident whales are randomly mixed within the Makah U&A during the northbound migration. The Draft EIS claims that 60, 20, and 13 percent of the first phase of the northbound migratory gray whales pass between 0.5-2, 0.1-0.5, and within 0.1 miles of the coast with 99 percent of northbound migrants passing within 0.1 mile from the shore. Draft EIS at 3-67 citing Poole (1984). This study was conducted in California, however, and it is unclear if the same percentages would apply in northwest Washington. It is also not clear if anyone has ever compared the migratory patterns (timing and distance to the shore) between known migratory and resident whales. Without such a study, it is impossible to suggest that the two groups randomly mix along the	

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	northwest Washington coastline. In addition, as reported in the Draft EIS, Green et al. (1995) reported that some portions of the ENP gray whale population may take a more direct route between Washington and the central coast of Vancouver, rather than following the longer coastal route past Cape Flattery. Draft EIS at 3-68. Indeed, according to Green et al. (1995) northbound gray whales off the coast of Washington averaged 11.8 km from shore or approximately 4 kilometers farther offshore than sightings of northbound gray whales in Oregon. Without evidence that the migratory and resident whales actually do mix randomly along the northwest Washington coast, NMFS should delete this claim from its analysis.	
AWI56	NMFS claims that there is no evidence of any genetic difference between resident and migratory whales. Draft EIS at 3-91 and 3-92. This is based on research by Ramakrishnan et al. (2001). A review of this study and its methodologies raise questions as to whether this since study is sufficient evidence to discount a potential genetic distinction between the resident whales and the migratory component of the broader population. Even if there is, in fact, no genetic difference there likely could be a behavioral difference between resident and migratory gray whales. The origins of such a behavioral difference may relate to the physical condition of individual animals (with stronger, healthier animals completing the full migration), a learned preference for only completing a portion of the migration (perhaps associated with the ability to find and exploit acceptable quantities and qualities of prey), or may be based on relationships between individual resident whales. The fact that such a large percentage of whales are documented as returning to the PCFA or smaller survey areas	The new DEIS contains an extensive discussion of new information about the genetic distinctions between PCFG whales and the larger ENP gray whale population (Subsection 3.4.3.4, Pacific Coast Feeding Group (PCFG) of Gray Whales). It also considers the potential importance of the behavior of PCFG whales in the long-term persistence of the ENP gray whale population (e.g., Subsection 4.4.3.2.1, Change in Abundance and Viability of the ENP Gray Whale Stock).

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	annually or nearly every year could demonstrate some type of relationship, even if not familial, that dictates which whales are likely to not complete the full migration. It must be emphasized, that just because a resident whale is not seen in a particular year does not mean that he/she is not present within any of the survey areas.	
AWI57	In summary, shockingly NMFS has failed to heed the advice of the court in *Anderson v. Evans* by not focusing its analysis on the resident whales contained within the Makah U&A. Instead, NMFS has elected to base its decision and analysis on the resident whales occupying the ORSVI. Thus, instead of basing a resident whale subquota associated with any whaling activity (if approved) on the number of resident whales documented in the Makah U&A, the subquota would be based on the number of resident whales in the ORSVI. Admittedly, there is overlap among the resident whales occupying the ORSVI and Makah U&A though even NMFS concedes that said overlap is only slightly more than 50 percent. In addition, NMFS has downplayed the significance of resident whale site fidelity by claiming that resident whales engage in "large-scale" movements among different resident whale survey areas. This is far from surprising given the whales' need to find available prey but it most certainly does not suggest a lack of fidelity to certain key areas. Indeed, NMFS even admits that resident whales do exhibit a pattern of returning to the same core areas annually with limited movements to other areas further to the north or the south. Ultimately, NMFS must return to the drawing in its analysis of resident whales in a supplemental EIS. It must provide a more comprehensive examination of all of the relevant resident whale data from all of the scientists who have participated in such research. It also must critically evaluate the methodologies used by	These paragraphs summarize comments made and responded to above.

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	Ramkrishnan et al. (2001) to determine if this study, by itself, is sufficient to claim that there are no genetic differences between resident whales and migratory whales. Furthermore, it must consider the possibility that behavioral factors (i.e., physical or social) may influence what whales are documented as resident whales within the PCFA, ORSVI, and Makah U&A. Finally, NMFS has failed to consider the long-term significance of the resident whale population in light of the significant changes to the ecology of the summer feeding areas as a result of climate change. In the summer feeding areas, gray whale range is expanding as the animals seek out alternative prey patches as prey density and composition in their primary feeding areas has declined or changes as a result of the warming oceans. Consequently, depending on the duration and severity of such changes in the arctic (which are ongoing), the importance of a second population of whales – resident whales – to the overall survival of the species is likely to increase. When it is considered that there was no reduction in the abundance of resident whales during the severe die-off of gray whales during 1999-2000, this would suggest that resident whales represent a type of potential buffer against the impacts of climate change to the larger migratory population. While the northwest Washington coast would not be capable of supporting the number of gray whales supported in the arctic in the past and though Washington's coast is also experiencing change as a result of climate change, it does represent habitat for a second group of gray whales of important value to the larger population.	
AWI58	**8. NMFS analysis of the environmental impacts of each alternative is confusing, contradictory, and contains a number of errors:**	This is an introductory paragraph. Specific comments and our responses are below.

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	Chapter 4 of the Draft EIS ostensibly evaluates the environmental impacts of the proposed action and its alternatives on gray whales, other wildlife, tourism, economics, social issues, and other concerns. The following discussion identifies deficiencies in this analysis, seeks clarification of certain claims or arguments, or questions certain conclusions.	
AWI59	In the introductory section of Chapter 4 under Alternative 2, NMFS states that any struck and lost whales will be assumed to be killed. Draft EIS at 4-4. For the purpose of evaluating the impacts of each alternative, it is imperative that any whale that is struck with a harpoon or shot with a bullet/grenade is assumed to be killed no matter whether the harpoon/bullet/grenade struck the whale and/or the severity of the strike.	The 2008 DEIS assumed a struck whale would die, regardless of whether it is landed or lost (Subsection 4.1.2, Alternative 2). That assumption is consistent with the assertion in this comment. The new DEIS makes the same assumption (Subsection 4.1.2, Alternative 2).
AWI60	In regard to the potential slaughter of resident whales under Alternative 2, NMFS reports on page 4-6 of the Draft EIS that the "Tribe's proposed method would result in an allowable bycatch level of 2.35 percent of the minimum estimated abundance of whales in the ORSVI survey area." Id. Considering that the tribe's proposal, as articulated previously in the Draft EIS, was to calculate an ABL based on the PBR for the number of whales estimated to be in the ORSVI, presumably the 2.35 percent figure is one-half the 4.7 percent rate of increase that NMFS has used in its PBR calculation.	The commenter correctly describes the calculation proposed by the Tribe and reported in the 2008 DEIS. For clarity, the new DEIS repeats the numbers and calculations proposed by the Tribe in its discussion of Alternative 2 (the hunt as proposed by the Tribe) (Subsection 4.1.2, Alternative 2).
AWI61	Using that figure and a minimum estimate of 102 whales (which is presumably the minimum number of whales estimated to occupy the ORSVI in 2005),[73] NMFS calculates an ABL for resident whales of 2.4 which it then rounded down to two. However, if the 78 (the corrected minimum number of previously seen gray whales in the ORSVI in 2005) is used in	The commenter presumably refers to the number of whales "seen" in 2005, as reported in Table 3-3. The estimated minimum abundance, however, is not the same as the number of whales "seen" in a given year. The 2008 DEIS contains an extensive discussion of the method used to calculate minimum abundance of whales in any given survey area (including the ORSVI), but fails to report

[73] In reality, there were 101 total resident whales seen in the ORSVI in 2005. Thus, the use of 102 as a minimum population estimate is incorrect.

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	the PBR formula with a one-half the rate of productivity set at .795 percent (one-half of the 1.59 percent rate of increase estimated for gray whales using data collected from 1967/68 to 2006/07[74] (Draft EIS at 3-72)) and a recovery factor of 0.5 (a conservative estimate given the lack of documented recovery in the overall gray whale population as well as no evidence that the ORSVI whales are "recovered" based on carrying capacity), the ABL based on this method is 0.3. Even if a recovery factor of 1.0 is used the corresponding PBR is 0.6, far lower than the 2.4 whales calculated using the 2.35 percent figure. Alternatively, if the most recent rates of increase provided by Rugh et al. (2008) are used (1.6 percent unweighted rate of increase; 1.9 percent weighted rate of increase) is used along with a recovery factor of 0.5, the resulting ABL would range from .31 to .375.[75] Even if a recovery factor of 1.0 is used the corresponding PBR (using the 1.9 percent rate of increase) is .74, far lower than the 2.4 whales calculated using the 2.35 percent figure. NMFS must explain the scientific basis for its use of 4.7 as the rate of increase for gray whales and why a smaller percentage (such as the current estimated rate of increase or the long-term rate of increase over the past forty years) should not be used given a declining rate of increase in the gray whales over the past decade.	what the most recent estimate was for the ORSVI. That oversight has been corrected in the new DEIS (Table 3-8). In its waiver request, the Makah Tribe proposed to apply the same PBR values to whales in the ORSVI that NMFS calculated for the general ENP population. Because Alternative 2 is the Tribe's proposal, it incorporates this method of calculating an allowable bycatch level. Other alternatives in the current DEIS would employ variations on the Tribe's proposed formula, including using 10% of PBR as the mortality limit for PCFG whales. Regarding the use of 4.7% as the Rmax value in the PBR calculation, Rmax is the maximum productivity rate, which is the rate NMFS uses in the PBR formula. The gray whale SAR has been updated with a new Rmax, which is what the current DEIS uses to calculate likely mortality limits.
AWI62	Furthermore, whether the ABL for resident whales is set at 2 or lower (depending on the formula used and the estimated population of gray whales within the ORSVI), NMFS concedes that up to 4 resident whales could be killed under the proposed alternative since the tribe requests that the ABL only be applied to whales who are successfully landed and not	A DEIS is not a decision document. The 2008 DEIS and the new DEIS both include as an alternative the hunt as proposed by the Makah Tribe in its request for a waiver. The analysis of this alternative provides information for the agency's ultimate decision.

[74] As discussed in another section of this comment letter, the PBR equation is not without potential weaknesses. See item 1 under Specific Comments on page 3 of this comment letter.

[75] This range was calculated using the standard PBR formula (78 x .016/2 (or .019/2) x .5).

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	whales who are struck and lost. Draft EIS at 4-7. If NMFS agrees with and allows the number of resident whales killed annually to potentially be far in excess of the limits proposed by the Makah, it must provide a rational explanation as to why it would allow such a level of mortality that even it concedes would result in adverse impacts to the resident whale population since that number of killed resident whales would not be replaced annually. The Makah are, in a sense, attempting to circumvent their own proposal by offering, on the one hand, to agree to a subquota of resident whales to reduce any potential impact to this unique group of whales but then undermining its own proposal by claiming that the ABL should apply to landed whales only. This is consistent with the proposal to use photographic evidence to determine if any killed whales are resident whales since said photographs would only be taken if the whale was landed.	
AWI63	NMFS and the Makah also underestimate the impact of any hunt on gray whales both numerically and behaviorally. The Makah claim, for example, that for every whale struck, four whales would be subject to unsuccessful harpoon attempts and ten whales would be approached. Draft EIS at 4-8. Using an estimated pod size of two, NMFS and the Makah claim that this corresponds to no more than 28 gray whales subject to unsuccessful harpoon attempts (i.e., 1 in 4 whales will be struck successfully with a harpoon and no more than seven strikes per year) in any year and 140 subject to approaches with no harpoon attempt (i.e., for every ten whales approached a harpoon attempt would be made on only one animal). Id.	In response to this and other comments we reviewed the estimates used in the 2008 DEIS and provide new estimates in the new DEIS. The basis for these new estimates is explained in Subsection 4.1, Introduction.

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	Clearly, NMFS failed to even consider the accuracy of these numbers before publishing the Draft EIS. Assuming each whale is in a pod containing two whales then for each whale struck up to eight whales would be harassed during unsuccessful harpoon attempts and up to twenty whales would be subject to approaches without any harpoon attempt. When the number of permissible strikes is included (up to seven), the total number of whales potentially harassed for each whale struck would be 56 (eight times seven) while the number of whales harassed as a result of approaches would be 140 (twenty times seven). In reporting on the harassment associated with whales that are subject to unsuccessful harpoon attempts, NMFS failed to multiply the result by two (the average pod size) though it did include this factor when calculating the number of whales approached. In reality, the number of whales subject to harassment as a result of Makah whaling, if permitted, would be far greater both because of an underestimate in the pod size used by the Makah and a failure to consider the potential harassment impacts to other gray whales in the vicinity of the hunt caused by other vessels involved in the hunt (i.e., Coast Guard, state police, NMFS, media, protest) and how a struck, wounded, and suffering whale impact whales in his/her vicinity. At a minimum, considering that more recent reported an average pod size of 2.79 (Rugh et al. 2008), assuming there were no whales indirectly harassed as a result of the hunt, the number of whales harassed for every whale struck would be approximately 78 (2.79 x 4 x 7) while the number harassed as a result of approaches only would be approximately 195 (2.79 x 10 x 7).	

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	The actual number of whales potentially harassed as a result of a Makah hunt would likely be much higher because of the number of boats potentially involved in a hunt, their distribution across the hunt area, and due to the likely, but unquantifiable, harassment impact on whales in the vicinity of a wounded and suffering whale targeted during the hunt. This number of harassed whales could be estimated if NMFS had and/or disclosed any information about the average distance between gray whale pods during migration or, for resident whales, as they feed, rest, interact, or otherwise use their summer range off the coast of northwest Washington. Similar deficiencies exist in the analysis of the potential for gray whale harassment under the other alternatives both due to the use of a pod size of two, mathematical mistakes, and a failure to account for indirect harassment. To correct such errors, NMFS must recalculate the likely impact of a Makah whale hunt on the number of whales subject to direct and indirect harassment under each of the alternatives, disclose all new calculations, and reevaluate the overall impacts of the alternatives in a new analysis.	
AWI64	Of particular importance is the need to determine how or if such a level of harassment may alter the behavior of resident or migratory whales by forcing them further offshore (less accessible to the Makah and to coastal whalewatching operations), making them more likely to flee from an approaching vessel (whether a whaling canoe/boat or not) thereby disrupting their feeding or other behaviors with potential energetic consequences, or potentially making them more aggressive around boats of any kind if they perceive a threat. This must include an assessment of the impact of repeated approaches on the same whale since the difference of behavioral impacts caused by a single approach versus	As this comment reveals, there is limited information available to support an analysis of how gray whale behavior might change over time in the Makah U&A if the Tribe commences a regular hunt. Based on the limited available information, the 2008 DEIS concluded that gray whale distribution and habitat use was not likely to change in the event of a Makah hunt (Subsection 4.4.3.2.3, Change in Distribution or Habitat Use). The discussion in the new DEIS more clearly identifies this as an uncertainty (e.g., Subsection 4.4.3.2.4, Change in Numbers of Gray Whales in the Makah U&A and OR-SVI Survey Areas).

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	potentially multiple approaches over the whaling period (if whaling were permitted) could be significant. NMFS has failed to consider the impact of multiple approaches on a single whale and, for that matter, its analysis of the impact of any hunt on gray whale behavior is weak. NMFS basically claims that it doesn't expect any behavior impact because of the relatively short duration of any potential Makah hunt (if a hunt is allowed and depending on the structure of the hunt), because no long-term behavioral impacts have been documented as a result of whale-watching operations, and because the Chukotkan natives who kill dozens of gray whales each year have not documented any behavioral response. Comparing the impact of whale-watching operations to a Makah whale hunt is like comparing apples to oranges. In the former instances vessels are legally required to remain at a distance from the whale for fear of violating the MMPA. Conversely, a Makah whale hunt (if permitted) would include the direct and purposeful approaches by a canoe full of whalers (following by an armada of other vessels) to point blank range so that a harpoon and bullets can be used to kill the animal. There is no comparison between these two scenarios. Similarly, without comparing the behavior of whales pursued during the Chukotkan hunt with the reactions of whales potentially pursued by the Makah is also difficult since the whales in the two areas may be subject to entirely different levels of harassment. Off the coast of Washington, whales may exhibit more adverse reactions to such a hunt because of different characteristics that influence the whales compared to whales within the Chukotkan hunting areas. Whales along the Washington coast have been protected from hunting for	

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	decades potentially making them more likely to alter their distribution and movement patterns if subjected to a hunt. Whales on their summer feeding grounds pursued by Chukotkan natives are less likely to alter their distribution or movement patterns in response to hunting given their need to feed compared to migrating whales off the coast of Washington who could more easily alter their migratory routes in response to a hunt. Similarly, though resident whales tend to use a core area, they may move to alternatives sites in response to whaling. Given the different stressors on the whales using or inhabiting the Makah U&A and the Chukotkan hunting grounds suggesting that the behavior of the whales hunted by the Chukotkans will be the same as any whales potentially hunted by the Makah is sheer speculation.	
AWI65	Though much is made in the Draft EIS about the Makah's alleged need for gray whale meat/blubber to improve their diet and health, NMFS concedes that there is insufficient information available about the health of the Makah people, the link between health and diet in the Makah people, and the current nutritional components of the Makah diet in order to draw any conclusions about this alleged need for edible gray whale products. For example, NMFS includes the following statements in the Draft EIS: "Whether consuming freshly harvest gray whale food products would affect the level of nutrition available to Makah tribal members would depend largely o the types and levels of nutrition present in an individual tribal member's existing diet relative to several factors: (1) what part(s) of the whale and how much of each would be consumed, (2) what currently consumed food items (and associated nutritional levels) would be replaced by gray whale food products, and (3) how each	Comment noted.

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	food item would be collected, stored, and prepared for consumption." "There are no data to compare the amount of contaminants currently being consumed by the Makah Tribe from its normal food sources with the amount of contaminants found in fresh whale products, making it difficult to determine the net change in contaminants to which tribal members would be exposed." "… data do not exist to indicate the amount of fresh whale food product an individual Makah member may consume in lieu of other food sources normally consumed by the same individuals." "As a result of this lack of data, it is not possible to discern risk levels based upon the existing best available information addressing the rate of consumption and method of cooking fresh whale tissues by Makah tribal members." "Whether consuming freshly harvested gray whale food products would affect contaminant exposure in Makah tribal members would depend largely on the types and levels of contaminant present in an individual tribal member's existing diet relative to several factors: (1) what part(s) of the whale and how much of each would be consumed, (2) what currently consumed food items (and associated contaminants) would be replaced by gray whale food products, (3) the age and sex of the whale, (4) possibly the time of year and body condition of the whale, and (5) how each food item would be collected, stored, and prepared for consumption."	

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	"The continued absence of freshly harvested gray whale food products in the diet of the Makah (if Alternative 1 were selected) would continue to preclude them from realizing the added nutritional benefits (e.g., minerals and omega-3 fatty acids) associated with consuming them, but there are not data to suggest that current diets of individual Makah members sufficiently lack these nutritional benefits." "… it is difficult to compare essential nutrients and minerals of whale products directly to other protein sources because the former have not been studied extensively." Consequently, NMFS concludes that "there are too many uncertainties, however, to quantify either type of effect or to predict whether any of the alternatives would result in a net positive or negative effect on human health." Draft EIS at 4-193. As a consequence of this uncertainty, NMFS must not base its final decision on any consideration of any perceived or alleged dietary benefits associated with the consumption of whale products since, as NMFS concedes, there is no evidence to prove such a benefit given the lack of baseline data on the diet and nutritional status of the Makah people.	
AWI66	**<u>Specific Comments:</u>** **1. Deficiencies in the use of the Potential Biological Removal (PBR) formula to determine the "sustainable" level of killing of gray whales:** The Makah and NMFS propose to use the PBR to calculate the number of gray whales that can allegedly be removed from the population each year without jeopardizing the stock's ability "to reach or maintain its optimum sustainable population	This comment correctly notes that the Makah Tribe has proposed to use a formula based on PBR to establish an acceptable level of removal of PCFG whales. At this time NMFS has no proposed action.

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	level." Draft EIS at 11. NMFS has historically used the PBR for gray whales to demonstrate that the current level of killing (not including natural mortalities) is well below the number of whales who could be removed without affecting the stock's optimum sustainable population. Indeed, based on NMFS' estimated gray whale population size and using the standard PBR formula, there appears to be a significant cushion between the number of whales killed (not including natural mortalities) and the PBR. As a consequence, most observers would dismiss the possibility that the actual level of killing is in excess of what is "sustainable" despite the multitude of threats to the species and the fact that such threats are increasing, not decreasing, in severity. As defined in the Draft EIS, the PBR is calculated by taking the minimum population estimate of the stock, multiplying that by one-half the maximum theoretical or estimated net productivity rate of the stock, and then multiplying the result by a recovery factor between 0.1 and 1.0. Draft EIS at 11. A second PBR is calculated based on the number of previously seen resident whales in the ORSVI to create what amounts to a resident whale subquota under the proposed action (Alternative 2). Based on the 2005 resident gray whale data, NMFS claims that the PBR for the ORSVI was 2.49 which, as demonstrated above, is far higher than what the PBR would be if the correct statistics were used when making the calculation. There are a number of problems with the use of the PBR formula for gray whales and for its use when attempting to define a subquota of resident whales. The PBR is defined as the "maximum number of animals, not including natural mortalities, that may be removed from a marine mammal	

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	stock while allowing that stock to reach or maintain its optimum sustainable population." Draft EIS at 3-54. As an initial matter, the concept of a PBR was originally developed as a fisheries management tool and then altered to be applied to marine mammals. The fact that the PBR does not include any adjustment to take into consideration natural mortalities is a significant deficiency in the value of this tool. If the purpose of calculating PBR is to ensure that no stock cannot reach or maintain its optimum sustainable population, the impact of natural mortalities on the population must be considered when calculating the PBR. If not then limiting slaughter to a level below the PBR is no guarantee that the target population can reach or maintain its OSP since the proportion of the population succumbing annually due to natural mortality events could reduce the population below OSP. NMFS fails to explain how or if natural mortalities are considered in conjunction with or separately from the PBR to ensure that a species can reach or maintain its OSP. For gray whales, NMFS has not included in the Draft EIS any data on age or sex-specific natural mortality rates. Such mortalities could be due to old age, disease, starvation (though climate change induced impacts to the gray whales primary prey species likely results in mortality that is entirely caused by anthropogenic impacts), and predation. It has been documented that killer whales or orcas do predate gray whales, particularly calves, and the impact of such predation can be significant. There are some estimates that upwards of 30 percent of calves may be killed by orcas (Mizroch and Rice 2006 citing Black 2001, Black 2003, Ternullo & Black 2002) It has also become evident that, due to ecosystem regime shift in the Arctic and its impact on gray	

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	whale ecology, a larger proportion of gray whale births are occurring in the open ocean as far north as the Carmel/Monterey, CA area. Draft EIS at 3-65. As a consequence, the protections afforded gray whales calves born in or near the birthing lagoons in Mexico are not present in the open ocean. Calves, therefore, are likely more susceptible to mortality due to thermal stress (a product of the colder water in northern California compared to Mexico) and killer whale predation. While we may not have a solid understanding of age and sex specific mortality rates for gray whales, no one can dispute that natural mortality does occur, that it can be significant particularly among gray whale calves, and that adult gray whale mortality rates may be increasing due to ecosystem regime shifts attributable to a warming climate/ocean. This latter category of mortality, though originally caused by anthropogenic factors, would be considered, under the PBR calculation, a natural form of mortality. As even NMFS concedes in the Draft EIS, the significant number of mortalities recorded in 1999 and 2000 "did not exceed expected levels of natural mortality." Draft EIS at 3-108 citing Moore et al. 2000). The only mortality events that would be applicable to any PBR events would be those with a known direct human nexus such as the killing of gray whales by aboriginal groups, ship strikes, or net entanglements. A PBR is a product of three factors multiplied together (i.e., minimum population estimate, one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size, and a recovery factor between 0.1 and 1.0). Draft EIS at 3-54. Each of these components of a PBR calculation requires additional discussion and analysis.	

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	First, while the use of a minimum population estimate would appear to be conservative, it depends on the validity and accuracy of the population estimate. If a population estimate is an overestimate (as is likely the case with gray whales) then the minimum population estimate is also likely to be an overestimate resulting in a PBR that is higher than what is appropriate. Second, the maximum theoretical or estimated net productivity rate of a stock are different measures. The difference between the maximum theoretical or estimated net productivity rate can be and likely is large since the first option refers to a rate of productivity that is theoretically the highest possible while the second option refers to a productivity rate that is likely lower and which presumably is based on empirical data. Allowing either rate to be used, given the potential differences in such rates, could result in substantial differences in the PBR. While the validity of either of these estimates is also of concern, providing the option of using one over the other without any explanation as to when the maximum theoretical productivity rate should be used instead of the estimated net productivity rate and vice versa introduces the potential for considerable statistical manipulation to achieve a PBR that may be larger than is appropriate. In addition, the requirement that the rate of productivity be based on said rates when the stock is at a small population size is also problematic and confusing. How is “small population size” defined? At certain sizes the productivity rates could be severely depressed due to difficulties in finding mates and/or a lack of breeding success or other factors that are keeping the population depressed. At other so-called “small” sizes,	

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	productivity could be maximized if the species is in the process of recovering from a past decline in abundance and is experiencing high productivity as it attempt to fill all available niches within its habitat. For the gray whale, does NMFS believe that the current population is "small" since it is smaller by some 9,000 whales compared to the estimated gray whale abundance in 1997/98 or because it is as much as six times lower than the pre-exploitation estimates calculated by Alter et al. (2007)? Or does NMFS use a productivity rate estimated for gray whales when the population was smaller than its current size? Since productivity rates can change dramatically depending on the population size and since such rates are crucial for the determination of PBR, a far more detailed explanation as to the origin, basis, and applicability of the PBR concept to whales and to gray whales in particular is needed in the Draft EIS. Finally, NMFS uses a recovery factor of 1.0 when calculating the PBR for the gray whale. This is the highest recovery factor possible which signifies that the population is recovered. Considering that Alter et al. (2007) recommended that the gray whale be designated as a depleted species under the MMPA since the current population is much smaller than its estimated pre-exploitation size, a recovery factor of 1.0 is too high and must be replaced with a recovery factor of 0.5 or lower to both be more accurate and to ensure that sufficient precaution is employed in calculating the gray whale's PBR. Moreover, if the PBR is used to determine the amount of human-caused mortality that a smaller subset of the gray whale population (i.e., the PCFA, ORSVI, or Makah U&A whales) can sustain, the use of a 1.0 recovery factor would also appear to be misplaced since we have no evidence that these smaller groups of whales are "recovered."	

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	Recognizing, based on existing data, that not all resident whales occupy the same summer habitat each year (i.e., some don't show evidence of summer habitat site fidelity) and that the number of whales in these smaller groups may vary throughout a summer and interannually, the use of a recovery factor of 1.0 suggests that the whale groups are at carrying capacity for their occupied areas. There is, however, absolutely no data or evidence to suggest that the whales are at carrying capacity within these smaller geographic areas (which are politically not biologically or ecologically defined). Indeed, there is no evidence that the "carrying capacity" for gray whales within the PCFA, ORSVI, and/or the Makah U&A has been defined.	
AWI67	For the entire ENP gray whale population, NMFS claims that the PBR is 417 whales. Draft EIS at 3-109. This was calculated using a minimum population size of 17,752 (derived from the mean of the 2000/01 and 2001/02 population estimates, a maximum theoretical or estimated net productivity rate of the stock at a small population size of 0.047 divided by 2 to obtain 0.0235, and a recovery factor of 1.0. This calculation is wrong. First, the first statistic used in a PBR calculation is supposed to be a minimum population size. Based on the data contained in Table 3-6 on page 3-98 of the Draft EIS, the minimum gray whale population estimates for 2000/01 and 2001/02 were 16,097 and 15,011, respectively. Consequently, the mean of these minimum estimates is 15,554 not the 17,752 used by Angliss and Outlaw (2005) as reported in the Draft EIS (page 3-109). Moreover, the minimum population estimate used in a PBR formula is traditionally calculated using the formula Nmin = $N/\exp(0.842x[\ln(1 +[CV(N)]^2)]^{½}$. See Draft 2008 gray whale	The commenter incorrectly equates the confidence intervals used in the annual abundance estimates reported in Table 3-6 with the calculation of Nmin (minimum abundance) as estimated for the PBR calculation. The commenter further asserts that the Nmin values reported in the 2008 DEIS are not consistent with the formula used in the agency's stock assessment reports. Finally, the commenter disagrees with the use of the maximum productivity rate (Rmax) used in the PBR calculation. The formula for estimating Nmin is described in Barlow et al. (1995). We use this formula in establishing Nmin for purposes of calculating PBR in our stock assessment reports. The confidence intervals reported in Table 3-6 of the 2008 DEIS were calculated by Rugh et al. (2005) and Rugh et al. (2008) based on a different formula. The two calculations serve different purposes. Regarding the commenter's point that the PBR calculation is not sufficiently conservative for setting a harvest threshold, the new DEIS includes an alternative that would set a mortality limit for PCFG whales at 10% of PBR. With respect to Rmax, we relied on the value developed in the analysis by Punt and

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	stock assessment report. There is no evidence that NMFS utilized this formula when estimating the population minimums used in any of the PBR calculations contained in the Draft EIS. NMFS must either use that traditional formula (as it has in the past) or it must explain why the formula is not relevant in this case. Second, it is unclear where NMFS (citing Angliss and Outlaw 2005) gets the 0.047 maximum theoretical or estimated net productivity rate for gray whales. As previously explained, the maximum theoretical and the estimated net productivity rates are entirely different measures with the theoretical maximum rate of productivity higher than any net productivity rate. NMFS fails to indicate whether the 0.047 rate is the former or the latter. To be conservative, and considering the decline in the gray whale productivity rate over time (i.e., an average productivity rate of 2.52 from 1967/68 to 1995/96 compared to an average productivity rate of 1.59 from 1967/68 to 2006/07),[76] the use of the lower rate to calculate the PBR would be more appropriate. Alternatively, the most recent estimate of gray whale productivity of 1.6 or 1.9 percent unweighted and weighted, respectively (Rugh et al. 2008) should be used. Finally, as previously explained, it is difficult to justify the use of a recovery factor of 1.0 since there is compelling evidence, provided by Alter et al. (2007) that the gray whale population has not recovered to its pre-exploitation size and given their conclusion that	Wade (2012) and used in our most recent stock assessment report (Carretta et al. 2014).

[76] If the 2.52 or 1.59 productivity rates were used in the PBR calculation the corresponding values would be 0.0126 and 0.00795, respectively.

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	the ENP gray whale should be designated as a depleted species under the MMPA. Consequently, a more conservative recovery factor would be at least 0.5. If some of these corrected or more accurate statistics are plugged into the PBR formula several of the resulting PBR values for the entire ENP gray whale population would be far lower than the current level of 417 and would also be lower than the known current human caused mortality level of an estimated 141 whales per year (Draft EIS at 5-4). For example, using some of the various statistics identified above several potential PBR values could be calculated. 1) 15,554 x 0.0235 x 1 = 366 2) 15,554 x 0.0235 x .5 = 183 3) 15,554 x 0.0126 x 1 = 196 4) 15,554 x 0.0126 x .5 = 98 5) 15,554 x 0.00795 x 1 = 124 6) 15,554 x 0.00795 x .5 = 62 7) 15,554 x 0.0095 x 1 = 148 8) 15,554 x 0.0095 x .5 = 74 9) 15,554 x 0.008 x 1 = 124 10) 15,554 x 0.008 x .5 = 62 The use of an accurate minimum population estimate, a lower productivity rate consistent with recent productivity estimates, and a recover factor of .5 would reflect a more conservative management strategy that would theoretically lessen the impact of a potential human-caused decline in gray whales. However, considering the significant problems with the entire PBR concept, namely its failure to incorporate natural mortalities into its formula, a more conservative PBR which includes potential losses due to natural mortalities,	

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	must be set considerably lower in order to protect the health and viability of the population. Precisely how low such a PBR would have to be set is unknown since data on gray whale natural mortality is not disclosed in the Draft EIS or is unknown.	
AWI68	**2. Use of Allowable Bycatch Level calculation to determine subquota of resident whales that can be killed by the Makah Tribe:** Pursuant to its MMPA waiver application, the Makah propose to set an allowable bycatch level (ABL) based on the calculation of the PBR level using the "number of previously seen whales in the Oregon-Southern Vancouver Island survey area" as the minimum population estimate for use in the PBR equation. Draft EIS at 1. In effect, the Makah and subsequently NMFS have proposed establishing a subquota of resident whales which, if met, would terminate the hunt for the remainder of the year. The logistics of establishing this subquota, however, will not work and will lead to the potential slaughter of up to four resident gray whales[77] per year far in excess of the PBR calculated for resident whales in the ORSVI for 2005 as delineated in the Draft EIS. The logistical and mechanistic problems with the establishment of a resident whale subquota as described in the Draft EIS are in addition to the deficiencies with the PBR process discussed previously. First, unless a new research methodology is established to identify and monitor resident whales within the PCFA, ORSVI,	As noted previously, Alternative 2 in the 2008 DEIS represents the proposal of the Makah Tribe, not the agency. The Tribe's proposal is to use the 3-year average minimum abundance estimate to establish the allowably bycatch level of PCFG whales. This is the protocol NMFS follows in establishing PBR in the stock assessment reports. Within a 3-year period, the estimated annual abundance may vary, either because population numbers actually vary or because of the imprecision of the estimates. The commenter notes a further concern that PCFG whales move among different survey areas. The Tribe's proposal implicitly addresses this concern in that the Tribe would calculate the allowable bycatch limit based on the minimum abundance of whales in the OR-SVI survey areas, but count against that limit any whale identified anywhere within the PCFG area.

[77] In reality, the number of resident whales that could be killed in any single year if the proposed action is selected and implemented is seven which is the limit on the number of strikes that would be permitted per year. Since NMFS, for the purpose of this analysis, assumes that a struck whale is a dead whale and since it concedes that not all resident whales have been photographically identified, it is possible that the Makah could kill a resident whale which would be classified as migratory since it was never previously photographed and cataloged.

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	and the Makah U&A to provide regular, instantaneous data on the number of resident whales within the ORSVI, the resident whale subquota calculated for a particular year may allow for more resident whales to be killed than is biologically appropriate. This is a product of the inevitable delay in surveying the ORSVI, locating and photographically identifying returning or new resident whales, and then determining how many previously seen resident whales are present within the ORSVI at any one time. Such data collection and calculations are not done overnight. Indeed, as evidenced by the data included in the Draft EIS, the most recent resident whale data for the ORSVI is from 2005 suggesting that there is a delay of a couple of years in assessing and publishing resident whale data. While returning resident gray whales tend to utilize the same core areas each year, they are not always founds in the specific sites where they had been documented previously. Considering their need to find prey resources, not surprisingly resident whales demonstrate movements within their range though as you move further northward or southward from the core area the movements become more limited. As a consequence there is some, but not sizeable, variability in the number of whales seen in the PCFA, ORSVI, and Makah U&A each year. Moreover, considering the inevitable delay in determining and publishing the estimated number of resident whales within the ORSVI, the calculation of a subquota of resident whales that can be killed by the Makah may be based on a number of whales that is well over or under the actual number of resident whales within the ORSVI in the particular year of the hunt.	

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	NMFS fails to address this deficiency in the logistics of calculating a subquota of resident whales that the Makah could be permitted to kill. Specifically, what is the delay (in years) in reporting the number of resident gray whales estimated to be within the ORSVI? Will NMFS devise a new research methodology in conjunction with its research partners (e.g., Cascadia Research) to more rapidly collect, analyze and report on resident whale data obtained within the ORSVI? Will the number of previously seen resident whales within the ORSVI be based on an annual average, a running average over the course of two or more years, or on the previous year's data?[78] If NMFS uses resident whale data collecting during the year prior to the hunt, will the "minimum population estimate" used in the PBR equation be the sum total of the maximum number of previously seen resident whales estimated to inhabit the ORSVI at any particular time during the previous year? Or, will it, recognizing that resident whales may move in and out of the ORSVI, be based on a minimum or average estimate of previously seen resident whales within the ORSVI?	
AWI69	Second, though NMFS claims that it intends to utilize the "National Marine Mammal Laboratory's photographic identification catalog," DEIS at 6, as its reference for identifying potential resident whales, there is no evidence that such a catalog actually exists at NMML. Indeed, there have been reports that NMML does not even possess the resident gray whale photographic catalog. This raises a number of questions which NMFS must answer. Does the NMML possess a resident gray whale photographic identification catalog? If so, does it contain a photograph of all resident gray whales documented since research on this unique group of whales	The commenter is correct that the 2008 DEIS erroneously referred to a gray whale photo identification catalog maintained by the National Marine Mammal Lab. The catalog is in fact maintained by Cascadia Research Collective. The new DEIS corrects this error.

[78] The definition of "identified whale" in the Draft EIS refers to whales within the PCFA and ORSVI survey areas "in a prior summer feeding period," Draft EIS at 6, but does not specify what is meant by "prior summer feeding period."

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	was initiated? If NMML does not possess such a catalog, who does possess and maintain said catalog? Has NMFS negotiated a contract with that person/organization to ensure that he/she or it will provide the required analytical services to compare pictures of gray whales killed by the Makah with resident gray whale photographs contained in the catalog or to permit a NMFS official to engage in such an analysis? What mechanism is in place to ensure that all gray whale scientists who study and photograph resident whale share their photographs with a person or organization to ensure their insertion into the resident gray whale catalog? These questions must be answered by NMFS before any further action is taken on the Draft EIS. NMFS cannot assert that NMML has a resident gray whale photographic catalog as a tool to use in determining if the Makah have exceeded the proposed resident gray whale subquota if such a catalog does not, in fact, exist at NMML and/or if NMML has no access to said catalog or if said catalog is incomplete.	
AWI70	Third, the proposed action (Alternative 2), if implemented, would limit the Makah to seven struck whales per year, three struck and lost whales, and the killing of an average of four whales per year (with a maximum of five in any one year). Draft EIS at ES-1 and ES-2. In order to determine if any of the whales killed were resident whales each whale would be photographed with the photograph being sent to NMFS and/or other specialists for comparison with a catalog of existing resident whale photographs.[79] This process is replete with problems.	As noted previously, we have not adopted or endorsed the Tribe's proposal. The DEIS evaluates the Tribe's proposal along with alternatives. The 2008 DEIS discloses the possibility that under the Tribe's proposal, a struck and lost whale could be a PCFG whale, but would not be counted against the allowable bycatch limit (Subsection 4.1.2, Alternative 2). The analysis in the 2008 DEIS therefore considers both a worst case and a likely scenario, based on the possibility that all struck and lost whales are PCFG whales, and based on the probability that a struck whale would be a PCFG whale according to their proportion in the Makah U&A (Subsection 4.1.2, Alternative 2).

[79] Although, in the tribe's waiver application, it claims that "as soon as practicable after a successful hunt, in consultation with scientists from NOAA's National Marine Mammal Laboratory (NMML) the Tribe will compare photographs of landed whales with the NMML photo-identification catalog for the Pacific Coast Feeding Aggregation (PCFA)… ." Waiver application at 2. If the Makah are responsible for comparing the photographs of a landed whale with existing photographs of residents whale to determine if it had killed a resident whale which could potentially limit future whaling opportunities this would create an

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	For example, according to the information presented in the Draft EIS, a minimum to moderate percentage of resident whales identified in any one year have not been identified or photographed previously. Thus, even if a whale killed and photographed cannot be matched to any resident whale photograph in the resident whale catalog, the whale may still be a resident whale. Of equal or greater concern is the fact that, as specified in the Draft EIS, the killed whales will only be photographed when landed. At that time, even if the killed whale is determined to be a resident whale, the whale is already dead. More importantly, since whales that are struck and lost (up to three per year under the proposed action) will never be photographed it will never be known if they were or were not resident whales. As a consequence, even if a resident whale subquota was set at, for example, two, up to four resident whales could potentially be killed before the subquota is met and the hunt is terminated if the first two whales struck are lost and if both were resident whales. Remarkably, though NMFS concedes that this is a possibility and that such a high rate of slaughter of resident whales would be in excess of any annual ABL for resident whales calculated using the PBR formula, it continues to endorse this proposal. Considering the Makah's likely predilection for pursuing those whales closest to shore to reduce the amount of time and effort required to kill a whale and tow its carcass to shore, there is a high likelihood that, if permitted to engage in whaling as described in Alternative 2, the Makah will pursue resident whales.	The commenter notes that a landed whale could also be a PCGF whale that had not yet been photographed or identified and therefore would not be counted against the bycatch limit. This would lead to a higher level of mortality for PCFG whales than the "worst case" scenario assumed in the 2008 DEIS. We have accounted for this possibility in the new DEIS (Subsection 4.1.2, Alternative 2).

inappropriate conflict of interest. Though this entire proposal is fraught with problems, it must be made clear how the process would work if it is employed in the event that NMFS authorizes the Makah to whale.

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	Even if NMFS altered its proposal to require that photographs be taken of each pursued whale, a Makah participating in the hunt would have to be trained to take the required pictures or a person already trained in obtaining such photographs (i.e., ensuring that the whale is photographed from the correct angle, that the most identifiable part of the whale is photographed) would have to accompany each Makah hunting party. Even if this were possible, there is no instantaneous way to determine if the pursued whale is or is not a resident whale. Even if the photographs could be transmitted from the canoe to a person with access to a resident whale catalog it would still take potentially hours to determine if the photographed whale was a resident whale. Requiring appropriate photographs be taken by a qualified/trained technician prior to any attempt to strike and kill the whale would, however, reduce the possibility of up to four resident whales being killed in any one year.	
AWI71	Finally, NMFS provides no explanation as to why the resident whale subquota would be calculated based on the estimated number of previously seen resident whales within the ORSVI versus using the Makah U&A as the geographic area for analysis. Since the Makah can only whale, if permitted, within their U&A, the only whales who could be potentially killed would be migratory or resident whales within the U&A. While there would always be some movement of whales both into and out of the Makah U&A, if the ABL were calculated using the PBR formula based on the estimated number of resident whales within the U&A, the resident whale subquota would be smaller and, thus, more precautionary reducing the likelihood of any short or long-term adverse impact on resident whales. For example if the number of previously seen whales in the	As explained in the Tribe's request, and in the 2008 DEIS, the Tribe's proposal to establish an allowable bycatch level based on the minimum abundance of whales in the OR-SVI is based on the recommendation of Calambokidis et al. (2004a), who noted the relatively high rate of interchange of whales seen within the Makah and the other OR-SVI survey areas (Subsection 3.4.3.3.1 Summer Range Distribution and Habitat Use; Subsection 4.4.2.2, Change in Abundance of Gray Whales Using the Makah U&A or OR-SVI Survey Areas).

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	Makah U&A in 2004[80] (Draft EIS at 3-90) is used (7) along with a one-half the net productivity rate of 1.9 (weighted rate of increase as reported by Rugh et al. 2008 based on 2006/07 gray whale census data), and a recovery factor of 0.5 the PBR value for whales within the Makah U&A would be .03 gray whales. Even if the 0.0235 factor is used along with a recovery factor of 1 then the PBR would be .1645 gray whales far lower than the 2.4 resident whale subquota presented by NMFS. Conversely, basing the ABL on the estimated number of resident whales within the ORSVI, increases the resident whale subquota even though many of the resident whales within the ORSVI may never enter the Makah U&A. Given all that remains unknown about the resident whales, AWI believes that NMFS should prohibit all whaling in order to ensure protection of all resident whales. If NMFS elects to issue the waiver and allow the Makah to whale then, at a minimum, it must adopt precautionary measures to limit the subquota or resident whales killed by the Makah by basing that subquota on the estimated number of resident whales within the Makah U&A.	
AWI72	Even assuming that the ORSVI is the appropriate management unit, the ABL for resident whales within the Makah U&A calculated using the PBR formula is in error. Draft EIS at 4-37. First, as the minimum abundance estimate for ORSVI whale, NMFS uses 106. The origins of this number are unknown and no reference or citation is offered in the Draft EIS. A review of Table 3-3, the total number of resident whale seen in the ORSVI is 101 not 106. However, as explained in several places in the Draft EIS, the minimum number that is supposed to be used to calculate the ABL for the Makah U&A is the number of	The 2008 DEIS fails to cite the source of the minimum abundance estimate of 106 used in the PBR calculation. It came from Calambokidis et al. (2004a).

[80] No data on the number of previously seen whales were provided for 2005 for the Makah U&A. Draft EIS at 3-90.

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	resident whales that have been seen in two or more years within the ORSVI. So, again using the data from Table 3-3 for 2005, the total number of previously seen resident whales in the ORSVI is 78.	
AWI73	Second, NMFS again uses 2.35 percent figure presumably as one-half the estimate net productivity rate. This would correspond to a 4.7 percent actual rate of increase which is far higher than the average rate of increase documented using data from 1967/68 to 2006/07 (1.59 percent) or the rates of increase provided by Rugh et al. (2008) (1.6 or 1.9 percent). NMFS fails to explain why it believes using the 4.7 percent rate is appropriate versus using the 1.59, 1.6, or 1.9 percentages or some alternative percentage between the 4.7 and 1.59 percent rates of increase. Considering that the recent estimated rates of increasing are in decline, the 1.59, 1.6, or 1.9 percent rates of increase would seemingly be the more appropriate statistic to use in calculating the ABL for resident whales in the Makah U&A since the objective is to reduce or eliminate the killing of these unique animals.	The PBR formula relies on the *maximum* net productivity (Rmax) level. The theory and rationale underlying the PBR formula is summarized in the 2008 DEIS and described in detail in references cited in the 2008 DEIS (in particular, Barlow et al. 1995 and Wade 1998). The Rmax productivity level used by the Makah Tribe in its proposal and in the 2008 DEIS evaluation criteria is based on the Rmax NMFS identified for ENP gray whales in its stock assessment report (Angliss and Outlaw 2008). Carretta et al. (2014) has an updated estimate of Rmax, which is used in the new DEIS.
AWI74	Third, and finally, NMFS continues to incorrectly use the 1.0 recovery factor when, since the current gray whale population size is no where near its pre-exploitation size and since Alter et al. (2007) recommended the species being designated as a depleted species, the recovery factor should be no more than 0.5. Using these corrected statistics, the new ABL for resident whales in the Makah U&A would be 0.3 – 0.37 per year, far lower than the 2.49 resident whales reported by NMFS. Draft EIS at 4-37.	The recovery factor used by the Makah Tribe in its proposal and in the 2008 DEIS evaluation criteria is based on the recovery factor NMFS identified for ENP gray whales in its stock assessment report (Angliss and Outlaw 2008). Carretta et al. (2014) calculated a PBR for PCFG whales separate from the calculation for the ENP stock, using a recovery factor of 0.5.
AWI75	**3. Use of powered chase boats to tow struck and killed whales to shore:**	The 2008 DEIS, Subsection 2.4.5.1, Hunt Using Only Traditional Methods, explains why the alternative proposed here was not analyzed in detail: “The use of powered vessels . . . to chase and tow whales represent reasonable efforts to

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	A portion of Makah tribal membership have advocated a resumption of whaling to revitalize Makah culture. They believe that a return to whaling will help restore the tribe's cultural past, its language, its ceremonies, and will lead to a spiritual reawakening. For individuals selected to be members of Makah whaling teams, rigorous training and spiritual preparations will be expected by them and their family members consistent with the reported traditions of their ancestors. Despite these training standards and seemingly inconsistent with the methods employed by their ancestors when pursuing whales, the Makah have proposed to use motorized chase boats to, among other things, tow killed whales back to shore. Draft EIS at 2. While AWI strongly opposes any whaling by the Makah, if whaling is permitted then both international and national treaties or laws require that it be done in the most humane manner possible to reduce the suffering of the struck whale. To accomplish this, the use of a chase boat to ensure that a rifleman can fire one or more shots at a harpooned whale to (hopefully) end the whale's suffering as rapidly as possible is entirely appropriate. Using the chase boat to then tow the struck whale to shore would, however, be inconsistent with the traditional practices that the Makah are trying to recreate by whaling. If the Makah historically relied on physical preparation and prowess in order to successfully kill and land a whale, modern day Makah whalers should, out of tradition, desire to emulate their ancestors. The Draft EIS suggests that, historically, Makah whalers used to go far out to sea to hunt gray whales and used to tow dead whales behind their canoes back to their ancestral lands. Sometimes it would take days for the Makah to tow the dead	retrieve any stricken whale and are more likely to meet WCA regulatory requirements than hunting using only traditional vessels."

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	whale back to land. Reportedly, when steam-powered ships became available, the Makah then relied on those ships to tow the whale carcasses to shore. It is doubtful that the companies owning those ships or the individual ship captains agreed to tow the whale carcass to shore as a simple gesture of goodwill rather, it is likely that goods (i.e., whale oil, seal oil, skins/pelts, or other products) were exchanged as payment. NMFS claims that the use of a chase boat to tow the whale carcass back to shore is needed to prevent the spoilage of the carcass. This excuse seems to conflict with reports that historically it could take the Makah whalers days to tow a whale back to land when using their traditional canoes and their own strength. Either there was significant spoilage of the whale historically (which calls into question the distance the Makah would travel out to sea to pursue whales and/or indicates that whale oil and not meat/blubber was the principal tradable resource obtained from whales historically), the Makah were far more proficient paddlers than they are today, or the Makah historically either utilized all whale products (spoiled or not) or there was significant wastage of a whale once landed. AWI is not advocating for a complete return to all traditional tactics to kill whales. Indeed, it would be in violation of international standards and domestic laws for the Makah to employ only traditional harpoons to kill gray whales given the inefficiency of such killing methods and the immense suffering that would result. Requiring the Makah to rely on traditional methods to tow a whale carcass to land, however, would be consistent with the tribe's desire to revitalize its cultural, spiritual, and physical relationship to whaling.	

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AWI76	**4. NMFS has not provided a legal description of the Makah's usual and accustomed grounds and stations:** An examination of the Treaty of Neah Bay reveals that the treaty itself does not set aside any ocean areas as part of the Makah's usual and accustomed grounds and stations. The description of the lands set aside in Article 2 to represent the Makah reservation does not extend into the ocean. In addition, as indicated above and in Article 4, the Makah's right of taking fish and of whaling or sealing is for its usual and accustomed "grounds and stations." While it is unclear what is meant by stations, the term grounds may not imply any area of the ocean. Admittedly, it is impossible to harvest marine fish or whales anywhere but in the ocean though freshwater fish can be killed in streams, tributaries, and creeks within the Makah's reservation. NMFS claims in the Draft EIS that the courts have defined the area of the ocean reserved for the Makah. Due to the inadequacy of the comment period on this Draft EIS, this claim could not be confirmed nor could any legal description of the boundaries of the Makah U&A, if articulated by the court, be mapped to determine the true extent of the U&A. This criticism is not meant to suggest that the Makah's U&A does not include areas of the ocean but it would be useful and informative if NMFS provided the legal description of the Makah U&A – at least the portion that includes the Pacific Ocean – so that interested stakeholders can better understand the boundaries of this area.	The Makah Tribe's request is that whaling be authorized in its fishing U&A, which has been adjudicated under *U.S. v. Washington* (Makah 2005).
AWI77	**5. The Makah tribe has not demonstrated the ability to engage in whaling in a manner consistent with the WCA's prohibition on waste:**	If we authorize a gray whale hunt by the Makah, we would evaluate the issue of waste in developing any applicable regulations.

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	The Draft EIS defines “wasteful manner” as “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 the whale.” Draft EIS at 14. NMFS has interpreted this standard to apply both to the process of whaling and of butchering the whale. Indeed, in its 1996 final rule amending the WCA, NMFS indicated that the waste provision in the WCA applies to the butchering process as well as to the killing and landing of the whale. Therefore, not only would a struck and lost whale constitute a violation of the “waste” standards in the WCA but so would the inefficient butchering of a landed whale resulting in the spoilage or waste of whale meat, blubber, or other whale products. Though NMFS suggests that Makah tribal members “removed almost all edible portions of the meat and blubber from the whale (killed during the 1999 hunt) by midnight,” Draft EIS at 1-38, videotape footage of the butchering of the whale demonstrates that the Makah had little idea how to butcher the whale and that, consequently, much of the whale was wasted. This footage, appended to this comment letter and also available for viewing on the AWI website (http://www.awionline.org/oceans/whaling/makah_video.htm), was obtained by a eyewitness who was present at the beach where the 1999 whale was landed and who witnessed the butchering process. Her written description of the butchering process that she captured on videotape provides compelling evidence of the incompetence of the Makah whalers in butchering the whale, their need for assistance from an Alaskan native and NMFS personnel to butcher the whale, and their decision to forego completing the butchering process to maximize the collection of all blubber and meat from the	

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	whale and to avoid wastage as is required by the WCA. Specifically, she writes: This video footage shows an Alaskan Inuit (unnamed for his protection) who was brought in by the Makah whaling commission to show them how to cook whale. He's shown here with National Marine Fisheries Service (NMFS) Joe Scordino and his colleges after reporters and whalers have left the beach they are seen trying desperately to keep the whale from going out with the tide. I showed up at the reservation shortly after the 10pm news had aired, something about that coverage made me uneasy so I grabbed a video camera and the only two people who would go with me (Andy and Jonathon) neither of whom had been involved in any of the protests, this would make it easier to slip onto the reservation unnoticed. Much went through my mind on that journey to Neah.... but mostly I wanted to see what would happen with the whale when the eyes of the world had left. As you will see the scene I embarked on was truly horrific... The tide was rushing in trying to reclaim the whale named Yabis. Joe Scordino of NMFS and the Inuit man (teaching cook;) worked feverishly to lighten the whale which was only one third of the way butchered at this time. They removed as much blubber as possible, throwing it onto a sandy, dirty blue tarp after onlookers refused to take it. In this clip you will hear an annoying background noise which is the sound of the Army truck used to eventually pull Yabis up from the tide... this exercise took several hours in real time and has been edited down.	

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	The canoe and whale where almost taken by the sea several times and a clearly unhappy crew from National Marine Fisheries Service grumble that they should not have to be doing this. The Inuit man calls for The Makah and their captain. (Wayne Johnson.) A boy who was one of three children on the beach offered his assistance but the ordeal clearly makes him ill. He asks the Inuit man "do you have to do this often?" The man replies "yea but we cut up our own whales". If the Makah wanted this whale so badly.. why where they so obviously absent here? And why was this two year old whales life to be wasted, her flesh left to rot into the next afternoon.. baking in the morning sun under a blue plastic tarp on a beach in Neah Bay as later reported by Whaleman. _____ Indeed, according to NMFS, the gray whale killed in 1999 generated 2000-3000 pounds of meat and 4000-5000 pounds of blubber. Draft EIS at 3-236, 4-145. According to Yablokov, however, a 44 foot gray whale killed in the Bering Sea in 1936 produced 20,020 pounds of blubber and 14,804 pounds of meat. This yield is far higher than that reported by the Makah though it is understood that the whale killed by the Makah may have been a juvenile. Nevertheless, the fact that the Makah obtained 2000-3000 pounds of meat and 4000-5000 pounds of blubber from the whale killed in 1999 is meaningless in regard to determining waste without disclosure of, at least, the total weight of the whale. Anecdotal reports, however, suggest that the Makah did waste a considerable amount of meat/blubber due to their inefficiency in	

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	butchering the whale killed in 1999 or because of their unwillingness to complete the butchering process in a timely manner. In addition to the data provided by Yablokov, NMFS must disclose any additional data that document the yield estimates of meat/blubber from gray whales so that the efficiency of the Makah in butchering this whale can be compared against such data so that both NMFS and the public can assess whether the Makah violated the WCA by wasting whale product due to the inefficiency in the butchering process. In addition, reports obtained from members of the Makah tribe document that the dead whale carcass was hauled to the tribe's landfill shortly after the kill with considerable meat and blubber remaining attached. While it is likely that scavenging birds, dogs, and other animals may have benefited from this unexpected food source, it is indisputable that the Makah violated the prohibition against waste contained in the WCA by allowing so much of the potential whale product from the killed whale to be discarded at the tribe's landfill. The inability of the Makah whaler's to efficiently butcher the killed whale and subsequent waste of whale products provides additional evidence that the Makah can't meet the standards for ASW under the IWC.	
AWI78	**6. Makah whaling will violate the conservation purposes of the MMPA:** As explained in the Draft EIS, the court in *Anderson v. Evans* defined the conservation purpose of the MMPA as "to ensure that marine mammals continue to be significant functioning	If we ultimately authorize a Makah whale hunt, we must make certain determinations under the MMPA, including a determination that the proposed taking will be in accord with the purposes and policies of the MMPA. The 2008 and new DEIS evaluate the potential effect of a hunt on the ENP gray whale stock as a whole and at various scales. This evaluation will provide the necessary information to the decision-maker in making any required MMPA

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	element[s] in the ecosystem" and not "diminish below their optimum sustainable population." DEIS at 1-18. NMFS fails to define, geographically or otherwise, the ecosystem of relevance in determining whether Makah whaling could or would violate the conservation standards within the MMPA. NMFS reports that the Makah Tribe claims that NMFS cannot deny the tribe's MMPA waiver application since tribal whaling "would not cause the ENP stock of gray whales to fall below its optimum sustainable population or to cease to be a significant functioning element of the marine ecosystem." DEIS at 1-19 citing Makah Tribe 2005a and Makah Tribe 2006a). If, as the Makah have done, the ecosystem is defined as the entire "marine ecosystem" inhabited by the ENP stock of gray whales it is not surprising that the Makah would conclude that its whaling could not violate the MMPA conservation standard. Considering the significant and increasing anthropogenic threats to the gray whale, however, it is not guaranteed, even at this extraordinarily broad scale of the entire "marine ecosystem," that Makah whaling may not adversely affect the gray whale over time. If, however, the "ecosystem" is defined more specifically, there is no question that Makah whaling could violate the MMPA conservation standard. In the context of the species, the gray whale occupies or uses a substantial area of ocean ranging from portions of the Beaufort Sea in the north to the protected lagoons of Baja California along the Mexican coast. This area does not constitute a single ecosystem but a series of ecosystem distinguished by physical, biological, oceanographic, and other characteristics. The composition of the substrate, prey species	determinations regarding the functioning of ENP gray whales as elements of their ecosystem. As noted previously, the purpose of an EIS is not to draw legal conclusions, but to evaluate the effects of a proposed action and alternative actions on the human environment.

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	and density, water temperature, water chemistry, and productivity of the feeding areas and migratory habitat used by gray whales is very different throughout the range of the species. Simply put, the characteristics of the habitat occupied by resident whales off the northwest coast of Washington differs from that in the arctic and in Mexico. Though NMFS repeatedly references the MMPA conservation standard that marine mammals continue to be significant functioning elements in the ecosystem, it never defines the ecosystem in which this standard applies. Considering that there are several different ecosystems occupied or used by gray whales, for the MMPA conservation standard to be meaningful NMFS must define the individual ecosystems and determine if the Makah were allowed to whale whether the impacts of said whaling would violate the conservation standard. For example, in this case, is the MMPA conservation standard applicable to the area occupied by the entire group of whales that comprise the PCFA (i.e., is the area occupied by whales within the PCFA considered a single ecosystem)? Alternatively, is the area defined as the ORSVI or the Makah U&A considered ecosystems in which the MMPA conservation standard would apply? Beyond defining the "ecosystem" in question, NMFS must also determine if a Makah whale hunt would impair the ability of gray whales to be a significant functioning element within the ecosystem. To make this determination, NMFS must understand the ecological and biological significance of gray whales within the ecosystem. Though our knowledge of resident gray whale movements, distribution, habitat use patterns, and behavior has improved over the decades since resident whales were first subject to study, our knowledge of	

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	their biological and ecological significance within the occupied areas remains paltry. If we don't understand the basic function of resident gray whales within an occupied ecosystem (regardless of how that ecosystem is defined), it is impossible to determine if the removal of resident whales through whaling will affect the gray whales ability to be a significant functioning element within the ecosystem. Thus, beyond simply identifying the ecosystem or ecosystems in question, NMFS must also both disclose the functional significance of resident whales within the ecosystem as well as assess the impact of Makah whaling on the gray whales' role within the ecosystem. Considering the likelihood that the Makah, if permitted to whale as described in the proposed action, will slaughter resident whales and that up to four resident whales could potentially be killed in a single year, the potential impacts to the functioning of the resident whales within the ecosystem could be significant. The fact that 77 percent of resident whales in the ORSVI in 2005 were documented in the area in previous years (i.e., indicative of some level of site fidelity) only increases the potential impacts associated with removing a proportionately large number of resident whales potentially far in excess of the calculated PBR.	
AWI79	**7. NMFS must clarify how and to whom the Makah, if permitted to whale, can share whale products:** The IWC defines "subsistence use" to include the "personal consumption of whale products for food, fuel, shelter, clothing, tools, or transportation by participants in the whale harvest," "the barter, trade, or sharing of whale products in their harvested form with relatives of the participants in the	As noted previously, the purpose of an EIS is not to evaluate legal issues. If we approve a Makah whale hunt, regulations would address this issue.

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	harvest, with others in the local community or with persons in locations other than the local community with whom local residents share familial, social, cultural, or economic ties" though "the predominant portion of the products from each whale are ordinarily directly consumed or utilized in their harvested from within the local community," and "the making and selling of handicraft articles from whale products… ." Draft EIS at 1-22. Though this definition is not contained in the ICRW or in the Schedule it was reportedly agreed to by the contracting governments of the IWC in 2004. Draft EIS at 1-22. NMFS interprets such language to mean that the Makah "could share whale products from any hunt within the borders of the United States with … relatives of participants in the harvest, others in the local community (both non-relatives and relatives), and persons in locations other than the local community with whom local residents share familial, social, cultural, or economic ties." Draft EIS at 1-23, 2-15, 4-100. This interpretation is so broad that the Makah could literally share whale products with anyone living in the United States including in Alaska, Hawaii, and potentially the U.S. territories. For example, "relatives of participants in the harvest" could live anywhere in the U.S. and persons with whom a Makah tribal member may share social, cultural, or economic ties could include virtually anyone including a friend, acquaintance, colleague, or business associate. It is improbable that the IWC intended for whale products taken from whales slaughtered in aboriginal hunts to be broadly distributed to virtually anyone within the country that allows the aboriginal whaling. Indeed, the IWC's definition of "subsistence use" specifies that the "predominant portion of the products from each whale are ordinarily directly consumed	

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	or utilized in their harvested from within the local community." Draft EIS at 1-22. Other definitions provide additional evidence that the NMFS interpretation of how the Makah can use/share any potential products from a whale (if the tribe is allowed to whale) is far too liberal. For example, the definition of "aboriginal subsistence whaling" adopted in 1981 by the Ad Hoc Technical Working Group on Development of Management Principles and Guidelines for Subsistence Catches of Whales by Indigenous [Aboriginal] Peoples, refers to whaling "for purposes of local aboriginal consumption" while the definition of "local aboriginal consumption" adopted by the same Ad Hoc group means the "traditional uses of whale products by local aboriginal, indigenous or native communities… ." Draft EIS at 1-30. The gray whale catch limit language in the IWC Schedule also specifies that the "taking of gray whales from the Eastern stock in the North Pacific is permitted … only when the meat and products of such whales are to be <u>used exclusively for local consumption by the aborigines</u>." IWC Schedule, paragraph 13(b)(2) and Draft EIS at 1-35. Finally, even the Makah, in its waiver application, make clear its intent to adopt tribal regulations that "will restrict the use of whale products to local consumption and ceremonial purposes.." which indicates that the Makah do not desire to have the ability to share whale products with anyone in the country with which they may have familial, social, cultural, or economic ties. Given these definitions and the Schedule language, the NMFS interpretation is far too broad and is destined, if the Makah were allowed to initiate whaling, to potentially lead to enforcement and other problems as whale meat could theoretically be shared with people living from Los Angeles to	

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	Miami and from New York City to Las Vegas. Though there is no legal basis for NMFS to permit the Makah to whale, if it chooses to do so it must tighten up its interpretation of how and to whom whale products can be distributed and/or promulgate new regulations or standards to limit the distribution/use of said whale products to the Neah Bay reservation. This would not prevent Makah or non-Makah who live off of the reservation from traveling to the reservation to partake in any potlatches but it would prohibit any whale meat or other whale products from being transported beyond the borders of the reservation. If the Makah are genuinely only interested in whaling to ostensibly revive their traditional and cultural practices, it should have no objection to such restrictions. In addition to imposing restrictions on the distribution/sharing of whale products, NMFS should also explicitly prohibit the sale of any whale product by anyone who participates in a whaling event and/or anyone who may receive whale products as the result of such an event. Though the Makah have agreed that any whaling would be non-commercial (i.e., no sale of whale products except for native handicrafts manufactured using parts/products from the whale), the Makah have consistently claimed a right to commercially profit from the sale of whale products as they did through trading of whale products historically. See Draft EIS at 3-330 ("…their original 1995 formal request to resume hunting of ENP gray whales stated that the Makah were reserving what they consider their treaty-secured right to whale for commercial purposes"). If NMFS, despite the evidence to the contrary, elects to issue an MMPA waiver to the Makah tribe, establish regulations to restrict any hunt, and to issue the required MMPA permits, it absolutely has and should use its authority to impose more	

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	stringent conditions on the Makah regardless of the opinions, arguments, or claims of the tribe. Finally, though NMFS has consistently held that native groups (Alaskans and the Makah) can create and sell native handicrafts from the inedible portions of slaughtered whales, it is unclear if this sale authority is legal. NMFS cites to the regulations implementing the WCA as authority for such sales (50 CFR 230.4 (f)) yet there is no explicit authority in the WCA itself to allow such sales. While the IWC has accepted one or more definitions relevant to aboriginal subsistence whaling that allows for the sale of such handicrafts, the WCA is the U.S. statute that implements the ICRW and, therefore, would presumably take precedence over the ICRW. Moreover, the MMPA does not permit the sale of native handicrafts produced from the inedible portions of whales as the MMPA authority to sell native handicrafts is limited to handicrafts made from fur seals. See 50 CFR 216.3. This must explain why the Makah requested, in its waiver application, limited authority to sell such traditional handicrafts. Therefore, if NMFS believes that the Makah have the legal right to sell native handicrafts manufactured from the inedible products of whales it must provide evidence that such authority exists in the law.	
AWI80	**8. NMFS is obligated to comply with NEPA when attempting to obtain IWC acceptance of catch limits for aboriginal subsistence whaling:** NMFS claims that its positions on issues subject to debate within the IWC are not "final agency action" and, therefore, NEPA review is not required since such positions are subject to change during IWC negotiations making any review of the	As noted in the 2008 DEIS (Subsection 1.2.4.1.4, United States' IWC Interagency Consultation): Negotiating positions advocated by the United States are not final agency actions; these positions may change during the negotiations. The United States' negotiating positions advocated before the IWC, moreover, may or may not be adopted by the IWC, and any attempt to analyze effects on the human environment would be speculative.

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	environmental impacts "speculative." Draft EIS at 1-24, 4-200. In regard to positions taken or decisions made about aboriginal subsistence whaling by a U.S. indigenous group, NMFS' interpretation of the applicability of NEPA is entirely inaccurate. Prior to any IWC meeting where a U.S. aboriginal whaling catch limit is to be discussed, the U.S. makes a decision whether to seek such a catch limit and what number of whales it intends to request as part of the catch limit based on the alleged needs of the aboriginal group. This decision is not made on the fly nor is it formulated at the IWC meeting itself, rather there is a review and decision process undertaken well before the IWC meeting. As a consequence, such a decision is a final agency action subject to NEPA review prior to an IWC meeting. Such a review requires the U.S. to disclose the environmental impacts of its decision and, perhaps more importantly, provides the public with an opportunity to participate in the decision-making process and to possibly alter the decision to be made by NMFS either by convincing the agency to forego seeking a quota at all or to modify that quota (up or down) based on evidence presented regarding either the status of the stock in question or as to the alleged need of the aboriginal group. In a June 2007 letter to NMFS, Friends of the Gray Whale and other groups criticized NMFS for failing to comply with NEPA prior to seeking a gray whale and bowhead whale quota for the Makah and Alaskan Inupiats, respectively, prior to IWC/59 in 2007. That letter (which is included among the attached documents) provides a detailed analysis of the applicability of NEPA to such decisions and counters the ongoing claims by NMFS that such decisions are not final agency actions.	

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AWI81	**9. The stated purpose and need for the proposed action are not legitimate:** NMFS asserts that the purpose of its proposed action is "to respond to the Makah's request to hunt ENP gray whales for ceremonial and subsistence purposes" and that the alleged need is "to address (its) federal trust responsibilities to the Makah." Draft EIS at 1-27. Strangely, since NMFS is the federal agency responsible for NEPA compliance, it also discloses that the Makah's purpose is "to resume its traditional hunting of gray whales under its treaty right" and its need is "to exercise its treaty whaling rights to provide a traditional subsistence resource to the community and to sustain and revitalize the ceremonial, cultural, and social aspects of its whaling traditions." Id. Contrary to the claims contained in the alleged need for the action that it is, in part, to revitalize Makah whaling ceremonies and social aspects of its whaling traditions, the IWC does not permit aboriginal subsistence whaling for "ceremonial purposes" or to advance any "social aspects" of a whaling tradition. Thus, such references must be deleted from the Draft EIS. Aboriginal whaling is only permitted when an aboriginal/indigenous group can demonstrate a "continuing traditional dependence on whaling and on the use of whales," Draft EIS at 1-30 and when whale products are needed to meet an aboriginal group's "nutritional, subsistence, and cultural requirements." Id.[81] The use of the conjunctive "and" in that	Comment noted.

[81] These criteria are included in the definitions of "aboriginal subsistence whaling" and "local aboriginal consumption" adopted in 1981 by the Ad Hoc technical Working Group on Development of Management Principles and Guidelines for Subsistence Catches of Whales by Indigenous [Aboriginal] Peoples. See Draft EIS at 1-30.

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	definition indicates that cultural needs alone are not a basis for qualifying for an aboriginal subsistence whaling quota as there must also be a nutritional and subsistence need. Furthermore, in IWC Resolution 1994-4 which established three broad objectives for evaluating aboriginal whaling requests from contracting governments, any alleged cultural need is directly tied to "nutritional requirements." Draft EIS at 1-21. Again, the use of the conjunctive "and" when referencing so-called "cultural and nutritional requirements" makes it clear that cultural needs alone are not a sufficient basis for either seeking or being granted an aboriginal subsistence whaling quota. Thus, the fact that some Makah have an interest in resuming whaling to enhance traditional ceremonies, to allegedly spur interest in their traditional language, to enhance traditional values, or to give more meaning to traditional whaling songs is irrelevant. The "nutritional requirements" of the aboriginal group is the key factor in determining if the group qualifies for an aboriginal subsistence whaling quota.[82] To be consistent with the concept of "subsistence use," however, the alleged nutritional need for whale products must be based on a	

[82] The claim by NMFS that "nutritional need is a factor in considering and setting aboriginal subsistence whaling catch limits, but not a threshold requirement," Draft EIS at 1-31, is simply wrong based on the various definitions referred to in this analysis. The fact that a Nutrition Panel in 1979 concluded that the nutritional needs of Eskimos could be met through local subsistence or western-type foods does not alter the importance of nutritional need in determining if a group qualifies for an aboriginal subsistence whaling quota. Unlike the Makah, in the case of the Alaskan Inupiats there was a demonstrable continuation in their consumption of whale products over time which is the other key criteria in authorizing aboriginal use. Finally, the claim that the Makah do indeed have a "nutritional need based on poverty and economic conditions on the … Reservation," Draft EIS at 1-32 is inconsistent with the available evidence that demonstrates that the Makah have subsisted fine without reliable access to whale products for over eighty years. Moreover, for reasons articulated in this comment letter, relying on any document produced by Renker, given her clear conflict of interest, to justify any alleged cultural or nutritional need of the Makah is inappropriate.

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	demonstrable need to include whale products in the diet for health reasons and/or to ensure the survival of the group. Simply enjoying the taste of whale meat/blubber and/or a preference for whale meat/blubber over venison, domestic beef, chicken, or fish is not an appropriate justification for an aboriginal subsistence whaling quota. In this case, neither the Makah nor NMFS has provided any evidence that the Makah must have access to gray whale meat, blubber, or other products in order to subsist. Indeed, over the past eighty years during which time the Makah have killed a single whale, there is no demonstrable evidence that the tribe's lack of access to whale meat, blubber, or other products has adversely affected its ability to subsist. If anything, evidence presented in the Draft EIS indicates that the Makah have no compelling need to access and consume whale meat/products to address any dietary deficiency. Similarly, the mere fact that the Makah claim to have a treaty "right" allowing it to whale has no bearing on whether the Makah have a legitimate subsistence need to whale. As previously mentioned, the fact that Congress failed to provide an exemption for the Makah or other mainland Native American groups to permit their killing of marine mammals as it did for Alaskan Natives when promulgating the MMPA is evidence that the Makah's treaty rights relevant to whaling and sealing have been abrogated. If there is no treaty right than the Makah can't rely on this claim in attempting to secure U.S. approval to whale and the U.S. has no federal trust responsibility to the Makah. Even if this treaty right remains intact, a treaty right is not one of the criteria used by the IWC to determine subsistence need.	

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	While such a treaty right may be of relevance domestically, since U.S. law recognizes the IWC as the preeminent authority in the management of whales, a treaty right has no bearing on whether the IWC's criteria for aboriginal subsistence whaling can or has been met. If the IWC's criteria has not been met then, under U.S. law, even if the IWC were to set a catch limit, NMFS cannot allocate the catch limit to the aboriginal group. Since neither NMFS nor the Makah have provided demonstrable evidence as to the tribe's subsistence need for gray whale meat/products, since any alleged cultural need to whale is tied to "nutritional requirements," since "ceremonial" or "social aspects" of aboriginal whaling are not relevant IWC criteria, and since any treaty right has no bearing on whether a group meets the aboriginal subsistence whaling standards imposed by the IWC, NMFS has failed to identify a legitimate purpose or need for the proposed action. Furthermore, if the existing purpose and need statement is deemed to be acceptable by NMFS then each and every time the Makah decide to request a modification to any gray whale MMPA waiver it may receive, NMFS will be obligated to engage in a new NEPA and waiver process. Such a waiver would also set a precedent for the Makah that may promote its submission of an application seeking an expansion of its whaling program to include the killing of other whale species, particularly humpback whales. If NMFS does not deny the present application it will be hard pressed to reject a future application and again, will have created a precedent requiring it to engage in both the NEPA and waiver processes. Considering the allegations that the Makah historically killed humpback whales with nearly the same frequency as gray whales and since the products of the humpback whale are believed to be of higher quality, it is likely that the Makah will seek an expansion of its	

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	whaling program in the future if it is given the permission to whale now. If NMFS would set the bar higher and develop or force the Makah to meet a higher standard in regard to the alleged purpose and need for whaling – as is required by NEPA – it could avoid problems in the future with the Makah attempting to expand and escalate any whaling activities if NMFS errs by authorizing a gray whale hunt at this time. Without a legitimate purpose and need, the Draft EIS is incomplete, illegal, and no further action should be undertaken pending, at a minimum, the development of a credible purpose and need statement.	
AWI82	**10. NMFS has failed to adequately articulate the jurisdictional issue relevant to the proposed whaling and has not provided an adequate discussion of the agency-specific statutes and regulations and their relationship to any proposed whaling:** The jurisdictional issues off the northwest coast of Washington are complicated. In addition to the Makah Reservation and its U&A, much of the marine zone is dominated by the Olympic Coast National Marine Sanctuary (OCNMS), the Washington Islands National Wildlife Refuges managed by the FWS, and the Olympic National Park under the management responsibility of the National Park Service. To complicate matters further the U.S. Coast Guard has established a regulated navigation area surrounding the Makah reservation and extending south along the coast, see map in Draft EIS at 3-3, and the U.S. military uses much of the area for training and other activities given the presence of dozens of military bases in the Seattle/Puget Sound area.	Comment noted.

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	NMFS attempts to provide a summary of the statutory and regulatory authority of most of the agencies who manage or use land or marine areas in northwest Washington. Its analysis, however, is woefully inadequate. As an initial matter, the map contained in the Draft EIS at 3-3 is likely inaccurate. For example, it is unclear if the map is actually drawn to the correct scale. If it is, the map suggests that the jurisdiction of the Washington Island National Wildlife Refuges extends out approximately 10 miles from shore. Interestingly, the boundary of the Refuges delineated on the map in the Draft EIS is similar to the boundary as indicated on maps contained in the Washington Island National Wildlife Refuges Comprehensive Conservation Plan which, as discussed below, potentially raises a number of questions about the applicability of other FWS statutes and regulations to any proposed whaling. However, AWI understands that not only is this depiction of the external boundary of the refuge complex inaccurate but that the ten-mile wide strip of coastal waters delineated on the map as being part of the refuge complex does not correctly depict the FWS's area of jurisdiction. Indeed, the FWS only has jurisdiction on the coastal islands that are part of the refuge complex from the mean high tide line and up or toward the terrestrial habitat. The NPS has jurisdiction along the portion of the coastal area occupied by Olympic National Park from the mean low tide mark and up or toward the terrestrial habitat. The NPS also has jurisdiction from the mean low tide to the mean high tide lines around each of the islands within the Washington Island Refuges. The actual marine or aquatic habitat is under the management jurisdiction of the OCNMS.	

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	Assuming AWI's understanding of these jurisdictional issues is accurate, NMFS must replace the map on 3-3 with a map that more accurately depicts that actual jurisdiction of the OCNMS, FWS, and NPS. OCNMS was designated in 1994 pursuant to the National Marine Sanctuaries Act, Draft EIS at 3-4, due to its "highly productive, nearly pristine ocean and coastal environment that is important to the continued survival of several ecologically and commercially important species of fish, seabirds, and marine mammals." Id. According to NMFS, regulations governing the management of the OCNMS "prohibit taking any marine mammal … except as authorized by the Marine Mammal Protection Act, … or pursuant to any treaty with an Indian tribe to which the United States is a party." Draft EIS at 3-6. If a tribal treaty is applicable then any "taking" of a marine mammal must be exercised in accordance with the MMPA and other relevant federal statutes. Id. and Draft EIS at 2-23. The Makah cannot satisfy this standard and, therefore, cannot be permitted to engage in whaling within the OCNMS. As previously explained, NMFS has failed to demonstrate that the conservation standard within the MMPA can be met if the Makah are allowed to whale since it has not defined the ecosystem in play. It also has not determined if the slaughter of whales within that ecosystem will significantly impair their function within that ecosystem. Moreover, since the Makah's treaty was effectively abrogated when Congress promulgated the MMPA and provided an exemption only for Alaskan natives, the treaty is no longer a relevant defense to allow the Makah to whale within the OCNMS. Without a valid treaty right, the OCNMS has no obligation to allow whaling within its	

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	borders and it, or NMFS its parent agency, should refuse to allow this activity within boundaries of the sanctuary. The Washington Island National Wildlife Refuges include the Quillayute Needles, Flattery Rocks, and Copalis refuges. These refuges are comprised of more than 870 islands, rocks, and reefs extending for more than 100 miles along the coast of WA. Draft EIS at 3-8. If the map in the Draft EIS on page 3-3 accurately depicts the area of jurisdiction for the FWS as including all islands and water from the coast to approximately 10 miles (based on the scale provided on the map), other laws governing the management of wildlife within the National Wildlife Refuge system would be applicable. For example, if whaling were to be permitted within this area, the FWS would have to, in addition to the completion of Comprehensive Conservation Plan, publish a compatibility determination for whaling, a whaling hunt plan, subject any whaling program within the refuge areas to NEPA compliance, and promulgate refuge specific regulations to authorize whaling. Based on a review of the Final CCP for the refuge published in 2007, no such analyses or regulations have been conducted or promulgated. The Final CCP specifies that the FWS goals for the Washington Island refuges “are to minimize or eliminate disturbance to wildlife.” Final CCP at 1-22. To accomplish this the FWS has adopted as part of its proposed action evaluated during its CCP process the creation of a voluntary 200-yard boat-free zone around each of the refuge islands. Final CCP at 2-4, 2-22. In regard to tribal use of refuge islands, the FWS intends to develop agreements with each tribe which would be done separately from the CCP process. Final CCP at 2-2. The status of these agreements is unknown.	

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	Despite the FWS decision to establish such a boat-free zone which had to be known to NMFS when it was preparing the Draft EIS, NMFS' proposed action (Alternative 2) would allow the Makah to hunt and kill whales within this 200-yard boat-free zone. NMFS, as a sister federal agency to the FWS, should not promote an alternative whaling plan that would directly violate a management decision made by the FWS in order to protect wildlife species that utilize refuge islands. The fact that the boat-free zone is voluntary (since FWS does not have jurisdiction over the water surrounding its islands) is irrelevant given the FWS' stated conservation need for establishing said zone. Alternative 4 is largely mimetic of Alternative 2 except that it prohibits whaling within the 200-yard zone around each island consistent with the FWS management decision. Though the FWS claims that it will enter into agreements with the tribes, presumably including the Makah, to determine when and under what circumstances the tribes may have access to the islands, it is entirely unclear if the Makah can be legally permitted to land and butcher a whale on any of the refuge islands without the FWS having to engaged in additional analysis and/or publish additional regulations to permit such activities. Moreover, considering that the refuge islands are designated as Wilderness Areas, Draft EIS at 3-260, additional restrictions on the use of such islands and on the operation of motorized vehicles or equipment on or potentially near such islands (depending on the established boundary of the Wilderness areas) would apply. These same restrictions would also be relevant to other federal lands that are designated wilderness including within Olympic National Park.	

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	This is further complicated by the fact that the NPS manages a portion of the islands from the mean low-tide mark to the mean high-tide mark. Within these areas, the NPS Organic Act would be applicable. This statute and its implementing regulations provide some of the most protective standards for the management of any federal land areas. Among other things, the NPS must determine if any activity constitutes an impairment of NPS resources including wildlife, air quality, water quality, the viewshed (or the scenic quality), and the natural quiet or the values of serenity/solitude found in national parks. Beyond determining if an activity will cause an impairment, NPS Policies also require the agency to determine if the activity creates an "unacceptable impact." If an activity causes an impairment, the activity must be altered so as to mitigate its impact to avoid an impairment or it must be prohibited. The determination of an "unacceptable impact" is, in effect, a buffer to prevent the NPS permitting any actions that are likely to cause an impairment by avoiding activities that cause unacceptable impacts. Moreover, in nearly all national parks, including Olympic National Park, the intentional killing or slaughter of any park wildlife is prohibited. Thus, if the Makah were permitted to whale and NMFS did not prohibit such whaling within the 200-yard boat-free zone established by the FWS, the Makah could not legally pursue, kill, or finish off a wounded whale, or butcher a whale within the low-tide to high-tide zone around the refuge islands that is under the jurisdiction of the NPS. These same restrictions would apply if the Makah attempted to pursue, kill, dispatch a wounded whale, or land and butcher a whale on any land/water areas under the jurisdiction of the	

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	NPS within that portion of the Olympic National Park which is located along the northwest Washington coast. NMFS has entirely failed to disclose or discuss the jurisdictional issues raised above within the Draft EIS. While some discussion of the responsibilities of the different agencies is provided, the analysis is weak at best and is often confusing and inaccurate. The NMFS must not promote any alternative that would violate the FWS's decision to establish a voluntary 200-yard boat-free zone to protect refuge wildlife. Moreover, it has to disclose and discuss the relevant FWS and NPS laws that are applicable to the pursuing, slaughtering, killing a wounded whale, and/or butchering a whale on lands under the jurisdiction of the NPS or FWS.	
AWI83	**11. NMFS' claims that Alternative 1 would not result in any reduction in gray whale mortality is purposefully intended to dissuade the public from supporting this alternative and is in error:** Throughout the Draft EIS, particularly in Chapter 4, NMFS claims that if it "does not authorize a Makah gray whale hunt, or authorizes a hunt for fewer whales than provided in the bilateral agreement, the Russian Federation could authorize the Chukotka Natives to take any of the unused catch limit." Draft EIS at 4-4, 4-32, 4-44, 4-46. In other words, NMFS is claiming that selection of the no-action alternatives will provide no measurable benefit to gray whales by reducing the numbers slaughtered since whatever number of whales the Makah do not kill can be killed by the Chukotkan natives in Russia. This is a deliberate effort intended to downplay the benefits of Alternative 1 for gray whales thereby biasing public	Our purpose in the 2008 DEIS and the new DEIS is to present factual information, not to persuade. Both describe the likely impacts of proposed action. The practice of Russia over the past several years demonstrates that aboriginal hunters are capable of taking the entire IWC quota and have taken the entire IWC quota in those years when the Makah Tribe has not hunted.

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	opinion against this alternative since it will, according to NMFS, result in no net benefit for the gray whales. At the same time, NMFS may be attempting to set itself up to make a legal argument to counter any lawsuit that may be filed to challenge its decision to permit the Makah to whale by claiming that there is no legal remedy available to provide relief to the harms claimed by any plaintiffs since the same number of gray whales will be killed whether the Makah kill them or not. Such a purposeful effort to bias public opinion against Alternative 1 or to make false claims to bolster some future legal argument is entirely inappropriate and, of course, inaccurate. As an initial matter, the NMFS claim that any whales not killed by the Makah could be killed by Russian natives assumes that only migratory whales would be killed by the Makah. This is a risky assumption considering the behavioral characteristics of resident whales who tend to occupy areas close to the coast and who remain in the area for an extended period of time increasing the likelihood that they would be targeted in a hunt. Migratory whales, though also potentially traversing habitat close to the coast, would not remain within the Makah U&A for as long and, therefore, would not be as susceptible to being hunted. Any resident whales killed by the Makah would not and could not be accessible to the Russian natives. Second, the Chukotkan natives have not taken their full quota of gray whales in recent years if ever and there is no reason to believe that if NMFS rejects the Makah's bid to whale that the Chukotkans will suddenly increase their slaughter of gray whales to compensate for the whales the Makah are not permitted to kill.	

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	Finally, the claim that failure to authorize the Makah whale hunt would, under the terms of the bilateral agreement with Russia, allow the Russian natives to kill any of the unused gray whale catch limit assumes that neither the U.S. nor Russia would seek an amendment to the catch limit quota to reduce it by the number of strikes and whales allocated to the Makah by agreement between the U.S. and Russia. Indeed, if the U.S. denies the Makah's MMPA waiver application and/or if a court were to again rule that U.S. actions were illegal, the U.S. would be obligated to report such developments to the IWC and adjust the catch limit accordingly since, among other reasons, the Russians do not have a legitimate demonstrable need for additional gray whales.[83] If under such a scenario, neither the U.S. nor Russia acts to amend the catch limit, another IWC contracting government could do so in order to ensure that any catch limit accepted for the Russian Federation is consistent with the needs of its native peoples. For the foregoing reasons, NMFS must amend any language contained in the Draft EIS that suggests that the selection of Alternative 1 will not result in a single gray whale being spared slaughter and must reevaluate the environmental impact of Alternative 1 recognizing that its selection would, indeed, save a certain number of whales from human-caused slaughter.	

[83] The current gray whale catch limit authorized by the IWC was obtained prematurely and illegally by the U.S. By seeking a catch limit (jointly with the Russian Federation) in 2007 before complying with its domestic legal obligations as ordered by the court in *Anderson v. Evans*, the U.S. acted prematurely. At that time the Russian Federation should have submitted its own request for a catch limit independent of the U.S. with the possibility that, pending U.S. fulfillment of its domestic legal obligations, the U.S. would submit a separate request or the two countries would submit a supplementary joint request. The failure of the U.S. to withdraw its 2007 request is due to the mistaken belief that it acted legally and may be indicative of a predetermined outcome of the current process which is illegal.

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AWI84	**12. NMFS has failed to adequately address welfare concerns associated with the proposed hunt:** Both US domestic laws and the IWC require that whaling be conducted humanely. Under the MMPA, NMFS must make a finding that any whaling is humane which is defined as inflicting the least possible degree of pain and suffering practicable. Draft EIS at 3-111 citing 16 USC 1362(4); 50 CFR 216.3. The IWC definition of humane killing is "death brought about without pain, stress, or distress perceptible to the animal…" Id. NMFS downplays the significance of welfare concerns associated with the proposed whale hunt based primarily on the alleged relatively rapid kill (8 minutes) of the gray whale slaughtered by the Makah in 1999. Draft EIS at 4-41. Even assuming that this time to death is accurate, NMFS concedes that the whale targeted during the 2007 illegal whale hunt was hit with at least four harpoons and shot 16 times with high caliber weapons but still did not die for some ten hours after being struck with the initial harpoon.[84] The fact that four of the five Makah whalers involved in this incident trained for and participated in the 1999 hunt and that one, Wayne Johnson, was the captain during the 1999 hunt suggests that the reported results of the 1999 hunt may be an anomaly and that future hunts will likely involve significantly more suffering by the targeted whales. While the weapons and munitions used in the various aboriginal hunts differ, the fact that times to death for whales pursued and killed by Chukotkan natives, by Greenland	Comment noted.

[84] While the initial illegal act of pursuing and harpooning the whale was entirely the fault of the five Makah whalers involved in the incident, the significant suffering of the wounded whale and the failure of any agency to humanely euthanize this whale to prevent his/her suffering was entirely the fault of NMFS who, in a graphic display of incompetence, could not make a decision to end the suffering of this whale thereby allowing the whale to endure presumably immense pain for over ten hours.

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	subsistence hunters, and by Alaskan natives are much higher than that reported by the Makah for the 1999 hunt provides additional evidence that the 1999 results may be anomalous and not predictive of future hunt results. In Greenland, for example, where the subsistence hunters have far more experience killing whales than do the Makah, the average time to death for minke whales was 21 minutes with a maximum time to death of 90 minutes. Draft EIS at 3-117. Admittedly, the rifles used by Greenland's subsistence hunters are smaller caliber than the weapons used by the Makah but minke whales are also smaller than gray whales. In Chukotka, where only rifles were used as the killing weapon, the reported average time to death for 40 whales was 47 minutes (minimum 5 minutes, maximum 3 hours and 20 minutes). For Alaskan native whalers reported times to death were also high. Considering the much longer times to death documented in other aboriginal hunts, including the Alaskan bowhead hunt, NMFS fails to consider the possibility that the reported time to death of the whale killed by the Makah in 1999 was an anomaly (though eight minutes can by no means be considered instantaneous) and that future kills will not be so rapid. Consequently, NMFS must assume, for the purpose of its analysis and in regard to its mandate under the MMPA to determine if whaling is humane, that the time to death in future Makah whale hunts is likely to be higher raising significant animal welfare concerns.	
AWI85	**13. NMFS has failed to adequately evaluate the potential health impacts associated with contaminant loads in gray whales:**	Comment noted.

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	The issue of so-called “stinky whales” has been a subject of discussion at the IWC for years based on concerns raised by the Russian Federation over its identification of a small number of whales that emit a medicinal odor and whose meat and blubber is inedible if the whale is killed. Efforts have been made by a number of governments, including the Russian and US governments, to determine the cause of this odor for years yet any laboratory findings or conclusions from such studies either are not being released to the public or have not been completed. There have also been, rather surprisingly, difficulties associated with obtaining, packaging, and shipping appropriate samples for analysis. While conclusive evidence of the source of the reported odor remains unreported or unknown, a report provided by the Russian Federation at IWC/60 claims that it found high levels of PCBE’s in a sample of the liquid taken from a sample obtained from a “stinky” gray whale killed by the Chukotkan natives. The liquid was obtained after the frozen sample had thawed. PCBEs are used as flame retardants in the manufacturing of a variety of household goods and potentially for fighting forest/wildland fires. Since the Chukotkan natives have documented the presence of “stinky” whales it is presumed, but not actually proven, that “stinky” whale also migrate along the west coast of the U.S. and potentially could be killed by the Makah (if the Makah are allowed to whale). While the Makah may elect not to consume any portion of a “stinky” whale, if they did choose to consume any portion of the whale this would raise concerns about the possibility of impacts to their own health.	

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	This is not the only contaminant documented in gray whales that may be of concern both for the health of the gray whale and, if consumed, for the health of the Makah. Though many studies suggest that gray whales have lower levels of heavy metal contaminants compared to other marine mammals, there are other persistent organic compounds that may be of greater concern particularly due to potential health impacts to the Makah. NMFS, for example, reports that "numerous researchers have documented concentrations of organic and inorganic contaminants in the tissues (muscle, organs) of the gray whales proposed for hunting by the Makah. Draft EIS at 3-301 citing Varanasi et al. 1994; Jarman et al. 1996; Krahn et al. 2001; Mendex et al. 2002; Ruelas-Inzunza and Paez-Osuna 2002; Tilbury et al. 2002; Ruelas-Inzunza et al. 2003; Dehn et al 2006a; Dehn et al. 2006b). Table 3-44 in the Draft EIS (page 3-304) contains a list of the concentrations of organic compounds measured in freshly harvested and stranded gray whale tissues including DDTs, dieldrin, hexachlorobenzene, and PCBs. NMFS fails, however, to explain if these levels are in excess of what is considered safe for human consumption. Since NMFS is considering the possibility of allowing the Makah to hunt and consume gray whales, it must do more than simply disclose the level of various contaminants found in gray whales by comparing these levels to any government safety standards. Considering the amount of seafood consumed by the Makah, the amount of contaminants (i.e., heavy metals, organic compounds, and other toxic chemicals) likely or documented to be in those foodstuffs (e.g., salmon, halibut, shellfish), and other contaminants in the environment, the cumulative	

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	impact of continuing to consume their existing diet while potentially adding gray whale blubber/meat/organs to their diet may pose unique yet unknown risks to the health of Makah tribal members. NMFS concedes that such cumulative impacts may be of concern. "While there is documented evidence of the beneficial effects of the nutrients in marine foods, persistent and potentially toxic chemicals also occur and are documented in the diets of native subsistence populations (citation omitted). In considering the type and amount of chemicals the Makah could ingest by consuming whale products, their continuing exposure to these contaminants is also a result of their ongoing, high consumption of other seafood products, including finfish and shellfish." Draft EIS at 3-301. Because of this potential cumulative impact posed by the Makah's consumption of various seafood products, including potentially gray whale, all of which may contain some level of contaminants, NMFS must do more than simply disclose information about chemical and other contaminants in gray whales. Instead, it must actually assess the likely impact of the consumption of gray whale products alone and in combination with the other traditional food products used by the Makah on human health.	
AWI86	**14. NMFS analysis of the social environmental is incomplete, inaccurate, and biased:** According to NMFS and the Makah, a resumption of whaling is necessary to promote the restoration of Makah cultural and to achieve a spiritual awakening among tribal members. As stated in the Draft EIS, "the Tribe believes it must revive these	The Makah Tribe asserts that a revival of their culture is necessary to combat social ills within the society, and that a resumption of whaling is necessary to pursue their cultural revival (Makah 2005a). The 2008 DEIS and the new DEIS draw limited conclusions about the effects of authorizing or not authorizing a Makah whale hunt. Specific elements of the DEIS conclusions are discussed further below.

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	traditions (whaling) to combat the social disruption resulting from the rapid changes of the last century and a half." Draft EIS at 3-213. Examples of such social disruption are teenage pregnancy, children dropping out from high-school, substance abuse, and juvenile crime. In other words, the Makah believe that a resumption of whaling will help address these social problems by presumably restoring pride and reinvigorating the role of traditional culture into the lives of tribal members. NMFS, however, provides no evidence to suggest that such beneficial impacts are likely to result if it allows the tribe to whale. If these and other specific problems are, in fact, the basis for allowing the Makah to whale, NMFS should quantify the current severity of such social problems on the reservation so that, in the future, the impact of whaling on such social issues can be actually measured.	
AWI87	NMFS suggests that whaling will provide benefits to the tribe beyond merely providing access to gray whale meat/blubber as it will increase the interests of young people in learning the Makah's traditional language, in practicing ceremonial rituals associated with whaling, and by giving the youngsters role models in the community. It is, however, unclear why whaling needs to be practiced for these benefits to be realized. Indeed, the Makah already have initiated a program to encourage its tribal members to learn the traditional language, it is not barred from engaging in any ceremonies, and surely there presumably already are individuals in the community that can and should be role models for the younger generation. Many of these efforts were begun decades ago well after the Makah voluntarily gave up whaling in pursuit of the more financially lucrative activity of sealing. Despite the fact that the tribe has killed only one whale in eighty years, these programs designed to revive Makah cultural have persisted for decades.	The 2008 DEIS concluded that under Alternative 1 (no hunt) the Makah Tribe could engage in many activities, practices, and ceremonies associated with whaling (Subsection 4.10.3.1, Alternative 1), while under Alternative 2 (the Tribe's proposal), the Tribe could engage in more activities, practices, and ceremonies associated with whaling (Subsection 4.10.3.2.2, Opportunity to Resume Whale Hunting). The assertions here do not undermine that conclusion.

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AWI88	Though the Makah claim that it must resume whaling to promote a cultural and spiritual revival among its people, this is simply not true. As evidenced in the Draft EIS, in the 1960s a small group of elderly Makah women initiated an effort to teach other tribal members about the cultural traditions of their people. Draft EIS at 3-239. At about the same time valuable archeological discoveries were being made at the Makah's ancient Ozette village site. These discoveries also provided an important impetus for renewed respect of and interest in the knowledge of Makah elders. As a result of these discoveries the Makah Cultural and Research Center was created to support Makah cultural activities. Draft EIS at 3-239. Indeed, from the 1960's to the present the Makah have engaged in many efforts to revitalize their traditional culture. To what degree these efforts have been successful is not disclosed in the Draft EIS. If they have been successful then this diminishes the alleged cultural need for whaling. If they haven't been successful then it's unclear if a return to whaling will actually reverse such trends or aid in addressing the social problems on the reservation.	The DEIS describes in general terms some of the results of the Makah Tribe's cultural revitalization that began in the 1950's and 1960's (Subsection 3.10.3.5 Contemporary Makah Society). It is unclear what the commenter means by success beyond this general description of the results.
AWI89	A great deal of emphasis is placed on the alleged spiritual and physical preparations undertaken by those who participated in the 1999 hunt. While it is hoped that such preparations were undertaken by all who participated in the hunt, there is no proof that all participants engaged in all traditional preparations particularly those of a spiritual nature. There also was and is no requirement that those participating in the hunt engage in such rituals (i.e., ritual bathing, praying, rubbing the skin with boughs and nettles, engaging imitative performances; Draft EIS at 3-227) or that there family members do so as was the case historically (i.e., the whaler's wife would be expected to lay quietly and still while her	Comment noted.

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	husband was out whaling so that the whale "would give itself to her husband"; Draft EIS at 3-228. Moreover, despite the alleged importance of such spiritual and physical preparations for whaling, there is no evidence that such preparations were made before the five Makah tribal members (including four who participated in the 1999 hunt) engaged in the illegal hunt of a gray whale in September 2007. These individuals were not engaged in the exercise of any spiritual journey, they simply had grown impatient with the current NEPA and MMPA process and wanted to make a statement about the tribe's alleged treaty right.	
AWI90	The bulk of the information contained in the Draft EIS regarding the social environment and discussions about the history of whaling, the spiritual importance of whaling, and the cultural value of whaling to the tribe is from work done by Renker. While Renker's qualifications to conduct the work, including preparation of the tribe's 1997 and 2002 needs statements submitted to the IWC, may be appropriate, she cannot be considered unbiased due to the fact that she is married to a member of the Makah Tribe who was or is a member of the Makah Whaling Commission. It is understood that NMFS was aware of this clear conflict of interest but elected to not engage any other qualified anthropologists who would not have such a clear conflict to review and critique Renker's analyses or to prepare an independent report documenting the tribe's alleged needs.	Dr. Stephen Braund assisted in development of the 2008 DEIS. Dr. Braund visited the Makah reservation and interviewed tribal members. He also reviewed Dr. Renker's work and included references to it in his report. We also retained Dr. Dorothy Kennedy to review our presentation of Dr. Renker's work and provide comments. The names of both of these cultural anthropologists appear in the list of preparers.
AWI91	The bias of Renker is best reflected in her conduct of at least two Makah household surveys conducted in 2001 and 2006 which were intended to measure Makah interest in whaling. One of many deficiencies in the 2002 survey methodology and implementation was the fact that when the researchers identified four Makah households known to be opposed to	The new DEIS provides a more complete description of the methods and results of Renker's household survey (Subsection 3.8.3.1, Makah Tribal Members). The text now makes clear that for the 2001/2002 survey, the numbers reported are a percentage of those who responded to the surveys, not a percentage of tribal membership or even a percentage of those surveyed. We agree that where the draft EIS relies on the 2001/2002 survey as evidence of the level of support for

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	tribal whaling in their random selection of households to survey, those households were not surveyed. Instead the researchers completed the survey for those households answering negatively to all questions regarding support of the hunt or use of whale products. Not only is this entirely inconsistent with any valid survey methodology but it also raises a question as to whether the researchers manipulated the data of the households that were surveyed to generate results that would suggest that whaling has more tribal support than it actually does. The deficiencies inherent in Renker's surveys along with her clear conflict of interest raise serious questions about her objectivity. Given these issues, NMFS cannot simply accept Renker's findings but rather, must independently verify such information either by having qualified NMFS staff undertake a review or by contracting with external experts (who do not have a conflict of interest) to engage in such an analysis.	and interest in whaling within the Makah Tribe, the DEIS should not overstate the conclusions. To further ensure that NMFS decision-makers give appropriate weight to the information from Renker's household surveys, a discussion of the limitations of the data from the surveys has been added to the new DEIS. We have also included the information that Renker has lived on the reservation for many years and has close ties to the community.
AWI92	**15. NMFS contracting with Parametrix Inc. to assist in the preparation of the Draft EIS presents a clear conflict of interest:** It has long been suspected if not known that NMFS had entered into a consultative relationship with a private firm, Parametrix Inc., for assistance in compiling relevant information, analyzing the information, and preparing the Draft EIS. In the List of Preparers and Agencies Consulted in the Draft EIS, a Parametrix Inc. official is listed as the Parametrix Project Manager. While there is nothing untoward or illegal about NMFS hiring a private consulting firm to prepare a NEPA document, Parametrix Inc. has a clear conflict of interest in this case which should have immediately disqualified it from consideration as a consultant in the preparation of the Draft EIS.	As is allowed by law (40 CFR 1506.5c), we employed a contractor to assist in preparation of the draft EIS, under the supervision of NMFS staff, and using a competitive and documented process to select Parametrix. At the beginning of the contract, the contractor disclosed that it also had a contract with the Makah Tribe to assist in the development of the Cape Flattery Tribal Scenic Byway Scenic Corridor management plan. After the unauthorized hunt in September 2007, members of the public raised questions about additional work Parametrix was performing for the Tribe. When questioned by NMFS about the additional work, Parametrix provided information on the details of the subsequent contract, and affirmed that it had obtained the work for the Tribe in a competitive process. Also as required by federal law, Parametrix and its subcontractors have signed disclosure statements prepared by NMFS as affidavidts that there is no conflict of interest by being employed by both the Tribe and NMFS (40 CFR 1506.5c). We accepted the disclosure statements in good faith, and conducted due

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	This conflict is due to the fact that the Makah Tribe has routinely hired Parametrix, Inc. to prepare various reports or analysis for the use of the tribe. NMFS has also used and continues to use Parametrix as a consultant on some of its other fishery related projects. While the latter relationship is of no significant consequence, the former relationship is of serious concern as it taints the objectivity of the entire Draft EIS. As a consequence of this existing and potentially long-term professional and financial relationship between Parametrix and the Makah, a conflict of interest in NMFS hiring Parametrix to prepare the Draft EIS is indisputable. The fact that Parametrix officials signed a government form claiming not to have a conflict of interest is entirely erroneous given the firm's preexisting relationship with the tribe. Moreover, the explanation provided by Makah Tribal Chairman Micah McCarty at the June 2008 public meeting at which the Draft EIS was discussed that the specific Parametrix office working on the Draft EIS is different than the office who had worked and continued to work with the Makah on its projects is irrelevant. Parametrix is Parametrix regardless of what office worked on what project. NMFS did not disclose the role of Parametrix in preparing the Draft EIS anywhere in the actual document with the exception of the listing of the Parametrix Project Manager at the end of the document. It is not clear if Parametrix was responsible for the preparation of the entire Draft EIS or only portions of the analysis. If the latter, it is not clear what portions were the responsibility of Parametrix. This conflict of interest problem is significant and can't be remedied except by NMFS terminating	diligence reviews of Parametrix's role as a contractor for the Tribe. We concluded that there was no potential for conflict to occur, and further, no biased information could be inserted into the draft EIS under our sole supervision. Producing an EIS is the responsibility of the federal action agency (40 CFR 1506.5(a)(c)). We are responsible for the content and process. We do not consider the relationship between Parametrix and the Tribe to have compromised the integrity of Parametrix's work product, and in any event are confident that in exercising our oversight we have ensured the document is a product of our analysis.

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	the existing process and starting anew by either preparing an analysis in-house or be hiring another consultant, that does not have any financial or professional ties to the Makah tribe, to prepare the new environmental document. Continuing this process without addressing this serious problem is unacceptable and could result in the entire document being invalidated by a court of law.	
AWI93	**16. NMFS has underestimated the potential precedent that would be set if it authorized Makah whaling by granting the requested waiver:** NMFS largely discounts the possibility that if it were to grant the Makah the requested MMPA waiver, authorize the tribe to engage in aboriginal whaling, and allocate a gray whale quota to the tribe that a dangerous precedent would be set. Specifically, the possibility exists that if the Makah were allowed to whale then other tribes may seek similar opportunities, other countries may use this as justification for aboriginal whaling requests for their aboriginal groups, and/or it would lead to additional MMPA waiver requests. It provides virtually no credible data or analysis to substantiate these claims apparently believing that wishful thinking is a sufficient basis for ignoring such precedential impacts.	The points summarized in this introductory paragraph are addressed below.
AWI94	In regard to other tribes, NMFS claims that the Makah are the only tribe whose treaty explicitly protects its whaling practices. While this may be true, it ignores the fact that many of the other treaties between the U.S. and various tribes protect tribal rights for fishing and hunting. For tribes that occupied coastal areas, hunting may have very well included the pursuit and killing of marine mammals including cetaceans. The mere fact that the treaty language does not explicitly reference whaling may not be sufficient in a court of law to convince a	Contrary to this assertion, the 2008 DEIS stated that “some Northwest Indian tribes traditionally harvested and used products from . . . marine mammals;” that tribes in the past have “expressed an interest in harvesting marine mammals;” and that “some tribes may continue to believe and assert that their treaty rights to take marine mammals are not subject to the MMPA.” It concluded that a waiver for the Makah Tribe “may influence these other Indian tribes in the Northwest and nationally to seek waivers of the moratorium to take marine mammals,” and that the “outcomes of any future processes would depend on facts not presently known, but it is possible that [a waiver] could

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	judge that a tribe that can document a history of hunting cetaceans did not intend to protect that practice when it signed a treaty with the U.S. government protecting its hunting rights.	lead to increased federally authorized take by other Indian tribes." Subsection 4.17.2.1.2, Increased Take of Marine Mammals by Indian Tribes.
AWI95	NMFS discounts the possibility that other tribes would seek aboriginal status under the WCA by arguing that no tribe has done so even though the Alaskan natives were granted such status 29 years ago while the Makah gained said status 9 years ago. Draft EIS at 4-199. This claim ignores the fact that the Alaskan natives were granted an exemption from the prohibitions of the MMPA and that the Makah's efforts to resume whaling have been highly controversial and subject to two federal lawsuits. The lawsuit may have dissuaded other tribes from pursuing similar opportunities. Those tribes may be waiting to see if NMFS is successful in authorizing whaling by the Makah and if such permission withstands any potential legal challenge. If that were to occur, other tribes may then pursue opportunities mimetic of those provided by the Makah believing that there proposals would be less controversial since the precedent would have already been set by the Makah.	Because no other tribes have requested a quota under the WCA, the 2008 DEIS states "NMFS considers it unlikely that publishing a WCA gray whale quota for the Makah's use . . . would influence other tribes to seek WCA quotas." Subsection 4.17.2.1.3, Increasing Aboriginal Subsistence Whaling and Harvest of Whales. The commenter cites reasonable factors that could have discouraged other tribes from seeking an aboriginal subsistence whaling quota. Accordingly, the new DEIS states, "it is uncertain whether publishing a WCA gray whale quota for the Makah Tribe's use . . . would influence other tribes to seek WCA quotas" (Subsection 4.17.2.1.3, Increasing Aboriginal Subsistence Whaling and Harvest of Whales).
AWI96	NMFS must disclose information about other tribal treaties in its analysis and should consult with appropriate legal scholars and/or the relevant case law as to the likely interpretation of hunting rights as applied to coastal tribes. If the courts, as is likely, are predisposed to interpreting the language of treaties quite broadly, NMFS cannot discount the likelihood that granting permission to the Makah to whale could open the floodgates of proposals from other tribes to be provided similar opportunities.	As noted above, we have adjusted the conclusion in the new DEIS regarding the likelihood of other tribes seeking a WCA quota.
AWI97	Though NMFS discounts the precedential impact of granting the requested waiver to the Makah, Draft EIS at 4-198, it concedes that its waiver of the moratorium and issuance of	The challenge to Alaska's management of walrus was brought by Alaska Natives based on the fact that the MMPA exempts them from the take prohibitions. NMFS' return of authority to the State of Alaska could not give Alaska the

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	regulations and permits for the Makah to hunt whales "has the potential to lead to additional requests for MMPA waivers from non-Indians or Indian tribes, and ultimately to the federally-authorized take of additional marine mammals," Draft EIS at 4-197, and that "it is possible that implementation of Alternatives 2 through 6 could lead to increased federally authorized take by other Indian tribes." Draft EIS at 4-198. Despite acknowledging the possibility of such impacts, NMFS uses Alaska's request for a waiver for 10 species submitted in 1976 as evidence of a likely lack of precedential impact of the issuance of a waiver to the Makah by arguing that Alaska's request did not generate additional requests from other states. Draft EIS at 4-198. Of course, this may be due to a successful legal challenge to this waiver by Alaskan natives. Draft EIS at 4-197.	authority to regulate Native takes (*People of Togiak v. United States*, 470 F.SUPP. 423 (DC 1979)). In 1981 Congress amended the MMPA to make it easier to return management authority to the states and to overrule the decision in that case (H.R. 97-228, 97th Cong., 1st Sess. 1981, reprinted at 1982 U.S.C.C.A.N. 1458, "The purpose of this language is to explicitly overrule the decision of the United States District Court in People of Togiak v. United States"). Accordingly, based on the lack of requests for waiver of the take moratorium or for return of management authority from any state other than Alaska, the new DEIS continues to conclude that future requests are unlikely, even if we waive the take moratorium in response to the Makah Tribe's request (Subsection 4.17.2.1, National Regulation of Marine Mammal Harvest).
AWI98	In regard to the implications of a Makah whale hunt within the IWC, NMFS claims that countries may choose to use the Makah example to justify their future proposals to allow aboriginal or similar whaling in their countries but that this will not alter the position of the U.S. in regard to its opposition to commercial whaling, will not affect the existing moratorium, and will not prevent the U.S. from actively pursuing its positions within the IWC. Draft EIS at 4-200. Considering that the U.S. is currently leading an IWC effort to develop a compromise package that may permit the resumption of commercial whaling and/or create a new category of so-called community based whaling to placate the Japanese and its allies, the U.S. claims that the Makah whale hunt would not or has not altered its internal policies in regard to the most contentious issues within the IWC are invalid.	The United States' delegation to the IWC has offered compromise proposals that would allow limited commercial whaling including small-type coastal whaling by Japan. The quid pro quo within these proposals is that Japan must severely decrease its research whaling. The commenter offers no evidence to support the suggestion that the United States is seeking a compromise that would allow commercial whaling and small-type coastal whaling because of the U.S. position on Makah whaling.
AWI99	NMFS concedes that Japan or other countries could use approval of Makah whaling -- given the tribe's substantial	The United States authorized the Makah Tribe's whale hunt in 1998, 1999, and 2000. Any impacts claimed in this comment have already occurred.

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	hiatus in whaling – as evidence of the expansion of the definition of aboriginal subsistence whaling (which it certainly is). This expansion, Japan and its allies would argue, provides precedent for the IWC to approve whaling operations similar to aboriginal subsistence whaling activities (i.e., coastal whaling) which, like the Makah's hunt, don't precisely meet the IWC accepted definition of such activities. Draft EIS at 4-201. NFMS discounts such an impact by claiming that this argument has been made even in the absence of the Makah hunt. While this may or may not be true, it is indisputable if NMFS ultimately allows the Makah to hunt that countries will exploit that approval to seek IWC approval for subsistence-like hunts in their own countries. In essence, U.S. approval of Makah whaling will be a de facto expansion of the definition of subsistence use.	
AWI100	While the U.S. continues to claim that its position on commercial whaling, the moratorium, scientific whaling, and other hot button issues within the IWC has not changed as alleged by conservation groups, the fact is that over the past decade or so (remarkably coincidental with the U.S. efforts to secure a gray whale quota for the Makah), U.S. whale conservation efforts and policies have weakened considerably. The Alaskan bowhead hunt and obtaining the bowhead quota every five years from the IWC has become the key issue that now dictates all other U.S. positions within the IWC. Considering the time and expense incurred by the U.S. in its continuing efforts to permit the Makah to whale, it is clear that this issue may be of equal importance to the government thereby also becoming a key consideration in U.S. deliberations on IWC issues of concern.	U.S. efforts to seek a compromise on commercial whaling have expanded as the Japanese research whaling has expanded. As in all parliamentary arenas, the many participants have many goals. The United States' express goals have included a halt to commercial whaling and support for international conservation efforts.
AWI101	Finally, as NMFS concedes in the Draft EIS, not a single previous MMPA waiver application that it has processed has ever resulted in a successful waiver of the MMPA. Draft EIS at	The assertions in this comment are speculation. The commenter points to no information beyond that considered in the 2008 DEIS that would inform predictions regarding future waiver requests.

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	3-312. Though NMFS has previously approved such applications, those have been found to be invalid by the courts. The issuance of a waiver to the Makah could, if not invalidated by a court, provide a blueprint of sorts for future waiver requests which, predictably, would be filed more frequently if the Makah "model" succeeds. This would not only require NMFS to expend considerable resources to complete the complicated waiver process but could also begin to impact marine mammal populations depending on the final disposition of such applications.	
AWI102	**Conclusion:** For all of the reasons articulated above, NMFS has no choice to either select Alternative 1 (the no-action alternative) or terminate the current process and begin anew by preparing a more complete and objective analysis of the impacts of Makah whaling. As drafted, the Draft EIS is woefully inadequate and does not comply with the legal requirements of NEPA. NMFS has failed to disclose all relevant information, its analysis of environmental impacts is incomplete or weak, and it has completely failed to evaluate the all reasonably foreseeable cumulative impacts of the proposed action. A new EIS or a supplement to the existing EIS is required if NMFS intends to continue to pursue its efforts to permit Makah whaling. Thank you for considering these comments. Sincerely, D.J. Schubert Wildlife Biologist Animal Welfare Institute	The points summarized in this concluding paragraph are addressed above.

D. Sandstrom – Comments submitted August 15, 2008.

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DS1	Thank you for the opportunity to comment on the DEIS for the proposed Makah whale hunt. My comments are listed below. 1. The DEIS is insufficient because it does not adequately assess the potential long-term impacts to the whales behavior, and associated negative impacts on the regional economy. The emergence of friendly gray whale interactions is a relatively new phenomenon, beginning with spontaneous interactions between native people in Baja and the whales in the 1970s. This relationship, and the cross-species trust that is at the heart of it, is fostered and encouraged by a whale-watching industry from Baja to Alaska, drawing millions of visitors from around the world to the west coast. The DEIS blithely assumes that there will be no net change in the whales' behavior if the Makah hunts are allowed to continue. How can NOAA and its consultants be so sure, and what are they risking if they are wrong? The friendly behavior and the trust that engenders it can be unlearned as surely as it was learned. How many hunts will it take? The issue is exacerbated for the whales that the Makahs are most likely to hunt. Based on the two hunts that have occurred, the Makah will kill resident whales. To the extent that they are able to find other food sources, how long will it be before the resident whales learn to avoid Washington's west coast? The potential negative impact on the entire region, including other tribes and businesses who depend on ecotourism associated with gray whales, deserves serious and further evaluation. For example, surveys assessing the impact of and support for the hunt should be submitted to and completed by residents of the state beyond the Makah tribe.	This comment claims the DEIS is inadequate because it doesn't address certain effects. The DEIS fully analyzes the potential for a Makah hunt to cause whales to avoid the Makah U&A (refer to Subsection 4.4.2.4, Change in Numbers of Gray Whales in the Makah U&A and OR-SVI Areas and Subsection 4.4.3, Evaluation of Alternatives). The conclusion of the analysis is that such a change in distribution is possible, though not likely.
DS2	2. The DEIS is insufficient because it labels this activity a "hunt," and does not address the critical fact that the whales themselves have changed. The Makah cannot recreate the cultural experience of their forefathers because the whales do not fear them (yet). To kill a friendly gray whale who approaches a canoe in a complete act of trust requires no more courage than kicking a puppy. It is spiritually and ethically bankrupt for the tribe to conflate this activity with any experience their ancestors might have had, and irresponsible of NOAA to participate in the confusion.	Comment noted.
DS3	3. The DEIS is insufficient because it does not explore or promote an alternative that protects the whales and the ecosystem, as well as the long-term cultural recovery and economic interests of the tribe. The Makah have not benefited economically or socially from the two previous hunts that have occurred. In fact, they may have suffered from unofficial boycotts. Significant numbers of the public, who are generally supportive of the tribe, are sickened by the brutality of the whale hunts that have occurred. Public response to the last, illegal hunt conducted by the tribe in September 2007 was overwhelmingly negative. The Seattle Times reversed its earlier endorsement of the hunt and cited its opposition to the practice in an editorial (Sept. 2007) The Makah could take advantage of their ancestral connection with the whales and their year-round proximity to the resident population to create an ecotourism industry at Neah Bay. This would offer the best long-term economic solution to the tribe, and best support NOAA's mandate to protection and preserve the	The DEIS explains why certain alternatives implied by this comment were considered but not analyzed in detail.

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	whales and their ecosystem. NOAA should take a leadership role in supporting the tribe to execute their treaty right in a manner that is culturally sound, economically viable, and consistent with long-term protection of the whales and the tribe. None of the alternatives proposed meet those criteria.	
DS4	4. The DEIS is insufficient because it does not address the illegal hunt conducted by the tribe in September 2007, and its negative impacts on the whales, the general public, and NOAA's ability to manage the species. In September 2007, members of the Makah tribe, including three members of the Whaling Commission, harpooned and shot a gray whale in the nearshore waters of the Straits of Juan de Fuca. Though the whale sank before it could be positively identified through DNA, it was anecdotally identified as a resident whale, so familiar to locals it had a nickname. By taking a resident whale in an area outside the hunting area, without a permit, and at a time that only resident whales were likely to be in the area, the Makahs demonstrated an utter disregard for preservation of the subspecies, and complete contempt for NOAA's authority and the existing rules of law. By not punishing the tribal members associated with the activities, the tribe demonstrated it is unwilling or unable to regulate its own tribal members with regard to whaling. For these actions, the tribe should not be rewarded with expanded opportunities to whale. The public has lost confidence that the tribe will abide by any agreement tendered under any alternative that NOAA selects.	The 2008 and new DEIS both describe the details of the unauthorized 2007 hunt. The new DEIS further elaborates on the law enforcement outcomes following that hunt.
DS5	4. Finally, the DEIS is insufficient because it does not address the long-term negative impacts for the whales and all species of the public must endure and then becomes accustomed to seeing whales killed, butchered and eaten again. The conservation movement that gave rise to the MMPA, and shift in public awareness that accompanied it, is one of the great environmental successes of the last century. The recovery of the gray whales is one of the MMPA's most celebrated successes. If NOAA elects to undermine the MMPA by allowing the Makah to so egregiously violate it, it also risks a huge erosion in public will to support or practice stewardship for other species. Over time, that will impact NOAA's long-term ability to protect and preserve not just the gray whales but all marine mammals. For example, it seems ironic if not hypocritical to issue a ticket for violating the MMPA to a boater in the San Juans, yet looks the other way while the tribe is butchering whales a little further west down the Strait.	Potential impacts to the suggested resource – "all species" – through the suggested mechanism are too speculative.

D. Weinstein – Comments submitted August 14, 2008.

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DW1	As a concerned citizen, I would like to submit the following comments concerning the 2008 Makah DEIS: 1. The DEIS, as well as the previous Environmental Assessment (EA), contains bias, half-truths, fallacies and misrepresentations. As for example, on page 3-290 the DEIS states that "One jet ski operator ran into a Coast Guard vessel" even though television cameras clearly showed the Coast Guard boat intercepting in such a way as to cause the jet ski operator to be hit and run over. This and other subtle and not so subtle variations from the truth taint the entire document.	In response to this and related comments, the new DEIS now states that a jet ski operator "collided with" a coast guard vessel.
DW2	2. The DEIS is also tainted by NMFS's history of closeness with the Makah and their unwavering support of the whale hunt. As for example: · Showing strong support and backing for the whale hunt in the media and other statements and actions. · Allowing a cultural presentation by the Makah at previous EA hearings and not allowing others to also make presentations. · Allowing printed materials from the Makah to be distributed at the EIS Public Scoping Meeting without also allowing written material from those opposed to the whale hunt. The materials in question included The Makah Nation on Washington's Olympic Peninsula Visitor Guide and The Makah Indian Tribe and Whaling: Questions and Answers Makah Tribal Council and Makah Whaling Commission January 2005. · Minimizing and dismissing public comments on the previous EA (90% of these comments were against allowing the whale hunt). · Discouraging public comment with the overwhelming 900 plus page DEIS along with a short comment period. · Refusing to listen, accept, and recommend reasonable alternatives to the hunt.	Comment noted.
DW3	3. An independent citizen and scientific review board, outside of NMFS and other government influence, should edit the DEIS as well as other documents for truth and accuracy.	Comment noted.
DW4	4. The public input process for the DEIS was flawed. At the October 2005 public scoping meeting in Seattle, the attendees were divided into groups and a facilitator wrote down their comments and alternatives on a flip chart.	Same response as to comment #1 above.

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	These ideas were so condensed and mangled by the process that they were no longer recognizable, and yet this is what was then supposed to be used to develop the alternatives in the DEIS.	
DW5	5. The May 2008 DEIS meeting in Seattle was also flawed and biased. People had to choose between giving/listening to oral comments or attending a question and answer session. There was a signup sheet to give oral comments and if you were attending the Q & A session, the questions had to be written down prior to the session on blue cards. Only three people signed up to give oral comments, all of which spoke against the whale hunt. The facilitator then allowed other people to speak in favor of the whale hunt, even though they had not signed up. After giving comments, I attended the remainder of the Q & A session and they refused to allow me to ask additional questions because they had not been written down previously on the blue cards. The meeting was then disbanded even though it was a full hour prior to the stated end time. People should not have to choose between giving oral comments and asking questions. If the rules were bent to allow additional people to speak, they should have also allowed people to ask additional questions, especially when there was a full hour remaining.	Comment noted.
DW6	6. The alternatives presented in the DEIS go above and beyond what the Makah have asked for and show a pro-whaling bias by NMFS. Real alternatives such as a ceremonial hunt where the whales are not actually injured or killed, development of ecotourism, and federal compensation for not hunting should have been included but were wrongly dismissed.	The new DEIS examines different alternatives. The alternative of a ceremonial hunt was considered but not analyzed for the reasons described in the 2008 and the current DEIS.
DW7	7. NMFS has repeatedly stated that the Makah have a treaty right to hunt whales. The treaty states that, “The right of taking fish and of whaling or sealing and usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of United States ...”. Since the citizens of the United States do not have the right to hunt whales, neither do the Makah. This key clause is conveniently excluded throughout the DEIS and other documents.	The purpose of the EIS is to examine the effect of alternatives, not determine legal issues.
DW8	8. NMFS has repeatedly stated that the IWC gave permission for the Makah whale hunt. The DEIS should state the truth that the IWC did not give permission and that this was just a side agreement between the U.S. and Russia.	The 2008 and new DEIS fully describe IWC actions.
DW9	9. The DEIS needs to explain why the NMFS thinks that the IWC gray whale quota applies to the Makah and why a separate specific request has not been made.	The 2008 and new DEIS fully describe the U.S. position and IWC actions.

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DW10	10. The idea that the Makah whale hunt is needed for subsistence is unfounded and is not recognized by the IWC. The original request for five whales per year is based upon five ancestral villages, not a dietary need. The DEIS fails to mention that the IWC has never recognized the Makah subsistence need.	Comment noted.
DW11	11. The claim of cultural need for the Makah whale hunt is also unfounded and sets a dangerous precedent that could be used to justify repeating all kinds of cruel, senseless, and horrible acts of violence. Cultural killing of whales is akin to animal sacrifice. Times have changed since the Makah originally hunted whales and there is no going back. This is the 21st century and cultural traditions that involve violence and killing should be left in the past. The DEIS needs to address animal sacrifice and its damaging effect upon society.	Comment noted.
DW12	12. If a waiver is granted under the Marine Mammal Protection Act, this sets the stage for other groups or commercial enterprises to do the same thing. The DEIS needs to clearly address this weakening of the MMPA.	This issue was explored in the 2008 DEIS and is dealt with more fully in the new DEIS.
DW13	13. The DEIS wrongly minimizes the negative health effects of eating whale meat. Whale meat is full of toxins, contaminants and food-borne pathogens and is especially unhealthy and dangerous for children to eat, however, the DEIS states that there is insufficient information for it to be considered a problem.	The new DEIS explores this issue in more detail.
DW14	14. The DEIS wrongly minimizes the negative aspects on the Makah such as the further separation and isolation of the Makah from mainstream America, which will do nothing but intensify their social and economic problems. The whale hunt has further divided our society and has encouraged anger and hatred.	The 2008 and new DEIS examine the effects of the alternatives on the social environment.
DW15	15. The DEIS should fully address the violent message the whale hunt sends to our children. How do you reconcile the joy of watching these highly social and intelligent creatures, then turn around, and allow them to be harpooned just because someone's ancestors have done so in the past.	Comment noted.
DW16	16. The DEIS should fully address the human emotional and psychological impacts of seeing a whale killed and our waters turning red with blood.	Comment noted.
DW17	17. The DEIS states that the whales should be killed humanely. There is no humane way to kill a whale. It cannot be determined when death actually occurs and they can suffer for hours. The Makah say that they will get better at killing with practice. This obviously did not occur with the illegally killed whale that took eleven hours to die.	Comment noted.

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	The whale was harpooned and shot 16 times, and this was done by men who had trained and participated in the previous hunts.	
DW18	18. The DEIS states the No-Action Alternative #1 will not result in fewer whales killed, because if the Makah do not kill the whales then the Chukotka Natives will. This is the same as saying we should not protect migratory species in this country because if we do not kill them, other countries will. Just because another country allows killing, it does not mean that we should.	The purpose of the EIS is to examine the effects of the alternatives.
DW19	19. Our resident whales need to be fully protected and the DEIS should not trivialize the issue. A full scientific study needs to be done to identify our resident whales and how their numbers are replenished. Since the "experts" can only guess at this point, they should err on the side of caution.	Since publication of the 2008 DEIS, NMFS and others have conducted additional research into stock structure of PCFG whales. These studies are described and discussed in the new DEIS.
DW20	20. According to the DEIS, the estimated population of the Eastern North Pacific Gray Whales has dropped 33% from 29,758 in 1997/1998 to 20,110 in 2006/2007. A 33% drop in population is huge and needs to be fully explained and not just dismissed as a normal change in population. With such a drop in population, it is imprudent to allow whales to be hunted. In addition: · IWC Commissioner Doug De Master said that the gray whale population is estimated at 17,000 whales, which is a full 3000 less than the NMFS estimate. · The IWC Scientific Committee and the Marine Mammal Commission have requested new studies to ascertain the current status of the whales. These requests have been ignored by NMFS. · Canadian researchers estimate the population to be as low as 15,000. When the population was at this level before, the whales were listed under the Endangered Species Act. · There has been a significant reduction in the number of calves. Last year's count was 100. · Global warming is creating food shortages and many whales are showing signs of emaciation. · The whales are migrating later and seeking other feeding areas. · There has been a significant increase in the number of "stinky" whales. · Oil and gas development rapidly accelerating in the gray whale feeding areas. · According to new genetic research the original population of gray whales was 118,000. The remaining population is a tiny fraction of the original population and the IWC quota of 140 whales will put the survival of the gray whales at risk.	The new DEIS presents current information on ENP gray whale abundance and trends, as well as current information on calf production.

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DW21	21. DEIS Table 4-1 Primary Differences Among Alternatives, And Associated Assumptions for Analysis shows the assumed number of whales with harpoon attempts and approaches, number of rifle shots, etc. These assumptions are based upon 1999-2000 hunts. The data from the illegal hunt should also be included since several of the men had trained and participated in the previous hunts.	In response to this and similar comments, we re-examined and adjusted the methods we used to estimate the likely numbers of hunt days, harpoon attempts, shots fired, etc. These new methods, and the results of applying them, are described in the new DEIS (for example, see Subsection 4.1.2, Alternative 2).
DW22	22. The DEIS wrongly minimizes the negative effects on other wildlife including endangered species. The whale hunt would have a negative impact on other birds, fish, and mammals, as their lives would be disrupted by boats, helicopters, and guns being fired in our National Marine Sanctuary.	These effects are considered. The comment offers no additional information for us to consider.
DW23	23. The DEIS Glossary does not include a definition of the word “sanctuary”. Since NMFS obviously does not understand the meaning of the word, it should be added to the Glossary. Webster’s defines sanctuary as “a refuge for wildlife where … hunting is illegal”. It goes against all reason to allow whaling in our National Marine Sanctuary.	Comment noted.
DW24	24. The DEIS wrongly minimizes the economic impact of the whale hunt at the national, state, and local levels.	Comment noted.
DW25	25. The DEIS wrongly minimizes the economic impact of the whale hunt on the whale watching industry as well as local tourism. The whales have only known friendly vessels will soon learn to avoid all boats. People will also avoid the whale watching tours so as not to encourage the whales to think that people our friendly and it is safe to approach boats. The tourism and the whale watching industry in Iceland took a major hit when Iceland resumed commercial whaling.	Comment noted.
DW26	26. The DEIS wrongly minimizes the effect on worldwide whaling. Japan as well as other nations are already claiming that they also have the right to hunt whales if we do. Canadian tribes now also want to resume whaling. The definition of subsistence whaling will be expanded and result in increased whaling and less conservation.	Comment noted.
DW27	27. The DEIS needs to address the fact that the Makah whale hunt will open the door to commercial whaling.	Comment noted.
DW28	28. The DEIS Table 4-3 Estimated Costs of Enforcement Related Activities and Resources shows costs ranging from a half million to two million dollars. This is an outrageous waste of taxpayer money, just so that the Makah can hunt whales and feel better about themselves.	Comment noted.
DW29	29. The full taxpayer cost of supporting the Makah whale hunt should be included in the DEIS. This should include all monies paid and received, past	Comment noted.

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	and present by federal, state, and local governments. The costs should include but not be limited to those for preparing the EIS and other documents; conducting meetings; supplying guns or other equipment; training; tracking whales; bringing in experts; sending representatives to the IWC meetings; deals and negotiations with other governments; press conferences; use of the Coast Guard; use of the National Guard; law enforcement such as the Washington State Highway Patrol and local police; closing roads, and court and legal fees, etc. All future and ongoing costs should also be included.	
DW30	30. With the recent national disasters and the war on terrorism, our Coast Guard and the National Guard are already stretched too thin. These resources should not be diverted to aid and abet whaling in our National Marine Sanctuary. The need for these resources and the effect on our national security and disaster preparedness should be included in the DEIS.	Comment noted.
DW31	31. The DEIS lists elements common among action alternatives 2 - 6 (page 2-5). One of these elements is "Tribal enforcement of whaling regulations". This is like having the fox guard the hen house. After promising tough prosecution of the illegal whalers, The Makah Tribal Court only fined the men $20 each. This clearly shows that they cannot or will not enforce whaling regulations.	Comment noted.
DW32	32. NMFS insists that the illegal whale hunt by the Makah should have no bearing on the DEIS. According to the July 29, 2008 Peninsula Daily News article "Court memos suggest on eve of sentencing that Makah Tribal Council OK'd whale hunt last year". If this proves to be true, then it shows a complete lack of respect for the laws of the U.S. and the application by the Makah should be denied.	The 2008 and new DEIS consider the implications of the illegal hunt for any future hunts by the Makah Tribe.
DW33	33. If the general public is restricted in order to protect their safety, then this denies them their right to access and enjoy the coastal areas. The rights of citizens and public safety should not be sacrificed so that the Makah can kill whales just to feel better about themselves.	Comment noted.
DW34	34. It is morally wrong to hunt whales that have only known friendly human contact and who willing come up to boats expecting to be greeted, as they are in the birthing lagoons in Baja. Killing these friendly whales is akin to shooting fish in a barrel and a betrayal of their trust.	Comment noted.
DW35	35. Lastly, the whale hunt is unnecessary, cruel, and inhumane and no amount of rationalization can ever change that.	We have considered these comments in preparing the new DEIS.

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	For the sake of the whales, other wildlife, the Makah and the general public, the only reasonable and responsible alternative is the No-Action (Alternative #1). Please advise that my comments have been received and will be taken into full consideration.	

Earth Island Institute – Comments submitted August 20, 2008 by W. Anderson.

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EII1	In response to the Federal Register [May 9, 2008 (Volume 73, Number 91, page 26375-26376] notice, these are my comments as an individual, and on behalf of Earth Island Institute, on the Draft Environmental Impact Statement for Proposed Authorization of the Makah Whale Hunt, dated May, 2008. The May, 2008, Makah DEIS is arguably better than its predecessors in some areas but upon reading with more depth contains many of the same problems of bias and omission as previous versions of this document written by NOAA/NMFS. There is additional information, greater effort and depth for a number of areas. That does not diminish the fatal fact that too many key issues were not addressed at all, addressed insufficiently or understated as being a problem or concern that needed further attention. In some areas, there was an extensive effort at documentation, but the information was given little weight and dismissed to the detriment of gray whales and Makah alike. In yet other areas, there was such blind, unfounded optimism that precautionary approaches in making conclusions were ignored. There is new and relevant information that I will cite. There are additional papers in the scientific literature; I was not able to follow up on these due to lack of time. These comments are arranged in the following order: general overviews are followed by specific comments, the Renker needs statement and then conclusions. <u>General Overviews</u>	These paragraphs contain introductory material.
EII2	<u>PREY</u> There seems to be no certainty for any time span covering the sub-arctic and arctic region except that ecosystem regimes vital to the survival of the ENP gray whales are changing rapidly. Current	In response to this and other comments, the new DEIS contains expanded and updated information regarding potential impacts to gray whales from potential future changes in the Arctic resulting from climate change (Section 3.4.3.6.11, Climate Change and Ocean Acidification).

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	indications lead the scientific community to believe that calf survival success is tied to ice conditions both in total area covered and "quality." Researchers are hypothesizing about the net effects of ice loss. They are coming to some varying conclusions (in the details) because of the countless co-mingling of inputs, factors that change rapidly over time in complicated ways. There appears general agreement that these changes exceed both historic and prehistoric events likely because of anthropogenic factors (global warming). The simple model is that there is greatest biological productivity and benefit to gray whale prey at the edges of ice packs. Arctic ecosystems are in radical flux as are the conditions that will either support or destroy the availability of gray whale prey. While some research believes there can be, at least initially, an increase in productivity in the northern gray whale foraging areas, this is dependant upon a number of factors such as currents being altered by the warming of marine waters, an expected increase in waves that may increase mixing and dispersion of nutrients not beneficial to productivity, the availability of nutrient-rich detritus from under-ice organisms may never reach the benthic community to produce densities and qualities of benthic prey required by gray whales and in some areas may be at depths too deep for gray whales. The expected increase in precipitation will increase the flow of fresh water from rivers emptying into marine waters and affect the habitat of prey species. There will be renewed competition between prey species and non-prey species, as well as other predators that may wish to exploit new prey communities. There appears to be no certainty, no true predictability or consensus in the scientific community as to effects of loss of ice cover and global warming (barely mentioned in the DEIS) upon gray whale prey. The DEIS response to all of this is commentary that ENP gray whales have proven truly adaptable in the past. It assumes the same will be true in the future – without basis. This blind optimism permeates the document.	

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	In one paper I can't again find, a researcher stated that these questions of predictability in the arctic were like putting a marble on top of an ice cream cone: it will roll off the top, but no one can predict in which direction. Gray whales face greater uncertainty and will have to expend more energy searching for new sources of food and swimming further to eat. That may further increase offshore births well north of traditional calving lagoons. In one paper cited, there is the proposal that the slight warming of water along the coast of California will help claves with loss of body warmth (Shelden at al. 2004) but no where in the DEIS do we see a questioning about calf survival being an issue for those born north of the birthing lagoons. Some of the required discussion missing from this DEIS is marine acidification and possible impacts upon prey species, threats of disease upon prey arising from warming, an examination of globally-warmed ecosystems far more thorough than the minimalist content presented, the threats of noise upon prey species and the impacts of toxic burdens on prey species.	
EII3	One exception of content was a discussion in the DEIS about how gray whales find food. The specifics of this are an uncertainty for baleen whales in general. Literature talks about how gray whales are able to utilize marine topography to their advantage. However, a discussion of what is and is not known on this subject and its implications is essential since what we don't know may kill them. Are there sounds (and their frequencies) their prey create? Chemical signals from their prey? And how do gray whales distinguish where the larger, more nutritious second-year amphipods are and consume them before turning to smaller-sized populations of the same species? If we acknowledge we do or do not know these things, we can address them as issues for gray whale viability as it pertains to noise (masking of prey), toxics (masking "taste") in the same way they are recognized as essential issues for endangered populations of salmon.	In response to this comment, the new DEIS contains additional information about gray whale foraging behavior (Section 3.4, Gray Whales). However, available science does not provide detailed answers to some of the specific questions posed in this comment. The recovery of the ENP gray whale stock from commercial exploitation, and the conclusion that the stock is at its OSP level, are indicators that the stock is viable. This comment raises the concern that future predictions of gray whale viability are uncertain in the face of global climate change. In response to this and similar comments, we have included Alternative 6 in the new DEIS, which limits the term of a waiver to 10 years. This would allow for an assessment of any ongoing effects of climate change on gray whales after a set period of years.

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	Papers regarding prey that may be of interest to NOAA/NMFS include: Stelle and Megil, date; Feeding Behavior of Gray Whales on Mysid Swarms: Prey Selection Based on Body Size; Stelle, L.L., 2006; Activity budget and diving behavior of gray whales in feeding grounds off coastal British Columbia.	
EII4	<u>POPULATION</u> Of the three original gray whale populations, one is extinct and the other nearly so; the remaining population (NMFS estimate of 20,110) had a precipitous drop in 1999/2000 when we lost one-third to nearly one-half of this only viable population. Yet the writers of the DEIS are content to be dismissive of this "blip." The DEIS even states that a lowered K from natural and anthropogenic causes should have everyone accepting the lower K-induced populations! Throughout the DEIS, the writers (and some members of the scientific community) are not looking at the other side of the coin: the reduced K, if it exists, is itself a threat to the population and should be addressed as such – but is not. There is but a brief mention about Alter et al that should be addressed in the next version since time may not have allowed the authors to make substantive review. There is nothing precautionary about the NOAA/NMFS approach.	The new DEIS discusses Alter et al. (2007) as well as later papers by Dr. Alter and others regarding historical population size and the appropriate approach to estimating carrying capacity for a marine mammal population (Section 3.4.3.1.3, Population Exploitation, Protection and Status).
EII5	<u>PCFA/ORSVI RESIDENTS</u> The exposure of pre-June 1 PCFA/ORSVI whales to hunting effort does not seem to be accounted for in the DEIS. Being in the area longer means greater exposure to harassment of all levels, being struck (and not being counted as a strike) and struck and lost. These whales are more important than the DEIS explores.	The 2008 DEIS included estimates of the numbers of PCFG whales that would be exposed to hunt activities under the action alternatives, based on sighting data (for example, Table 4-1, Primary Differences among Alternatives, and Associated Assumptions for Analysis). As discussed in more detail in the 2008 DEIS, it is reasonable to expect that hunters would encounter PCFG whales in the same proportion as do researchers photographing whales. The new DEIS uses updated information to estimate the proportion of PCFG whales likely to be encountered by hunters (for example, Table 4-1, Primary Differences among Alternatives, and Associated Assumptions for Analysis).

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EII6	Given there was not a decline in the PCFA/ORSVI whales during the 1999/2000 die-off, and since there is still a reported 10% + of skinny whales observed in calving lagoons, these southern coastal foragers whales may be an essential component of gray whale survival not reflected in their relatively few numbers. In Goerlitz, D.S., 2003; *Mitochondrial DNA variation among Eastern North Pacific gray whales on winter breeding grounds in Baja California*, there are indications of a traceable substructuring of the larger ENP GW population and that further testing of the biopsies from PCFA/ORSVI whales already in possession (plus future research) are likely to reveal more about the role PCFA/ORSVI whales are playing in the survival of the population overall. None of them should be removed under the Makah proposal because they showed remarkable resiliency during the 99/00 catastrophic die-off. We need every one of the "residents" whose "less than 1% (if I recall correctly)" habitat strategy is worth more than their current low numbers suggest - numbers NMFS is dismissing as not important.	The commenter cites no information, and we are not aware of any information, to support the statement that "there was not a decline in the PCFA/ORSVI whales during the 1999/2000 die-off." Because surveys of summer-feeding whales did not begin coast-wide until the late 1990's, the surveys are not adequate to support a conclusion about trends in PCFG abundance just before or after 1999/2000. Contrary to this comment, Calambokidis et al. (2011) hypothesize that the large number of new sightings during the early survey years may be a combination of "discovery" and immigration. Lang et al. (2011) model several assumptions regarding the demographic trends of the PCFG whales, including an assumption of a 30% increase in the population following the 1999/2000 die-off. This information is discussed in detail in the new DEIS (3.4.3.4.1, PCFG Population Structure). That discussion also addresses the potential importance of the PCFG feeding strategy to the overall health of the larger gray whale population.
EII7	<u>GLOBAL WARMING and ECOSYSTEMS</u> These subject areas are entirely deficient. The writers have barely touched upon these subjects apparently fearing to tread too far from the "project area." It is commonly and clearly recognized in the literature that, though the impacts of global warming upon the gray whales' sub-arctic and arctic ecosystems effects may not be entirely predictable, the changes already are drastic. Papers that may be of interest to NOAA/NMFS are: O'Shea and Odell, 2008; Large-Scale Marine Ecosystem Change and the Conservation of Marine Mammals; Palumbi, S.R. et al, 2008; Ecosystems in Action: Lessons from Marine Ecology about Recovery, Resistance, and Reversibility; Moore, S.E., 2008: Marine Mammals As Ecosystem Sentinels;	The 2008 DEIS explored several threats occurring throughout the range of ENP gray whales (Section 3.4.3.6, Known and Potential Anthropogenic Impacts). In response to this and similar comments, the new DEIS contains updated information on individual threats and also examines additional threats such as climate change and ocean acidification (Subsection 3.4.3.6.11, Climate Change and Ocean Acidification). Subsection 5.4, Gray Whales, considers the cumulative effect of those threats when considered in the context of the action alternatives.

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	Climate Change 2001, Report of the Intergovernmental Panel on Climate Change; Obst and Hunt, 1990; Marine Birds Feed At Gray Whale Mud Plumes In the Bering Sea; AFSC Processed Report 2007-05; May 2007; Implementation Plan for Loss of Sea Ice (LOSI) Program.	
EII8	MAKAH DIETARY NEEDS AND HEALTH/FOOD CONTAMINATION The DEIS fails to present information needed for the Makah to make safe food choices, does not present independent scholarship on nutritional needs in Neah Bay and leaves interested parties to guess what threats to gray whales may be presented by toxic burdens. The health and trust responsibilities to the Makah and gray whales are equally entwined.	The 2008 DEIS presented available information regarding contamination in gray whales (Section 3.16.3.2, Environmental Contaminants in Gray Whales), and the new DEIS includes updated information in the same section. The new DEIS also notes that under the action alternatives, individual tribal members would be exposed to higher levels of certain contaminants as a result of eating more whale products (Section 4.16.3.2, Alternatives 2 through 6).
EII9	There is a paucity of information regarding the current toxic burden of Makah tribal members in Neah Bay. The DEIS is wholly reliant on two authors, Renker and Sepez, covering a few papers, for the bulk of its information and all of its conclusions. I will respond the Renker Needs Statement in a later section of my comments. The DEIS uses Renker's claim that fully 55% of Makah dietary intake is fish high in essential fatty acids and many other key dietary needs. Yet, the argument is made in many (DEIS) places that there is a need for even more essential fatty acids without stating the current intake already present and the (non-existent) shortfalls whale oil is supposed to supply to prevent lifestyle diseases prevalent in Neah Bay. I saw nothing indicating that on-reservation Makah did not already meet high levels of essential fatty acids intended to reduce insulin resistant diabetes and heart disease/better serum lipid profiles.	The 2008 DEIS noted that the action alternatives may result in an increase in certain minerals and omega-3 fatty acids in the Makah diet, which could have health benefits (Section 4.16.3.2, Alternatives 2 through 6). It makes no assertions that Makah tribal members need an increase in any particular nutrients. The new DEIS reaches the same conclusion and adds that the action alternatives may increase the exposure of tribal members to certain contaminants, depending on whether whale products replaced other foods with similar contaminants (primarily other seafood), or food that did not (Section 4.16.3.2, Alternatives 2 through 6).
EII10	This is doubly troubling because a high-content fish diet is likely to also be high in contaminants. Who is acknowledging concern and	See the response to the two previous comments.

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	examining impacts from adding contaminated whale fat to the Makah diet? Studies report a widely varying amount of toxic contaminants in gray whales but, there is no human advocacy here. Some literature and the DEIS make the mistake of saying contamination is relatively low (in some studies) compared to those found in other, even more heavily contaminated marine mammals. This kind of comparison by relativity to other foods is a gross disservice to the Makah and the DEIS should point that out. What needs to be known is what are the current toxin burden levels of Makah, how much are they getting from their current foods and what would starting to eat whale oil and meat do to their toxic burden and allowable recommended limitations? NOA/NMFS/BIA agencies have had nine years to research these questions. It is entirely premature to schedule a decision on the alternatives offered in this document without knowing the impacts of those alternatives upon the health of the Makah. This is unconscionable.	
EII11	Yet, at DEIS 3/302 and 3/303 we are told DDTs and PCBs were higher than other gray whales tested. If I understand the figures, the levels of these two contaminants alone are exceeding by four and more times the levels cited by the USDA as “safe.” What is even more unfortunate is that it appears this 1999 whale was not tested for many other contaminants known to be spreading throughout global ecosystems including PBDEs that act much like PCBs in the human body. If the DEIS is not simply reporting what is known, then that must be corrected. If it reflects all that is known, then agencies have failed in their most basic responsibilities. I feel this as much as the suffering the Makah want to cause in the gray whales. The chemicals I cite here have been linked with hyperactivity and insulin resistant diabetes, the very issues Renker and others are concerned about.	The 2008 DEIS presented available information regarding contamination in gray whales (Section 3.16.3.2, Environmental Contaminants in Gray Whales), and the new DEIS includes updated information in the same section. The new DEIS notes that under the action alternatives, Makah tribal members who consume gray whale products may be exposed to increased levels of those contaminants known to be present in gray whales (Section 4.16.3.2, Alternatives 2 through 6).
EII12	It is unlikely gray whales can escape the effects of most of these toxic burdens. Heavy chemical contamination is one of the chief suspects in the “stinky whale phenomenon. Flame retardants, perhaps PBDEs that are common in Washington state marine mammals, are one of several	Based on the abundance and productivity of the gray whale population described in the 2008 DEIS and new DEIS, it does not appear that contaminants have prevented the ENP gray whale population from achieving its OSP level.

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	suspects. Research can and must identify the levels and sources of this contamination because they are threats. These threats to both gray whales and their prey are not adequately presented in the DEIS. Ebbesson et al, 2005c, as cited in the DEIS, describes how poor health can continue in an area that access to whale consumables. I can't find the DEIS recognizing this idea. Papers that may be of interest to NOAA/NMFS include: De Luna and Rosales-Hoz, 2003; Heavy Metals in Tissues of Gray Whales and in the Sediments of Ojo de Liebre Lagoon in Mexico; Budge, S.M. et al, 2008; Blubber fatty acid composition of bowhead whales: Implications for diet assessment and ecosystem monitoring; Booth and Zeller, 2005; In Environmental Health Perspectives; Mercury, Food Webs, and Marine Mammals: Implications of Diet and Climate Change for Human Health; AFSC Processed Report 2004-05, 2004;Computations of Historic and Current Biomass Estimates of Marine Mammals in the Bering Sea; Burek, K.A. at al, 2006; Effects of Climate Change on Arctic Marine Mammal Health.	
EII13	Makah dietary needs have never been based on quantifiable data, but instead on the insufficient basis of five Makah villages no longer extant. The whole idea of a four-whale need is betrayed by the DEIS offer to limit landed whales to two in DEIS Alternative #5. Instead of Renker's questionable and Sepez' advocacy papers, there should be a discussion of why a cultural anthropology panel was not appointed as was for the bowhead DEIS process. Since this DEIS uses these two unquestioned sources to so large an extent, it is incumbent upon NOAA/NMFS to examine the methodologies, data and conclusions in a peer-reviewed context. These papers underly the entire proposed	The purpose of including alternatives in an EIS is to develop relevant information for the decision-maker and the public. The 2008 DEIS included an alternative with lower harvest levels for that purpose. The DEIS reached the following conclusion regarding that alternative: "With the high percentage of Makah residents desiring whale products for consumption and use, limiting the number of whales harvested to two would likely not satisfy the Makah's need for whale products; would result in fewer opportunities to hunt, process, share and consume whales; and would not adequately facilitate participation in

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	action as well as the alternatives offered and must pass rigorous standards.	whale-hunting activities by Makah residents (Braund et al. 2007)" (Section 4.10.3.5.1, Limits on Whale Hunting).
EII14	SPECIFIC LINE ITEM COMMENTS Cited by chapter/page/line(s) until chapter 4 when the use of line numbering in the DEIS ceases in my copy. At that point I will use chapter/line/any reference point handy. The Cover Page – The *Draft Environmental Impact Statement for Proposed Authorization of the Makah Whale Hunt* should indicate the major component of the request, and that is the proposed waiver of the Marine Mammal Protection Act. I believe it should reflect the proposed action as does the May 9, 2008 Federal Register announcement, in part, *We are issuing this notice to advise the public that NMFS has prepared a Draft Environmental Impact Statement (**DEIS**) in response to the **Makah** Tribe's request that NMFS waive the take moratorium of the Marine Mammal Protection Act (MMPA) to allow for treaty right hunting of eastern North Pacific (ENP) gray whales…*	In partial response to this comment, we have changed the title of the DEIS to *Draft Environmental Impact Statement on the Makah Tribe Request to Hunt Gray Whales.* As noted in the 2008 DEIS, the Tribe sent a letter following their initial request for an MMPA waiver that expanded their request to include agency action necessary under the WCA (Section 1.1.1, Summary of the Proposed Action). We announced this expansion of scope in a Federal Register Notice on February 27, 2006 (71 FR 9781, Feb. 27, 2006).
EII15	Executive Summary- Here the Makah 1855 treaty language is quoted in the same way as it is throughout the DEIS; it deletes the rest of the phrase "in common with all people." Please do not delete these words every time the DEIS wishes to make a point about the source of the Makah treaty claim to whale.	In response to this comment, we have included Article 4 of the 1855 Treaty with the Makah verbatim in the section of the new DEIS that specifically discusses the Treaty of Neah Bay (Section 1.2.2, Treaty of Neah Bay and the Federal Trust Responsibility).
EII16	In the brief summation of alternatives here and elsewhere, there is no substantiation of nutritional yield per whale and the actual needs of the four whales demanded annually by the Makah. The only direct weighing of the parts of a gray whale I could find is in Yablokov and Bogoslovskaya, date unknown, *A Review of Russian Research on the Biology and Commercial Whaling of the Gray Whale*, Chapter 20, Academic Press, ISBN# 0-12-389180-9.	The 2008 DEIS described the findings of Sepez (2001), who documented the amount of whale product yielded from the whale harvested by the Makah Tribe in 1999 (Section 3.10.3.5.1, Makah Whaling).
EII17	ES/2/22-26: "humane" should be added to the list of considerations.	The list mentioned in this comment is a list of resources that may be affected by the alternatives. Humane killing is explored in the 2008 DEIS in the context of ENP gray whales (3.4.3.5, Welfare of Individual Whales), which are one of the resources identified in the list.

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EII18	Glossary- Lose/Strike/Struck and Lost: There is an inappropriate and general mixing together of these terms and the way they are used in the DEIS for different purposes. The IWC does not always set specific struck, struck and lost quotas except (as far as I know) for the US Alaska and Russian Chukotkan bowhead aboriginal hunt. These can, as in the case of the Makah, be set up in within the cooperative agreements between the US and Makah tribe. The bilateral agreement between the US and the Russian Federation does not require them. I have not found evidence for strike limits in the Chukotka gray whale hunt, just struck and lost, so using their success rate later in the DEIS s not appropriate.	The commenter points to no specific instance in which the DEIS used these terms inappropriately. The discussion of the success rate in the Chukotka hunt is relevant to anticipating the likely success rate in a Makah gray whale hunt, in that the species hunted is the same and the hunting methods are similar.
EII19	For the Makah quota, the DEIS should examine the implications of the Makah-requested definition of struck that is far different than the domestic regulations to implement the Whaling Convention Act: 50CFR Part 230.2, Definitions, defines strike as hitting a whale with a harpoon, lance, or explosive device (FR/Vol.61/ No. 113/June 11, 1996, page 29631). The DEIS glossary cites a June 2007 Schedule to the IWCRW to define a strike as penetrating a whale with a weapon used for whaling. The Makah's intended version of "strike" and the pre-emptive concurrence by NMFS in this DEIS is*: "any blow or blows delivered to a whale by a harpoon, rifle, or other weapon which may result in death to a whale, including harpoon blows if the harpoon is embedded in the whale, and rifle shots that hit a whale." NMFS considers this definition equivalent to the WCA regulatory definition of a strike, meaning "hitting a whale with a harpoon, lance, or explosive device." A whale is considered to be struck when a harpoon is or has been embedded in a whale. This definition of 'strike' includes situations where the harpoon disengages from a whale; is retrieved to the water surface clean of skin, blubber, and other whale parts; and there is no other evidence of potentially lethal injury (such as blood in the water)*(DEIS 2/11/4-11*).* In this scenario, the Makah can puncture the	The 2008 DEIS used the term 'strike' as it was used in the 1998 gray whale management plan and as proposed by the Tribe. The definition adopted is useful for the EIS analysis because it represents a conservative measure of when a whale suffers an injury that could be fatal. We have addressed this comment in the new DEIS in two ways. First, we have clarified our interpretation of the term 'strike' (Section 2.3.2.2.4, Number of Whales Struck (Annual and 6-year). Second, we have clarified that the Tribe's request estimated the numbers of whales that would be disturbed in conjunction with a hunt, but did not propose a regulatory limit on harassment (Section 2.3.2.2.6, Whales Approached and Subjected to Unsuccessful Strike Attempts).

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	skin of as many whales as they like with harpoons and not rack up a single strike. This is entirely unacceptable and appears to, at the least, violate the WCA.	
EII20	In the rushed and blurred practice of whaling from small vessels, penetration is easily missed. Whales can easily be wounded and not always have blood and bits of flesh in telling amounts. There is a paper I can't again find that discussed the mortality to whales from wounds far smaller than the Makah/NMFS threshold. I ask that the authors find it and include it in their discussion in the next version of the DEIS. The NMFS is wrong to ignore its own domestic regulations (hit a whale), whose purpose is to "implement the Whaling Convention Act" (16 U.S.C. 916 et seq.) then skip over entirely the ICRW definition (penetrate) and embrace the Makah's self-serving, non-counting of a certain increase in mortalities by "strikes" (requiring the weapon be imbedded and likely to result in death – which is actually a take and if secured in some manner then lost, a lost whale). The DEIS and cooperative plan and the definitions of strike should follow regulations, and not unilaterally change the outcome of strikes against the ENP gray whales. If NOAA/NMFS move to again alter domestic regulations for the Makah by changing the definition of "strike," then it will need to go through that public process. Certainly the agency must not leap-frog even further in supporting the Makah version which apparently been made without process. It is this very kind of deal-making between NOAA/NMFS and the Makah where the agency has already committed to an important agreement affecting impacts – mortalities – before the public has its process that is so discouraging. The Makah requested definition of "strike" must be rejected in whole.	As noted above, if we waive the take moratorium we are required to promulgate regulations, which, among other things, would define relevant terms including 'strike.' The waiver and moratorium must be promulgated through the rigorous process of formal rulemaking. Thus the scenario suggested in this comment – the adoption of a definition without public process – is not possible.
EII21	Humane: This definition is misleading and does not convey the actual impact of whaling. That can be corrected by adding that it is highly unlikely the death of any of these whales can ever be called humane as it does not meet veterinary standards of loss of consciousness before prolonged suffering, and that whales will feel pain, emotional distress and other	The definition of 'humane' included in the 2008 DEIS is the definition Congress adopted in the MMPA.

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	unwanted impacts from the act of whaling. Numerous harpoons and gun shots will cause suffering from minutes (1999) to several hours (2007).	
EII22	Wasteful Manner: When, in 1996, I made comments on the revision to the US regulations implementing the Whaling Convention Act, I questioned the interpretation of the term "wasteful manner." I was assured that: *Comment: The term ``wasteful manner'' should include the use and waste of whale products after landing.* *Response: NMFS agrees. The term has the same meaning as the definition at Sec. 216.3: ``Wasteful manner means any taking or method of taking which is likely to result in the killing of marine mammals beyond those needed for subsistence or for the making of authentic native articles of handicrafts and clothing or which results in the waste of a substantial portion of the marine mammal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal.''*(Federal Register/Vol. 61, No. 13?June 11, 1996/page 29629) This understanding is not reflected in the glossary under "wasteful manner." Nor is it adequately discussed in the DEIS. Traditionally used whale parts as well as an unknown amount of meat and blubber were wasted in the 1999 whale kill as evidenced on video transferred to the DVD titled, *Butchering of Gray Whale; Neah Bay, WA; May 18, 1999*; © Erin O'Connell with permission. I am sending this DVD via mail to be included as an attachment to these comments. I, with Erin O'Connell, personally edited the raw footage. This waste and abandonment of the whale by the Makah when federal biologists and an Inuit man were left to work alone should be describe and included in the DEIS.	In response to this comment, the new DEIS glossary defines the term 'wasteful manner' using the language from NMFS regulations at 50 CFR 216.3: "[A]ny taking or method of taking which is likely to result in the killing of marine mammals beyond those needed for subsistence, subsistence uses, or for the making of authentic native articles of handicrafts and clothing, or which results in the waste of a substantial portion of the marine mammal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal." The comment provides no specific details as to what portions of the 2008 DEIS contain an inadequate analysis because of any particular interpretation of the term 'wasteful manner.'
EII23	Subsistence Whaling:	The glossary in the 2008 DEIS included a definition of 'aboriginal subsistence whaling.'

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	This term is not defined in the DEIS Glossary and should be included by quoting a definition from the same 1981 IWC Ad hoc Technical Working Group source as is the term "subsistence catches."	
EII24	Identified Whale: I was unaware that NMML had established a gray whale catalog and photo identification expertise. Why is Cascadia Research not mentioned? Does NMML truly have this catalog set up and by implication a qualified team to do the comparison work? Or has the DEIS simply made a mistake and withdraws this definition? If NMML plans to attempt to replicate the decades of expertise within Cascadia Research, then this should be stated and discussed in the DEIS at length.	The comment is correct that the 2008 DEIS erroneously referred to a gray whale photo identification catalog maintained by the National Marine Mammal Lab. Cascadia Research Collective maintains a photo collection and a database of sighting and identification records. The new DEIS corrects this error.
EII25	Chapter 1- 1/1/12: There is another reference here (and elsewhere) that the killing will be as humane as possible but nowhere is there recognition that the hunt remains inhumane. I found the word pain once in the entire DEIS. See my comments on the Glossary definition for "humane."	Comment noted.
EII26	1/8/25-26: for over a decade, NOAA/NMFS has been trying to minimize measurement of impacts by claiming the Makah are the only tribe with the express right to whale. While it is true the term whale is used uniquely, all treaties in this region recognize that customary hunting fishing activities are broadly inclusive. This means the Quileute, Jamestown S'Klallam and others believe they have the right to whale if they chose to exercise it. Please make sure this is understood in every place the DEIS makes the "express language' point as it otherwise misleads readers into thinking this must be, by treaty, a limited event.	The 2008 DEIS found it unlikely that other treaty tribes would seek a whaling quota if NMFS grants one to the Makah Tribe (Section 4.17.2.1.3, Increasing Aboriginal Subsistence Whaling and Harvest of Whales). In response to this and other comments, the new DEIS more clearly notes the possibility that other tribes may seek whaling quotas if the Makah Tribe is successful in this request (4.17 Regulatory Environment Governing Harvest of Marine Mammals). It also notes that before any tribe could receive a permit to hunt whales, the United States would have to request a quota on behalf of that tribe and present a needs statement to the IWC. The IWC would have to approve a catch limit in light of that request. Moreover, any regulation promulgated in response to the Makah Tribe's request would authorize whaling only by Makah Tribe members. If another tribe requested authorization to hunt whales, another formal rulemaking process would be required to authorize hunting by that tribe.

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EII27	1/14/7-8: The phrase "future decisions related to the MMPA (and WCA…)" is used without explanation. How will this DEIS aid what anticipated decisions? Please elaborate so commenters can address what the scope of the impacts will really be. Future decisions regarding the WCA are not really stated in the referred section 1.2.4.	The 2008 DEIS included a detailed explanation of the decisions made in the waiver process (Section 1.2.3.3, Section 101(a)(3)(A) – Waiver of the Take Moratorium). The 2008 DEIS also described the processes required under the WCA (Section 3.4.2.2, Whaling Convention Act). It is the decisions under these statutes to which the quoted passage refers.
EII28	1/15/5: Regarding allowable restrictions under the MMPA there is text about regulating size. I ask that rules be adopted to add no whale less than 35 feet can be hunted – and larger if needed to kill only sexually mature whales. The length at sexual maturity is different for females than males. Greater size equals greater yield means fewer whales killed. This is a mitigation measure to reduce impact and harm.	Comment noted. Researchers who conduct gray whale surveys note that it is extremely difficult to determine length of a free swimming whale (Calambokidis, pers. comm. etc.)
EII29	1/23/13-14: A copy of the bilateral agreement for gray whales between the US and the Russian Federation should be included in the DEIS.	The most recent bilateral agreement is included in the list of references in the new DEIS and is available on request.
EII30	1/25/1-2: I take issue about the statement that the US is opposed to commercial whaling at the IWC. Recent developments where the US has shown openness and even leadership to compromise on Japan's Small Type Coastal Whaling proposals, that are cultural and commercial in nature, indicates otherwise.	The U.S. position in 2008 was opposition to commercial whaling, as explained in the 2008 DEIS (Section 3.17.3.2.2, Commercial and Scientific Whaling). That continues to be the U.S. position, as explained in the new DEIS (Section 3.17.3.2.1, Commercial and Scientific Whaling).
EII31	1/25/28-31: See "wasteful manner" comments under Glossary as they apply here.	See response to previous comment regarding the definition of this term in the glossary.
EII32	1/28/22-25: The ground-breaking Maa-Nulth agreement is given just six lines. The DEIS does not detail that agreement, nor explore its applicability to the Makah as a reasonable alternative as defined by NEPA. The Maa-Nulth did not give up their right to whale, they stored it for twenty-five years. The gray whales are still part of their sustenance via the wondrous potlatch held by the Canadian federal government.	The No-action Alternative in the 2008 DEIS fully explored the impact on the human environment if the Makah Tribe does not hunt whales.
EII33	1/31/27-29: U.S. states nutritional need is a factor, not a threshold. How can waste be avoided if nutritional need is not THE factor? This problem reverts to my earlier comment that the Glossary has omitted defining "subsistence." It must and can use its cited source in the DEIS (*Reeves, R.R. 2002; The origins and character of 'aboriginal*	The United States evaluated the Makah Tribe's request in light of the definition of aboriginal subsistence whaling adopted in 1981 by the IWC's *Ad Hoc* Technical Working Group on Development of Management Principles and Guidelines for Subsistence Catches of Whales by Indigenous [Aboriginal] Peoples. The 2008 DEIS described

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	subsistence' whaling: a global review. Mammal Review 32(2): 71-106) that refers to IWC definitions of subsistence whaling. I request that a quote from this same paper be included: "In view of these factors, it is difficult to see how Makah whaling can be made to fall within any credible definition of 'subsistence'."	the IWC deliberation of this term (Section 1.2.4.1.3, IWC Aboriginal Subsistence Whaling) and the United States' rationale in submitting and defending the Makah Tribe's request (Section 1.4.1.2.2, Overview of Requests for ENP Gray Whales on Behalf of the Makah). The evaluation by the United States is described in the document referenced as "United States (1996)" in the 2008 DEIS.
EII34	Due to time constraints, I am not going to rehash the debate about what happened at the IWC since the initial Makah request was submitted to that body. There should be an update on the sad number of struck and lost bowheads that have occurred in the U.S. during the past two years. Despite poor ice conditions that continued to result in many wasted bowhead whales, an endangered species, the hunters persisted and even more whales were lost.	It is unclear how an analysis of struck and lost bowhead whales in the Alaska Native hunt would inform an analysis of the Makah Tribe's proposed hunt or the other action alternatives, as the setting of the two hunts, and the methods of hunting, are very different.
EII35	1/38/22-33: Much is missing from this narration, but it is not the best use of my remaining time.	Comment noted.
EII36	1/37/30-33: See my earlier objections under "strike" in the Glossary. This whale was wounded, but no strike was called. Wounding can happen time after time without regulatory limits under the jointly proposed Makah/NMFS definition of "strike." It must be struck down.	The incident referenced here and described in the 2008 DEIS (Section 1.4.2, Summary of Recent Makah Whaling) was witnessed by a NMFS observer. The observer's report is contained in Gosho (1999) and NMFS (1999). As described in the 2008 DEIS, the observer concluded the harpoon made contact with but did not penetrate the whale, based on several factors, which are described in the referenced section of the 2008 DEIS. Under the definition of 'strike' in the applicable management plan, the observer and NMFS concluded that the incident did not count as a strike.
EII37	1/39/11-15: This section is remarkable for what it does not say. During the entire time of the 8-plus minutes, from the time of the initial attack by the Makah, when she appeared to be feeding, to her death, this whale suffered terribly. Aside from the harpoon wounds and fear, this inexperienced whale who never knew harm or aggressive action from vessels, was shot in the head, shattering the ridge of her skull and then endured another bullet traveling through her body and into her left flipper. The DEIS is sanitized of the aesthetic review the DEIS promised in the executive summary. The DEIS will fail to weigh	The 2008 DEIS reported facts that are relevant to the death of the whale in the 1999 hunt. For example, it described whale responses to being pursued, (Section 3.4.3.5.2, Whale Response to Being Pursued), being struck with a harpoon (Section 3.4.3.5.3, Whale Response to Being Struck), and time to death after being struck (Section 3.4.5.4, Method of Killing and Time to Death). It does not dramatize the hunt or speculate about the whale's experience beyond the presentation of facts.

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	alternatives appropriately if it can't talk accurately about suffering the whales are proposed to endure under the waiver sought by the Makah and NOAA/NMFS.	
EII38	1/40/30: It is not inaccurate to state we know the tribe did not approve the hunt. The DEIS must reflect the record which consists of four signed statements including those by Makah tribal members that allege key tribal government officials did in fact know of the planned hunt, and the denials those same officials have apparently made to investigators. Just the facts.	The new DEIS describes the NMFS investigation of the illegal hunt, including allegations of tribal council endorsement (Section 1.4.2, Summary of Recent Makah Whaling – 1998 through 2014).
EII39	1/41/1-23: Why are key and relevant facts missing from this account of the illegal September 2007 whale killing? Note that three of the five convicted whale killers of 2007 were trained by the Makah tribe, represented the tribe and served on the 1999 crew that killed a whale "legally." In fact, Wayne Johnson was the Makah Whaling Commission Chair at the time. The willingness and abilities of the tribe to play their roles in a cooperative agreement are at the forefront and should be accounted for fairly and consistently if the alternatives are to be weighed honestly. To omit these facts biases the DEIS.	The 2008 DEIS analyzed the cost to the Federal government and others associated with management and law enforcement. This analysis describes the costs of monitoring whales, observing hunts, and providing law enforcement in the event protests occur (4.6.2.5 Management and Law Enforcement). In response to this and other comments, the new DEIS includes cost estimates for NMFS personnel to monitor Makah management of the hunt, as well as Federal administrative and law enforcement costs to investigate and prosecute potential infractions.
EII40	1/46/8-11: The effects of removing gray whales from local ecosystems will vary from one individual to another in proportion to their history of recurrence in the area. This subject seems under-addressed in the DEIS and should be expanded in later sections.	In response to this and similar comments, and new information, the new DEIS includes an expanded discussion of the PCFG sighting history in the Makah U&A, including the relative importance of males and females, as well as an alternative that would require hunting only males (Alternative 3), and an alternative that would have different catch limits for males and females (Alternative 5).
EII41	1/50/table 1-3: Table should include WDFW and Washington state's DNR as having review authority under the current state sensitive species status.	It is unclear what this comment means by "review authority." There is no action on the part of Washington state that is required relative to authorizing a Makah whale hunt as a result of sensitive species designation.
EII42	<u>Chapter 2</u> – 2/2/17-29: It seems there should be added to this list biological opinions, the MMC, state authorities along the Pacific coast in the US,	In response to this comment, the new DEIS notes that the list of sources consulted is only a partial list (Section 2.2, Alternative Development Process). The new DEIS also includes sources we consulted beyond

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	Mexico and Canada. Amazingly, there is no evidence of input or communication from countries (Mexico and Canada) or states having vital interests in this proposed action affecting a migratory species.	those mentioned in the 2008 DEIS. Regarding consultation with other governments, the new DEIS includes IWC deliberations, decisions, and documents as sources consulted. The Government of Mexico is a member of the IWC and the Government of Canada participates in the IWC through observers.
EII43	2/2/32 through 2/3/1-31: When describing 40CFR 1502.14 (CEQ) and the guidelines for establishing alternatives, all I see are variations on killing proposals. It appears that in preparing this DEIS, NOAA/NMFS has a mandate to offer more alternatives, even those that may not be "desirable from the standpoint of the applicant." Aside from the one default "no action" option, why are there no other non-lethal alternatives, any of which can result in a negotiated outcome for all parties? It is appropriate that this DEIS revisit the current list of proposed alternatives. Revisiting my proposed alternative, the Makah will negotiate a settlement similar to the Maa-Nulth in Canada to store their whaling as the Makah say they have done in the past in exchange for land, economic sustainability (annual payments), health and "nourishment." At 2/3/11-12 there is a recitation about what reasonableness is. I ask NOAA/NMFS to follow through on those guidelines.	The 2008 DEIS discussed the alternatives mentioned in this comment in Section 2.4, Alternatives Considered but Eliminated from Detailed Analysis. These include a non-lethal hunt (Section 2.4.1) and alternative compensation to the Makah Tribe (Section 2.4.6). The new DEIS also considers these alternatives (Section 2.4, Alternatives Considered but Eliminated from Detailed Analysis). The No-action Alternative fully evaluates the effect on the human environment if the Makah Tribe does not hunt gray whales.
EII44	I have read both Sections 2.4 Alternatives Considered But Eliminated and the related 2.4.6 Alternative Compensation and am not convinced by this prejudicial, self-filtering argument and logic. It is not s serious consideration of the alternative. When NOAA/NMFS states such an alternative could be negotiated at any time, disconnected from the DEIS, it feels like someone trying to wiggle out of the obvious: the DEIS and the entire process are the perfect and most appropriate moments to consider this alternative. When included in the DEIS, the pros and cons are weighted in conjunction to those of other alternatives. Clarity is gained. The first being that the federal government has more resources and legal standing to enable this alternative. Just having this alternative listed in the EIS would give it weight and credence, a moment for the tribe to fully consider it AFTER it was thoroughly	The purpose of an EIS is to develop information for the decision-maker and the public regarding the proposed action and a range of reasonable alternatives. The 2008 DEIS identified several types of compensation, but concluded that the outcome of a negotiation with the Tribe is speculative (Section 2.4.6, Alternative Compensation). The 2008 also noted that a private party offered alternative compensation to the Tribe previously but without success. Without knowing what compensation might be offered and accepted, any analysis of this alternative would therefore be speculative. The new DEIS also emphasizes the fact that the analysis includes a No-action Alternative that fully explores the effect on the human environment if the Tribe does not hunt.

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	described and evaluated on an equal footing with the lethal alternatives. It is just this type of NOAA/NMFS bias that keeps everyone repeating the NEPA/MMPA processes. The guidelines are clear, as the DEIS iterates at 2/2/1-31 that the proposed alternatives do not have to be "desirable" to the applicant. The DEIS is saying one thing about the guidelines and then telling interested parties that it can't follow those guidelines because the applicant does not like it! I think it is safe to assume that the average US citizen – people affected by the proposed Makah action – would think it an appropriate Alternative. I believe it is incumbent NOAA/NMFS do so.	
EII45	2/10/4-33: Please see my comments in Glossary, identified whales. If NMML has a catalog and team as the DEIS states, then it should be described and available for public view now. We should be able to know who the staff is and how data and the Cascadia Research Collective expertise in interpretation will not be lost.	As described in the response above, the 2008 DEIS erroneously identified the National Marine Mammal Lab as having a photo identification catalog. The new DEIS correctly identifies Cascadia Research Collective as maintaining the photographs and database associated with the photo identification research, and notes that in the event we adopt regulations authorizing a hunt, the regulations would need to include a process for officially identifying harvested whales.
EII46	2/11/3-12: I addressed the inappropriate choice of defining the term "strike" in the glossary section of my comments. This is one of the more egregious decisions NOAA/NMFS has made because as used, it allows Makah to injure, break skin on whales with no limits but is not counted as a strike unless there is a mortal injury. As I described at length earlier, this appears to violate domestic regulations, the intent of the IWC schedule and common sense. Again, I ask NOAA/NMFS find the wound study paper related to the issues of nonlethal strikes, opportunistic diseases and mortality.	See the previous response to this comment.
EII47	2/11/21-22: The voluntary setting of numbers struck and lost is good to know (even as the whales are repeatedly wounded without triggering strikes), but how does it compare to the IWC's struck/loss algorithm (SLA)?	The IWC scientific committee has analyzed the Makah Tribe's proposed hunt to determine its effect on PCFG whales. Their analysis is more fully described in the new DEIS (e.g., Section 4.4.2.3, Change in Abundance and Viability of PCFG Whales).
EII48	2/11/30: The DEIS, relying on the Makah recollection, believes there will be 10 approaches for every throw. What did the NMFS observers document in 1999? Since this number is the basis for important	In response to this and similar comments, we re-examined and adjusted the methods we used to estimate the likely numbers of hunt days, harpoon attempts, shots fired, etc. These new methods, and the results of applying

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	computations of harassment levels and impacts, a greater effort should be made to quantify this number in addition to the Makah good-faith estimate. There should be discussion about Makah biologists and NMFS observer(s) documenting this activity.	them, are described in the current DEIS (for example, see Subsection 4.1.2, Alternative 2).
EII49	2/14/1-5: Here and elsewhere there is extensive discussion about darting and shoulder guns. The obvious conclusion is that these have been discussed between NMFS and Makah – no matter who brought it up. The DEIS should either declare this has never been discussed, or describe when and what was discussed about it including the likelihood these weapons will be used as it can influence several subject areas within the DEIS. The DEIS in this area (and others) fails to consider benefits of moving the whale hunt much further offshore nearly eliminating impacts of killing PCFA/ORSVI whales.	The Tribe proposed to use a rifle (Makah 2007). We included the darting gun as a reasonable option because it is used in other aboriginal subsistence hunts and was recommended by some members of the IWC when the United States first requested a quota for the Makah Tribe (IWC 2006). In response to this and other comments, the new DEIS includes an alternative that would require the Makah Tribe to hunt whales no closer than 5 miles from shore (Alternative 3).
EII50	2/17/18-29: Given the September 2007 illegal hunt, it is clear that enforcement and prosecution is not possible or meaningful under Makah authority. Please discuss Judge Arnold's opinion that WCA does not apply to the violations committed by the Makah 5 during the illegal killing. Discuss the ability of Makah tribal government in this regard.	Comment noted.
EII51	2/23/16-18: This is an incomplete statement about the distribution of identified whales. Please be more specific on frequencies of occurrence as one moves westward from shore.	In response to this and other comments, the new DEIS includes the alternative of an offshore hunt, which explores available information regarding the distribution of gray whales generally and PCFG whales in particular (Alternative 3).
EII52	2/24/30-32: This is another place where the term wasteful manner is defined inadequately. See my previous comments.	See response to previous comment regarding the definition of this term in the glossary.
EII53	2/26/1-16: This alternative, again, is written weakly and dismissively. It should be revisited and developed as a serious alternative. I can't help but notice the biased attitude here.	Regarding alternative compensation to the Makah Tribe, see the response to comment above.
EII54	2/28/table 2.2: In the benthic category, nothing about feeding pits, how their edges are dynamic and spur recolonization and productivity; roles of gray whales in their various ecosystems with high versus low site fidelity are not compared.	Table 2-2 in the 2008 DEIS included a brief summary of the major effects of each alternative on various resources, including benthic habitat and communities. The full analysis considered the potential effect on the benthic environment if a hunt were to remove PCFG

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		whales from the Makah U&A. For example, Section 3.4.3.1.3 (Feeding Ecology and Role in the Ecosystem) described the role of the gray whales' benthic feeding in structuring benthic communities. Section 4.3.3.2.2 (Benthic Environment) examined the indirect effect on the benthic environment of removing feeding whales and concluded the effect would be minor considering the dynamic nature of the environment and the role played by large-scale environmental factors.
EII55	3/15/22-23: This says the tribe proposes to adopt regulations to enforce NMFS regulations. Please give a few examples as a way to explain anticipated regulations.	The Makah Tribe recently adopted regulations to govern a gray whale hunt. They are describe in the new DEIS.
EII56	3/21/23-33: There are several important statements here that I need to understand more fully. Please comment on the following: *The Makah fisheries management staff are responsible for the management of marine mammals, important biological and cultural resources within the Makah U&A.* Does this statement mean the Makah Tribal government has been given full authority to lead management of the species of their concern in their U&A? If so, when was this done and under what authority and process? I have not seen published research results with a Makah tribal origin. Are they required to apply for research permits under the MMPA? Does part of this authority include their being the primary or sole parties for collecting photo identification of PCFA/ORSVI whales in the Makah U&A? Is this also true for the biopsy programs? It is not a secret that the Makah have their eyes on humpback whales, so I ask the same questions as above for this species as well. What other species of marine mammals are the Makah responsible for? How do my questions apply to those species? How does this status of responsibility affect other scientific permits and on-going research by scientists operating in whole or part within the Makah U&A?	There are many activities that might be considered "management." The Makah Tribe has had a marine mammal biologist on staff for many years, and has participated in the photo identification project led by Cascadia Research Collective and conducted research under Cascadia's research permit (e.g., Calambokidis et al. 2014). The Tribe has also participated in pinniped surveys under research permits issued to NMML. The Tribe has also adopted an ordinance governing interactions between fisheries and marine mammals. These are some examples of Makah tribal management of marine mammals.
EII57	3/25/28-30: *Ecology has not listed the Pacific Ocean, the Strait of Juan de Fuca, Neah Bay, or any of the rivers and streams within the project area as impaired for water or sediment quality parameters.* My question to that statement is has the state adequately tested these	In response to this and other comments, and in light of new information, the new DEIS includes a more detailed discussion of ocean acidification as a factor affecting gray whales (Subsection 3.4.3.6.11, Climate Change and Ocean Acidification).

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	waters on a regular basis? When was their last testing period? How far offshore do they go? How deep? Are there other agencies (NOAA) who can complete the picture of marine habitat health – or lack of it? Why do newspaper accounts tell of acidification of benthic ocean waters off of our coast while the DEIS infers that all is well with water quality in the "project area?" Are gray whale prey affected by marine acidification which reduces the ability of some species to utilize calcium carbonate to build shells and other biological structures?	
EII58	3/28/14-19: Please include the fact that some of these harmful algal blooms produce bio-toxins that are proven threats to gray whales but not yet stated in the DEIS. These blooms are mentioned as occurring in the area but there is no comment about its deadly significance.	The referenced section of the 2008 DEIS described the status of water quality. A different section discussed the status of gray whales, including potential effects of algal blooms (Section 3.4.3.6.3, Harmful Algal Blooms).
EII59	3/45/21: Kelp beds found between 6 and 200 foot bottom depths seems inconsistent with other claims (less than 100 foot depth waters); see 3/47/8-9. Please fact check or explain. Also, a good map of Washington state's kelp beds is reportedly available fromWA DNR and would be helpful in defining ORSVI foraging habitat. In fact, it is important to see habitat maps, prey maps covering all of gray whale habitat.	The photo identification database includes an extensive record of areas where gray whales are observed foraging in the Makah Tribe's U&A and elsewhere. Gray whales forage in areas where kelp beds are and are not present. It is unlikely that mapping kelp beds would augment available information about PCFG foraging areas in the Makah U&A.
EII60	3/48/3-31: describes benthic infauna tube worms and other prey of gray whales. As a continuation of the previous comment, a set of maps detailing the locations of prey species and marine substrates with potential to be supportive of these species will help readers see the habitat potential for PCFA/ORSVI gray whale foraging.	We are unaware of any maps that identify the availability of benthic prey in the range of PCFG whales. Many benthic feeding areas are ephemeral and affected by large-scale environmental factors (Section 3.3.3.2.1, Physical Features and Processes).
EII61	3/52/25-31: Please comment on the 60% of K approach and why it is the latest perspective even though developed in 1980. It will be helpful to further explain the implications of using non-K and non-MNPL statistical analysis. I am concerned for a few reasons here. I can't tell if the usefulness and accuracy of K becomes less reliable when K declines quickly, especially in rapidly changing, unstable ecosystems. Is K then still valuable when it is part of other calculations? Please attempt to clarify this section.	In response to this comment, the new DEIS discusses in more detail the rationale for NMFS' continued use of 60% of K as the default value for MNPL (3.4.2.1.2 Calculating Marine Mammal Population Parameters). The new DEIS also discusses the analysis of Punt and Wade (2012), which was completed after the 2008 DEIS was released, and which uses statistical analysis to conclude that the ENP gray whale population is within its OPS range (3.4.3.1.3 Population Exploitation, Protection, and Status). As explained in the new DEIS, Punt and Wade's analysis derived

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		a point estimate that the ENP gray whale stock is at 85% of its carrying capacity. It is unclear what the commenter means by "non-K and non-MNPL statistical analysis."
EII62	The second concern I have, and this problem pops up later in the DEIS as well, is that K, the carrying capacity, can be seen from two opposite perspectives. Many researchers believe K is declining for the gray whale at present, so the DEIS and others are saying, "We've reached carrying capacity. Everything is fine with gray whales. Die-offs are just a result of exceeding carrying capacity. The opposite way to look at a declining K is not to declare a healthy stabilization, but to see declining K as an environmental problem and a threat to the long-term survival of gray whales that must be addressed quickly and proactively. I believe this DEIS is taking the former path when instead it should act with precaution, not abandon its duties and address the threat of a declining gray whale K. List it as a threat and be more cautious with this last population.	The carrying capacity of the ENP gray whale's environment does not appear to be declining currently and this comment fails to cite information that the 2008 DEIS did not consider. There have been increases and decreases in gray whale abundance, suggesting a fluctuating carrying capacity (Moore 2003), but overall the abundance trend is generally stable (Moore et al., 2013). The current DEIS describes the updated information on ENP abundance and trends (Subsection 3.4.3.1.3, Population Exploitation, Protection and Status).
EII63	3/53/footnote: ENP is at or above MSY. How does this square with *Alter, Rynes and Pulambi, 2006, DNA evidence for historic population size and past ecosystem impacts of gray whales* that suggests there was a much larger original gray whale population than current estimates? It is barely mentioned and then dismissed for the rest of the DEIS? Please include and discuss at length.	In response to this and other comments, the new DEIS includes an expanded discussion of K and explains that NNMFS considers carrying capacity to be current carrying capacity and not historical carrying capacity (Subsection 3.4.2.1.1, Defining Marine Mammal Population Parameters).
EII64	3/54/3-16: PBR is defined here but PBR seems weakened to me if it is in the context of OSP that may drop rapidly with declining K. Further in the DEIS it is stated that since PBR is calculated as a percentage, when the number of identified whales increases, so will the allowable by-catch levels. We stand to lose our "resident" gray whales with the highest recurring fidelity to the PCFA/ORSVI sectors because they are exposed to a much higher level of hunting effort. I can't discern how this risk to these particular whales is identified in the algorithms and mitigated in the alternatives provided.	A declining carrying capacity would presumably result in a lower abundance and thus a lower allowable mortality limit for PCFG whales. It's unclear how a declining carrying capacity would lead to increased harvest rates.

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EII65	Please explain further the relationships between ABL, PBR and the K. It seems like all the relationships to these models are weak in rapidly changing and unstable arctic and sub-arctic ecosystems. If I'm right, and the argument must be made, then the discussion must be greatly expanded here.	The 2008 DEIS included a full explanation of marine mammal population parameters, including PBR and K, particularly in the context of the MMPA (Section 3.4.2.1, Marine Mammal Protection Act Management). It also explained the Tribe's proposal for an allowable bycatch limit (ABL) (Section 2.3.2.2, Gray Whale Hunt Details). The 2008 DEIS also analyzed the impact of the Makah Tribe killing up to 7 ENP gray whales per year on the ENP gray whale population (e.g., Section 4.4.3.2.1 Change in Abundance and Viability of ENP Gray Whales).
EII66	How often is the recovery factor reviewed? Calf counts are still well below their peak in the 1980s. What happens to all of these factors if net recruitment falls again for more a year or longer? For increased yearling and adult mortalities approaching what we saw in 1999/2000?	The recovery factor in the PBR calculation is reviewed every time a new stock assessment report is produced. In the case of ENP gray whales, we completed numerous stock assessment reports over several years, which all concluded that a recovery factor of 1.0 was appropriate. As described in the new DEIS (Section 3.4, Gray Whales), we completed a stock assessment report for ENP gray whales in 2012 (Carretta et al. 2014), which also calculated a PBR for the PCFG, using a recovery factor of 0.5. Carretta et al. (2014) explain why that recovery factor was chosen.
EII67	3/55/19-22: The DEIS states here that take permits will not be detrimental to "stocks." Much of the research in the DEIS agrees that finding genetic evidence for ENP gray whale substructuring has been difficult, especially when baleen is tested: gray whales move around at lot and reflect that in testing. It seems the DEIS concludes that there is no genetic profile that can identify substructuring placement of the PCFA/ORSVI whales. However, at least one paper appears to counter that DEIS assertion: Goerlitz, D.S. et all, 2003; Mitochondrial DNA variation among Eastern North Pacific gray whales on winter breeding grounds in Baja California. From the abstract: *These data suggest that all animals exhibit some level of site fidelity to their natal lagoons as adults, and that the ENP gray whale population may be substructured on the population's wintering grounds.*	In response to this and other comments, we conducted additional research into gray whale stock structure. We convened a Task Force of experts within NOAA Fisheries to consider the information developed from that research and the research of other scientists, to determine whether there was sufficient information to suggest the PCFG is a separate stock. The research and the results of the Task Force deliberations (Weller et al. 2013) are reported in the new DEIS (Section 3.4, Gray Whales).

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EII68	This begs the question about testing PCFA/ORSVI for wintering site fidelity to see if any correlations emerge. It is too early to write off these populations now defined by behavior as not having discoverable unique DNA and isotope signatures. Statements in the DEIS about these southern range coastal feeding whales being a relatively unimportant percentage of the larger population is premature, especially in their "protection" from the 1999/2000 die-off. They may be the most secure and stable portion of the entire at-risk population. Removing even a few of them may be reducing this possible reservoir of species survival. Harassment arising from several hundred hunt approaches over five years is just as bad, perhaps worse in its ability to remove them from this ORSVI sector. Therefore, take permits may reasonably be expected to be detrimental to the "stock." Please address this paper and continue the literature search to discuss this issue in greater depth.	See response to previous comment.
EII69	3/56/23-32: Wasteful manner provision again; leaves out part essential aspects of what wasteful manner means in 216.3 in the MMPA and opined by NMFS in the FR in 1996.	See previous response.
EII70	3/59/1-9 and connected to 3/61/1-9: This is the heart of my long-winded questioning for the past few pages. I see that the Alter paper is cited here, but not in the DEIS list of references. The Alter paper is not discussed at length nor are papers listed in Alter. This is vital stuff, but once again the DEIS seems content to accept a reduced K and therefore lower numbers of gray whales instead of declaring reduced K as a threat to gray whales that must be met with a plan and relisted to threatened or endangered status under ESA, depending upon trends in habitat and prey availability. Declining K should NOT be the new, acceptable norm. If part (to much) of the lack of full recovery is due to anthropogenic causes, then relisting becomes all the more imperative as anthropogenic inputs are increasing daily.	The Alter et al. (2007) paper was discussed in the 2008 DEIS but mistakenly omitted from the list of references. The new DEIS discusses additional papers by Dr. Alter published since the 2007 paper, and includes them in the list of references. As described above, the new DEIS also includes an expanded discussion of K. We reviewed the status of gray whales in 2001 and concluded that listing under the ESA was not warranted (Subsection 3.4.3.1.3, Population Exploitation, Protection and Status).
EII71	3/61/6-7: The EIS cannot wait for the next stock assessment report to discuss Alter, etc. in detail. The ENP gray whales population and	As described above, the new DEIS discusses Alter et al. (2007) and papers published by Dr. Alter since 2007.

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	recovery status are central to the Makah proposal and choosing of alternatives.	
EII72	3/61/10 on to 3/62/1-32: I ask that this section be written and clarified with time and place foraging, and the targeted prey inside and outside the "project area.." There's very little written about the roles gray whale feeding strategies have in their respective ecosystems. Nor is there much about energetics and costs of foraging under receding ice conditions versus PCFA/ORSVI foraging strategies - the energy saved and the like. Not all prey provide the same nutrient load. There needs to be discussion about how prey species compete with one another, how prey species dominance ebbs and flows in response to environmental changes and predation pressures, things that affect nutrient availability for gray whales. Please consider including these publications about prey that I will cite in short-hand due to time constraints: Coyle, K.O. and Highsmith, R.C, 1994; Benthic amphipod community in the northern Bering Sea: analysis of potential structuring mechanisms; Aydin and Meuter, 2007; The Bering Sea- A dynamic food web (oriented to fish, it has some things to say about gray whale foraging habitat); Nelson and Johnson, date?; Whales and Walruses as tillers of the sea floor; Oliver, Slattery Silberstein and O'Connor, 1982; A Comparison of Gray Whale Feeding in the Bering Sea and Baja California; Feder, H.M. et al, 1994; The northeast Chuckchi Sea: benthos-environmental interactions;	We reviewed the cited literature and included information from these papers where it is relevant to gray whales and informs the DEIS analysis.

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	Nelson, T.A. at al, 2008; Spatial-temporal patterns in intra-annual gray whale foraging: Characterizing interactions between predators and prey in Clayquot Sound, BC, CA; Coyle, K.O. at al, 2007; Amphipod prey of gray whales in the northern Bering Sea: Comparison of biomass and distribution between the 1980s and 2002-2003;	
EII73	3/65/1-12: Since 1980 calves are being born in increasing numbers prior to reaching calving lagoons in colder, unsheltered waters since. I have not found yet any discussion about possible increases to mortality. Please discuss this possibility.	The 2008 DEIS discussed this fact and the possibility of increased mortality as a result. The new DEIS includes updated information on calf production and survival (Subsection 3.4.3.1.5, Reproduction and Calf Production).
EII74	3/66/10-17: was surprised to read no direct observations on N and S migrations off of WA coast. See new Calambokidas, 2008 paper reporting 2006 data.	The new DEIS includes a new alternative that would require the Tribe to hunt offshore at least 5 miles. Available information about offshore distribution of gray whales is discussed in Subsection 3.4.3.3.2 ENP Seasonal Distribution, Migration, and Movements, and analyzed in Section 4.4.3.3, Alternative 3.
EII75	3/66/25-32 AND 3/67/ AND 3/68/ - ALL: There are several similar yet different study findings regarding the distance to shore for the gray whale migration corridors. Probably some variability. The draft environmental assessment, 2001, used Green et al, 2005 for northbound migrants at a distance of 11.8 kilometers. The DEIS should discuss the best distance from shore to have the greatest chance of not intercepting PCFA/ORSVI whales as a percentage of likelihood. NOAA/NMFS has failed to advocate for a greater distance offshore to lessen the concerns of myself and others. Migrants are well offshore. If the Makah want to hunt, that is where it should be to avoid as much as possible killing PCFS/ORSVI whales. If feels like this need is being ignored to placate the Makah without it being fully discussed in the DEIS.	In response to this and other comments, the new DEIS includes a new alternative that would require the Tribe to hunt offshore at least 5 miles (Subsection 2.3.3, Alternative 3 (Offshore Hunt)).
EII76	3/70/20-21: Rugh carry cap estimated at 23,686. K and these estimates should be challenged as long as anthropogenic aspects are causes for the decline.	The new DEIS describes the findings of NMFS stock assessment reports on ENP gray whales produced since the 2008 DEIS was released. These reports include estimates of abundance. It is unclear what this comment means by the 1.59% reference.

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	More population ruminations. As I recall, the 1.59% estimate of pop increase is lower than in the previous few years. Is this explained?	
EII77	3/107/table 3-8: note that data used is PRELIMINARY from 2002-5.	Comment noted. The new DEIS includes a table with updated calf counts (Table 3-2). Data that are preliminary are noted as such.
EII78	3/109/10-18: This is more excuse-making about how we should accept population fluctuations because we are inescapably close to K. Large scale changes and alteration to the climate are therefore excused from the table as being a threat. A large decrease in GWs is just K acting up, no need to be alarmed by climate and ecosystem collapses… this is inexcusable.	Nature is variable and the abundance of natural populations will fluctuate as the environment fluctuates. In response to this and other comments, the new DEIS has added climate change and ocean acidification to the list of threats to gray whales (Subsection 3.4.3.6.11, Climate Change and Ocean Acidification).
EII79	3/111/8- : Another place to state this is not humane killing. The DEIS criteria include aesthetics so we need ethical statements of fact. Aesthetics is not about covering up a painful and disturbing reality by refusing to describe it like it is an the DEIS.	The line cited in this comment is in the section discussing the welfare of individual whales and is a quotation from the IWC definition of 'humane killing.' The 2008 DEIS thoroughly explored aesthetic impacts on viewers at the scene and in the media (Section 4.12, Aesthetics).
EII80	3/111/29-32: waste again, no mention of 1996 FR meaning, not 50CFR 216.3. Over the years, the U.S. has refused to propose allocations of whales based on documented need and applied that to yield per whale. Not doing this will result in waste.	See responses to comments above on this subject.
EII81	3/114/6-12: see also 3/129/9-15. These definitions and proposals for criteria to use are unacceptable and needlessly impacting. Here and in other areas, there is a need to challenge the ideas that no data exist to describe gray whales being harassed/chased. I can't see how the DEIS can infer this. Several opportunities here to include pain, pain response…	As noted above, the 2008 DEIS relied on factual information to judge the humaneness of the proposed hunt and alternatives rather than subjective or immeasurable criteria.
EII82	3/120/15-22: here and as a general theme in the DEIS, it is said gray whales are adaptable and tolerant of noise and other disturbances. Yet, not mentioned is the context of the life and death need to travel and eat or starve and the urgency of mating and giving birth during exposures to noise. Even though appearing tolerant, the DEIS does not care to discuss tipping points of their ability to tolerate, nor the impacts of noise on prey. Appearances of tolerances is not the same	The commenter does not cite to any information, nor are we aware of any, regarding the relationship between noise and gray whale prey. The commenter also points to no information regarding the level of harassment that might cause gray whales to vacate an area.

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	thing as no costs to gray whales from disturbances. Effects can be subtle yet accumulate to meaningful impacts.	
EII83	3/121/1-4: If, as the Makah steadfastly claim, their whaling has been stored, yet kept alive, why then has not a single Makah come forward to state when the last whale hunt took place, who were involved and what are their associated recollections? Why is the tribe apparently unable to describe the last whale kill and only refer to sometime in the 1920's? It either meant much over the 70 year hiatus or it did not.	There are several indicators of the continued importance of whaling to the Makah Tribe, as described in the 2008 DEIS (3.10.3.5, Contemporary Makah Society).
EII84	3/129/9-13: statements about whale watch effects contradict earlier statements @ 3/114/16-23 and 3/130/14 and 3/130/21-33 and 3/131/1-3.	We have carefully reviewed all of the cited passages and can find no inconsistency among them. These passaged generally describe the scientific studies of gray whale reactions to whale watching vessels.
EII85	3/129/32: there are no meaningful minimum approach distances in many of the Mexican whale watch programs especially in friendly whale lagoons. This means many or more gray whales will be habituated to close approach vessels to one extent or another.	Comment noted.
EII86	3/131/1-3: my notes say, if there's no effect, then why rules? Vessels causing serial behavior changes add to caloric and behavioral interference.	NMFS has adopted rules prohibiting vessels from approaching within a certain distance of whales in some circumstances (see the discussion in the Federal Register Notice regarding Southern Resident killer whales for a review of such regulations, 76 FR 20873, April 14, 2011). These rules have been promulgated in circumstances where populations are small and whale watching is intense, and where there is a risk of collision. Although it's not possible to quantify the effect of whale watching, there are circumstances where it is appropriate to control the risks posed by whale watching.
EII87	3/139/chart table: add state sensitive.	In response to this comment, the new DEIS includes "sensitive species" in the line regarding state regulations (Table 3-16).
EII88	3/165/ onward… In general, description of Makah unemployment and similar issues: these numbers are deceptive. They include under 18 and over 65 year-olds in the work force; roughly, it appears that Neah Bay needs about 622 decent jobs for enrolled, voting tribal members to be at full employment. Much of the employment is seasonal and may be at higher than annual hourly rates. No attempts to disclose total tribal	Comment noted.

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	government income, grants, value of free medical care the cheapness of rent, the expense of food and other cost considerations. DEIS fails to provide the data for any profile. Census data is from 2000. A quick review from the census website does not seem to correlate to figures given. I can say that between 1999, when I left Neah Bay, to when I returned in 2008, I subjectively feel there has been a gross decline in the physical structures and overall presentation in Neah Bay proper. The tribal government appears to have unwisely committed time and resources to whaling, to their detriment.	
EII89	3/207/1-2: This chart does not demonstrate on-reservation job statistics. It is for Native Americans in the county overall.	Comment noted.
EII90	3/208/10-15: 250 seasonal fishing jobs, added to other reported jobs in Neah Bay lead me to believe there is not much transparency in the data coming out of Neah Bay.	Comment noted.
EII91	3/296/25 onward: I'm going to lump most of the Makah dietary issues and gray whale contamination in one area for the sake of time. See the general issues section at the beginning of my comments.	
EII92	Chapter 4- Summary of Alternatives 1-6: The number of gray whales targeted for harm appears to be based on arbitrary factors. This is not supported by cultural, nutritional or yield per whale data. Alternatives presented in the DEIS ensure that the only choices provided will lead to greater and lesser degrees of whaling. This bias forces the public to choose the least of the worst of lethal alternatives, and in one case, to force the public to accept trading a kill of identified residents for migrants.	One of the purposes of an EIS is to develop information for the public and decision-maker. The 2008 DEIS included alternatives intended to illuminate issues, such as hunt area and timing, as well as numbers of whales killed.
EII93	**Line numbers are missing from my DEIS copy from here on**. Ch.4/pg.8/: my notes say pod size used is smaller than used for migrants.	The 2008 DEIS relied on information about pod size to both migrating whales and PCFG whales. The new DEIS relies on information about pod size from Laake et al. (2009) and applies it to PCFG whales (Section 4.1, Introduction).
EII94	4/23/: The DEIS has not cited any literature in this section despite many inferred conclusions.	Section 3 of the DEIS provides information on the affected environment for each resource, with citations. Section 4 of the DEIS analyzes the

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		effect of each alternative on each resource, relying on the information presented in Section 3. For this reason, Section 4 contains very few references to the literature, and instead refers back to Section 3, which cites the literature.
EII95	4/24 – 4.3.3 : This statement claims taking a few to all whales from U& A project area won't make much difference to benthic community. Given thousands of feeding pits in WA, this appears to be a hasty conclusion. The narrative that delivers the DEIS to that decision is highly speculative and lacks much quantitative evidence.	The cited paragraph is an overview of the more detailed analysis contained in pages 4-24 through 4-30. The comment identifies no specific information that was not considered in that analysis.
EII96	4/32/: The DEIS claim of not much impact from gray whale removals rests upon IWC determination that 124 whales killed won't matter – according to the DEIS. I don't believe the IWC has an adequate and specific focus that supports that view given the science presented is, I believe, largely from the U.S. delegation that is there for the purposes of convincing the IWC scientific committee to get the Makah a quota. There is more information in the DEIS and the parties interested in this proposed action than was considered at the IWC during quota deliberations.	The 2008 DEIS relied on several sources of information to reach conclusions about impacts, not just the conclusions of the IWC. The comment identifies no specific information that was not considered in the DEIS analysis.
EII97	4/33/: The bottom of this page asserts that coastal gray whales are interchangeable with those in the Strait and Makah U&A. Writers still don't appreciate that close-shore feeders are not migrants. So, impacts should be weighted with location and behavior of the whale when attacked.	The indirect effect on the benthic environment of killing gray whales under the Tribe's proposal is discussed at the top of page 4-27 of the 2008 DEIS. The analysis concludes that the removal of whales "would probably not appreciably change background levels of benthic disturbance or the quantity of benthic prey consumed." It further notes that whale foraging appears to play an insignificant role in structuring benthic communities, which are most strongly affected by the physical features and large-scale environmental processes. The comment presents no contrary information we should have considered.
EII98	4/37/: The open-ended possible increase in allowable by-catch is not acceptable because it would remove the whales with the highest site fidelity first due to their increased hunt exposure in the Makah U&A areas.	The purpose of the EIS is to develop information for the decision-maker and the public. The NEPA document itself does not reach conclusions about whether certain alternatives are acceptable according to various criteria.

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EII99	4/39/ 3rd para: This seems to be overly generalized and dismissive as if there is not a point at which we could create harassment with noise. Thee are no boundaries indicated.	Comment addressed elsewhere.
EII100	4/40/ : There is no data, just a supposition based on non-measurements. Gray whales have a compelling reason to feed there as the stakes are high. Same with 4/43/.	The analysis in the cited section describes the lack of information on effects of disturbance, and notes that a Makah hunt could disturb whales sufficiently to cause them to abandon the area and that the potential for that to occur would likely depend on the intensity of the disturbance. This comment presents no specific information on the subject that the DEIS failed to consider.
EII101	4/49/: The use of terminology in the DEIS diminishes the sense of place, a place people would care about. People are not be aroused by "Project Area" but the DEIS constantly uses the phrase Project Area to describe a magnificent national marine sanctuary, the Olympic National Park and a national wildlife refuge. The DEIS should seek to use the descriptive terms given to these areas. Otherwise use of language can alter the public's perceptions of the environment in which this killing is to take place.	The term "project area" is commonly used in NEPA practice to describe the affected area.
EII102	4/50/: Would not what is described here require an action by the U.S. government to alter the bilateral agreement with the Russian Federation? If so, the paragraphs there are not true.	The page cited in the comment refers to the discussion in Section 4.1, Introduction, which explained the expectation that the Chukotka Natives would take any gray whales from the IWC quota that are not taken by the Makah. As described in the new DEIS, this is what has in fact happened during the quota periods that the Makah have not hunted.
EII103	4/52/: The important statement here is that 7 whales killed is more than U&A recruitment rate (also means more than marine sanctuary recruitment).	Comment noted.
EII104	4/195/4.16.2.2: I have responded to this sad state of affairs earlier in my comments. NOAA/NMFS and presumably the BIA have known about the contamination of the 1999 gray whale that year. While these agencies moved the whaling proposal forward, they did nothing to mitigate the issues identified on this page. The summary of his paragraph must be included with each lethal Alternative proposed. The contaminants and their effects on human health should be	The current DEIS expands the discussion of contaminants in gray whales (Section 3.16.3.2, Environmental Contaminants in Gray Whales).

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	summarized here. Whaling must not be allowed to proceed without addressing these issues. The DEIS process must stop until human health and informed choices can be reasonably explored in this document.	
EII105	<u>The Anne Renker Paper</u> I will briefly summarize why this paper distorts the DEIS to unacceptable levels. The DEIS depends upon this paper almost entirely to create the alternatives bases(number of whales). It would be one thing if it was simply a needs statement, but the DEIS has adopted and utilized the conclusions of this paper throughout. For that reason, that heavy reliance, NOAA/NMFS must objectively peer review the methods, data and conclusions drawn. There are red flags that are compelling:	For the 2008 DEIS, NMFS contracted with an independent cultural anthropologist, Dr. Braund, to travel to Neah Bay and provide a report (Braund 2007). We continue to rely on Dr. Braund's work in the new DEIS. In response to this and other comments, the new DEIS provides more detail on the background and context of Dr. Renker's Household Whaling Surveys (Section 3.10.3.5.1, Makah Whaling).
EII106	1. This does not appear to be an arms-length survey and paper. Two surveys were done for Renker. Both used the same "turkey draw" system to establish a random sample. Yet, in the first survey, only 159 households out of 217 contacted agreed to be surveyed (27%). In a small, socially dynamic village, there were likely common themes running through the decliners. These were never explained but it is reasonable to assume it was because of family animosity or opposition to whaling which would not be openly stated. The second survey used the same sampling technique but nearly all agreed to be interviewed. Why the change? I have briefly read comments by others who have more detailed information. They concluded that the selection could not have been random given an impossible percentage of those contacted being officially involved in the taking of the 1999 whale.	Comments noted.
EII107	2. The survey forms do not appear to very confidential since generations of family members can easily identified by other household members at the time of the interview visit.	
EII108	3. Renker 2002 infers there are not enough fish for nutritional health but does not produce the data except that which	

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	counters her assertions – that 55% of the Makah diet is typically fish. There are enough essential fatty acids and protein is such a diet.	
EII109	4. Small-community members are going to shout for the team predictably. No matter the professional skills of the interviewers or the author, Renker, the results have a high likelihood of being non-representative of personal feelings.	
EII110	Certainly there are people in Neah Bay who strongly support the concept of going whaling. But because of the social structure there, it will take more than a semi-public survey conducted between tribal families to find a measure of truth.	
EII111	The DEIS must make the majority of its needs case by mixing in other sources of information. An anonymous website with security codes would have been more fruitful.	The purpose of a DEIS is not to make a case, but to develop information for the decision-maker and the public.
EII112	<u>Regarding the Denial of Additional Time for Public Comment Period</u> After being granted an extension of the comment period for a cumulative 98 days, I and others requested an additional period of 30 days. In an undated August letter from Donna Darm (sent by separate mail), NOAA/NMFS rejected my request, submitted jointly with others including the Animal Welfare Institute. There were no material reasons given other than the opinion that 98 days is sufficient time for similar DEIS documents of similar size and scope. While I cannot say whether all other DEIS documents are more, or less, equal to this one, I do know that each one is unique – as is the level of interest, the degree of public evaluation, the completeness and incompleteness of the document and the profiles of the responding public. I know of no harm to any party that would have resulted from granting our request for an extension. For my part, I am not able to completely evaluate and respond to this DEIS for lack of time. I have a lot of material that I need to still read so will make supplemental comments. Barring a stated harm presented	NOAA's regulations regarding NEPA require that the agency provide a 45-day comment period on all EISs (NOAA Administrative Order 216-6). In this case, we provided 98 days to review the draft – an initial 60-day period and a 38-day extension. In response to request for comments on the draft, we received more than 800 pages of comments from over 400 commenters, suggesting that the 98-day comment period allowed commenters sufficient time to read and comment on the draft. This 98-day comment period is consistent with, or longer than, other comment periods for complex draft EISs prepared by NMFS. For example, for its 1,000 plus page draft EIS on Washington States' forest practices, we provided a 90-day comment period. The nearly 1,200 page draft EIS on the Puget Sound Chinook harvest management plan had a 46-day comment period. Consequently, we believe that given the amount of comment review time offered to the public, and the substantial number of comments received during this period, that NMFS provided adequate time to review and comment on this DEIS.

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	NOAA/NMFS, I believe the intent of Congress in enacting NEPA has been defeated unnecessarily. I request that, as part of its response to the public comments that are submitted here, NOAA/NMFS describe its material reasons for denying the joint request that out-weigh NEPA considerations. Included in that response, NMFS should state the content of communications within and between governments, including that of the Makah. Did the Makah have veto power over my/our request?	
EII113	Conclusions I have detailed how NOAA/NMFS has by broad omission of information and issues, and in making key, unsupportable conclusions on the data it does provide, that this DEIS is still insufficient for supporting any Alternative. As I generally describe in the Summary of my specific comments, there is insufficient information to protect the Makah (harm from additional dietary toxic burdens) and the feeding summer resident PCFA/ORSVI whales. The "missing" portions of the current DEIS are so substantial that they will likely change the weight and meaning of those existing portions currently deemed sufficient. For those reasons, and those based on my comments in this letter, NMFS must correct these deficiencies, and those that others identify, by writing a Supplemental DEIS (SDEIS). Regarding my choice of Alternatives, the one that I would choose is not one of the six provided, though I had brought it up in the Seattle scoping meeting. In written comments I made on scoping dated October 24, 2005, I suggested that the treaty could be renegotiated and include restoration of the Makah land base. My current alternative of choice that should be offered in the EIS would be the US and Makah negotiating an agreement similar to that between the Maa-Nulth First Nations (cultural cousins to the Makah) and the Canadian government. In exchange for "storing" their whaling practices, the Makah would enjoy cultural and material sustenance with the return of lands usurped by European settlers and annual payments that could address	Comment noted. The 2008 DEIS included the alternative of compensation to the Makah Tribe in exchange for agreeing not to whale (Subsection 2.4.6, Alternative Compensation to the Tribe), in response to the cited scoping comment and similar comments by others during scoping. The new DEIS also includes this alternative (Subsection 2.4.7, Alternative Compensation to the Makah Tribe).

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	most social and economic needs. Even if the current tribal government has stated they have no interest in this Alternative (and if they have, it should be disclosed in the SDEIS), it should be included because the interests of the MMPA and NEPA go beyond the party proposing the action that requires an EIS. Signed, Will Anderson 2122 8th Avenue N, #201 Seattle, WA 98109 206.715.6414 friendsofthegraywhale@comcast.net Earth Island Institute International Marine Mammal Project 300 Broadway, Suite 28 San Francisco, CA 94133-3312 415.788.3666 www.earthisland.org	

Humane Society of U.S. – Comments submitted August 15, 2008 by N. Rose.

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HSUS1	On behalf of The Humane Society of the United States (HSUS) and its more than 10.5 million members and constituents, I am submitting comments on the draft Environmental Impact Statement (DEIS) for the proposed authorization of the Makah whale hunt (*73 FR 26375*). For the record, we would like to state that the timing of this comment period made a thorough review of the document difficult for many stakeholders, as it wholly overlapped with the lead-up to and duration of the annual meeting of the International Whaling Commission (IWC). Our review of the DEIS is consequently less detailed than we would have liked, and we reserve the right to revisit its content during future stages of the on-going regulatory and waiver process. Indeed, the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS), regardless of the content of a final EIS, may subsequently need to produce a supplemental EIS, as events develop and research and investigatory results are published that may need to be incorporated into the environmental impact analysis.	Comment noted.
HSUS2	**Overview** While the DEIS is a considerable improvement over previous documentation prepared under the National Environmental Policy Act (NEPA) and an effort has been made to be responsive to the scoping comments submitted by The HSUS and others in October 2005 (HSUS comments attached), it is still a biased analysis that seems tailored to support a predetermined outcome. The HSUS considers the DEIS to be deficient in several respects: 1) Failure to fully consider all reasonable alternatives – the DEIS fails to consider a number of viable alternatives to the Makah's proposal to kill whales; 2) Characterization of the past and present political situation – the DEIS, as with previous NEPA documents prepared on the Makah request, inaccurately describes the political and administrative background of the Makah's effort to resume whaling; 3) Public safety – the DEIS fails to adequately clarify how those responsible for managing the hunt will prevent on-water interactions between whalers, officials (e.g., the Coast Guard), and protesters from becoming dangerous;	These paragraphs summarize comments that appear in more detail below.

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	4) Effective management of the hunt – the DEIS does not adequately address the ramifications of an illegal hunt that occurred on September 8, 2007; 5) Future of the Eastern North Pacific (ENP) gray whale population – the DEIS does not adequately consider the cumulative impacts on the gray whale population from, e.g., global climate change, chemical and noise pollution, harmful algal blooms, and increased shipping; 6) Impact on individual gray whales – the DEIS does not adequately consider the impact of hunting methods on individual animals or whether those methods are "humane;" and 7) Effect on federally-protected areas – the DEIS does not adequately discuss how the hunt affects wilderness and other federally-designated protected areas.	
HSUS3	An important reason why The HSUS opposes the Makah request (but see below for a discussion of our primary objection) is because the push to conduct this hunt, while perhaps understandable in the context of treaties and certainly culture (although we continue to assert it is not a subsistence hunt), is frankly inexplicable in the context of the modern situation in Puget Sound. As the DEIS makes clear, Puget Sound is far different today than it was up through the early 20th century when the Makah whale hunt ceased due, *inter alia*, to the commercial extinction of the gray whale and a focus by the Makah Tribe on other industries of the western economy, including sealing. In modern aboriginal whale hunts in remote regions such as northern Alaska or Chukotka, the use of dangerous weapons risks only the whalers (and the whales) and in more populated areas such as St. Vincent and the Grenadines, dangerous/explosive weapons are not used. It is simply not sensible to pursue this hunt, with this weaponry, in one of the most economically important and densely populated shipping and recreational regions of the United States.	The 2008 DEIS fully analyzed the potential impact of a Makah gray whale hunt on public safety (Subsection 4.15, Public Safety). Comment noted.
HSUS4	The Makah are not being "good neighbors," as they insist on pursuing whaling in an area inhabited by many people and vessels, an activity that will interfere with the use of a protected area and that poses significant danger to all those involved, due to strong opposition to it. The Makah request has resulted in community divisions that will take a long time to heal (if they ever do), and in an enormous taxpayer and manpower drain.	The 2008 DEIS fully analyzed the potential impact of a Makah gray whale hunt on the social environment, including the Tribe's neighbors on the Olympic Peninsula (Subsection 4.8, Social Environment). The comment cites no specific information that was not included in the 2008 DEIS.

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	The Makah accuse opponents of the hunt of pushing their cultural values on the Tribe, but in fact the same accusation can be made in the reverse – the Makah Tribe is forcing an entire region to adapt to its cultural values. The DEIS, unfortunately, downplays all of these elements of the situation when considering the impact of this hunt on the human environment.	
HSUS5	In essence, while we appreciate the Makah's desire to preserve its cultural traditions, pursuing *this* tradition is simply not practicable from a wider social, economic, and safety standpoint. While this may not be fair from some perspectives, it is reality. Puget Sound today is a melting pot of many uses (business and recreational), cultures, values, and ideas, where the Makah tradition of whaling, especially when using modern weaponry and without a subsistence basis, does not and will not mix easily.	This is not a substantive comment about the content of the 2008 DEIS but a comment about cultural values.
HSUS6	**Failure to Consider All Reasonable Alternatives** Given these varying cultural values, NMFS's (and the Makah Tribe's) failure over the years of controversy to change the proposal to one that might be more acceptable to the wider community is difficult to fathom and violates NEPA's requirement to "rigorously explore and objectively evaluate all reasonable alternatives."[1] NMFS has never proposed a hunt that is pursued farther offshore in the migratory corridor, or that establishes a smaller annual quota that actually matches consumption commitments by tribal members (four or five whales in a year will no doubt result in meat going to waste, as not all tribal members want to eat it), rather than one that symbolically matches the historic villages of the Makah Nation[2]. Certainly a ritualized hunt or a ceremonial event that relies entirely on "calling a whale" to shore – the latter described in the DEIS as a valued cultural practice historically performed by the Makah chiefs – would address the concerns within the opposition, but none of these options are apparently acceptable to the Makah.	In response to this and other comments, the new DEIS includes an alternative of an offshore hunt (Subsection 2.3, Alternative 3). The 2008 DEIS included an alternative with an annual limit of 3 whales landed per year, fewer than the 5 requested by the Tribe (Subsection 2.6, Alternative 5). Moreover, by analyzing a harvest of up to four whales on average, and up to five whales maximum, per year, the 2008 DEIS analyzed lesser included impacts of fewer whales per year. As explained in the 2008 DEIS, we did not analyze an alternative of a ceremonial hunt because the effects on the human environment would be the same as the No-action Alternative, thus analyzing such an alternative in detail would provide no additional information for the public or decision-maker (Subsection 2.4.2, Subsistence Use of Drift Whales).
HSUS7	The HSUS rejects the rationale in the DEIS that these alternatives are not acceptable because they would not meet "the purposes and needs" of the Makah. Just because the Makah's intention was to reserve their right to kill whales when they signed the Treaty of	As explained in the 2008 DEIS, we did not analyze a non-lethal hunt in detail because its effect on the human environment would not be different from the

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	Neah Bay in 1855 does not mean they still *must* kill whales to meet their purposes and needs. The Makah are free to interpret their purposes and needs however they wish, as long as that interpretation does not violate the law. The purposes and needs of the Makah are as flexible as their hunting methodologies – if they are free to modify and modernize the latter, they are certainly free to modify and modernize the former.	No-action Alternative and its analysis would provide no additional information for the public or decision-maker (Subsection 2.4.1, Non-lethal Hunt). We did not examine use of drift whales in detail for the same reason (Subsection 2.4.2, Subsistence Use of Drift Whales).
HSUS8	**Characterization of the Past and Present Political Situation** The HSUS and numerous others, including Parties to the IWC, have opposed the Makah hunt proposal from the outset because it failed to conform to international standards of aboriginal subsistence whaling. The proposal threatened to create and has *de facto* created a new category of whaling – cultural whaling – that does not reflect a nutritional need and weakens the distinction between aboriginal subsistence whaling and commercial whaling. The DEIS omits mention of our position entirely when discussing opposition to the Makah proposal; instead it implies that the only opponents are those who do not accept any killing of whales or who are concerned solely with the suffering of hunted whales. Certainly *some* opponents hold this latter position and it is an argument that is relatively easy for the government to counter and the DEIS spends some time doing so. But the government cannot defend its support for the Makah proposal by honestly addressing our reasons for opposing it, so it simply ignores us.	This and following comments do not cite specific passages from the 2008 DEIS. We have attempted to identify the sections of the DEIS that are the subject of each comment. The 2008 DEIS neither supported nor defended the Makah Tribe's request for a waiver of the MMPA. Rather, it examines the impact of the Tribe's proposal, and alternatives to that proposal, on the human environment. In response to the concern raised here and elsewhere, the 2008 DEIS examined the potential for authorization of a Makah hunt to lead to increased whaling worldwide (Section 4.17, National and International Regulatory Environment). In describing the concern about potential impacts, the 2008 DEIS stated: "Public comments also expressed concern that NMFS' approval of Makah whale hunting could lead to increased whaling by weakening United States leadership in whale conservation or strengthening the position or resolve of whaling proponents" (Subsection 4.17, National and International Regulatory Environment) The new DEIS included a similar passage, which has been revised in response to this comment to state: "Public comments on our 2008 Draft Environmental Impact Statement (DEIS) expressed concern that NMFS' approval of Makah whaling could lead to increased whaling worldwide by

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		creating a new category of cultural whaling, weakening United States leadership in whale conservation, or strengthening the position or resolve of whaling proponents." (Subsection 4.17, National and International Regulatory Environment).
HSUS9	As the DEIS notes, the working definition of "aboriginal subsistence whaling" has been amended at the IWC, but it does not clarify that this change was spearheaded by the US delegation solely because of the Makah request[3]. The new definition is far weaker than the original, as it no longer includes the requirement to demonstrate a nutritional need; a requirement, incidentally, that the Alaska Natives expended considerable effort to meet in the 1970s and 1980s and that formed the basis for the opposition expressed by IWC Parties at the annual meeting in 1997 (see below).	This comment does not accurately represent the information presented in the 2008 DEIS. The 2008 DEIS noted that the working definition of "aboriginal subsistence *whaling*" developed by an ad hoc technical working group in 1981 was never adopted by the IWC (Subsection 1.2.4.1.3, IWC Aboriginal Subsistence Whaling). The 2008 DEIS also described a definition of "aboriginal subsistence *use*," which was developed by a "Cultural Anthropology Panel" in 1979 (Subsection 1.2.4.1.3, IWC Aboriginal Subsistence Whaling). As described in the 2008 DEIS, the 1979 definition of "use" was adopted by the IWC in 2004, as proposed by Russia. The 1979 definition of "use" did not "amend" the 1981 definition of "whaling."
HSUS10	By not including our position in the DEIS's description of the spectrum of opposition to the Makah proposal, the US government is able to avoid acknowledging actions it has taken to amend the aboriginal subsistence standards at the IWC and in domestic regulations to fit the Makah proposal rather than the other way around. Indeed, the DEIS avoids having to include a more thorough and culpable description of the actions the government has taken to push the proposal forward, which led to multiple court judgments ruling that these actions were illegal. Clearly the government would prefer to minimize reference to this history and the DEIS certainly does so! The precedent-setting nature of this request has led to political machinations on the part of the government that has made the world a less safe place for whales, no doubt never the Makah Tribe's intention, but unfortunately a principal result.	As described above, the 2008 DEIS described various grounds for opposition to the Makah's proposal. Also as described above, in response to this comment, the new DEIS adds to that list the concern that the Makah's proposal adds a new category of "cultural whaling." As described in the 2008 DEIS, the United States offered a detailed explanation of its determination that the Makah Tribe's request met the IWC standards for aboriginal subsistence whaling (Subsection 1.4.1.2.2, Overview of Requests for ENP Gray Whales on Behalf of the Makah).

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		In response to this and other comments, the new DEIS also cites the document the United States prepared and presented at the 2007 meeting of the Aboriginal Subsistence Whaling Group that details the factors supporting the United States' conclusion that the Makah Tribe's request met the requirements for an aboriginal subsistence whale hunt (Subsection 1.4.1.2.2, Overview of Requests for ENP Gray Whales on Behalf of the Makah).
HSUS11	Regarding the events at the 1997 IWC meeting in Monaco, it is at best disingenuous, and at worst misleading, for the DEIS to suggest that "many" IWC delegates supported the US delegation's request on behalf of the Makah. It is also incorrect to suggest, through the use of the word "others" when referring to the opposition encountered, that this opposition was in the minority. Indeed, a majority of countries speaking in the plenary session at the 1997 meeting opposed the US submission on behalf of the Makah Tribe on substantive grounds, including Australia, the Netherlands, Spain, the United Kingdom, Chile, New Zealand, Brazil, Mexico and Argentina.	The 2008 DEIS passage that referred to "many" delegates supporting the Makah proposal and "others" opposing it describes the IWC annual meeting in *1996*, rather than the meeting in *1997* (Subsection 1.4.1.2.2, Overview of Requests for ENP Gray Whales on Behalf of the Makah). According to the Chair's Report, at the 1996 ASW Sub-committee meeting, 10 members supported the Makah request (Denmark, St Vincent and The Grenadines, Norway, Russian Federation, Grenada, Japan, Republic of Korea, Monaco, St Lucia, and France) and 8 members expressed doubt (Australia, Spain, Chile, China, New Zealand, Mexico, Oman, and The Netherlands) (IWC 1996 Chair's Report). The United States withdrew its request at the plenary session. In response to this comment, the referenced passage appears in the new DEIS but the reference to the plenary meeting is deleted. Also in response to this comment, the description of the 1997 plenary meeting in the new DEIS includes the sentence "Several delegates opposed the Makah Tribe's request, while others supported it (IWC 1997) (Subsection 1.4.1.2.2, Overview of Requests for ENP Gray Whales on Behalf of the Makah).
HSUS12	The Verbatim Record for the Monaco meeting contains several statements clarifying that the vote by numerous Parties for the gray whale quota was in support of the Russian	Regarding the *1996* IWC meeting, the 2008 DEIS stated: "Other delegates indicated they would vote

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	Federation's request on behalf of the Chukotkan people, whose subsistence needs had long since been recognized by the IWC, *not* in support of the Makah proposal. Nevertheless, the DEIS not only ignores these clearly stated caveats but offers another rationale for the opposition to the Makah request: "One reason for this opposition was that the United States did not ask the Russian Federation to share the existing [quota]…" Yet the Verbatim Record does not support this as an opposition rationale at all, although certainly Parties recommended that aboriginal groups share existing quotas rather than combine requests additively. The reason for the opposition was because the Makah request did not conform to the existing definition of aboriginal subsistence, full stop. It is clear that the DEIS seeks to respond to previous criticism that the description of events at the IWC omitted the fact that there was opposition. However, rather than describing the opposition accurately, the DEIS ignores the facts and instead manufactures a rationale that allows the government to avoid admitting that, in essence, it forced a vote on subsistence quotas that put Parties in the position of having to vote for the gray whale quota if they wished to support the Chukotkans, even knowing that the United States had "done a deal" with the Russians that would allocate some of the whales to the Makah. The DEIS is rife with sins of omission (see below), but this is one instance where the text is completely inaccurate. The US delegation manipulated the situation and damaged its integrity in order to get some form of approval for the Makah proposal at the IWC. The government's actions were wholly inappropriate and The HSUS strongly urges the US government to avoid recasting history. What is done is done – ignoring it or spinning it simply makes a bad situation worse.	against the proposal. One reason given for this opposition was that the United States did not ask" Russia to share its existing quota (Subsection 1.4.1.2.2, Overview of Requests for ENP Gray Whales on Behalf of the Makah). The next paragraph explains there were other reasons for the opposition to the request, specifically that the Makah did not have a "continuing traditional dependence" on whales and did not have a nutritional need for whales. This paragraph describes in detail how the U.S. delegation responded to those criticisms before withdrawing its request that year. Regarding the affirmative vote at the *1997* IWC meeting approving the joint U.S.-Russian request, the 2008 DEIS did not describe support or opposition, but did describe IWC deliberations that led to the inclusion of the words "whose traditional aboriginal subsistence and cultural needs have been recognized" to the Schedule language (Subsection 1.4.1.2.2, Overview of Requests for ENP Gray Whales on Behalf of the Makah).
HSUS13	NMFS's indiscriminate – and indeed illegal – support for the Makah proposal has weakened the US position on whaling domestically and internationally and the need to avoid acknowledging this continues to result in an inaccurate portrayal of the opposition to the hunt, including from Parties to the IWC, and the actions taken by the US delegation at the IWC. Contrary to the DEIS's characterization, the IWC has *never* acted on the Makah request – the request (i.e., the needs statement) was withdrawn in 1996 and events transpired in 1997, as described above, that led to a vote on a gray whale quota (as required by the Schedule) that numerous Parties made clear was *not* to be taken as support for the Makah needs statement. Indeed, the US delegation, which had	The comment states that U.S. support for the Makah proposal has weakened the U.S. position on whaling but provides no specific information to support that statement. The 2008 DEIS examined the potential for the requested agency action to increase aboriginal subsistence whaling and harvest of whales (Subsection 4.17.2.3, Worldwide Whaling). The comment cites no information that was not included in that analysis.

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	established a precedent when it acted on behalf of the Alaska Natives in the 1970s of submitting strong needs statements in order to demonstrate that subsistence quota requests were based on a clearly defined need, completely reversed its previous policy and insisted in 1997 that the IWC *cannot* act on aboriginal needs statements. The delegation argued that there was no mechanism at the IWC to recognize aboriginal needs, despite the considerably more diligent (and legal) efforts it went through on behalf of the Alaska Natives to accomplish that very recognition. Given this, for the DEIS to say that the IWC acted on the Makah request is not only incorrect, it is hypocritical.	
HSUS14	The United States has established a dangerous precedent of Parties acting unilaterally or bilaterally to recognize aboriginal needs, as it did bilaterally with the Russian Federation in 1997, and to determine without IWC oversight which groups are eligible to take whales from stocks for which the IWC has assigned a quota.	The comment refers to actions that have already occurred. The 2008 DEIS examined the potential impact of taking the proposed action, and alternatives to that action. In any event, while the comment asserts that U.S. action at the IWC already set a precedent, the comment does not provide specific information beyond that analyzed in the 2008 DEIS to support any conclusion about the effect of such a precedent.
HSUS15	We note that the DEIS, in Section 4.17.2.2, concludes that "...it is unlikely that NMFS' actions to either deny the Makah request (Alternative 1- No- action) or grant the Makah some level of hunting (Alternatives 2 through 6) would change the United States' position on commercial and scientific whaling or its ability to actively pursue its position." This statement is disingenuous. NMFS's actions have *already* changed the US position on commercial whaling and undermined its opposition to it, as outlined above.	The comment states that the U.S. request on behalf of the Makah Tribe resulted in a change in the U.S. position on commercial whaling, yet provides no evidence of a change in the U.S. position on commercial whaling.
HSUS16	The United States was once a leader at the IWC against commercial and scientific whaling, but is now trailing Australia, New Zealand, and the United Kingdom in this regard, all of whom opposed the Makah hunt proposal from the outset. The DEIS' argument that a Makah hunt would not weaken the US position against commercial whaling because US support for the Alaska Native hunt has never done so (which in fact is questionable) entirely misses the point that the two hunts are not the same and that this is precisely why The HSUS, many IWC Parties, and others have opposed the Makah proposal.	The 2008 DEIS considered whether authorizing a gray whale hunt will affect worldwide whaling, including aboriginal subsistence, scientific, and commercial whaling. That analysis appears on pages 4-200 through 4-205 of the 2008 DEIS (Subsection 4.17.2.2, Worldwide Whaling; Section 4.17.3, Evaluation of Alternatives).
HSUS17	**Public Safety**	The 2008 DEIS described the potential for hunters, protesters, or bystanders to be injured from

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	Chapter Two describes "Public Safety Measures," but fails to clarify that these very measures were employed in the 1999 and 2000 hunts and nevertheless someone was seriously injured in 2000. The only way a guarantee of conducting a safe hunt can even be approached, let alone achieved to any satisfactory degree, in such a heavily populated region is by expending large sums of taxpayer money on Coast Guard escorts to enforce the RNA and MEZ and to be on hand should an emergency response be required. As noted above, this is simply *not* a good place to host a whale hunt today – this may not be fair from the Tribe's point of view, who never invited westerners to the Olympic Peninsula, but it is reality.	weapons, boating accidents, or protest activities (Subsection 4.15, Public Safety). The analysis stated that the lowest risk of injury would occur under the No-action Alternative, and the risk of injury would increase depending on the number of days hunting would occur.
HSUS18	Quite frankly, it is almost a guarantee that someone who is not a whaler *will* eventually be injured or killed during a Makah whale hunt if one is authorized. The dangers inherent in whaling, which in other aboriginal whaling situations are faced only by the whalers (as is appropriate), are being shared by others in this case (e.g., the protesters, the media, even the NMFS observers and the Coast Guard). One could argue that the protesters and reporters are facing these risks voluntarily but that would be a glib response. The protesters have their beliefs too and the reporters are simply doing their job, just like federal agency personnel. The DEIS implies that familiarity will breed contempt and eventually the circus that has surrounded previous hunts (in 1998, 1999, and 2000) will die down, but while it may be true that eventually only a core group of protesters and reporters will remain, they *will* remain. NMFS and the Makah – and the DEIS authors – simply refuse to acknowledge the reality that a whale hunt is incompatible with the Puget Sound region. The public safety discussion is, in essence, a fantasy, one that ignores that the previously established safety measures did not work in 2000 and arguably did not work in 2007 either, since the illegal whalers were able to go out onto the water with a large caliber rifle that was supposed to be under lock and key and discharge it several times without taking any of the precautions the Makah management plan requires.	The 2008 DEIS analyzed public safety in terms of the risk of injury and concludes that there is a risk of injury under the action alternatives, which is likely to increase based on various factors, most particularly the number of days of hunting (Subsection 4.15, Public Safety). None of the analyses of public safety impacts concludes that risks to public safety will diminish over time. It is unclear what passage the comment refers to regarding continued interest in and opposition to the hunt. Two sections of the 2008 DEIS that analyze effects associated with the number of vessels and hunting expeditions include the following language: > [A]lternatives that allow more hunts might attract less public interest over time and less media coverage. Because of the difficulty of predicting such variations, and how they might affect the precise numbers of vessels and aircraft participating in each hunt, this analysis assumes each hunting expedition would be accompanied by the same amount of vessel and aircraft activity and associated disturbance.

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		(Subsection 4.5.2.1, Disturbance, and Subsection 4.2.2.1, Spills.) This language does not appear in the discussion of public safety.
HSUS19	**Effective Management of the Hunt** The DEIS' treatment of the illegal September 2007 hunt by several Makah tribal members is shallow and inappropriately dismisses its significance in the context of a future hunt authorization. The US delegation failed to report this breach as an infraction at the 2008 annual meeting of the IWC[4]. The federal government did successfully prosecute the illegal whalers, but in its efforts to prevent the illegal hunt from derailing the current regulatory process, the government has once again cut corners at the IWC (see HSUS scoping comments and above discussion on the characterization of the political situation), further weakening its overall policy and position on whaling.	The 2008 DEIS analyzed the cost to the Federal government and others associated with management and law enforcement. This analysis describes the costs of monitoring whales, observing hunts, and providing law enforcement in the event protests occur (Subsection 4.6.2.5, Management and Law Enforcement). In response to this and other comments, the new DEIS includes cost estimates for NMFS personnel to monitor Makah management of the hunt, as well as Federal administrative and law enforcement costs to investigate and prosecute potential infractions. Regarding U.S. reporting of the 2007 unauthorized hunt, the United States did report this incident to the IWC, but did not characterize it as an "infraction" of IWC regulations because the Makah hunt was approved by the IWC (IWC 2007).
HSUS20	In addition, the public has not had access to all of the details surrounding the investigations into the illegal hunt and there have been allegations made by the perpetrators about Makah Tribal Council involvement that must be resolved. We strongly urge NMFS to include a thorough discussion of these issues in the final EIS, to include details so far kept from the public (in the NMFS and Coast Guard reports on their investigations) and to resolve any unanswered questions that were raised at the trials. If events continue to develop, a supplemental EIS may eventually be required.	Subsequent to the release of the 2008 DEIS, some of the defendants filed documents in federal court alleging that the tribal council knew about and approved the hunt. The new DEIS describes the NMFS investigation of the illegal hunt, including allegations of tribal council endorsement (Subsection 1.4.2, Summary of Recent Makah Whaling ─ 1998 through 20012).
HSUS21	Interestingly, no mention is made in the DEIS of the fact that the leader of the illegal hunt was the 1999 whaling captain, Wayne Johnson. The very man selected by the Makah system to lead the whaling crew did not hesitate to break the law and, according to media quotes, was proud of having done so. In addition, and aside from any allegations of involvement, the Tribal Council failed to fulfill its promises to punish these actions fully and definitively. These facts beg the question of how the Makah Tribe will manage the	In addition to the added discussion about the investigation of the unauthorized hunt, described above, the new DEIS also discusses the role of certain individuals in the unauthorized hunt, questions raised about tribal management of the hunt, and the potential need for Federal oversight

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	hunt adequately in the future, which includes the process for selecting the whaling crew. Indeed, the DEIS contends that the established tribal management system will suffice for the future. The HSUS strongly disagrees with this contention and urges that the final EIS address how the proposed hunt regulations and the associated Marine Mammal Protection Act (MMPA) permit will be effectively enforced in the future, given the tribal system's failure to stop or prosecute the illegal hunt.	and enforcement of a hunt (Subsection 4.6.2.5 Management and Law Enforcement).
HSUS22	**Future of the ENP Gray Whale Population** While the present status of the gray whale population is much improved from the early 20th century, its long-term viability is very much in question and the DEIS does not adequately address this. Swartz et al. (2008)[5] noted an on-going decline in numbers of whales of various age classes in Laguna San Ignacio, one of the main breeding lagoons in Mexico. While this may simply indicate a shift in distribution, it may also reflect a true decline in breeding ground numbers, yet the DEIS does not even mention this work. Indeed, the DEIS assumes the gray whale population is at or within its Optimum Sustainable Population size, but in fact this is merely speculative and there are other scientific opinions on this.	Comment noted. The new DEIS describes new scientific information developed since the 2008 DEIS was published, including the studies by Punt and Wade (2012), which conclude that the ENP gray whale stock is at 85 percent of K (Subection 3.4.3.1.3 Population Exploitation, Protection, and Status). This analysis was reviewed by the Scientific Committee of the IWC.
HSUS23	For example, Alter et al. (2007)[6] conducted a genetics analysis that suggested a historic population size several times larger than currently assumed. The DEIS mentions this paper, but mostly in the context of saying additional evaluation of its analysis is needed. This again argues that a supplemental EIS may eventually be required. Alter et al.'s analysis suggests that either the current ENP gray whale population is far from its historical K value or that K has significantly declined in the past 100 years. If the former is true, then the precipitous drop in population in 1999/2000 is of deep concern (since it is not related to reaching carrying capacity, as the DEIS supposes). If the latter is true, then the gray whale's habitat has been severely altered or damaged in the past few decades, again an issue of deep concern. Regardless, the DEIS should have discussed these possibilities thoroughly, even if the eventual conclusion was to discount them – yet it does not. The final EIS must rectify this omission.	The new DEIS discusses the issue of carrying capacity of the ENP gray whale stock, referencing Alter et al. (2008), Alter et al. (2012), and other relevant publications subsequent to the release of the 2008 DEIS. We kept these comments in mind as we developed that discussion. As explained in the 2008 and new DEIS, we consider carrying capacity to be the current carrying capacity of the habitat (Subsection 3.4.3.4.5, Estimates of Carrying Capacity (K), OSP, and PBR).
HSUS24	As noted above, the DEIS blithely dismisses the 1999/2000 population decline as a mere "blip" in a population fluctuating around its carrying capacity. But this is only a hypothesis and there could be other, more troubling explanations for this decline, including (as the DEIS itself suggests) that a loss of sea ice in the Arctic somehow reduces foraging success for gray whales. If this latter hypothesis is correct, then global	The 2008 DEIS devoted several pages of discussion to the 1999/2000 mortality of ENP gray whales and NMFS' investigation and response (Subsection 3.4.3.4.2, Stranding Data). The DEIS did not describe that event as a "blip" or present an explanation for the event and noted that the theory

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	climate change and loss of sea ice bodes very ill for the gray whale, yet the DEIS barely addresses this. While the discussion of the gray whale's natural history and status is much improved over earlier NEPA documents, there is still inadequate consideration of the on- going perturbations in the Arctic due to global warming. Measurable and predicted impacts from global warming in the Arctic have led another agency, the US Fish and Wildlife Service, to list the polar bear as threatened under the Endangered Species Act. Yet global climate change is not even mentioned by the DEIS in any substantive way until Chapter 5 and then encompasses only two paragraphs – the review of the threats facing the gray whale in Chapter 3 does not have a separate discussion on global climate change at all. This is a gross omission by the authors of the DEIS and absolutely must be corrected in the final EIS.	that the die-off was related to the population hitting its carrying capacity was "imperfect." The 2008 DEIS stated that the cause of the mass stranding was "unknown" citing the official NMFS report of the investigation (Gulland et al. 2005). The new DEIS includes an expanded discussion of the potential future role of global climate change and ocean acidification on the gray whale population (Subsection 3.4.3.6.11, Climate Change and Ocean Acidification).
HSUS25	The DEIS also inadequately considers the impact of the proposed hunt on Pacific Coast Feeding Aggregation (PCFA) and Oregon to Southern Vancouver Island (ORSVI) gray whales. The Ninth Circuit expressly rejected NMFS's 2001 Environmental Assessment on the Makah hunt proposal because it failed to adequately discuss the impact on PCFA whales [7]. The court noted the importance of discussing the impacts on local populations because "gray whales disappear[ing] from the area of the Strait of Juan de Fuca, the Marine Sanctuary, or both" would have a significant impact on the environment, regardless of the hunt's effect on the wider gray whale population.	The 2008 DEIS considered the impact on gray whales at various scales, including impacts on abundance in the Makah U&A and ORSVI (Section 4.4.2.2, Change in Abundance of Gray Whales Using the Makah U&A or ORSVI Survey Areas); relationship of proposed levels of mortality to the PBR of whales in the ORSVI (Section 4.4.2.2.1, PBR of Whales in the ORSVI Survey Area), and distribution within the Makah U&A, ORSVI, and PCFG (Section 4.4.2.3, Change in Distribution or Habitat Use). Though this comment describes that analysis as inadequate, it provides no specific suggestion for an analysis not included in the 2008 DEIS.
HSUS26	The current DEIS also fails to adequately address this issue. Here, the DEIS sets an annual Potential Biological Removal (PBR) level for ORSVI whales of 2.49 whales, or 12.45 whales over a 5-year period. It acknowledges that Alternatives 2 and 4 would exceed that 5-year PBR by 2.5 whales, and Alternatives 3 and 6 would exceed the 5-year PBR by 22.5 whales. It also acknowledges that the PBR calculation *only* includes ORSVI whales "landed" and would not include those "struck and lost." However, the DEIS does not explain why struck and lost whales should not count toward the hunt's portion of the PBR. More importantly, the DEIS does not explain how exceeding PBR – particularly when "struck and lost" whales are not even counted – will affect the PCFA or ORSVI whales.	The DEIS did not "set" mortality rates for the PCFG or any other group of whales. Rather, it examined the potential impact on the human environment of the Tribe's proposed hunt and alternatives to that proposal. The Tribe did not propose to count struck and lost whales against the PCFG total, thus Alternative 2, which reflected the Tribe's proposal, included that element. The 2008 DEIS did explore how mortality associated with the Tribe's proposal and all the action alternatives might affect

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		abundance of gray whales in the ORSVI and Makah U&A. The new DEIS also examines the effect of the Tribe's proposal, and the other action alternatives, might affect abundance of gray whales at various scales, including in the Makah U&A and within the larger PCFG.
HSUS27	We also wish to note that the discussion of the potential impacts of the various alternatives on the whales found in the Makah U&A is highly speculative and frankly not precautionary. The discussion assumes that the appearance of new whales in the photo-ID catalog reflects the wide range in movements of whales in the Makah U&A and in fact parallels recruitment into this group of animals; that is, it assumes that this is a relatively open population, with new whales entering it from the larger ENP population all the time. The DEIS's discussion treats this working hypothesis as a fact, but the truth is that this hypothesis does not yet have data that clearly support it – the continuing appearance of new whales in the catalog could merely reflect the increased photo-ID work being undertaken by researchers, who have expanded their efforts throughout the PCFA and ORSVI survey areas. It is the lack of precaution in this discussion that we wish to emphasize – the DEIS responded to the court order to focus more attention on the PCFA whales and the hunt's potential impacts on it, but the subsequent discussion is thin on fact and rich on speculation, perhaps unavoidable but not a license to ignore uncertainty.	The new DEIS includes new information and analysis available since the 2008 DEIS regarding recruitment into the PCFG (Subsection 3.4.3.4 Pacific Coast Feeding Group (PCFG) of Gray Whales).
HSUS28	Chapter Five, Cumulative Effects, appears to have entirely missed the point of a cumulative effects analysis. For each element under analysis (e.g., water quality, other wildlife, economics), the DEIS appears to have considered how a Makah hunt would affect that element cumulatively with other activities already having, or predicted to have in the future, an effect on that element. But a cumulative effects analysis ought to analyze how human activities, especially those clearly identified as threats, interact to have cumulative effects on the environment and, in this case, the ENP gray whale population. This section should have a discussion on cumulative and synergistic impacts already facing the gray whale and how the hunt will add to these. For example, a cornerstone of the cumulative effects chapter should have been how global warming is affecting and is predicted to affect the gray whale and its habitat and how the effects of other human activities, such as (obviously) aboriginal subsistence hunts, shipping, chemical discharge,	In response to this and other comments, that discussion has been expanded in the new DEIS. The conclusion remains that while a variety of foreseeable activities may affect gray whales in the future, there is insufficient information to project the likely effects of these threats in the future.

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	and noise production, are working and will work together with global warming impacts to affect the gray whale. The section-by-section presentation of how the hunt will add to effects on one element at a time is *not* a cumulative effects analysis.	
HSUS29	As written, the cumulative effects chapter is merely a rehash of the earlier discussions found in Chapters Three and Four – for example, the conclusion that any oil spill from whaling-related vessels would not appreciably increase the risks associated with potential oil spills because tankers already in the region would wreak much greater havoc if they spilled their much larger volumes of oil is a conclusion already discussed in earlier chapters. Clearly a cumulative effects chapter is meant to consider *more* or *other* issues, such as, e.g., how impacts from oil spills might interact or already be interacting with, *inter alia*, global warming, noise, industrial fishing, chemical pollution, harmful algal blooms, and (of course) aboriginal whaling to affect the gray whale. In addition, concluding that the activity being analyzed will have a negligible impact and therefore will not add appreciably to one other activity with a large impact is a fallacy into which agencies that have attempted to conduct cumulative effects analyses have fallen too often. All activities with impacts must be considered *together*. NMFS must reconsider this chapter in the final EIS and at a minimum consider how the multiple threats faced by gray whales might interact to negatively affect the ENP gray whale population in ways not anticipated when considered separately or in pair-wise only combinations.	The 2008 DEIS addressed the multiple threats to the ENP gray whale stock in Chapter 5, which examined the potential cumulative effects of unrelated activities. In response to this and other comments, that discussion has been expanded in the new DEIS. The conclusion remains that while a variety of foreseeable activities may affect gray whales in the future, there is insufficient information to project the likely effects of these threats in the future.
HSUS30	**Impact on Individual Gray Whales** Whenever NMFS issues a take permit pursuant to the MMPA, the permit "shall" specify "the location and manner (*which manner must be determined by the Secretary to be humane*)" of take (emphasis added)[8]. While the DEIS describes the hunting methods that may be used in Chapter Two, it never discusses the impact these methods will have on individual animals, or the "degree of pain and suffering" that individual whales may face. Instead, in its "Environmental Consequences" section, it states that "[w]elfare effects on...whales are considered at the scale of the ENP gray whale stock and of whales that use local survey areas." The DEIS must discuss the pain and suffering the hunt will cause *individual* animals, as well as a full analysis of which method, if any, can be deemed "humane" under the MMPA.	The 2008 DEIS analyzed in detail the impact on individual whales by considering the manner and time to death associated with each alternative and method of hunting (for example, Section 4.4.3.2.4, Manner and Time to Death examines the impact on individual whales under the Tribe's proposed alternative). The evaluation criterion is described in Section 4.4.2.4, Method of Striking and Killing; Time to Death; Hunting Efficiency.
HSUS31	**Effect on Federally-Designated Protected Areas** The hunt is proposed in or near federally-designated protected areas, including the Olympic Coast National Marine Sanctuary; the Washington Islands National Wildlife Refuges, including the Quillayute Needles, Flattery Rocks, and Copalis Refuges, which	The 2008 DEIS examined the potential effects on the values represented by federally designated areas, but not on the areas themselves. For example, the 2008 DEIS considered impacts to water quality,

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	are almost entirely designated as Wilderness Areas; the Olympic National Park; and the Olympic Biosphere Reserve. NMFS must fully account for any possible effects the proposed hunt will have on the values intended to be protected by these areas.	marine habitat and species, gray whales, wildlife, economics (including recreation), noise and aesthetics. This comment does not identify any specific values associated with federally designated areas that is not captured in the range of resources analyzed in the 2008 DEIS.
HSUS32	For example, the 2007 Washington Islands National Wildlife Refuge Comprehensive Conservation Plan contains a voluntary 200-yard boat exclusion zone, intended to protect the wilderness character of the refuge, as well as the sea birds and other wildlife on and near the islands. Only Alternative 4 requires compliance with this 200-yard protective zone. This exclusion zone should be required in each alternative. In addition, most of the Washington Islands Refuges are also designated wilderness areas. In recognition of this, the US Fish and Wildlife Service's "Vision Statement" for the three refuges states that: "The more than 600 rocks, reefs, and islands known as Flattery Rocks, Copalis, and Quillayute Needles National Wildlife Refuges, are designated wilderness (except Destruction Island), and all will continue to be preserved in a natural condition with *minimal human intrusion*" (emphasis added). Also, the Wilderness Act of 1964 requires that the "agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area."[9] The DEIS fails to describe how allowing a whale hunt that will include multiple vessels within 200 yards of a designated Wilderness Area will promote that area's wilderness values.	One of the purposes of an EIS is to develop information for the public and decision-maker. By having alternatives that vary in their details, the DEIS provides information on the effect of the variations. If each alternative required an exclusion zone, the DEIS would not present the public and the decision-maker with information about the effect of having an exclusion zone. The 2008 DEIS analyzed the potential effect of a whale hunt on the National Wildlife Refuges.
HSUS33	In fact, in the Makah's comments on the 2007 Comprehensive Conservation Plan, the Tribe noted the potential inconsistency between its use of fish and wildlife resources in the area and the Refuge's "minimal human intrusion" and wilderness goals. Instead of resolving the issue, the Fish and Wildlife Service promised to issue a "Memorandum of Understanding" with the Makah over the dispute. The DEIS does not mention this issue, or the result of the Memorandum with the Tribe, despite NEPA's requirement that the agency fully address "[p]ossible conflicts between the proposed action and the objectives of Federal…policies and controls."[10]	Comment noted.
HSUS34	**Miscellaneous** There are a number of minor (and perhaps not so minor) points in the DEIS that lead to a biased account of the elements surrounding the Makah whale hunt proposal and the previous hunts. These minor issues, when added together, lead to a more positive picture	Comments noted.

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	of the issues than reality warrants. For one example, the DEIS does not mention the presence of an Alaska Native at the 1999 butchering of the whale on Front Beach until well into Chapter 3 and then only in passing. In fact, this individual was videotaped by a bystander very late the night the whale was towed into the beach, expressing dismay that everyone (meaning the Makah whaling crew and the butchering team) had already gone home and left him to deal with the remaining tasks alone. No mention is made of this footage, which was sent to NMFS after the hunt. The only rationale for this omission seems to be that it does not reflect well on the Makah involved in processing the whale and detracts from the DEIS's portrayal of the 1999 hunt as an overwhelmingly positive, well-ordered and well-attended event.	
HSUS35	For another example, the DEIS describes the 2000 incident where a protester on a jet ski collided with a Coast Guard vessel (see above, "Public Safety"), but places the blame on the protester for "running into" the Coast Guard ship. This is not how the protester recalls it – she considers that the Coast Guard vessel ran over her craft. Regardless of perspective, there is also no mention of the seriousness of her injuries – she continues to suffer pain in her back and shoulders eight years later and receives periodic medical treatment for it. The biased presentation of both of these details minimizes the incident, presumably in order to support the DEIS's dubious contention that public safety will be adequately protected under the hunt regulations and Coast Guard rules.	The 2008 DEIS provided a detailed description of incidents associated with previous Makah whale hunts (Section 3.15.3.4, Behavior of People Associated with the Hunt) to ensure a complete analysis of the potential impacts to public safety if a hunt is authorized, including the fact that a protestor required transport to the hospital and suffered a dislocated shoulder. The analysis concluded that if a hunt were authorized, there would be a potential for injury from boating accidents: Under any of the action alternatives, boating accidents might result from protest activities on the water, the actions of a wounded whale, or adverse weather and sea conditions. Any type of boating accident could result in traumatic injury, drowning, or hypothermia. The risk of individuals being injured in a boating accident associated with protester activities would be reduced by the Coast Guard navigational restrictions (Section 3.1.1.3, Coast Guard Regulated Navigation Area), to the extent protesters obeyed those restrictions. In response to this and related comments, the new DEIS now states that a jet ski operator "collided with" a coast guard vessel.

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HSUS36	In addition, the DEIS does not adequately analyze the impacts from the significant taxpayer expenditures that have been associated with conducting the Makah hunt, in contrast to the relatively minor outlay for the Alaska Native whale hunt. In the past, there have been direct subsidies to the Makah Tribal Council in support of the hunt (see previous HSUS comments). Even if such subsidies have ceased, the hunt is conducted in a densely populated area with significant vessel traffic and therefore the Coast Guard must mobilize to protect the safety of mariners and the whalers. It is simply inescapable that the Makah hunt will cost more in public money than the Alaska Native hunt. The DEIS only speculates on the cost of potential future hunts under the various alternatives, with minimal impacts analysis – it does not address the issue of previous expenditures, including the costs of lobbying at the IWC for the Makah request. Again, this omission seems geared toward minimizing the negative and emphasizing the positive – yet few of the postulated benefits to the Tribe have actually been confirmed, such as improved health, but are merely speculative for now.	The 2008 DEIS examined the administrative and law enforcement costs associated with each alternative (Subsection (4.6.2.5 Management and Law Enforcement). This comment provides no information to support a conclusion that costs associated with a hunt by Alaska Natives is relevant to the analysis presented in the 2008 DEIS.
HSUS37	There are other examples, including (as noted above) the failure of the DEIS to include an accurate description of The HSUS's position on the hunt, but the overall issue is the subtle, persistent effort by the DEIS's authors to present the Makah whale hunt proposal and its history in the best possible light. There has been less outright misstatement of fact than in previous NEPA documents and more "sins of omission," but the result is similar – the past has been adjusted, if not revised, to portray the hunt proposal as a reasonable alternative and the actions of the opposition as unreasonable and even irrational. The HSUS will not dwell on these minor and not so minor points in these comments, as they merely draw attention from the major arguments we have against this proposal, but we did want to remark on their existence.	See the response to the above comment regarding how the 2008 DEIS characterized opposition to the Tribe's proposed hunt.
HSUS38	**Conclusion** The HSUS does not support any activity that causes animals to suffer – and it is our belief that all whaling, for whatever purpose, is inherently inhumane. Indeed, the DEIS discussion on killing methods and welfare merely reinforces The HSUS's contention that whales cannot be killed humanely. *Average* times to death for aboriginal hunts (and even commercial hunts with far more sophisticated technology) are in the region of tens of minutes and maximum times can be more than an hour. Therefore, we cannot support aboriginal subsistence whaling. However, we do not oppose such whaling, as we accept subsistence need as a rationale for killing wildlife; rather, we hold that such whaling	This comment presents legal arguments and does not appear to take issue with the factual information or analysis presented in the 2008 DIES.

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	must be conducted in as humane a manner as possible (which in most cases it currently is not) and *must* be for nutritional as well as cultural/traditional needs. Finally, there can be no argument that all such whaling must be conducted in accordance with domestic and international law. We oppose the Makah hunt proposal, but not other subsistence hunts, because the request has always been for a cultural rather than a subsistence hunt. It has never fit the definitions and requirements of domestic and international management regimes. It will require a waiver from the Marine Mammal Protection Act (MMPA). It creates a novel category of whaling at the international level that all too easily could be used by pro-whaling nations to justify killing more whales. The DEIS's dismissal of these concerns in Chapter Four is unconvincing and misleading – the support the US delegation has consistently shown the Makah proposal has already shifted the dynamics at the IWC, for the worse as far as whale protection is concerned.	
HSUS39	We repeat: The hunt proposal did not meet the previously-set standards for aboriginal subsistence. The US government instead went about re-writing the rules, making them weaker, and undermining previously strong policy positions. The world is now less safe for whales and has lost a strong and unequivocal champion against commercial whaling, developments in which this proposal has played a large role. Support for the Alaska Native bowhead hunt has also promoted these developments, but not by weakening the definition of aboriginal subsistence whaling. Thirty years ago the US delegation worked to ensure that the aboriginal subsistence category of whaling at the international level had rigorous standards and was clearly distinct from commercial whaling. Twenty years later, it at best undermined and at worst reversed this position and worked to weaken these standards, cutting corners so severely that it actually broke the law. This can in no way be seen as good for whales, although it has certainly been good for whalers.	We understand this comment to refer to the process by which the United States sought a gray whale quota at the IWC, not a specific comment about the analysis presented in the 2008 DEIS. This comment points to no evidence indicating an actual effect on the human environment (for example, on the amount of whaling worldwide) of the U.S. action at the IWC. Nor does it identify a likely effect, beyond those that have already occurred, if the United States took the action proposed by the Tribe (waiver of the take moratorium, issuance of an MMPA permit, and authorization under the WCA).
HSUS40	From the start, NMFS has mishandled the Makah Tribe request to revive its whale hunt. If the agency had handled the application for this take in a manner consistent with US laws, policy, and international treaty obligations in the first instance, The HSUS would have found it far more difficult to raise objections when the Makah Tribe brought its request to the IWC in 1996. However, from the outset, NMFS has been so anxious to "get the job done" that it has consistently failed to "do the job right" and the courts have agreed with us. The agency's efforts to promote and approve the Makah request – apparently at any cost – have consistently resulted in legal short cuts and questionable policy positions that have weakened domestic and international whale protection. The	The 2008 DEIS was prepared over a period of 3 years, following two scoping periods. As new scientific information came to light, we terminated the 2008 DEIS and commenced a new process, starting with a scoping process. The new DEIS is being released for public comment more than 6 years following the release of the 2008 DEIS. This record demonstrates serious deliberation of the Tribe's request.

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	government has been so anxious to get to the finish line – to approve the Makah request – that it has repeatedly bent and broken the rules, the most recent example being its effort to avoid reporting the illegal September 2007 hunt as an infraction at the 2008 IWC meeting. All the stakeholders in this process are the poorer for this mishandling and dangerous precedents have been set.	The United States reported the unauthorized take of the whale in 2007 by Makah hunters, but did not report it as an infraction, because, while the hunt was illegal under U.S. law, the catch limit for ENP gray whales was not exceeded (Annual Report of the International Whaling Commission 2008).
HSUS41	Regarding the MMPA waiver process, we strongly urge that if the agency eventually grants the waiver, it should narrowly tailor it, to minimize the chances that other parties will come through the door that issuing a waiver to the Makah will open. While other waivers have been granted, none have remained in place, in some instances because the courts ruled they were illegal. This waiver, if it is granted and used as intended, should be narrowly defined as much as possible, so it will be a "one-off" event.	The 2008 DEIS stated that all action alternatives consider hunting of gray whales only (Subsection 2.3.2, Elements Common among Action Alternatives). In response to this comment, the new DEIS details the enforcement measures and training and certification processes in common among action alternatives (Subsection 2.3.2.2.12, Other Environmental Protection Measures).
HSUS42	The HSUS is aware of detailed comments prepared by the Peninsula Citizens for the Protection of Whales (PCPW). Many of the PCPW's concerns regarding the DEIS, particularly how it refers to the PCFA whales and issues related to potential conflicts of interest among those who prepared the DEIS and conducted research on Makah culture and subsistence needs, are shared by The HSUS and we wish to endorse these portions of the PCPW's comments. Thank you for the opportunity to comment on this precedent-setting and important issue. Sincerely, Naomi A. Rose, Ph.D. Marine Mammal Scientist Cc: Tim Ragen, executive director, Marine Mammal Commission *Email boilerplate omitted.*	See responses to the PCPW comment letter.

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	[1] See 50 CFR §1502.14(a). [2] Alternative 5 does propose a smaller quota, but it is *still* not based on actual consumption commitments; it is an arbitrary number and the exchange for this smaller number is less protection for resident whales. And of course, the Makah do not accept it and their own proposal continues to be for up to five whales a year. [3] The original IWC working definition of aboriginal subsistence whaling, developed by the Ad Hoc Technical Working Group in 1981, was as follows: ● Aboriginal subsistence whaling means whaling, for purposes of local aboriginal consumption carried out by or on behalf of aboriginal, indigenous or native peoples who share strong community, familial, social and cultural ties related to a continuing traditional dependence on whaling and on the use of whales. ● Local aboriginal consumption means the traditional uses of whale products by local aboriginal, indigenous or native communities in meeting **their nutritional, subsistence and cultural requirements** [emphasis added]. The term includes trade in items which are by-products of subsistence catches. ● Subsistence catches are catches of whales by aboriginal subsistence whaling operations. The new definition, adopted by consensus by the Parties in 2004, is as follows: ● The personal consumption of whale products **for food, fuel, shelter, clothing, tools, or transportation** by participants in the whale harvest [emphasis added]. ● The barter, trade, or sharing of whale products in their harvested form with relatives of the participants in the harvest, with others in the local community or with persons in locations other than the local community with whom local residents share familial, social, cultural, or economic ties. A generalized currency is involved in this barter and trade, but the predominant portion of the products from each whale are ordinarily directly consumed or utilized in their harvested form within the local community. ● The making and selling of handicraft articles from whale products, when the whale is harvested for the purposes defined in (1) and (2) above.	

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	It is important to note that the requirement for nutritional need has been eliminated (see, *inter alia*, use of the conjunction 'or' rather than 'and' in the first bullet of the 2004 definition). In addition, this definition could be interpreted to mean that anyone with whom the Makah conduct business (persons outside the local community with whom the Makah share 'economic ties') could receive whale products in trade – this is disturbingly open language and may not preclude commercial trade. [4] The rationale provided by the US delegation for not reporting the illegal hunt as an infraction is not satisfactory. Various international agreements (e.g., Article 27 of the Vienna Convention of the Law of Treaties, internal law and observance of treaties, states "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty") contain language clarifying that activities allowed by the agreement must be conducted in accordance with domestic law. Any illegal action is thus an infraction of the agreement. NMFS and the US IWC delegation apparently reject this interpretation and contend that only takes in excess of the IWC quotas (or other specific Schedule provisions, such as the taking of a mother/calf pair) are infractions. This sets a disturbing precedent. [5] Swartz, S.L., Urban-R, J., Gomez-Gallardo U., A., Gonzalez C., Troyo V., B., and Najera C., M. 2008. Preliminary comparison of winter counts of gray whale in Laguna San Ignacio, B.C.S., Mexico from 1978 to 2008. Document submitted to the International Whaling Commission Scientific Committee, SC/60/BRG30. [6] Alter S.E., Rynes E., and Palumbi S.R. 2007. DNA evidence for historic population size and past ecosystem impacts of gray whales *Proc. Natl. Acad. Sci USA* 104:15162-15167 – incidentally, this important reference is missing from the references list in the DEIS, although it is cited in the text. [7] *Anderson v. Evans*, 314 F.3d 1006 (9th Cir. 2002). [8] 16 USC §1374(b)(2)(B). [9] 16 USC §1133(b). [10] 50 CFR §1502.16(c). _____	

Makah Indian Tribe – Comments submitted August 14, 2008 by M. McCarty.

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MT1	Attached are the comments of the Makah Indian Tribe on the Draft Environmental Impact Statement for Proposed Authorization of the Makah Whale Hunt (May 2008). Thank you for this opportunity to comment. The Tribe sincerely appreciates the substantial time and effort you and your colleagues at NOAA have dedicated to producing this document. If you have any questions please contact Jonathan Scordino, Makah Marine Mammal Biologist, at (360) 645-3176 or by email at mtcmmbiologist@centurytel.net. GENERAL COMMENTS Overall, as measured by the breadth and depth of the resources and impacts evaluated, the analysis presented in this Draft EIS is extremely thorough. More than just a long document, the substance of the agency's analysis represents a hard look at all resources likely to be impacted by the Tribe's proposal to resume ceremonial and subsistence whaling under the rights guaranteed by the Treaty of Neah Bay. In particular, the Draft EIS responds to the concerns of the Ninth Circuit in Anderson v Evans by carefully examining the local impacts of the hunt on gray whales that are present in the Makah U&A and other southern areas of the ENP stock's summer range. The Tribe appreciates the extensive analysis of the Makah people and culture and their relationship to whaling, which includes the substantial information gathered from visits to Neah Bay and discussion with the tribal community. In the often polarized public debate over whaling in the twenty-first century, the focus is too frequently limited to the impacts on the gray whale rather than on the substantial impacts that a decision to approve or reject the Tribe's waiver request will have on Makah subsistence, ceremonial, cultural and spiritual needs and values. It is, after all, the "human environment" that NEPA requires the agency to analyze, and just as the impacts to the gray whale are a central topic for the EIS, so too must be the impacts of the agency decision on the Tribe. This Draft EIS goes a long way toward educating the agency decision makers and the public about the potential impacts on both sides of the Tribe's waiver request. The five action alternatives and the no-action alternative represent a reasonable range of alternatives to the Tribe's proposed action. The alternatives represent both more and less restrictive approaches than the proposed action and clearly demonstrate the impacts that the Tribe's proposed time, area, and PCFA whale limits will have on affected resources. In doing so, the Draft EIS analyzes the principal conservation measures proposed by the Tribe in the waiver request. Moreover, the range of alternatives highlights that the proposed action is modest in scope and was carefully crafted so as to reflect both the Tribe's needs and the objective of minimizing the impacts to gray whales present in the southern portion of the summer range. The conservative nature of the Tribe's proposal is made clear when comparing Alternative 2 (the Tribe's proposal) with Alternatives 3 and 6, which are less restrictive in time, area, and/or limits on PCFA whales.	Following publication of the 2008 DEIS, and prior to publication of the current DEIS, we engaged in consultations with the applicant (Makah Tribe) regarding these and other comments. We have addressed these 2008 comments through revisions to the text, where appropriate.
MT2	WHALE WATCHING Whale watching may have greater impacts on gray whales than is suggested in this document. Gray whale calf counts in the lagoons of Baja California have declined persistently over the past decade while gray whale	

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	population numbers in general have increased. The decreased use of the lagoons also coincides with increased ecotourism and whale watching efforts. This observation may show that disturbance from whale watching is either reducing survival of individuals using lagoons or it is displacing the whales to breeding areas that were not seen as favorable areas in the past.	
MT3	HOT HARPOONS/PENTHRITE GRENADES The Tribe has concerns about the analysis of penthrite grenades under Chapter 3 and Chapter 4. First, there needs to be some analysis on the expense of buying the grenades. The EIS should also analyze how the whale will be killed using a penthrite grenade, i.e. a "hot harpoon." Because (unlike bowhead whales) gray whales sink when killed, an exploding harpoon with a penthrite grenade cannot be used as the weapon to dispatch the whale and at the same time be the initial harpoon delivered on the whale. A single harpoon is not likely to be sufficient to retrieve a dead and sinking whale because the harpoon is likely to tear out under the strain of retrieval. A more accurate representation of this method of hunting would be the use of one or two cold harpoons, followed by the use of penthrite grenade harpoon to dispatch the animal. Based on this method, it is likely that use of a large caliber rifle aimed at the whale's central nervous system, as proposed by the Tribe, would result in a shorter time-to-death compared with the realistic use of a penthrite grenade. In addition, the effective range of the rifle is much longer than the effective range of a penthrite grenade harpoon.	
MT4	USE OF DRIFT WHALES FOR CONSUMPTION The legal basis for the subsistence use of drift whales by Makah tribal members needs to be clarified. See Sections 2.4.2 and 4.10.3.1. The Tribe believes that the Treaty of Neah Bay authorizes the use of drift and stranded marine mammals without prior approval from NMFS. However, there is no agreement between the Tribe and NMFS governing the subsistence use of drift whales, and NMFS' policy on this issue has never been formalized in writing. There is an agreement, which was referenced in the EIS, which allows subsistence use of marine mammals taken incidentally to fishing. The beachcombers' clause within the MMPA does not allow the consumption of edible tissues, only the collection of tissues for scientific or educational purposes. Therefore, neither of these resolves the legal uncertainty described above. Absent formal written guidance expressly authorizing Tribal members to utilize stranded marine mammals the use of this resource may be significantly less than assumed the analysis of Alternative 1.	
MT5	USE OF WHALE PRODUCTS FOR MANUFACTURE AND SALE OF TRADITIONAL HANDICRAFTS The legal basis for the Tribe's use of non-edible whale products for manufacture and sale of artwork and traditional handicrafts needs to be clarified. On page 4-123, lines 23-25, the Draft EIS states "With the possible exception of products from drift whales or whales caught in fisheries, there would be no potential for households to consume whale meat and blubber or use non-edible whale products for the manufacture and sale of traditional handicrafts." The clause "with the exception of" implies that products from drift whales can be used for such purposes under Alternative 1. In Section 4. 7.3 .2.1 on page 4-124 the document states "Compared to the no action alternative, the potential for whale products for ... making and selling handicrafts would increase ... " This language again implies that Makah tribal members can currently utilize	

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	whale products for art sold commercially and that agency authorization of a hunt would only increase the opportunities for utilization of such products in the manufacture and sale of handicrafts. Yet Section 2.3.3.2.6 at page 2-14 states that the use of whale products is strictly part of analysis for action alternatives, thus implying that use of whale products is not included under the no-action alternative (Compare Section 2.3 .1 at page 2-4 to 2-5).	
MT6	NORTHWARD MIGRATION CHARACTERISTICS AND ASSUMPTIONS REGARDING MOST LIKELY HUNTING TIMES At Pages 3-65 and 3-66, the Draft EIS discusses the characteristics of the northward migration, particularly that mother and calf pairs constituted the second migratory phase and are the last to leave the wintering areas. Page 3-67 notes that 90% of this phase is made of cow-calf pairs. In Chapter 4, the Draft EIS makes some logical assumptions (with the exception noted below), including that the timing of a hunt under Alternatives 2 and 4 (see, e.g., Page 4-5) would most likely be in the late Spring. The Draft EIS should make the connection between the characteristics of the second phase of the northward migration and the assumption as to likely hunting in April and May, which may affect hunting opportunities given the prohibition on striking calves and females accompanied by a calf.	
MT7	ASSUMPTIONS UNDER ALTERNATIVE 5 Alternative 5 includes more restrictive limits than the proposed action. The Tribe would be limited to 3 strikes, 2 whales harvested, and 1 struck and lost. However, the agency's assumption, without spelling out the details as it does for Alternative 2 at page 4-7 (bottom), concludes that "all three whales potentially killed could be PCFA whales." (4th line from bottom. Note that the sentence starts off incorrectly as "Alternative 3" instead of Alternative 5). In alternatives 2, 3, 4 and 6, it is assumed that the combination of struck and lost (3), maximum harvest (5) and strike limit (7) results in the potential for up to 7 whales to be killed in any given year for the reasons stated at the bottom of Page 4-7. Applying the same reasoning to Alternative 5 yields a potential of two (not three) whales killed in any given year. This is because whaling for the year will have to cease once (1) 2 whales are harvested; (2) one whale is harvested and one is struck and lost; or (3) one is struck and lost. The maximum potential killed whales is therefore two, and the strike limit provides no actual restriction. This error should be corrected, or addressed as suggested below. If corrected to two potential kills, it would affect the assumptions in the rest of Section 4.1.5 and the analysis in other parts of the Draft EIS, such as in the comparison of alternatives (Page 4-57, bottom). An alternative approach to making the change suggested above would be to alter the parameters of Alternative 5 to a limit of two (2) whales struck and lost annually. Under this scenario, the assumption of 3 potential whale kills per year would be valid. In addition, it would be a more realistic limit, since it would be very restrictive if the first hunt of the year led to a struck and lost whale and this single struck and lost event resulted in a closure of the hunt for the entire year.	
MT8	BEST AVAILABLE SCIENCE Throughout this document there is a need to note that the data on gray whale abundance is the best science available. These estimates have been collected by experienced researchers for NMFS and have been validated by the leading international authority on large whales, the International Whaling Commission.	

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	Noting that this analysis of populations is based on the best science available will help decisionmakers and the public review the EIS and understand that the best science was used.	
MT9	SPECIFIC EDITS OR COMMENTS Page 1-13: states "Congress specified that the primary objective of the marine resource management under the MMP A is to maintain the health and stability of the marine ecosystem." It needs to be recognized that historically and currently Native Americans have been part of the ecosystem. The Makah Tribe and other tribes of the Pacific Northwest have hunted marine mammals since time immemorial. Page 1-33, line 19. "s" should probably be "Chukotka Natives". Page 2-7, Table 2-1. There is a random "2" after U&A in Alternative 6. Also for Alternative six, the row for maximum harvest, struck and struck and lost should read "Same as Alternatives 2, 3, and 4". Page 2-10, line 28. Appendix A contains the Tribe's waiver request, but it is not "discussed in detail" there. Table 2-2. Page 2-34 (Tourism). Alternative 6 should be "Similar to Alternative 2". Same with "Public Safety" on Page 2-38. page 2-37, Ceremonial and Subsistence Resources, Alternative 5 should conclude with "compared to Alternative 2." Page 2-44 (Media Observers, Alternative 6) was probably intended to refer to Alternative 3. Page 2-49 (Indigenous People Worldwide, Alternatives 2-6) should probably read "Similar to Alternative 1" for consistency throughout the table and ease of reference by the reader. Page 3-11, line 9. "sunset" should probably be "sunrise". Page 3-27, Figure 3-2. Cape Johnson appears to be mislabeled. It is north of La Push. Page 3- 79, line 28 states that identified whales reappeared "at least 93.3 miles away" from where they were seen in previous year. Instead of "at least," the sentence should read "up to 93.3 miles away" to be consistent with the example from the preceding sentence. Page 3-87. In the analysis ofPCF A whales it is noted that survey results are analyzed for population numbers under the assumption that all whales observable are seen. This document needs to discuss how close this assumption is to reality. While it is not unheard of in wildlife sciences to make the assumption that all individuals are observed, normally this is only done for animals that are highly visible, like African elephants, or have abnormally high effort, like Southern Resident killer whales. PCF A whales have neither traits of high visibility nor abnormally high observation effort. Therefore, any estimates under these assumptions are very conservative as the assumption is unlikely to be satisfied. Page 3-112, lines 19-22, portrays the hunt as a single harpoon being thrust into the animal before the whale is shot in the central nervous system with a large caliber rifle. This description is not accurate. As noted above, gray whales sink after they have died (unlike bowhead whales). A single harpoon may not be sufficient to retrieve a whale that has sunk to the ocean floor. Therefore, two or even more harpoons should be in the whale before the whale dies to prevent losing a struck whale. The additional harpoons can be applied before or immediately after the whale is dispatched with the rifle, as occurred in the 1999 hunt (see Page 1-38).	

COMMENT CODE	COMMENT	STAFF DRAFT RESPONSE
	Page 3-116, lines 22-23. The caliber ofbullet used for the majority of the 16 shots in the unauthorized 2007 hunt was known to be .460 caliber. One of the shots may have come from the .577 caliber rifle, but likely not more. Page 3-121, line 13. Should insert "gray" in the sentence "Although Alaska natives hunted gray whales .... " Note also that this appears to be contradicted by Table 3-9 (Page 3-122), showing 2 gray whales harvested in 1995. Page 3-122, Table 3-9 is missing information regarding IWC allocations. Section 3 .4.3 .6.9 at Page 3-134 should note that in the past gray whales have been entangled in Makah fishing nets. During the late 1970s and early 1980s a few whales were accidentally captured in nets. This appears to be referenced in Page 2-21, lines 11- 13 (citing Angliss and Outlaw 2008). Failing to note that gray whales have been incidentally captured in tribal fishing gear in the past may lead a reader to conclude that under the no-action alternative, if a whale is caught in a net, the fishermen caught the whale intentionally. Documentation that gray whales are occasionally caught in tribal fishing gear will promote greater public understanding of this issue. Chapter 4 should include line numbers for consistency and ease of reference. Page 4-9, line 12 should be corrected. It is not whales "after June 1 "; rather it is whales between June 1 and November 31st. Similar changes to page 4-7 as appropriate. In Chapter 4 there is analysis on social benefits of the Makah hunt on Page 4-126, Section 4.7.3.3.3. Under the analysis it is stated that, "There is insufficient information to determine whether the potential social benefits to Makah Tribe would offset potential adverse social effects." This analysis did not reference or neglected to consider Dr. Ann Renker's 2007 report. There, it was found that 88.8% of Makah households surveyed in a randomized sample want to return to whaling. Clearly, the vast majority of Makah tribal members would benefit if whale hunting were renewed. Section 4.8.3.1 at Page 4-133 needs to have the words "might" and "perceived" stricken from the last sentence. The lack of respect for treaty rights would be present, and not just "perceived," if Alternative 1 is chosen. Also, Makah tribal members, and those of other tribes, will feel increased tension and frustration if the no-action alternative is chosen, not "might". Section 4.10.3.2.2 at Pages 4-145 to 1-146 substantially overestimates the number of whales available under the no-action alternative for subsistence use. There may be 1 whale that dies in tribal fishing gear (see comment above) or drifts into tribal beaches every 5 years, but it is unlikely that any drift whale that is caught or comes ashore would be in edible condition. Whales have a thick blubber layer that traps the heat of their body. As a result, after they die the process of autolysis is quicker in whales than other animals due to the ability of a whale's body to retain heat given their immense size and thick blubber layer. An edible whale is unlikely to come to shore more often than once every 20-30 years. Eating a whale that has decomposed through autolysis may make tribal members sick and for this and other reasons does not fulfill the Tribe's treaty right.	

Marine Mammal Commission – Comments submitted August 14, 2008 by T. Ragen.

COMMENT CODE	COMMENT	STAFF DRAFT RESPONSE
MMC1	The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Draft Environmental Impact Statement (DEIS) for Proposed Authorization of the Makah Whale Hunt. The National Marine Fisheries Service has previously prepared two environmental assessments related to the hunting of gray whales by the Makah Tribe. The Service prepared the present document to address the ruling of the Ninth Circuit Court of Appeals in Anderson v. Evans that an environmental impact statement was needed to meet the agency's responsibilities under the National Environmental Policy Act. In particular, the court was concerned about the need for additional analyses on three different issues: the impact of the proposed hunting on the whales that remain in the waters of the Pacific Northwest throughout the summer (referred to as the Pacific coast feeding aggregation), public safety concerns, and the proposed hunt's precedential effect on possible hunting by other tribes in the United States or within other countries that are parties to the International Whaling Commission. The Commission believes that the DEIS meets the requirements of the National Environmental Policy Act The Service has been particularly thorough in soliciting public input on the scope of the DEIS and in the breadth of issues addressed in that document. Also, the range of alternatives considered in the DEIS is appropriate, given the purpose and nature of the tribe's request for a waiver under the Marine Mammal Protection Act and the constraints established by the International Whaling Commission in authorizing subsistence whaling of gray whales. In summary, the Commission believes that the DEIS does a good job of analyzing the environmental consequences of the various issues that participants and decision-makers will need to consider in the course of a rulemaking under the Marine Mammal Protection Act to authorize a proposed hunt. If the Service decides to proceed with a rulemaking to waive the Marine Mammal Protection Act's moratorium and authorize the Makah Tribe to take gray whales, the Commission and others will have sufficient opportunity to make substantive recommendations about the selection of a preferred alternative from among those considered in the DEIS. As such, the Commission sees no need to make recommendations concerning the selection of alternatives at this stage. In any future reviews, we will consider not only the impact of the proposed hunting on the gray whale stock and on the Pacific coast feeding aggregation but also ways to improve hunting efficiency (e.g., to minimize the number of struck and lost whales) and to ensure that any taking is humane.	Comments noted.
MMC2	Because of the length of the DEIS, we are not now providing specific drafting suggestions or identifying areas where clarification would be useful but not substantively important. There is, however, one threshold issue that we believe the Service should address more directly than it has. This issue concerns the requirement under section 103(a) of the Marine Mammal Protection Act that regulations issued to waive the moratorium on taking or importing marine mammals ensure that the taking will not be to the disadvantage of the affected stock and will be consistent with the purposes and policies of the Act. Discussion in the DEIS	In subsection 3.4.2.1.1 (Defining Marine Mammal Population Parameters) of the new DEIS, we describe how we manage impacts to marine mammal populations according to congressional directives with the goal of maintaining the number of animals within OSP

COMMENT CODE	COMMENT	STAFF DRAFT RESPONSE
	suggests that this "disadvantage test" will be met as long as the stock would not be reduced below its optimum sustainable population (OSP) level by the authorized taking. Although this is one possible interpretation of the requirement, support can be found in the recommended decisions from previous rulemakings under section 103 for an alternative view, which is that allowing a healthy stock to decline to the point where it has been reduced to its maximum net productivity level (the lower bound of the OSP range) would be inconsistent with the statutory requirement that taking not disadvantage the stock. It does not appear that the levels of taking being considered in this instance are likely to disadvantage the stock under either interpretation. However, because this is fundamental issue of statutory interpretation that may have implications beyond the current proceeding, a more complete discussion would be useful. The Commission looks forward to working with the Service as it continues to evaluate the Makah Tribe's rulemaking request.	between K and MNPL (i.e., the current state of ENP gray whales), or, if a population is below OSP, achieving that level. As described in response to other comments, the purpose of our analysis in this DEIS is not to reach legal conclusions but to predict likely effects on the human environment of the Makah Tribe's proposed action and the alternatives. We would expect to delve into the waiver-related determinations indicated in this comment as part of any subsequent analyses required under MMPA.

Peninsula Citizens for the Protection of Whales – Comments submitted August 14, 2008 by M. Owens.

COMMENT CODE	COMMENT	STAFF DRAFT RESPONSE
PCPW1	Ever since NOAA's first Environmental Assessment rubber-stamped the Makah whale hunt, we have naively believed that a thorough and honest EIS would find way too many potentially negative impacts to people and whales to justify a return to whale "harvesting" in Washington State. The release of this DEIS has shattered the expectation that the highest quality scientific data and social analysis would be collected in an unbiased way, allowing decision-makers an honest and untainted look at this controversial issue. This Draft has obviously been prepared with the sole intent by NOAA to arrive at the same politicized decision that they have always arrived at: "There will be no significant impact on people or whales."	Neither the 2008 DEIS nor the new DEIS arrive at any decisions, or conclude that the Tribe's proposed whale hunt will have "no significant impact" on the human environment. Rather, they examine the best information to quantify impacts where possible, and where quantification is not possible, to describe impacts qualitatively. The NMFS staff who prepared the 2008 DEIS were Northwest Region staff who had not been involved with prior agency actions regarding the Makah's requests to hunt gray whales. Other circumstances were also different from past NMFS' actions on the Tribe's request. In response to the Ninth Circuit decision in *Anderson v. Evans*, staff prepared an EIS rather than an environmental assessment, ensuring a hard look at potential environmental effects. Also in response to *Anderson*, the 2008 DEIS used MMPA standards to inform the evaluation criteria so that agency decision-makers will have the necessary analysis to make MMPA determinations.
PCPW2	It is impossible to read through this Draft without being struck by the conflicts of interest inherent in the preparers, the many issues left under analyzed and unanalyzed, and the low drumbeat of uncertainty that nervously throbs through every page. The word "uncertain" itself is used at least 49 times. The phrase "not possible to predict," 16 times. The phrases "too speculative to consider," "too speculative to conclude," "insufficient information" and "difficult to predict" are used over 30 times. And the word "might" takes the prize at 258 times used.	Specific comments regarding conflicts of interest are addressed in response to a number of other specific comments below. Regarding the DEIS's treatment of uncertainty, any predictions about the effects of future events necessarily involve uncertainty. The DEIS characterizes the level of uncertainty associated with various predictions. Any final decision by NMFS will take account of the uncertainties.
PCPW3	The conflicts of interest embedded in this document are less easily spotted, but quite appallingly apparently to "locals" who are paying attention. A prime example involves the firm hired to prepare the Draft, Parametrix Inc.	As is allowed by Federal law (40 CFR 1506.5c), we employed a contractor to assist in preparation of the 2008 DEIS, under the supervision of NMFS staff, and using a competitive and documented process to select Parametrix. At the beginning of the contract, the contractor disclosed that it also had a contract with the Makah Tribe

	NOAA knew before hiring Parametrix that this company had a history of lucrative employment with the Makah Tribe. Parametrix began work for the Tribe in 2003 on a Corridor Management Plan for their Cape Flattery Tribal Scenic Byway. Parametrix was a natural choice for this job, as they had facilitated a Corridor Management Plan for the adjoining Juan de Fuca Scenic Byway. Additionally, in 2002 Parametrix had supported the Makah Tribe's effort to simply annex the reservation road onto the Juan de Fuca Byway. This plan was halted by local objections to linking the Juan de Fuca Byway to the potential "whaling road," so the Tribe designated its own Tribal Scenic Byway and Parametrix Inc. felt the frustration of dealing with the overwhelming objections of the outer community to whaling. One of Parametrix's Scenic Byway goals will be to help the tribe "interpret" whaling to tourists. This process has slowed to a halt, which must reflect the Tribe's need for a conclusion to the waiver process. If a waiver is granted, Parametrix will be back to work, helping the Tribe to finalize the whaling related tourism mentioned repeatedly in the Draft. Subsequent to the hiring of Parametrix to consult on tourism issues, TranTech, a major sub-consultant to Parametrix, was selected by the Makah Tribe in 2006 to provide construction administration services in a $10 million paving project on the Tribal Byway through Neah Bay. This consulting job continued into 2007. It is not known by us how many other projects link the Makah Tribe to Parametrix Inc. We do know there is a connection to the wave energy project. NOAA should have avoided the impropriety implied in the hiring of a consultant with such deep ties to the Tribe and the “project area”. NOAA should have disclosed these relationships publicly, not kept them under wraps. All references and	to assist in the development of the Cape Flattery Tribal Scenic Byway Scenic Corridor management plan. After the unauthorized hunt in September 2007, members of the public raised questions about additional work Parametrix was performing for the Tribe. When questioned by NMFS about the additional work, Parametrix provided information on the details of the subsequent contract, and affirmed that it had obtained the work for the Tribe in a competitive process. Also as required by law, Parametrix and its subcontractors signed disclosure statements prepared by NMFS as affidavits that there is no conflict of interest by being employed by both the Tribe and NMFS (40 CFR 1506.5c). We accepted the disclosure statements in good faith, and conducted due diligence reviews of Parametrix’s role as a contractor for the Tribe. We concluded that there was no potential for conflict to occur, and further, no biased information could be inserted into the DEIS under our sole supervision. Producing an EIS is the responsibility of the Federal action agency (40 CFR 1506.5(a)(c)). We are responsible for the content and process. We do not consider the relationship between Parametrix and the Tribe to have compromised the integrity of Parametrix’s work product, and in any event are confident that in exercising our oversight we have ensured the document is a product of our analysis. In preparing the new DEIS, we relied on a “blanket purchase agreement” between NMFS and Parametrix to fund discrete products, including updates to the background information about several of the resources, contained in the Affected Environment section. Specific comments regarding the analysis of effects on tourism are addressed later in the responses.

	opinions expressed in this DEIS related to tourism are now suspect and need to be reviewed. The optimistic statement at: 4-106: "Overall, it is reasonable to expect more visitors would be drawn to the area than avoid the area as a result of a whale hunt," and from Table 2-2, "ability to hunt creates opportunity for the Tribe to promote hunt-related tourism," sound like the wishful thinking of consultants who have been hired to promote whaling related tourism, and it is!	
PCPW4	The comments that follow are not the sole opinions of one person or one family. They represent the thoughts and input of the many members of the Peninsula Citizens for the Protection of Whales as well as the great majority of the general public of Clallam County many of whom have signed our petitions (submitted to NMFS in the past). There have been many meetings, discussions and conversations during the short comment period for the DEIS.	Comment noted.
PCPW5	We wish there had been more time, as this Draft is so deficient, so filled with errors, intentional omissions and bias that, without considerable revisions and reassessments, it utterly fails as a prepatory document for the FEIS. It has been impossible to comment adequately in the time period allowed. In part because documents and questions were slow in being provided. It was quite frustrating for Steve Stone, NMFS, to take a week off during the time he was in charge of responding to requests. It is now too late to receive answers to numerous questions put to NMFS regarding references in the DEIS. This DEIS is an insult and affront to all who have spent over 10 years submitting comments to NMFS in good faith and participating in numerous lawsuits. The cart has remained firmly in front of the horse and there seems no way out of Wonderland.	NOAA's regulations regarding NEPA require that the agency provide a 45-day comment period on all EISs (NOAA Administrative Order 216-6). In this case, NMFS provided 98 days to review the draft – an initial 60-day period and a 38-day extension. In response to request for comments on the draft, NMFS received more than 800 pages of comments from over 400 commenters, suggesting that the 98-day comment period allowed commenters sufficient time to read and to respond to the draft. The 98-day comment period is consistent with, or longer than, other comment periods for complex draft EISs prepared by NMFS. For example, for its 1,000 plus page draft EIS on Washington States' forest practices, NMFS provided a 90-day comment period. The nearly 1,200 page draft EIS on the Puget Sound Chinook harvest management plan had a 46-day comment period. Given the amount of review time offered to the public, and the substantial number of comments received during this period, we

		conclude there was adequate time to review and comment on this 2008 DEIS.
PCPW6	**Comments on the Draft**	
PCPW7	RE: 1.1.3 Line 8 and 9 "In 1994, ENP gray whales were delisted. Comment: For the record, the gray whales were delisted in 1994 after NOAA was relentlessly petitioned to do so by The Northwest Indian Fisheries Commission. Other proponents of delisting were oil companies and mid-water trawlers associations. Many conservation groups, as well as the Marine Mammal Commission, opposed the delisting. Most objections then cited habitat threats that have now only worsened. Global warming impacts should mandate the re-listing of the gray whales.	NMFS recently considered a petition to list ENP gray whales under the Endangered Species Act and concluded that a full status review was not warranted (75 FR 81225, Dec. 27, 2010).
PCPW8	RE: 1.1.4 Makah Tribe's Historic Whaling Tradition. Comment: This section contains the first of many references to Renker and Sepez. Renker will be cited (77) times as an authority on the Makah's "need" to whale. Sepez will be cited (37) times as an authority on Makah culture and subsistence use of foods. Nowhere is it mentioned that Ann Renker PhD is the wife of a whaler, and that Jennifer Sepez had a long term romantic relationship with a whaler in Neah Bay (A Whale Hunt, Sullivan 2000). The bias inherent in the work of these two women is inextricably woven into the fabric of this DEIS, and will be commented on in depth. NMFS never should have relied so heavily on biased sources, or kept that bias covered up.	Renker is an anthropologist who has worked among the Makah Tribe for many years. Renker's reports in 1996, 2002, 2007, and 2012 were prepared by her for the Makah Tribe as "Needs Statements" in support of the Tribe's request to hunt whales. They present and summarize numerous sources of information regarding the Makah Tribe's whaling history, and describe and summarize the results of surveys of tribal members. They were reviewed by the United States and made available to interested members of the public via the public involvement process described in the 2008 DEIS (Subsection 1.2.4.1.4, United States' IWC Interagency Consultation). The United States offered these needs statements to the IWC to support the request on behalf of the Makah Tribe for an aboriginal subsistence catch limit. The 2008 DEIS cites all three of these documents as references. We respond to the specific comments about Dr. Renker's work where those comments appear below.

			Jennifer Sepez. Sepez (2001) is the doctoral thesis of a PhD anthropologist, which was reviewed by an academic panel and defended by the author under academic protocols. The subject of the thesis was not whaling, but the contemporary subsistence practices of an Indian tribe. Because Sepez was present in 1999 when the Makah successfully hunted a whale, she documented the Tribe's subsistence use of that whale. The document provides useful observations and conclusions to help inform an analysis of likely effects of the alternatives on the Tribe's ceremonial and subsistence activities. For these reasons, we conclude that the document contains useful and reliable information that is appropriate to include in a NEPA evaluation. The new DEIS continues to cite these documents as sources of information, as well as Renker (2012), which the United States submitted to the IWC as the Makah Tribe's needs statement in 2012. In addition, both the 2008 and new DEIS rely on the work of other cultural anthropologists (Braund 2008, and an independent review by Dorothy Kennedy), and the anthropological literature, to develop the analysis.
PCPW9	RE: Comment:	1-23 footnote: "The annual quota from this feeding aggregation (Greenland bowhead) shall only become operative when the Commission has received advice from The Scientific Committee (IWC) that the strikes are unlikely to endanger the stock." This IWC concern for strikes on a feeding aggregation should also hold true for strikes on the Makah U&A whales. Allowing (7) strikes per year (Alt. 2) presents an extremely high risk for such a small group of whales. "Struck and lost" should go against the quota for resident whales.	Consistent with this comment, the analysis in the 2008 DEIS assumed that a struck whale will die. The new DEIS makes the same assumption. It also includes two alternatives in which all whales that are struck but not landed count as PCFG whales (Alternatives 4 and 6) and two alternatives in which whales that are struck but not landed count as PCFG whales in proportion to the presence of PCFG whales during the season in which the whale was struck (Alternatives 3 and 5).

PCPW10	RE: 1.4.1.2.2 Overview of Requests… Comment: NMFS reports here that "on May 5, 1995, … the Makah Tribal Council notified NMFS of its interest in reestablishing ceremonial and subsistence hunts…" NMFS does not report that on April of 1995, they were notified by Tribal representatives that… "the Makah are planning to operate a processing plant so as to sell (marine mammals) to markets outside the U.S."	The 2008 DEIS considered the Makah Tribe's 2005 request, which does not include the commercial sale of whale products. None of the alternatives examined in the 2008 DEIS or the new DEIS consider commercial sales.
PCPW11	RE: 2.3.3.2.7 Public Safety Measures. "All whalers would participate in … drug and alcohol testing." Comment: There is no explanation of whether tests and standards for passing will be promulgated and conducted by the Tribe or by NMFS. Where will accountability to the public enter into this extremely important monitoring process? Many members of the past crews have had well known drug and alcohol problems (A Whale Hunt, Sullivan 2000).	As with management of other tribal hunting and fishing activities, we anticipate the Tribe will be responsible for such testing.
PCPW12	RE: 2.3.3.2.7 Enforcement "Tribal enforcement" Comment: The Tribal Council has lost all credibility, enforcement wise. In spite of all management plans, rules, laws and promises, the Tribe was unwilling and unable to bring any charge whatsoever against the Sept. 8, 2007 whalers. In particular, the Tribe had promised to prosecute the State's animal cruelty and reckless endangerment laws.	In developing the 2008 DEIS, we recognized the concern raised in this comment, as well as the potential for attempted disruption of any tribal hunt by protesters. Accordingly, the 2008 DEIS included oversight and enforcement costs in its assessment of the economic impact of hunt alternatives. We have re-examined these costs in light of comments received and events surrounding the illegal hunt and its aftermath. The new DEIS includes additional costs of $50,000 per year associated with the potential need for a half-time position within NMFS to monitor hunt management (e.g., Subsection 4.6.3.2.5, Management and Law Enforcement).
PCPW13	Consequently, these important violations went unprosecuted.	The tribal members who participated in the 2007 unauthorized hunt were prosecuted in federal court and two served federal prison sentences. Three served probation.

PCPW14	Additionally, the accusations by the convicted whalers of Tribal Council participation in the decision to have that hunt, casts an even darker shadow on the willingness of a Tribal Council to abide by rules.	Subsequent to the release of the 2008 DEIS, some of the defendants filed documents in federal court alleging that the tribal council knew about and approved the hunt. The new DEIS describes the NMFS investigation of the illegal hunt, including allegations of tribal council endorsement (Subsection 1.4.2, Summary of Recent Makah Whaling – 1998 through 20012). The tribal council has cooperated with the agency as it has proceeded to evaluate the request and conduct an analysis under NEPA. NMFS' Office of Law Enforcement did not find evidence that the tribal government sanctioned the unauthorized hunt. Because there is no credible evidence that the tribal government has acted in bad faith, we will continue to consider the Tribe's request.
PCPW15	In fact, a day before legal whaling was to begin in 1998, (Sept. 30, 1998) the whaling crew approached a whale. According to the Coast Guard, a kill attempt was imminent before it was called off at the last moment. The Coast Guard noted their lack of confidence that the Tribe would play by the rules. From Coast Guard log, Oct. 1998, attached. "The Makah issued a whaling permit late on the 28th or 29th and commenced a hunt on the 30th. The Makah informed the Coast Guard and NMFS, but they did not inform NMFS is the agreed upon manner and NMFS did not have an observer onboard as is required per prior agreements. During the hunt, AP called the Coast Guard to ask if a hunt was taking place. We said yes, in keeping with D13 policy of not announcing hunts, but not giving false information to the press. Prior to dispatching the whale, NMFS found out and asked that the hunt be discontinued. Steadfast was on scene and confirmed that a whale was about to be taken when the Makah ceased the hunt. Upon returning to port, the Makah addressed the press stating that the permit was only a practice permit. Capt __(redacted)__ wanted to let you know that any confusion and/or animosity that may be expressed in the press regarding this incident is pretty much a result of the Makah	Any gray whale hunts by the Makah Tribe would be governed by the MMPA, by regulations adopted by NMFS through formal rulemaking, and by a permit issued under the MMPA and regulations.

	issuing a whaling permit, telling us they issued a whaling permit, then switching and saying it was just a practice permit." Then, from Coast Guard Log, Oct. 11, 1998: "Discussion with tribal chairman confirmed that the Tribe is awar of their responsibilities to make securite broadcast prior to initiating whaling operations and to fly the five pennant from whaling vsl in order for the MEZ to be in effect. CG reps at the meeting were left with the impression that the Tribe would not necessarily comply with these requirements viewing them as compromising their element of surprise." So from the very first attempted hunt to the most recent, a cavalier attitude towards "rules" seems to be in play. How will NMFS ensure compliance in the future from their "co-managers?"	
PCPW16	RE: 2.3.3.2.2 E.N.P Gray Whale Hunt Details. 2-10, lines 25 - 28 Comment: It is mentioned here and elsewhere that the allowable bycatch level of whales in the NMML's photo catalog would be calculated by a certain formula, and a number arrived at using current numbers, NMFS seems to be estimating that two resident whales per year can be harvested by the Makah. As photo IDs are added to the NMML's catalogue every year, will that allowable "bycatch" number go up to 3, 4, or 5? At that point will all considerations for resident whales be moot? If NOAA believes it is possibly for the allowable "bycatch" of identified whales to rise over 2, this must be analyzed and discussed openly. The number of catalogued whales will surely rise with increased efforts by NMFS and the Tribe to make photo ID's. But the few faithful Makah U&A whale numbers have not been shown to have	The subsection of the 2008 DEIS cited in this comment describes the Tribe's proposal, which includes setting an 'allowable bycatch level' using a PBR-like formula. This formula includes a term for minimum abundance, and as proposed by the Tribe, the group of whales used to set that abundance would be ORSVI whales. As noted in the comment, if minimum abundance of ORSVI whales went down, the allowable bycatch level would go down, and if the minimum abundance went up, the allowable bycatch level would go up. Given that surveys of the PCFG have been ongoing for nearly three decades, we consider it unlikely there are currently many 'undiscovered' PCFG whales, and that if the minimum abundance of ORSVI whales increased, it would be the result of an actual increase in abundance and not the result of having identified numerous previously undiscovered whales. In addition, in response to this and other comments, the new DEIS includes table 3-7, showing the minimum abundance estimates of PCFG whales and ORSVI whales. These tables show that the abundance has been stable since 2003.

		permanently risen. A disproportionate number of strikes and struck & lost will undoubtedly affect this small faithful group of 20 or so.	The comment refers to a group of 20 “faithful” whales repeatedly seen in the Makah U&A. Figure 3-6 in the 2008 EIS showed that the number of unique whales seen in the Makah U&A from 1998 through 2005 varied from 8 to 35, that many new whales were seen each year, and seen again in subsequent years, and that the total number of uniquely identified whales in the Makah U&A during this period was over 100. The new DEIS relies on the best available sighting information as reported by Calambokidis et al. (2014; Updated analysis of abundance and population structure of seasonal gray whales in the Pacific Northwest, 1996-2012). That report includes a table summarizing sighting histories of whales seen in the PCFG range in at least one year (Appendix Table 1), tables summarizing the history of mothers seen with calves and calf sighting histories (Tables 12 and 13), and a figure displaying the latitudinal distribution of sighting for whales seen 6 or more times after June 1 (Figure 8).
PCPW17	RE: Comment:	Strikes (5 year and Annual) 2-11 The issues of “strikes” and “struck and lost” is dealt with in a very confusing way throughout the DEIS. However, the bottom line seems to be that it will be acceptable to NMFS if up to 35 whales are killed every five years. At this rate, 70 whales could have been killed between 1998 and 2008. This is a completely unacceptable rate of slaughter which will have a devastating effect on our small resident whale population. What is the meaning of line 23: “If the struck and lost quota is met or exceeded…” How does NMFS envision quotas being “exceeded”?	The 2008 DEIS described, in tables and text, the total number of whales that may be killed under each alternative. The analysis assumed that any struck whale would be killed (whether the whale is subsequently landed, or is lost). Neither the 2008 DEIS nor the new DEIS offers a conclusion as to whether any level of mortality is acceptable. The Tribe’s proposal includes safeguards to avoid exceeding the PCFG catch limit, but the Tribe’s proposal also implies that more than one hunting party may be active at a time, which could lead to the quota being exceeded. This possibility would need to be addressed in any regulations NMFS ultimately adopted.
PCPW18	RE: Timing of Hunt	2.3.3.2.3 Location of Hunt and 2.3.3.2.4	The Tribe’s proposal is designed to avoid the intentional harvest of identified whales by restricting hunting to the migration period. The 2008 DEIS (Table 3-5) reported that 17.9% of the whales present in

	Comment:	To proclaim that hunting among the near shore feeding sites during April and May is "designed to avoid any intentional harvest of gray whales that have been identified within the PCFA Survey area" simply defies common sense and the evidence. April and May represent the middle and end of the arrival to Washington State's near shore coast of the resident whales and the mothers and calves, two categories which NMFS claims to want to protect from death and harassment. The Tribe must go offshore to target migrating whales.	the coastal portion of the Tribe's U&A prior to June 1 are PCFG whales (Table 3-5). The new DEIS describes new information suggesting that about 33% of all whales sighted in the coastal portion of the Tribe's U&A before June 1 are PCFG whales (Subsection 3.4.3.4.2, PCFG Seasonal Distribution, Migration and Movements). In the same subsection the new DEIS also discusses more thoroughly the timing of the migration and the potential presence of migrating mothers and calves in the coastal portion of the Tribe's U&A during April and May. The new DEIS also includes the alternative of an offshore hunt, in response to this and other comments (Subsection 2.3.3, Alternative 3 (Offshore Hunt)). It also includes two alternatives that would count any whale struck and lost as a PCFG whale (Alternatives 4 and 6).
PCPW19	RE: Comment:	Securing and Towing the whale 2-14 … "The Makah Whaling Commission be able to amend tribal regulations periodically…" This Makah request is unanalyzed as to the potential to affect changes to policies that the public has been allowed to comment on, and is unacceptable. Could these "changes" include location of hunt? Timing of hunt? Method of hunt? Weapons? Vessels used? NMFS must reject this request or analyze it. What "changes" are potentially contemplated?	The full statement in the 2008 DEIS is "The Tribe proposes to conduct research and development to refine hunting methods further. After consultation with NMFS, the waiver request proposes that the Makah Whaling Commission be able to amend tribal regulations periodically to improve the safety, effectiveness, and humaneness of the gray whale hunt." (Subsection 2.3.3.2.5, Overview of Proposed Hunting Method (Element Common among Action Alternatives)). We do not understand the term "methods" to refer to hunting seasons or areas, but rather equipment and techniques. It is conceivable that over time there could be improvements to hunting methods. If we adopt regulations authorizing a hunt, the public would have an opportunity to comment on any permits issued under those regulations through the public comment process provided for in the MMPA. Tribal regulations would need to be consistent with NMFS' regulations.
PCPW20	RE:	2.3.3.2.6 Whale Product Use and Non-Commercial Use and Distribution.	If we approve the Tribe's request and authorize a whale hunt, we will promulgate regulations that address the use of inedible parts.

	Comment:	NMFS must clearly list what “inedible parts” can be used, and what handicrafts will constitute “authentic articles.” Along with the new declaration that the meat itself can be freely passed off the reservation, the floodgates will be opened on our Peninsula for a whale product free-for-all, with no control or enforcement possible. It will be impossible to define any illegal possession or use of whale products, as anyone can fit themselves into one of the categories allowed to “share” the meat: “familial, social, cultural, or economically tied.” While this may make some sense among the isolated villages of the high north, the Makah Reservation is connected by roads and waterways to the rest of the world.	
PCPW21		The Treaty of Neah Bay, 1855, specifically bans The Makah from trading with “Vancouver’s Island.” Although the tribes across the Straits fit all the above criteria, will the Treaty preclude the sending of whale meat to Canada?	If we approve the Tribe’s request and authorize a whale hunt, we will promulgate regulations that address the sharing of whale meat.
PCPW22	RE: 2.4 Alternatives considered but eliminated from detailed analysis. 2.4.4.2 Hunt outside areas frequented by identified whales. Comment:	This very important and often suggested alternative seems deliberately mis-titled to facilitate its dismissal. This alternative has always been proposed by commenters as: “Hunt offshore in the actual migratory corridor.” This is an extremely reasonable and problem-solving alternative, as it addresses the gun-safety issue by getting the .50 cal at	In response to this and other comments, the new DEIS includes an alternative that would require the Tribe to hunt whales at least 5 miles from shore (Section 2.3.3, Alternative 3 (Offshore Hunt)).

		least 3 miles off the shore, and can quite reasonably be expected to avoid the great majority of whales who are feeding and resting inshore, particularly the mothers and calves, and most resident whales. Whaler's safety is assured by the presence of multiple chase boats and support boats. NMFS did not properly phrase or address this suggested alternative, which NMFS well knows would sooth many concerns about shooting resident whales at their feeding sites inshore and harassing mothers and calves. We request a reconsideration of this alternative, properly framed as a hunt in the offshore migratory corridor. Olympic National Park should be consulted for their input on this. Park visitor safety would be ensured by an off-shore hunt.	
PCPW23	RE: Comment:	3.4.3.1.4 Seasonal Migrations 3-66 "There are no direct observations that establish the timing of either phrase of the northward gray whale migration through the project area… it is reasonable to estimate that… migrants in the second phase would be in the project area from roughly early May until June." This "rough estimate" conveniently estimates that mothers and calves don't arrive along Washington until May. This is not "reasonable," and there have been many "direct observations," considering that the Quileute tribe, just south of the Makah U&A, has a brisk and enthusiastic season from early April until May based on the arrival of the mothers and calves. Hundreds of people flock	In response to this and other comments the new DEIS describes the timing of the migration in greater detail (Subsection 3.4.3.4.2, PCFG Seasonal Distribution, Migration and Movements).

	to La Push to see the calves playing in the breakers while the mothers feed close by. April must be considered the arrival of phase two, 90 percent of which (3 – 67 line 8) is "cow-calf pairs."	
PCPW24	Lines 18 – 30 page 3-67 documents the offshore migratory corridor as most north-bound migrants cut from near-shore Oregon to mid Vancouver Island. Average offshore distances for Phase I whales reported as 7.3 miles by Green et al (1995). Southbound migrants averaged 15.7 miles offshore (3-68). This information reinforces the argument that whaling should occur off shore, and that hunting in April and May will target many mothers and calves with harassment as they hug the coast. The only other whales who would logically be in the "project area" would be resident whales and desperately hungry north-bound migrants, taking a chance on locating a patchy feeding site.	The commenter has selected limited citations from this passage to bolster the argument that whales close to shore in the Makah U&A during April and May are likely to be mothers and calves or identified whales that will spend the summer feeding in the PCFG range. For the new DEIS, we re-examined the evidence regarding migratory distance from shore for any particular category of whale (including new information) but found insufficient evidence to draw any conclusions about the likely offshore distribution of PCFG whales (Subsection 3.4.3.4.2, PCFG Seasonal Distribution, Migration and Movements).
PCPW25	RE: 3.4.3.3.1 Summer Range Distribution and Habitat Use. Comment: This important section is very confusing, with Tables 3-2, 3-3 and 3-4 being almost impossible to decipher. What does come across, though, is one inescapable reality: There are a very small number of whales who return most years to the same feeding sites on the outer coast in the Makah U&A. That important number is hard to extricate from the mish-mosh of irrelevant data and charts, but seems to be between 20 and 30.	The purpose of Tables 3-2 through 3-4 in the 2008 DEIS was to provide information about how many new whales recruit into the different survey areas within the PCFG each year. This information was central to our evaluation of the likely impact of a tribal hunt. The new DEIS relies on the best available sighting information as reported by Calambokidis et al. (2014; Updated analysis of abundance and population structure of seasonal gray whales in the Pacific Northwest, 1996-2012). That report includes a table summarizing sighting histories of whales seen in the PCFG range in at least one year (Appendix Table 1), tables summarizing the history of mothers seen with calves and calf sighting histories (Tables 12 and 13), and a figure displaying the latitudinal distribution of sighting for whales seen 6 or more times after June 1 (Figure 8). This should aid

		the public and NMFS' decision-makers in better understanding how gray whales use these feeding areas during the summer.
PCPW26	RE: 3-95 "The number of these identified whales is a small fraction (less than 1 percent) of the total ENP gray whale population, almost all of which migrates through their survey areas on the northward migration. If these whales are randomly mixed… Dec. 1 through May 30 less than 1% of encounters between whales and Makah hunters… would be one of these identified whales." Comment: This misleading calculation minimizes possible impacts of hunts on Makah U&A whales, disregards many facts cited elsewhere in the DEIS: ● The favorable weather conditions for a hunt will occur in April and May at a time when most of Phase I has already passed Washington. ● Most whales in Phase I and many in Phase II are about 5 miles offshore, not in the near shore waters of all previous hunts and hunt attempts. ● This leaves a much smaller pool of whales for the hunters to "encounter", which will include unknown percentages of resident whales, mothers and calves, and hungry migrating whales who are stopping to eat on the way north. The "hunters" have never targeted the migratory corridor off shore, only the feeding areas very close to shore.	On the page cited in the comment, the 2008 DEIS states that <u>if</u> PCFG whales occurred in the Makah U&A in proportion to their numbers in the overall population, only 1% of whales in the Makah U&A prior to June 1 would be PCFG whales. The discussion on the same page notes, however, that <u>this is not the case</u>. The evidence shows they are <u>not</u> randomly mixed and in fact the evidence available for the 2008 DEIS indicated 17.9% of all whales present in the Makah U&A during May are PCFG whales. This discussion in the new DEIS has been modified to reduce potential confusion (Subsection 3.4.3.4.2, PCFG Seasonal Distribution, Migration and Movements). In addition, the new DEIS reports the findings in Calambokidis et al. (2012) that about 33% of all whales in the coastal portion of the Tribe's U&A during March-May are PCFG whales.

		It is logical that there will be a much higher than 1% chance that these vulnerable whales will be targeted. NMFS needs to provide a more realistic estimate of the number and make up of whales encountered in the Point of Arches/Cape Alava area in April and May.	
PCPW27		This section confirms the 9th Circuit Court's interest in the well-being of the Makah U&A whales, as well as their extremely low numbers, less than two dozen.	As described above, the 2008 DEIS reported 40 identified whales observed the Makah U&A in more than one year.
PCPW28		If NMFS is claiming that the numbers are rising slowly in all the survey areas, that must mean that none of the areas have reached its OSP. If the Makah U&A has still not reached its OSP, it must be hard for a randomly recruited whale to succeed at finding enough productive feeding sites to be satisfied with the area. This would explain why many whales are "newly seen" but few are "seen again." The calves that learn the feeding areas from their mothers have a great advantage in The Makah U&A. For example: Cascadia's whale #107 was identified as a calf in 1994 with his mother whale #43 who was identified in 1984 and seen many times over the years as has her calf #107. All this begs the question: What is the OSP of the Makah U&A? Why has NMFS not analyzed this important f actor? Before the Makah begin killing and harassing whales away from these feeding grounds every spring, it is vital to know how many whales should or could be utilizing this area.	The 2008 DEIS did not assert that the number of whales in the survey areas was slowly rising, but instead surmised that the data showed many new whales recruiting into the group every year (Subsection 3.4.3.3.1, Summer Range Distribution and Habitat Use). The new DEIS includes an updated discussion of PCFG stock structure and recruitment rates (Subsection 3.4.3.4, Pacific Coast Feeding Group (PCFG) of Gray Whales). The comment contains an implied question about the carrying capacity of the Makah Tribe's U&A – that is, how many whales it can support during the summer feeding season. That is unknown, but it is likely that the carrying capacity of summer feeding areas changes over time. This subject was more fully discussed in the 2008 DEIS, including examples of specific areas with variable distribution during the summer feeding period (Section 3.4.3.3.1, Summer Range Distribution and Habitat Use).
PCPW29	RE:	3.6.3.3 Summary of Economic Effects	Comment noted.

	Comment:	"No quantitative information is available concerning the economic effects of the Makah Tribe's practice whale hunt exercises in late 1998…" (line 3-4 3-196) "Practice whale hunt execises?" The Tribe should have told the Coast Guard, The National Guard, The FBI, The Clallam Country Sheriffs, The Whale Task Force, and all those who spent untold resources "protecting" their right to go hunt a whale that fall that this was just a "practice exercise." They should have told the hordes of media workers who left their families to live in Neah Bay to be on scene for "the hunt." They should have told all the protestors who the Tribe found so annoying and "threatening." They should have told Paul Watson he didn't need to park two ships in the bay. Or is this new labeling of the many false starts, tribal infightings, violence against protestors of 1998 a way of minimizing the many fiascos of the Fall of 1998 hunt season?	
PCPW30	RE: Comment:	3.8.3 Existing Conditions "According to a 2001/2002 household whaling survey… 93 percent responded that the Makah Tribe should continue to hunt whales…" Statements such as above, throughout the DEIS, must be stricken or reevaluated by an unbiased panel of anthropologists and statisticians. Renker's results are simply not trustworthy, tainted throughout all the Needs Statement with the inherent bias of her personal pro-whaling position.	The new DEIS clarifies that not all those surveyed responded to the questionnaire (Subsection 3.8.3, Existing Conditions). The text now makes clear that for the 2001/2002 survey, the numbers reported are a percentage of those who responded to the surveys, not a percentage of tribal membership or even a percentage of those surveyed. We agree that where the draft EIS relies on the 2001/2002 survey as evidence of the level of support for and interest in whaling within the Makah Tribe, the EIS should not overstate the conclusions. The new DEIS has been revised accordingly. To further ensure that NMFS decision-makers give appropriate weight to the information from Renker's household surveys, we have added to the new DEIS a discussion of the limitations of the data

		The world and the general public have been swayed by her results, showing an almost 100% unified tribe behind whaling. In a Lynda Mapes Seattle PI story of 2002, these questionable statistics are passed on without question to a wide local audience: "… 163 randomly selected respondents… were surveyed… The survey found 94 percent of respondents believed resuming whale hunts had affected the tribe positively…" And to quote the biased viewpoints of Keith Hunter, non-Makah pro-whaling activist who lived on the reservation for a short time is completely insupportable. (More comments on Renker results at 3.10.3.51)	from the surveys (Section 3.8.3, Existing Conditions). We have also revised that discussion to make clear that Renker has lived on the reservation for many years and has close ties to the community. In addition, where commenters cited additional reliable sources providing contrary information, those sources have been included. Parametrix retained two anthropologists to assist with the draft EIS – Dr. Dorothy Kennedy and Dr. Stephen Braund. Dr. Kennedy reviewed the material in the 2008 DEIS and assisted with responses to comments. Dr. Braund reviewed the anthropological sources, visited the Makah reservation, interviewed tribal members, and prepared drafts of his findings, which were edited by NMFS staff. Dr. Kennedy's and Dr. Braund's credentials are cited in the "List of Preparers" included in the 2008 DEIS and new DEIS. These professionals relied on numerous sources in working with us to prepare the 2008 DEIS. Their material is incorporated into the new DEIS.
PCPW31	RE: Comment:	3-214 lines 27-32 This section points out a couple things. Whalers were paid to practice (and attend meetings), which seems to add a commercial incentive at odds with "spirituality." And the changing nature of the Makah Tribal Council is highlighted. The makeup of the Council can change every year. The judges of the 9th Circuit Court pointed out the problematic nature of making agreements with any particular council. How will NMFS ensure the continuity of commitments made by a particular council?	Any gray whale hunts by the Makah Tribe would be governed by the MMPA, by regulations adopted by NMFS through formal rulemaking, and by a permit issued under the MMPA and regulations. The Makah Tribal Council also recently adopted new whaling regulations and these are described generally in the new DEIS (Section 2.3.2, Proposed Action) and included in full in Appendix B, of the new DEIS. The proposed regulations contain a variety of provisions intended to ensure compliance by the Tribe.
PCPW32	RE: Comment:	3.10.3.1 Makah Archaeological Resources Connected with Whaling Much of this section comes from Ann Renker and her sources. In both her 2002 and 2007 Need Statements, written to support a gray whale quota	In response to this comment, we asked Parametrix to retain Dr. Dorothy Kennedy to address certain questions and to review the 2008 DEIS. Regarding the assertion that Makah occupation of the Olympic Peninsula prior to 500 years ago is uncertain, Dr. Kennedy provided a

		request by U.S. at IWC, Ann Renker does her best to maintain the Makah story line that the Tribe has occupied the North Olympic Peninsula for thousands of years. Never does she mention that this version of the "mists of time" scenario is seriously questioned by numerous scholars. Specifically, there is ample evidence that the Makah usurped Quileute domination of the Peninsula possibly as little as several hundred years ago. Yet Renker pummels the reader with dates, painting a misleading picture of history. She mixes what is known about the pre-contact whaling culture of the Vancouver Island Nootka (relatives of the Makah) with references to the whale bones and artifacts found in midden layers on the Peninsula. These bones and artifacts cover a wide range of dates, and it has not been established that the older layers (pre-400 years ago) represent Makah occupation. Excerpts from <u>Needs Statement</u> 2007: Pg. 4: "whale hunting… for at least 1,500 years before present day." "750 years before (1,500 b.p.) Makah used drift whales." Pg. 5: "for 1,500 years, whale hunting…" Pg. 6: "… 2,000 year old subsistence culture."	lengthy analysis. In that analysis, she noted that two competing views were presented to the Indian Claims Commission in the 1970s as to whether Ozette village was autonomous or was a principal Makah village. The Commission accepted the view that Ozette village was part of the Makah Tribe at the time of the 1855 Treaty. The Commission also relied on the estimate made at the time, without the benefit of carbon dating and prior to extensive excavation, that Ozette village had been occupied for about 500 years. Dr. Kennedy also reviewed information available subsequent to the 1970s and the Indian Claims Commission findings. She concluded that the available evidence supports "Makah occupation of some places on the Olympic Peninsula at the time of the Treaty and back into the pre-historic period, some say anywhere from 500 to 1,000 years." Dr. Kennedy's analysis concluded: What we can say with confidence is that sites on the Olympic Peninsula associated with the Makah at the time of the 1855 Treaty show evidence of continuity of occupation extending from deep in the past. The Aboriginal residents of these sites practised[sic] whaling in a manner consistent with that described ethnographically for the Makah. Such lifeways were not restricted to the Makah, for these people practised a culture largely shared with their immediate neighbours to the north and south. I have not seen evidence that would discredit the assertion that the immediate ancestors of the Makah resided on the Olympic Peninsula at the time of initial contact, and likely for many, many generations before this. Certainly they resided here at the time of the 1855 Treaty. In conclusion, it is my opinion that both the ICC materials and the results of the Ozette investigations are two pieces in the puzzle of discerning Aboriginal occupation that remains to be completed—

	Pg. 11: "Archaeological data from…Makah village of Wa-atch indicates whale bone present some 3,850 +/- 75 years before present." "…data from Ozette site… 1,500 years of continuous whale use." Pg. 26: "…Makahs and their nu-ca-nu relatives hunted whales… at least 1,200 years" Pg. 55: "For approximately 2,000 years the Makah people relied on… the whale." Pg. 61: "The food products of the gray whale… have sustained the Makah people for over 2,000 years." The controversy over who occupied the Olympic Peninsula when, surfaces in the works of scholars referenced in Olympic National Park anthropologist Jacilee Wray's 1997 book – <u>Olympic National Park Ethnographic Overview and Assessment:</u> According to information provided for the Indian Claims Commission, the Makah came to Cape Flattery "from	one of these two sets of data alone cannot be said to be the more "persuasive scientific information" to support assertions of Makah occupation of the Olympic Peninsula. In addition to this analysis, Dr. Kennedy reviewed the 2008 DEIS and provided a number of edits relevant to this comment, in particular changing references from "Makah Tribe" to "aborigines" or "aboriginal people" in passages discussing the prehistoric period, including the prehistoric occupation of Ozette village. These recommendations are incorporated into the new DEIS (Subsection 3.10.3, Existing Conditions).

	Vancouver Island about 500 years ago." (ICC 1970:172) A story related to Ruth Kirk by a Nuu-Chah-Nulth elder (Kirk 1986:23-24). Powell states that the Quileute formerly occupied the entire northern area of the Olympic Peninsula, but were dislodged by the Makah and Klallam J.V. Powell, linguist and Vickie Jensen Quileute: An Introduction to the Indians of La Push, 1976. Reagan mentions an ancient midden heap 16 miles up the Hoh… Reagan believes that the Quileute once "owned" the entire Peninsula. Albert B. Reagan Archaeological Notes on Western Washington and Adjacent British Columbia, 1917. Reagan notes that the fishing grounds of the Quileute are at Cape Flattery and states that at one time the Quileute/Chimakum had complete control over the greater part of the Peninsula… The Makahs captured the Quileute settlement of Warmhouse, between Cape Flattery and Neah Bay; then captured villages at Tsooez, Waatch and headed toward Ozette… Albert B. Reagan	

	Some Traditions of the West Coast Indians, 1934. References to the "Makah/Nootka" invasion of the Peninsula are numerous and describe a bloody village by village take over that was still being vividly retold by Tribal elders in the 1800's. Helen Clark, who worked for the Women's National Indian Association in Neah Bay during the first decade of the 20th century, recorded many oral histories. Following is an excerpt from her rare manuscript entitled, "Chips From An Old Block." "Many years ago… the little village of what is now known to Indians as West Coast, was swept away by… a tidal wave. The natives determined to seek another home. All the families but one sailed southward until they reached an Island at the mouth of the Straits (of Juan de Fuca). These homeless Indians, afterward called Makahs, besieged this island (Tatooche)… starved the natives into submission and took possession. Part of them went south and settled at what is now called Osette.	

		The rest crept up to a little village on the bay. Although it was already occupied by a peaceful people, they determined to possess it. Stratagem, bloodshed, and active warfare soon gave them homes they had not built, and fish they had not dried. As was customary at the time they killed the old people and kept the younger ones as slaves." In summary, it is far from accurate for anyone to state as unequivocal fact, that the Makah have occupied the Peninsula beyond 400-500 years.	
PCPW33	RE: Comment:	3.10.3.5.1 Makah Whaling. Lines 24 – 26: "… some of those individuals taking a leading role in revitalizing (whaling) are from whaling families of high status who trace their ancestry to men who formerly hunted whales." One thing that is repeatedly mentioned in Renker's Needs Statement 2007, is the "complex pattern of social stratification" that is, unarguably, one of the hallmarks of the Nootka/Makah whaling culture. Some examples from the document (pages referenced are from Needs Statement 2007):	Dr. Kennedy reviewed this comment and provided the following response: The distinctions between "caste" and "class" are well discussed in the anthropological literature. Modern scholarship refers to the Makah, along with their Nuu-chah-nulth neighbors, as being "class-divided"—they are examples of societies having class, not caste. They had three named and ranked strata: titleholders, commoners, and slaves. Descriptions of social organization indicate that villages on this part of the NW Coast contained a number of cognatic descent groups, each headed by a titleholder, whose inheritance was believed to be traced to the founding ancestor. Inheritance of the title was by primogeniture. Oldest siblings and oldest children were titleholders, while junior siblings and children of such were commoners. Among the accounts

	pg. 10: “Emphasis on achieved wealth as measured in property and hereditary rights.” “Complex pattern of social stratification.” “Integration of rank and kinship as the basis for social interaction.” pg. 11: “A highly regulated system of ceremonial and economic privilege including ownership of, and control over, … whaling grounds, fishing grounds and other sections of ocean and river property.” pg. 15: “A whaling crew consisted of a chief, or the whaler… The whaler owned the canoe and the equipment… he also owned important ceremonial privileges through his hereditary status…” “Whaling was restricted to the men who… possessed the hereditary access to the position…”	where this stratification is described is the book by Leland Donald (1997:277) Aboriginal Slavery on the Northwest Coast, which focuses on the lowest possible class, slaves, but includes discussion of stratification generally. In the NW Coast’s class-divided societies, each descent group has both titleholders and commoners, and each strata has differential access to resources. While it is certainly true that the head chiefs owned more resources and opportunities than the lower chiefs, and the commoners possessed none at all, Donald points out that both titleholders and commoners obtained their primary social identities as members of descent groups. Thus, the treaty was signed with headmen of descent groups that included both whalers and fishermen, and should not be thought of as representatives of only a “caste” of whalers.

	pg. 18: “strict protocol governed the butchering process… the distribution of the whale reinforced the Infrastructure of Makah society each time the process occurred.” pg. 19: “The highly stratified nature of the Makah social system was a mirror of the status structure involved in the entire process of the whale hunt… whaling actualized the social organization of Makah society.” “Whalers, or ‘headmen,’ were ranked at the top of the pyramid of social standing.” “The anthropological literature tends to concentrate on the role of high-status men in the whale hunt… The women who married whalers dominated the top of the female analog to the male status pyramid.” “Marriages between (two whaling families)… united two powerful, wealth families and ensured that	

	consolidated social, ceremonial, and political power would be transmitted to another privileged generation; this procedure is common to… royal families." pg. 20: "anthropologists were most interested in the ceremonial, social, and work activities of the privileged classes…" The United States did not make a treaty with another government. The United States made a treaty with whalers. The whalers *were* the "headmen." Whaling is what made them and their families the wealthy, powerful, privileged class, in control of strategic locations on and off shore. Of course they demanded the right to continue whaling. Their very lifestyle as chiefs depended on it. But everyone couldn't be a whaler. The "complex pattern of social stratification" was really a caste system, with sealers and fishermen ranked below whalers, and commoners and slaves at the bottom of the heap. The U.S. government signed a treaty with primarily, the "royal families." And in the family memories of some contemporary	

		Makah, these old claims to status are not forgotten. “Makah people had never stopped educating their children about their respective familial whaling traditions” (pg. 34). It should be no surprise that the prime movers of the “back to whaling” crusade are descendants of the whalers. Keith Johnson, a whaling family member and former Tribal Councilman, said in a Peninsula Daily News interview on Sept. 27, 1998: “(Whaling)… brings in all of the cultural aspects of our heads of family… and lifts that family up in its identity as a whaling family.” That same fall in 1998, John McCarty, grandson of the last Makah Whaling Chief, and Makah Whaling Commissioner, interviewed on KIRO-7 TV said, “There could be with the lesser families that, uh, like I don’t like to call them slave families, but the slave families and the less prominent ones, that there might be a feeling of what’s going to happen now?” Renker bemoans “the introduction of American values” in the 1800’s such as “the American philosophy of social equality” and	

		how that social equality "made it difficult for Makahs to continue to staff and organize whaling canoes, and therefore households, according to the ancient patterns" (pg. 30). Social equality is considered by most Americans today to be the hallmark of a free and just society. Are the whaling families actually hoping for a return to a traditional status and power structure that is above the shifting winds of the democratic process?	
PCPW34	RE: Comment:	3.10.3.5.1 Makah Whaling This section describes Ann Renker's Household Whaling Surveys, HWSI and HWSII, her methods, results, and excerpts from her Needs Statements. These topics raise so many questions it is hard to know where to start. We'll start with Ann Renker PhD., herself. While she is no doubt a fine person and an asset to her adopted home of Neah Bay, she is in no way an objective or neutral scientist. She is, in fact, married into a very prominent and activist whaling family, and her Needs Statements unabashedly reflect their support of whaling. Did NMFS critique the Needs Statement or have them reviewed by impartial anthropologists?	As reflected in the List of Preparers, we employed two cultural anthropologists to assist in preparing the 2008 DEIS – Dorothy Kennedy and Stephen Braund. These two experts contributed to sections of the document.
PCPW35	RE: Comment:	HWSI, 2002 It's a compelling premise for a community survey, to frame it in terms of defending one's Tribe from "outside attacks." "The expressed purpose of the survey was to address concerns of some non-tribal citizens who believed that the Makah Tribe did not	Comments noted. As described above, the new DEIS has been revised to more accurately reflect the circumstances surrounding Dr. Renker's work and the results of her surveys.

		support whaling and wasted the whale products received from the 1999 hunt." 3-241 One would think Tribal members would put differences aside and really pull together to show unity in the face of these comments from "non-tribal citizens." Jennifer Sepez (Sepez 2001) informs us that, "Typically, face to face interview surveys in the U.S. have a refusal rate of 5% - 20%." Her own survey in Neah Bay had a 10.9% refusal. Renker had a 31% refusal rate for her survey. Did NMFS ask Renker why that might be? The whaling proponents have done their best over the years to stifle dissent. Those who spoke out against whaling were threatened and intimidated. Renker even uses this Needs Statement as a platform to falsely accuse four dissenting tribal members of being responsible for all protests against whaling! (pg. 36) Considering the conflict within the Tribe over whaling, it is not surprising that in Household Survey (I) 2002, 58 out of 217 contacted households (31%) refused to participate in the survey. There is no effort to explain this large number. Four additional households were determined by the surveyors to be anti-whaling, so to "minimize external influences" they were not interviewed, and their surveys were filled out for them "to answer negatively." When 31% of the survey contactees removed themselves from the sample pool, "random sampling" was no longer random. It had at that point self-selected for cooperation with the Makah	

	Cultural Resource Center, whose oft-stated desire is the return to whaling. Add the 31% to the 5.5% who were scored as “anti whaling” and this is a total of 36.5% who are at the least, unwilling to help with the survey, and at the most anti-whaling. So to imply a 93.3% approval rate for whaling in 2002, is not honest, is not science, and disregards the implications of the election results of 2000. After the whale hunt in 1999, voter frustration with whaling swung tribal policy in a different direction in 2000 and 2002. New leaders slashed funding for whaling, arguing other needs were more pressing. With no budget, the Makah Whaling Commission was shuttered in 2002, and angry whaling families were told to go ahead at their own expense. No more tribal subsidies for family hunts. Keith Johnson said he was voted off the council after the first hunt amid criticism that the Council had spent too much time and money on whaling. “It was really clear that whaling was a dead horse,” he said. Lynda Mapes Seattle Times April 15, 2002 Nowhere does Renker, or the DEIS, analyze, discuss or even mention the “dead horse” period, but Keith Johnson’s startling statement throws open a small window to the large divisions in Neah Bay over whaling.	

		It is quite clear that the following Letter to the Editor that ran in the Peninsula Daily News on April 11, 1999 must speak for a large percentage of the Tribe: "I am a Makah and I am against whaling. I respect the whale's right to swim free. Killing whales will not wipe out all the ills of the reservation. It is not a cure for addictions; drugs or alcohol. … Hundreds of us do not want to see these wonderful creatures killed. Many of us believe there is more to be gained by saving the whales. In my humble opinion, this whaling issue was never brought to a ballot vote by the Tribal Council. If it was put to a ballot vote, I believe that we would not be facing this heart breaking issue." ***A Makah Tribal Member,*** ***Neah Bay*** So where does this leave Renker's "93.3% approval," touted in Table 3.32 and throughout the DEIS? NMFS must reevaluate the misleading results and methodology of the Household Whaling Surveys, and explain to the public why this biased work was	

		supported uncritically and submitted to the IWC shamelessly. How did Renker achieve such a response from a “random sampling”? With all the “refusals” out of the picture, who were her “respondents”? One cannot get a clear picture without all the data from the surveys. Renker has carefully cherry-picked the answers and percentages that support her conclusions and that she wants the readers of the Needs Statements to see, and the DEIS is happy to do the same. Renker’s handpicked data is strewn liberally throughout the Draft reinforcing over and over the message that the Tribe overwhelming wants whaling, wants whale meat. Her “random sampling” says so. We found in our files a draft version of the 2002 Needs Statement. This old version happens to have a Household Survey filled out with Renker’s data results for each question. A handwritten note at the top advises: “Will not be included as a part of Needs Statement. Will be available separately upon request. FYI for now.” A cover letter addresses the Draft and survey data to Rolland Schmitten, March 8, 2002, CC: Michael Tillman, Chris Yeats and Roger Eckert. When the data results from questions 37 and 38 of the first Household Whaling Survey are compared to the numbers in Table 3-34 in the DEIS, interesting facts emerge. Sixteen (16) respondents to the HWSI identified themselves as members of the 23-member Makah Whaling Commission. Seven	

		(7) members of respondents' households also were counted as MWC members. 16 + 7 = 23. So, somehow, all Makah Whaling Commissioners' households were surveyed. Table 3-34 lists thirteen (13) members of the whale hunt crew. The HWS lists ten (10) respondents and eleven (11) household members on the hunt crew. With twenty-one (21) crew members in the survey, that certainly must include all thirteen (13) claimed by Table 3-34. Twenty-two (22) respondents identified themselves as support crew, as did nine (9) household members. That total of thirty-one (31) must certainly include members of the tow crew on the one fishing boat that pulled in the whale, as well as twenty or so others who worked in a "support crew" capacity. So, we have a "random sampling" that happens to include the opinions of: ● The entire Whaling Commission ● The entire hunt crew and almost enough for a second crew ● All tow-crew members plus an additional 20 or so "support crew." It strains credulity beyond the breaking point to believe that these respondents were "randomly chosen." The survey needed to achieve a pre-determined outcome: An overwhelming Tribal desire for whaling and evidence that the meat and blubber were utilized. This seems to be ample motivation to bias the sampling, and the magnitude of the bias does	

		falsify the conclusions. The survey results were not left to chance, and the fact that the complete results were not included in the Needs Statement is a big red flag. NMFS did see the results. What were Schmitten et al's comments to Renker upon receiving the Draft? There needs to be a complete and thorough review of Ann Renker's Household Surveys and the way her results were used to mislead the IWC in the Needs Statements, and the American public in the DEIS. The fact that Renker's survey results "were supported in an independent survey by anthropologist Jennifer Sepez" (3-242) is not reassuring, only more troubling, given the romantic relationship Ms. Sepez carried on with the captain of the 1998-99 hunt seasons as he helped her with her research for her doctoral thesis. (A Whale Hunt, Sullivan 2000) Did Ann Renker and Jennifer Sepez keep these relationships with whaling families in Neah Bay away from NMFS, or were they truthful and NMFS used their work without question anyway? If that is the case, the public should have been informed of the possible conflicts of interest inherent in their work. It is an important component in analyzing the reliability of the data in this DEIS, and information that is only available to commentors living very close to the reservation. NMFS has relied quite heavily on Ann Renker's Needs Statements to make the case for the Makah's "nutritional and cultural	

		need" to the world, and continues to do so. Dissent within the Tribe has been stifled, blame on "outsiders," and purged from or minimized by survey results in a methodical and dishonest way. It seems that NMFS has chosen to look the other way and not to ask questions or challenge findings in Renker's work. This does a disservice to a large faction of the Tribe, to the neighboring communities, and to the ones who NMFS is most charged with protecting: The gray whales. There is no great need for whaling or whale meat in Neah Bay. As on Makah elder has repeatedly stated: "We are not hungry. We don't need dead whales to know we are Makah." Whaling will be a novelty pastime for the rich. Divorced from its original cultural and nutritional importance, it will be an ego-driven exercise, marking time until the hoped for commercial harvesting materializes.	
PCPW36		NMFS can deny that this is likely, but has never put forward any binding assertion from the Tribe that they will not resume commercial whaling. In fact, it is the reverse: the Tribe has always stated that their treaty reserves for them the commercial use of marine mammals, and NMFS has remained silent on this topic, in spite being asked to clarify this issue. This current plan for an "open door" whale-meat policy will no doubt lead to money changing hands for this "nutritious and	The Ninth Circuit in *Anderson v. Evans* held that the Makah must comply with the processes in the MMPA in order to hunt whales. We have always maintained that the Whaling Convention Act applies to tribal whale hunts. Both the MMPA and WCA prohibit commercial whaling. Our position is that the Tribe may not engage in commercial whaling. The Tribe's proposal does not include commercial sale of whale meat or blubber and none of the alternatives in the 2008 or new DEIS contemplate commercial sales of whale meat or blubber.

		healthful" food. Smuggling of whale meat to anywhere in the world is quite feasible and maybe an irresistible temptation, given the monetary value of whale meat in Japan.	
PCPW37	RE: Comment:	3.10.3.5.1 Makah whaling, 3-24 "Makah whalers reported enduring intense physical and spiritual training." Author Robert Sullivan spent a great deal of time with the whaling crew in 1998-1999. His book A Whale Hunt (2000), had no preconceived agenda but by documenting his observations of crew preparations, inadvertently de-bunks the above statement from Braund. Braund is a Parametrix sub-contractor who paid a visit to Neah Bay in 2007. He spoke to whaling family members and found, no surprise, a support and need for whaling.	Comment noted.
PCPW38	RE: Comment:	3.10.3.5.3 Symbolic Expression of Whaling. This section serves to remind us that most of the world has adopted images of whales in art of every media to symbolize a renewedl effort to care for and protect nature and the environment. Sculpture, T-shirts, photos, paintings, "doodles" by children and even tattoos have been produced by the millions to reinforce the huge global cultural/spiritual connection to living whales. It is the feelings, sensibilities, and hopes and dreams of these – the great majority of people here and everywhere – that will be harmed and diminished by this unnecessary scheme to benefit from the slaughter of whales.	Comment noted.
PCPW39	RE:	3.10.3.4 Makah Historic Whaling 3-228 lines 11-13 "Chiefs had two methods of obtaining	Comment noted.

	Comment:	whales: either hunting them from a canoe on the open water and harpooning them, or using ritual to entice them to die and float ashore… thereby permitting the chief to avoid the dangers of hunting at sea." We would propose this as an alternative. Cultural, safe, lots of rituals and the end result is a dead whale on the beach ready to be butchered. No shooting, no struck and lost: Sounds like an alternative we could live with.	
PCPW40	RE: Comment:	3.10.3.4.1 Cessation of the Hunt "Swan (1870) noted that even in the 1850's, the Makah Tribe was whaling less than in the past, but he could provide no clear explanation for the decline." In Winter Brothers, by Ivan Doig, Swan writes in his diary in 1887, "Captain Sampson informed me that whales have been quite plenty around the vicinity of the Cape this spring but the Indians have not been after them as they devote themselves exclusively to sealing."	The 2008 DEIS contained an extensive discussion of the role sealing may have played in the cessation of the Makah Tribe's hunt in the subsection immediately following the subsection cited in this comment (that is, Subsection 3.10.3.4.2, Factors Responsible for Discontinuation of the Hunt).

PCPW41	RE: 3.10.3.4.2 Factors Responsible for Discontinuation of the Hunt Comment: This section quotes Charles Scammon's 1874 Marine Mammals of the Northwestern Coast at length. As a whaler, his knowledge of whales, and gray whales in particular, is still considered valuable and accurate. On page 3-234, lines 12-14, the DEIS notes that "when the Makah Tribe… attempted to hunt whales in the early 1900's, few whales remained in the local waters." Scammon sheds light on a possible reason, with his description of kelp whaling: "The first year or two that this was practiced, many of the animals passed through or along the edges of the kelp, where the gunners chose their own distance for a shot. This method, however, soon excited the suspicions of those sagacious creatures. At first, the ordinary whale-boat was used, but the keen-eyed "Devilfish" soon found what would be the consequences of getting too near the long, dark-looking object as it lay nearly motionless, only rising and falling with the rolling swell. A very small boat, with one man to scull and another to shoot, was then used… This proved successful for a time, but, after a few successive seasons, the animals passed farther seaward…" Green et al. (1995), Offshore Distance of Gray Whales... references studies that concur with Scammon's observations: "… Hubbs (1959) and Rice and Wolman (1971) suggested that the few whales observed along traditional migration routes off California in the late	Comments noted. In developing the new DEIS, in addition to the information referenced in the comment, we sought additional assistance from Dr. John Calambokidis, who has first-hand experience surveying gray whales along their migration route. Dr. Calambokidis reviewed the 2008 DEIS and examined available data to assess the likelihood that gray whales would avoid the Makah U&A if hunting occurred there. The results of Dr. Calambokidis' review are reflected in the new DEIS (e.g., Subsection 4.4.2.3, Change in Abundance and Viability of PCFG Whales and 4.4.2.4, Change in Numbers of Gray Whales in the Makah U&A and OR-SVI Areas). In addition Alternative 6 of the new DEIS provides that the waiver and regulations authorizing a Makah gray whale hunt would expire in 10 years. This would allow an opportunity for NMFS and the public to evaluate the effects of a hunt on the distribution of PCFG whales within the Makah U&A.

		1800's and early 1900's (Townsend 1887, Andrews 1914, Howell and Huey 1930) was due to animals traveling farther offshore to avoid shore-based whaling pressure rather than an overall population decline." These suggestions that gray whales will learn to avoid hunt areas, serves warning to this Makah process: Do not ignore the possibility, indeed the likelihood, that the harassments and killings of gray whales at their feeding grounds will drive them offshore. Maybe not the first season, or the second, but according to Scammon, it will happen.	
PCPW42	RE: Comment:	3.16.3.1 "Early archaeological studies indicated that as much as 84 percent of the Makah diet was whale meat, oil, and other food products (Renker 2002) Considering that 80% of bones found at Ozette were Northern Fur Seal, how does that jibe with a calculation of whale providing 84% of the diet? With the Makah diet currently so high in healthful sea foods, and supplements such as cod liver oil readily available, where is the	In response to this comment, we have reviewed the original literature cited in Renker (2002), and modified the new DEIS to reference the original source of the information, which is Huelsbeck 1994 (Table 127) (Subsection 3.16.3.1, Nutritional and Health Benefits from Consuming Whale Food Products and Other Traditional Subsistence Foods). Huelsbeck conducted the original assessment of the archaeological evidence from the Ozette site. The analysis in the 2008 DEIS explored the impact on the Tribe of having or not having fresh gray whale meat (Subsection 4.16.2.1, Nutritional Benefits and Section 4.16.3, Evaluation of Alternatives).

		great need for contaminated whale meat in the diet?	
PCPW43	RE: Comment:	4.1.1 Alternative 1 There is no relevance to the gray whales utilizing the Makah U&A, in this speculation about Chukotka harvest levels with or without a Makah harvest. Analysis of Alternative 1 should have focused on the fact that without Makah hunting, the small numbers of gray whales utilizing the Makah U&A would be left in peace to thrive as functioning elements in this unique environment, and to gradually increase to the currently undetermined OSP of the Makah U&A Additionally, there would be no harassment of the mothers and calves in April and May in the "project area." Hungry migrating whales would also be able to feed and rest on their way north. With the continuing problem of "skinny" whales, utilization of the "project area" during north bound migration may be the difference between life and death for undernourished whales. The fact that this "analysis" of the effects of Alt. 1 – no hunting – contains no pertinent mention of positive effects to whales in the Makah U&A is a blatant smoking gun to the bias inherent in this DEIS. The paucity of balance by NMFS/Parametrix is nowhere more visible than in this little section. NMFS must answer why they could find no beneficial consequences to Alt. 1.	The comment cites the introduction to Section 4 of the 2008 DEIS (Subsection 4.1, Introduction). Section 4 examined the environmental effects of each of the alternatives, and the introduction to that Section described the activities we anticipated would occur under each alternative (e.g., Subection 4.1.1, Alternative 1). The introduction section described the basis for certain assumptions that are important to the analysis of each alternative (for example, how many whales would be killed, how many days of hunting would occur, during what time period would hunting occur). The analysis in Section 4 then examined the likely environmental effects of each alternative based on the assumptions established in the introduction. Section 4.4.3.1, Alternative 1, described the effect on ENP gray whales if NMFS did not authorize a hunt, which is that the status quo would prevail. This is the baseline against which other alternatives were measured. Thus in its analysis of other alternatives, the DEIS described potential effects of hunt alternatives compared to the no-hunt alternative. For example, Subsection 4.4.3.2.3, Change in Distribution or Habitat Use, described the risk that gray whales could change their current use of the coastal portion of the Makah U&A, or other coastal areas, as a result of authorizing a hunt.

PCPW44	RE: Comment:	4.1.2 Alternative 2 This section devotes (44) lines to explanations and predictions as to why a Makah hunt should and would occur in the months of April and May. Considering that whales in the Makah U&A during April and May will include large proportions of Phase II whales (90% mothers and calves) and resident whales, it is not surprising that there is such an over-kill of justification for allowing this timing for a hunt, and raises the big red flag of a biased assessment bent on justifying a preconceived NMFS decision, not allowing the possibility of science to direct a reasonable outcome. NMFS seems preoccupied with finding the perfect weather conditions for whalers. Is this really NMFS's mandate? Or should NMFS be at least equally concerned with the safety and wellbeing of the gray whales under its care?	The analysis in the 2008 DEIS predicted and analyzed impacts of alternative actions. Unless the EIS describes what we expect will happen under a given alternative, the analysis of impacts will not be complete. For this reason, the 2008 DEIS included a full discussion explaining why we expected the Tribe to hunt primarily in April and May. The analysis was not offered as a justification to explain why hunting "should" occur at that time, but as our prediction of what the Tribe is most likely to do if a hunt is authorized under the terms proposed by the Tribe. The comment offers no information to suggest that we were wrong in our expectation that the Tribe would most likely hunt in April and May if we authorize a hunt as the Tribe requested.
PCPW45	RE: Comment:	Allowable by-catch of identified whales (4-6) While this PBR methodology claims to be protective of whales faithful to the Makah U&A, there is an unexplained implication. If the abundance levels of whales returning to the ORSVI area will be "annually updated," then the allowable by-catch at this point in time (DEIS May 2008) may be different when/if a hunt is allowed. In fact, the numbers of ID'd whales only has to rise by a small number to tip the ABL level of 2.35% (rounded down to (2) in the DEIS) to over 2.5 which would be rounded up to (3) or (4) or (5). At which point any protection of resident whales would be moot.	The comment is correct that under the Tribe's proposal, the allowable bycatch level could change in response to a change in abundance of returning OR-SVI whales. Such abundance-based harvest management is consistent with the proposition that a larger population can withstand more human-caused mortality. Abundance-based management is included as an element of all five action alternatives in the new DEIS. The 2008 DEIS states that "The allowable by-catch level using the current minimum abundance estimate of 102 would be 2.4 whales (102 times 0.0235)" and that the 2.4 would be rounded down to 2. For the allowable bycatch level to increase to 3, there would have to be an increase in abundance of 26 OR-SVI whales (128 times 0.0235 = 3). This represents a nearly 25 percent increase in abundance. To

			achieve an allowable bycatch level of 4 whales, abundance would have to rise to 170. While abundance levels and other elements of the PBR-like calculation have changed since the 2008 DEIS, the same principle applies, in that fairly large changes in abundance would need to occur before the allowable bycatch level increased.
PCPW46		And if the Tribe is allowed to "apply the ABL only to whales landed, then all 35 whales killed every 5 years could be from the Makah U&A. Sooner or later, that would extirpate our faithful whales. While NMFS assumes that "other" whales will "fill in," there will be over 20 years of science flushed down the drain if these specific whales are "harvested." These whales include many who have been adopted through Cascadia Research's adoption program. These whales include many who are seen by and known to residents along the Straits. These whales provide profound enjoyment to tourists and fishermen. The whales who return to bays and rocky points farther in the Straits must first pass through the "project area." Eventually they too will feel the harpoon and the .50 cal. NMFS is participating in an experiment with unknown consequences to our Washington State resident whales.	The 2008 DEIS examined the potential maximum impact to identified whales under the Tribe's proposal, including the possibility that struck and lost PCFG whales would not be accounted for in the bycatch limit. Table 4-2 displayed both the potential maximum number of Makah U&A whales that could be killed over the 5-year period (20) and the likely number of Makah U&A whales that could be killed over the 5-year period (6.27). The estimate of the likely number of Makah U&A whales killed was based on estimates of the proportion of Makah U&A whales likely to be present in the Makah U&A during the spring hunting season. The new DEIS provides this same information in Table 4-1, based on updated information on the presence of Makah U&A whales in the Makah U&A during the spring. In addition, the new DEIS includes two alternatives that would count all struck and lost whales as PCFG whales and two alternatives that would count struck and lost whales as PCFG whales in proportion to their presence in the Makah U&A during the season they were struck.
PCPW47	RE: Comment:	4.1.2 Alt2 (4-8) The amount of harassments predicted by the Tribe on this page are bad enough: 140 attempts on whales and 700 whales approached every five years. But these	In response to this and other comments, we re-examined the information available regarding likely gray whale pod size in the project area during the time the Makah Tribe proposes to hunt. Our assumption that the average pod size in the project area is 2 whales is based on the average observed pod size during the southbound

		numbers are based on the untruth that whales in the “project area” during May and April are “migrating” in “average pod size of two.” It is much closer to the truth to admit that these whales are where they are because they are feeding. The mothers and calves are also resting, nursing and hiding from orcas in the kelp beds near shore. The whales in these areas at this time are also milling, circling, feeding, resting, moving around in groups and numbers that change as they look for food between the various and variable patchy areas on the coast. Helicopter coverage of the unsuccessful hunts in 2000 clearly showed mud plumes in the same frame as the whaling canoe. The approaches and harpoon attempts could be plainly seen from above, frightening the feeding whales and causing them to flee the immediate area. The truth of the matter is that the approaches and the harpoon attempts will come down over and over again, year in and year out on many of the same whales. The faithful ones who specialize in feeding in the Makah U&A. If we are to believe the observations of Charles Scammon (cited earlier), gray whales are not stupid or oblivious to their surroundings and experiences. They will learn. They will feed elsewhere. The consequences of that are unanalyzed. They may crowd feeding areas to the north or south. Mothers and claves may move off	migration (Laake et al. 2009). It is possible that average pod size is different in the project area during the spring. However, there is no available information to support a different assumption of what the pod size might be. Like the 2008 DEIS, the new DEIS examines the possibility that an ongoing hunt in the Makah U&A under any of the action alternatives could disrupt normal behaviors and cause gray whales to abandon the area as a feeding area. In addition, Alternative 6 of the new DEIS provides that the waiver and regulations authorizing a Makah gray whale hunt would expire in 10 years. This would allow an opportunity for NMFS and the public to evaluate the effects of a hunt on the distribution of PCFG whales within the Makah U&A.

	consequences.	shore where conditions are much more dangerous for the vulnerable calves. NMFS is encouraging an experiment with grim All other Alternatives but (1) risk the same predictably bad consequences to the near shore U&A whales of the outer coast and the Straits.	
PCPW48	RE: Comment:	4.3.3.2.1 Pelagic Environment (4-26) The second paragraph on this page states that the number of whales "allowed to be removed" will be "less than 1 percent of the some 20,000 whales, and less than 5 percent of the 464 whales observed in the Makah U&A…" This sentence raises a problem of definition: In most cases, this DEIS uses the term "Makah U&A whales" to define the smallest number of identified whales in the PCFA. These are all whales who have been identified in the very n ear shore areas where the whale hunts of '98, '99, and 2000 have all occurred. It is confusing and self-serving to mix the whales near shore ("to be removed"), with the "20,000" and the "464" (PCFA) 'observed in the Makah U&A. In this last case, NMFS is using the entire "the Makah U&A" to mean the fishing grounds out to 40-50 miles off shore. This is the same misleading terminology that the DEIS used to state that the resident whales (Makah U&A whales) will only have a 1% chance of encountering a Makah hunter. The Makah hunters will not be out in the migratory corridor used by the great majority of migrating whales. This	The section of the 2008 DEIS cited in this comment discussed the likely impact on the pelagic environment in the project area. The pelagic resources in the marine environment are highly mobile and variable. Gray whales likely have little ecological interaction with these resources, except to feed on them opportunistically as they pass through.

		mixing of word usage seems intended to minimize fears about the well being of local whales and their habitat in a very dishonest way. NMFS must reword these statements to differentiate between off-shore migration corridor portion of the Makah U&A and the near shore whales and hunt areas of the Makah U&A.	
PCPW49	RE: Comment:	4.4 ENP Gray Whale & 4.4.2.1 "NMFS currently considers the ENP gray whale stock to be within it's OSP… and viable" This section should have discussed the potential for any of the many threats to the gray whales' habitat to greatly and suddenly change that viability. The die off of 1999-2000 is still not fully understood, but may relate to the worsening conditions in the Arctic. As the sea ice melts away, so do the hopes for a healthy future for gray whales. The ever-present threats of oil spills, dead zones, algae blooms, Navy sonar, projects off shore such as wave energy buoys, oil exploration and drilling, threaten all whales, including the whales in the Makah U&A. NMFS should be taking the most protective measures when it comes to the gray whales. The gray whales are in much more peril than the elite Makah whaling families, and NMFS priorities should be to protect them. The EIS must acknowledge the nature and extent of the threats to their viability.	The 2008 DEIS addressed the multiple threats to the ENP gray whale stock (Subsection 3.4.3.6, Known and Potential Anthropogenic Impacts). In response to this and other comments, we have expanded that discussion in the new DEIS, including potential future trends for the stock. In the event the ENP gray whale stock were to decline below its OSP level, we would not be able to issue a permit to the Makah under the MMPA, thereby eliminating any authorized hunting by the Tribe.
PCPW50	RE:	4.4.2.2 (4 – 36) "There is no evidence of familial recruitment in the local survey areas"	The new DEIS reflects new information about internal recruitment into the PCFG, as well as updated information from Calambokidis et al. (2014) regarding recruitment of calves into the PCFG feeding areas

	Comment:	This is just not so. The Peninsula Citizens for the Protection of Whales have adopted whale #107. He was identified as a calf with his mother, #43. They are both seen most years, with #107 feeding at the near shore places in the Makah U&A that his mother took him to as a calf. Additionally, in the Dec. 2000 Final Report "Range and Movement of Seasonal Resident Gray Whales," pg. 12: "there is some evidence for maternally directed site fidelity." The statement quoted above, "there is no evidence," should be stricken from the DEIS and replaced with the known facts.	(Subsection 3.4.3.4, Pacific Coast Feeding Group (PCFG) of Gray Whales).
PCPW51	RE: Comment:	PBR of whales in ORSVI Survey Area The Makah must not be allowed to dictate the ABL for PCFA whales. Struck and lost must go against the PCFA quota, and the total PBR must never rise above two. How can NMFS consider it reasonable to allow a possible 15 ORSVI whales to be killed every five years? By NMFS' own admission, that "would exceed by 2.5 whales the PBR level resulting form the Tribe's proposed method." It is not sufficient for NMFS to next state a lower "likely" number. Does NMFS not put stock in the precautionary principal? Why bend over backwards to satisfy the whaling families at the expense of our very small number of resident whales?	The 2008 DEIS makes no judgment as to whether the Tribe's proposal is reasonable. Its purpose is to analyze the likely impact of the Tribe's proposal on the human environment. The conclusion that it is likely that on average 1.25 whales out of seven would be identified whales was based on information available at the time. The new DEIS contains updated information and a revised estimate. In response to this and other comments, the new DEIS includes two alternatives that would count all struck and lost whales as PCFG whales and two alternatives that would count struck and lost whales as PCFG whales in proportion to their presence in the Makah U&A during the season they were struck.
PCPW52	RE:	4-38 "Estimates of the proportion of PCFA whales in the Makah U&A during April and May… are based on a small number of observations."	We have for several years funded survey efforts in the Makah U&A and elsewhere in the PCFG survey areas, as described in the 2008 DEIS and the new DEIS. In addition, we have funded research to collect and analyze biopsy samples (the research is reported in Lang et al. (2011), summarized in the new DEIS (3.4.3.4.1, PCFG Population

	Comment: NMFS has had ample time – years – to do the research needed to know what whales are present where and when. This DEIS should never have been prepared without this vital information. How can decisions about hunts in April and May be made without the facts that are needed to protect the Makah U&A whales? It is bad enough that NMFS well knows mothers and calves are using this area at that time. NMFS must obtain and provide longer term data on the composition of whales in the near shore Makah U&A in April and May.	Structure). As noted in previous responses, Calambokidis et al. (2014) report on the additional information gathered regarding PCFG whale presence in the Makah U&A prior to June 1 and now estimate that about 33% of whales present are PCFG whales. These results are summarized in the new DEIS. While it would be ideal to survey the area more frequently, sea conditions make it impractical (Calambokidis et al. 2014). In part to account for this uncertainty, Alternative 6 of the new DEIS provides that the waiver and regulations authorizing a Makah gray whale hunt would expire in 10 years. This would allow an opportunity for NMFS and the public to evaluate the effects of a hunt on PCFG whales within the Makah U&A after 10 years of hunting.
PCPW53	RE: 4.4.2.3 Change in Distribution or Habitat Use 'It is reasonable to expect that whales approached by Makah whale-hunting vessels would react in a similar, temporary manner… (as to whale watching)" Comment: Comparison of whale watching and whale hunting: <u>Vessels involved in hunt: (3-275)</u> - Coast Guard Helicopters - Coast Guard Cutter - Coast Guard Utility boats (several) - Coast Guard Zodiacs (several) - Tribal Canoes – one or two - Tribal Chase Boats – one or more (24' long, 200hp engines) - Tribal Fishing Vessel (tow boat) - Protest Vessels – five to fifteen – various sizes (3-273) - Protest Aircraft (3-274) - Media Helicopters – three (3-274) - NMFS Research Vessel(s)	In response to this and other comments, the new DEIS contains a revised discussion comparing whale reactions to hunting with whale reactions to whale-watch vessels (e.g., Subsection 3.4.3.6.6, Vessel Interactions). It remains uncertain how a tribal hunt might cause whales to change their distribution in the Makah U&A or other local survey areas.

	<u>Vessels involved in whale-watching in Makah U&A:</u> - One to five vessels out of Neah Bay and Sekiu - One to five whale watching vessels in Straits - Small number of kayakers <u>Behavior of vessels involved in locating and pursuing a kills:</u> - Many very loud engines - All vessels searching for and pursuing whales moving at high speeds. Canoe being towed by support boat. Coast Guard vessels, protest boats, media boat, and NMFS boats keeping pace. - Helicopters circling above <u>Behavior of whale watch boats searching for and observing whales:</u> Guidelines: 1 Be cautious and courteous. Approach areas of suspected marine mammal activity with extreme caution. 2 Slow down: Reduce speed to less than 7 knots when within 400 yards of whale. Avoid abrupt course changes. 3 Avoid approaching closer than 100 yards to any whale. 4 If vessel is unexpectedly with 100 yards of a whale, stop immediately and allow the whales to pass.	

	5 Avoid approaching whales from the front or from behind. 6 Keep clear of the whale's path. 7 Limit viewing time to maximum of 30 minutes. Source: NMFS and Fisheries & Oceans Canada <u>Vessels involved in hunt: attempted approach, harpoon, kill shots.</u> - All vessels close in on whales. - Canoe(s), chase boats, Coast Guard vessels, media boat, protest boats, NMFS boat all in vicinity of whales being approached. Harpoon attempts made from within feet of whale. Shots fired within yards of whale. (Composite description of failed hunts and successful hunt – Observers Report). <u>Vessels involved in watching whales in Makah U&A:</u> - One or two vessels floating quietly no closer than 100 yards. Comment: The behaviors and numbers of vessels involved in the whale hunts of 1998, 1999, and 2000 are in no way comparable to the behaviors of the very few whale watching boats the Makah U&A whales are likely to encounter on their northbound migration in March and April, on the coast, or even on their entry into the Straits. Whale watching has not yet blossomed on the outer coast of Washington or on the U.S. side of the Straits.	

		But we can learn from other areas. Farther north, on the outer coast of Vancouver Island, in Clayoquot Sound, more significant whale watching does occur. During a three year period (1991 – 94) D.A. Duffs, University of Victoria, Victoria B.C., studied the foraging tactics and movement patterns of the gray whales of the area: “Over the 3 year period, the whales gradually moved further from the main commercial whale-watching port of Tofino, necessitating a significant increase in travel distances for the whale-watching fleet, from only 10km in 1991 to as much as 30 km in 1994. The implications of this for the management and sustainability of whale-watching are discussed.” From: “The recreational use of gray whales in Southern Clayoquot Sound, Canada. Applied Geography 16(3): 179-190 1996. Additionally, from Randall’s “The Problem of Gray Whale Harassment: at lagoons and during migration” 1977: Harassment involves evasive action, taxing the “energy budget.” “This energy may be important to the animal’s reproductive fitness or survival.” He describes behaviors of gray whales that signal harassment by boats, including: 1. Speed up 2. Slow down 3. Breathing changes 4. No blow 5. No roll 6. No flukes 7. Dodge reverse	

	8. Bottom dodge 9. Disappear 10. Sun slick "trickiest and most intelligent" He also makes this important statement about whale response: "Some whales are skittish and react with panic when approached by even the most careful observer. Others are unafraid and even attracted to boats." From Heckel, et al 2001 "Influence of Whale Watching on Gray Whales": "The intentional approach of vessels might elicit escape reaction in whales, and the vessel's speed, direction, distance and sound seem to be important factors." (Bird 1983) "… vessel's proximity and speed probably resemble a chase as experienced by gray whales when pursued by killer whales (Goley and Straley, 1994) or by aboriginal subsistence hunters off Chukotka (IWC. 1993)." Comment: These are just a few references to the effects of whale watching on gray whales. It is eye opening to realize the potential effects of an activity that means the whales no harm, an activity that only seeks to observe them from a distance as they pass by or mill and feed. Most people participating in whale watching would be heart broken to ponder the power of their cumulative presence to drive whales off shore away from their feeding areas, to cause evasive behavior that saps their energy reserves, to disrupt resting, sheltering, and	

		nursing of young, and to cause actual panic in some sensitive whales. It is no wonder that Heckel, when contemplating the potential long-term effects of whale watching on gray whales concludes: "The precautionary principal adopted by the U.N. Conference on the Environment and Development (UNCED) urges caution when making decisions about systems that are not fully understood." (Meffe and Carroll, 1947) How much more frightening and severe harassment will the gray whales face from Makah whaling? The hundreds upon hundreds of "approaches" that are in actuality aggressive attack moves. The dozens and dozens of harpoons flung at close range with numerous motorized boats and ships clustered around. The glancing blows, the strikes, the struck and lost, the dead and dying whales. The gun shots hitting and wounding and killing over and over and over, year after year after year. Scammon says the whales will leave. Observers of the whale watching effects in Tofino say the whales will leave. Those faithful few whales whose presence around us here on the Peninsula, make every glimpse of the Straits and the ocean a potential "joyful happening." Those faithful few will surely be among the dead and vanished. And then it will be too late for "adaptive management" to mitigate the loss. A few less strikes? A lesser number of approaches? Bigger weapons? Just quit caring about "resident' whales?	

		The 9th Circuit Court's decision requires NMFS to care. Require NMFS to protect the faithful few. NMFS' current Alternatives Two through Six mock the Court. All will lead to the elimination of local whales by either fear or death. Does NMFS have evidence to support its theory that whale hunting and whale watching will have a "similar and temporary" effect? None of the references provided by NMFS "suggested the whales might become habituated and have less of a reaction the more frequently they are approached" (4-39). The references cited above conclude the opposite is much more likely.	
PCPW54	RE: Comment:	"It is uncertain how whales would react to unsuccessful harpoon attempts, but the reaction may be similar to that observed in whales that are tagged or biopsied. Whales may be less likely to habituate to unsuccessful harpoon attempts than to approaches... It is unknown whether whales near successful harpoon attempts will… over time avoid vessels." All this uncertainty defies common sense, and available studies by NMFS. Herb Sanborn writes in <u>Gray Whale 5 Year Monitoring Plan</u> about biopsy samples of blubber collected from north bound whales in 1995: "The effective range of current equipment is 20 meters, however many animals could only be approached to within 40 meters. Additional testing will be necessary to determine whether biopsying from a greater distance is	As described above, in response to this and other comments, we sought additional expert review of the 2008 DEIS from Dr. John Calambokidis. The results of that review are incorporated in the new DEIS.

		possible, with modification of the present equipment…" This indicates that the comparison between harpoon attempts and biopsy collection may not bode well, as harpoon attempts must be made from a few feet away, not 40 meters.	
PCPW55	RE: Comment:	4.4.3 Evaluation of Alternatives NMFS refuses to consider an Alternative that takes the hunt offshore to the migratory corridor. Every alternative other than Alt. 1 makes it mathematically likely that every Makah U&A whale will be approached by Makah hunting vessels on multiple occasions and could repeatedly be subjected to harpoon attempts. Mothers and calves that will be in the hunt area in April and May will feel the "collateral harassment" as well. Therefore, the only Alternative that satisfies the 9th Circuit Court and the MMPA' mandates is Alternative I. How can we take this DEIS seriously, when it ends section 4.4.3.2.3 with this statement: "Thus available information indicates that gray whale distribution and habitat use will not change compared to the no-action alternative." NMFS' own studies cannot possibly lead to this conclusion. And NMFS' own uncertainties cannot logically lead to this declarative statement.	In response to this and other comments, the new DEIS includes an alternative that would require any hunt to occur at least 5 miles from shore (Alternative 3, Offshore Hunt). During public scoping for the new DEIS some commenters objected to the inclusion of an offshore hunt, while others supported its inclusion. As described above, in response to this and other comments, we sought additional expert review of the 2008 DEIS from Dr. John Calambokidis. The results of that review are incorporated in the new DEIS.
PCPW56	RE: Comment:	4.4.3.2.3 Migrating Whales "Migrating whales travel one to two miles offshore on their northward migration…" At 3-67, lines 29-30, the DEIS states: "These sightings farther offshore are consistent with	In response to this and other comments, we reviewed all available information regarding the distance from shore that migratory whales travel, both during the northbound and southbound migrations, in the Makah U&A. This updated information is described in Subsection 3.4.3.3.2, ENP Seasonal Distribution, Migration and Movements).

		Green et al (1995), who documented phase one north bound migrants off the coast of Washington… averaging a distance of 7.3 miles." This is another example of conflicting "facts" that seem to be deliberate attempts to confuse. In this case it suits the desired outcome to continue to place all "20,000" migrating whales into the "project area," thereby "diluting the chances of a resident whale being harassed or killed."	
PCPW57	RE: Comment:	4.4.3.5.3 (4-59) "Thus even if some whales do abandon the area as a result of hunting disturbance, new whales... ***might*** come into the area, indicating that gray whale distribution and habitat use ***will not*** change compared to the no-action Alternative." For a paragraph that includes the following: "***is likely to be***," "***is less certain***," "***is uncertain***," "***is also uncertain***," "***may be***," "***if***," "***might not***," "***if***" and "***might***" to end in a statement of fact is absolutely astounding. Does NMFS stand behind this conclusion with enough certainty to base decisions on it? Even if a population of gray whales on the coast were thought to be relatively constant, harvest regimes that remove maximum sustained yields annually would change whale behavior, reduce densities and observability and alter established relationships between whales and their environment.	Comments noted.
PCPW58	RE:	1.2.2 Treaty of Neah Bay… "Courts liberally construe treaties, resolve ambiguities in the tribe's favor, and "interpret Indian treaties to	The 2008 DEIS stated that "some Northwest Indian tribes traditionally harvested and used products from . . . marine mammals;" that tribes in the past have "expressed an interest in harvesting marine mammals;" and that "some tribes may continue to

		give effect to the terms as the Indians themselves would have understood them." "The Treaty of Neah Bay is the only treaty, between the U.S. and an Indian tribe that expressly provides for the right to hunt whales."	believe and assert that their treaty rights to take marine mammals are not subject to the MMPA." It concluded that a waiver for the Makah Tribe "may influence these other Indian tribes in the Northwest and nationally to seek waivers of the moratorium to take marine mammals," and that the "outcomes of any future processes would depend on facts not presently known, but it is possible that [a waiver] could lead to increased federally authorized take by other Indian tribes." (Section 4.17.2.1.2, Increased Take of Marine Mammals by Indian Tribes).
	Comment:	The words "and seals" has been left out of the above statement. Olympic National Park anthropologist Jacilee Wray wrote in her 1997 book Olympic National Park Ethnographic Overview and Assessment: *The Treaty of Neah Bay is the only Stevens treaty with language that specifies the right of whaling and sealing. However, the privilege to hunt included in the other western Washington treaties have also been construed as including whaling and sealing (Mitchell 1992). Currently the Makah, Quileute, Quinault, Skokomish, Port Gamble S'Klallam, Jamestown, S'Klallam, Lower Elwha Klallam, as well as the Muckleshoot, Tulalip, Lummi, and Nooksack have tribal regulations regarding the harvest of the harbor seal and the sea lion (Northwest Indian Fisheries Commission: Personal Conversation 1996).* It is becoming clear that many western Washington tribes are closely monitoring the Makah legal battle. When and if a legal precedent is established, any or all may claim	

		"discrimination" if they are not also allowed to whale. In 2004 the National Congress of American Indians passed Resolution #MOH-04-025 supporting Makah whaling rights, which concludes with these words: *Now therefore be it resolved, that the NCAI does hereby go on record in full support of the right of the Makah Tribe to freely exercise their treaty right to hunt whales* ***while supporting the rights of fishing Tribes to marine mammal management without threats, intimidation, harassment or interference.*** *Be it further resolved, that NCAI supports the Makah Tribe* ***and other effected tribes*** *to take all necessary steps, judicial, legislative and administrative, to reverse the court's ruling in Anderson v. Evens.* *Be it finally resolved, that NCAI calls upon the United States government and all of its agencies to support the efforts of the Makah Tribe* ***and effected tribes*** *to restore its full treaty whaling rights.* The Quileute Tribe has often claimed to have the identical whaling rights to the Makah, although they have renounced any desire to return to it. (Whales – Touching the Mystery, 2006, Doug Thompson).	

PCPW59	RE: Comment:	1-12 “The federal government has a trust responsibility to protect the treaty hunting, fishing, and gathering rights of Indian tribes.” 1 “Preparation of the EIS is the first step…: it will aid NMFS in future decisions related to the MMPA (and WCA). Table 2-2 “may prompt other tribes…” 4.17.2.1 Marine Mammals Nationally “NMFS’ waiver of the moratorium… for the Makah hunt… has the potential to lead to additional requests for MMPA waivers from… Indian Tribes and to additional requests for a quota under the WCA by those claiming aboriginal subsistence whaling rights.” 4.17.2.1.2 “A successful completion … in response to the Makah in this waiver request may influence these other tribes in the Northwest and nationally to seek waivers…” It seems pretty clear where all this is heading. NMFS is prepared to take precedent-setting actions without even estimating how many other tribes could likely pursue waivers for take of marine mammals. NMFS concludes that because it has been nine years since the Makah received an allocation and no other tribe has requested or inquired about an allocation, this “suggests” there is little interest by other native groups to seek take of gray whales. This is extremely flawed reasoning. There have been 9 years of see-sawing court battles. Nothing is settled. Why would there be inquiries during this delicate phase of court ordered NEPA compliance?	The 2008 DEIS acknowledged that a successful request by the Makah could lead other Tribes to make similar requests to hunt marine mammals: A successful completion of the authorization process in response to the Makah in this waiver request may influence these other Indian tribes in the Northwest and nationally to seek waivers of the moratorium to take marine mammals. The outcomes of any future processes would depend on facts not presently known, but it is possible that implementation of Alternatives 2 through 6 in the draft EIS could lead to increased federally authorized take by other Indian tribes. With respect to the No-action Alternative, it is uncertain whether a decision by NMFS to deny the Makah Tribe’s request would result in less harvest of marine mammals by Indian tribes in the future. (Section 4.17.2.1.2, Increased Take of Marine Mammals by Indian Tribes). NMFS recognizes that some Northwest Indian tribes traditionally harvested and used products from seals, sea otters and other marine mammals. Northwest Indian tribes have in the past expressed an interest in harvesting marine mammals (Schmitten 1994). Additionally some tribes may continue to believe and assert that their treaty rights to take marine mammals are not subject to the MMPA. A successful completion of the authorization process in response to the Makah in this waiver request may influence these other Indian tribes in the Northwest and nationally to seek waivers of the moratorium to take marine mammals. The outcomes of any future processes would depend on facts not presently known, but it is possible that implementation of Alternatives 2 through 6 could lead to increased federally authorized take by other Indian tribes. With respect to the No-action Alternative, it is uncertain whether a decision by NMFS to deny the Makah Tribe’s request would result in less harvest of marine mammals by Indian tribes in the future.

		It is much more reasonable to conclude that any interested parties, on the west or east coasts of the U.S., are waiting for the precedent to be set by the Makah. Granting the Makah a waiver could have a domino effect with unknown consequences. The flood gates could be opened on a marine mammal slaughter that will be impossible to monitor or control. Alternative I is the only way to hold onto the protections guaranteed by the MMPA. All marine habitats are degrading and imperiled. This is not the time to unnecessarily reduce population numbers. It does not make sense to conclude that the no-action Alternative is "unlikely" to result in fewer requests from Indian tribes in the future. It is more logical to conclude that considering the 10 year legal battle, the denial of a waiver would be quite discouraging to others. The granting of the waiver will have the opposite effect.	Thus, we did not conclude, as the comment suggests, that the No-action Alternative was "unlikely" to result in fewer requests from Indian Tribes in the future. Rather, we acknowledged that the results of no action were uncertain.
PCPW60	RE: Comment:	4.15 Public Safety – Bystanders A scant (9) lines are devoted to the safety of "bystanders." This in spite of the real dangers of using a .50 cal rifle close to shore. There is no argument among ballistic experts that the range of a .50 cal weapon greatly exceeds the "hundreds to thousands of yards from shore" that the DEIS reasons makes it "extremely unlikely that bystanders on land would be exposed to injury," from a Makah whale hunt.	We have incorporated the information presented in this comment in the new DEIS to provide a more complete picture of potential impacts to public safety of authorizing a Makah gray whale hunt (Subsection 3.4.3.5.4, Method of Killing and Time to Death). In addition, the new DEIS includes the alternative of an offshore hunt (Alternative 3, Offshore hunt), in which we selected the distance from shore specifically to avoid the potential for someone on shore to be injured by a bullet from the hunt.

		The most recent Makah safety protocols call for 500 yards visibility and "pointing the rifle downwards." Ballistics expert Roy Kline recommends no firing within 6,670 yards from shore. NMFS' comment at 3-262 unfairly minimized the potential danger to campers and hikers on the narrow coastal beaches of Olympic National Park (ONP), when the statement is made that "May is not a peak month," and that "hunts were well-advertised." According to ONP data, April and May are actually quite popular months on the coast; and there never was definitive advance warning of hunts. Coastal Strip overnight wilderness permits (each permit represents 1 – 14 people camping overnight on the outer coast) ● April 2002: 231 permits ● May 2002: 396 permits ● April 2003: 426 permits ● May 2003: 355 permits ● April 2004: 355 permits ● May 2004: 408 permits Considering these high numbers of park visitors within range of the .50 cal, NMFS must consult with ONP about enhancing safety for these innocent bystanders. The Tribe estimates 140 rifle shots every 5 years. NMFS must also confer with ONP on the following: ● What will policy be in the event that a near-shore hunt results in a dead, dying,	

		or simply frightened whale beaching on the wilderness strip? ● What will policy be regarding the pursing, killing (with .50 cal), and butchering of whales in ONP? ● How close to ONP beaches are motorized vessels allowed to approach? Many of these issues would be resolved if the hunt was taken off-shore in the migratory corridor, an alternative that for safety issues alone, should have been considered. See attached chart/map showing identified whale sightings, camper numbers, hunt sites, .50 cal danger zone, and migratory corridor.	
PCPW61	RE: Comment:	4.6 Economics "… potential effects on Clallam County as a whole will not be addressed in this analysis." This statement encapsulates the biased nature of Parametrix's treatment of tourism issues throughout this DEIS. In the Scoping Report 2005, prepared by Parametrix for NMFS, there is the admission at 3.1.1.7 socioeconomics and tourism, that "there were 47 comments regarding a need to analyze the effects of whale hunting on socioeconomics and tourism." There is no possibility that these comments could have been construed to represent a concern for tourism in Neah Bay rather than the off-reservation communities of Clallam County.	The 2008 DEIS examined economic impacts in Clallam County (for example, Section 4.6.2.1, Tourism, describes the potential for a gray whale hunt to change tourism in Clallam County). The 2008 DEIS found it unlikely that implementation of the Tribe's proposal would have an economic impact in Clallam County (Section 4.6.2.1, Tourism). The commenter provides no evidence to the contrary. The new DEIS contains updated information on the economic status of Clallam County (Section 3.6.3.1.3, Tourism) and continues to conclude that a Makah gray whale hunt would have little economic effect on the county (Section 4.6.2.1, Tourism).
PCPW62		While the potential for a "tourism boycott" is given token mention here and there in the DEIS, it is discussed only in reference to the	The 2008 DEIS states that any positive effects of a whale hunt on tourism (both locally and county-wide) could be offset to some extent if opposition to the hunt resulted in boycotts of Olympic

		effect on the reservation, not on Clallam County or Washington State, where tourism is increasingly important as the fishing and timber industries provide fewer and fewer jobs. There is a huge likelihood that if whaling begins again and is no longer stoppable through legal actions, the cumulative consequences of the slaughter of gray whales, identified or not, will be negative. The Olympic Peninsula has long marketed itself to tourists as a natural wonderland. The presence of the Olympic National Park is the heart and soul of the eco-tourism advertising directed at families. For Parametrix to put a favorable spin on whaling-related tourism, reveals the Parametrix strategy in its other job description to work with the Makah Tribe on promoting whaling-related tourism! The conflict of interest involved in Parametrix overseeing an analysis of the effects on tourism of whaling, is certainly mind boggling, and needs to be reassessed by NMFS. NMFS' judgment in hiring Parametrix is called into question and deserves an explanation, as nowhere is the relationship between Parametrix and the Makah Tribe revealed to the DEIS reader. The unanalyzed likely fate of tourism on the Peninsula is grim. It is likely that a tourism boycott will worsen with every whale killed, year after year after year. The great majority of people everywhere believe that whales should be watched, not	Peninsula tourism activities, including boycotts of Neah Bay specifically (Section 4.6.2.1, Tourism). The comment presents many statements of those offering an opinion about how whale hunting might affect tourism, but presents no data. Absent data, it would be speculative to quantitatively estimate the economic impact on tourist-related businesses in the area, should calls for boycotts of Olympic Peninsula tourism occur. Data presented in the 2008 DEIS that were taken from the annual travel economic impact report produced by the Washington State Tourism Office show that travel spending in Clallam County decreased in 1999 but increased in 2000. Because a Makah whale hunt occurred in both 1999 and 2000, it is uncertain whether the spending decrease in 1999 can be attributed to the whale hunt. In the new DEIS we include updated economic data regarding Clallam County. To reflect the uncertainty about the impacts that whaling may have had on the tourism industry, Subsection 3.6.3.1.3, Tourism, has been revised as follows: "It is unknown whether businesses experienced a decrease in sales because of negative attitudes toward whaling by whale-watchers or other tourists, but it is possible that some businesses were affected."

		killed, especially where there is no survival need for the meat. It will also be very hard to erase the horrendous Sept 8, 2007 “hunt” from the minds of the public. Bill Sperry was the president of the Forks Chamber of Commerce in 2001 (Forks is the larger of the communities close to Neah Bay). Mr. Sperry was quoted in the Peninsula Business column by business consultant Jim Walker, in the Peninsula Daily News, July 3, 2002, in a column entitled “A Vision for West End Tourism:” “Sperry hopes that the Makah tribe will become part of the Peninsula tourism plan, but first Makah whaling, which he views as a put-off to many visitors, must end.” Parametrix only referenced one website in regard to boycott “research”: a website called “Boycott these companies.” This site is irrelevant to tourism or whaling. But there are dozens and dozens of websites providing details and updates on whaling-related boycotts around the world. To studiously avoid this information serves the Makah whaling agenda, but disregards the potentially devastating effects a decrease in tourism would have on local businesses and the low-wage employees in tourism service jobs on the Peninsula. A few headlines from boycott information on-line: - “The resumption of whaling hurts Iceland tourism” Nov. 12, 2006 InTransit	

	- "More than 65,000 say no to Caribbean commercial whaling" Dec. 21, 2006 Caribbean Net News - "Whaling foes say support for hunting could backfire on the Caribbean nations that helped Japan end a 20-year moratorium - are told tourism may suffer" June 20, 2006 L.A. Times - "The resumption of whaling by Iceland and the potential negative impact in the Icelandic whale-watching market" 2003 Current Issues in Tourism - "Pro-whaling St.Lucia suffers tourism decline" April 20, 2007 Cyber Diver News Network - "French Polynesia could profit from international vote (against) whaling" June 22, 2007 Pacific Magazine - "Tourism: Whale threat looms again could threaten visitor business" article from Tonga - "Bauger chief (head of Icelandic bank) blubbers about whaling." From article: "This whaling could hurt us because many pressure groups have been saying they will encourage others not to buy things from Icelandic companies." Jan. 12, 2007 Times Online - "Tourism boycott hurts St. Lucia" May 28, 2007 Eco The statement by Parametrix at 4.6.2.1 Tourism that there is "no evidence that calls for boycotts of Olympic Peninsula tourism had any negative economic impact on tourism in the area" is incorrect and irrelevant. Incorrect: The Peninsula Daily News in July 1999 quoted Al Seda, the then owner of Big	

		Salmon Resort in Neah Bay: Commenting on his fishing business being down quite a bit from the past (75 boats compared to 200), Seda "attributed the decline to several factors, among them the Makah killing of a gray whale off the coast May 17…" Irrelevant: Only one whale was killed in the years since 1998, outside of the Sept 8, 2007 debacle. Most people feel that whaling has been stopped, not to return again. There has been nothing overt to boycott in the quiet behind-the-scenes actions by NMFS the past many years. If whaling does return, with that return will come the boycotts that will hurt many more off the reservation than on. The DEIS does get it right at 4.6.2.1 Tourism: "Persons opposed to whaling under any conditions would be likely to participate in a boycott under any of the action alternatives." As that describes most Americans, NMFS must reevaluate the Parametrix decision not to analyze the probable impacts of whaling on economics off the reservation. If NMFS approves a waiver, they will be setting in motion an experiment unknown in the lower 48 states of the U.S.: resumption of the killing of whales in the midst of 21st century America. To refuse to analyze the potential for devastating economic effects to the Olympic Peninsula is unconscionable.	
PCPW63	RE:	4.10.3.1 Cultural Identity – Alt. 1 "Without whale hunting activity… young tribal members would lack any active whaler role models… living a culturally proper life…"	Comment noted.

	Comments:	With most of the previously active whalers in prison, on probation, accused of various crimes including domestic violence and many with drug and alcohol problems, any references in this DEIS to whalers as role models must be stricken or labeled as speculative. For NMFS to fail to honestly characterize the current whalers is to endorse the concept that whalers can break federal, state, and Tribal law and still be considered "role models." And to complain that Alt. 1 could "reinforce their feeling of disillusionment with the federal government," one comment: Join the club!	
PCPW64	RE: Comments:	Cumulative Effects 5.1 Context for Analysis It is commendable that the DEIS devotes pages to the Wave Energy Pilot Project, but while it may be the only "projected development in the area of which NMFS is aware," there are other developments afoot which should have been considered in this section. The Peninsula Daily News, 3-19-06 ran an article titled "Navy Plans Pacific Marine Mammals Study – Another proposal may intrude on Olympic Coast Marine Sanctuary." To quote the article: "U.S. Navy officials say they will study the movements of marine mammals in the Pacific Ocean as they develop procedures for avoiding conflicts with sensitive species such as killer whales. The Navy is also preparing an E.I.S. on its plan to expand a testing range off the coast of Washington	In response to this and other comments the new DEIS includes a discussion of projected Navy activities as well as other activities and developments within the ENP gray whales' entire migratory range (Section 5.4, Gray Whales).

		One proposal would increase the size of the existing range by some 50 times and intrude on protected habitat inside Olympic Coast National Marine Sanctuary, according to Michael Jasney of the Natural Resource Defense Council." This must fit the criteria of "reasonably foreseeable future action," but there is no mention of it in the DEIS. NMFS should also acknowledge the potential for off-shore drilling, as it is being discussed daily by the President and both presumptive nominees for the Presidency.	
PCPW65	RE: Comment:	5.4 ENP Gray Whale "Ocean energy projects would have a greater impact on summer-feeding whales in the PCFA… (and could) negatively affect the abundance of gray whales identified in the ORSVI. Under Alternatives 3, 5 and 6… it is possible that the abundance of identified whales in the ORSVI would decline as a result of cumulative effects." This finding begs three questions: 1 Did NMFS submit comments to the wave energy project expressing concern for the ORSVI whales? 2 Will NMFS now remove Alternatives 3, 5 and 6 from consideration as unreasonable? 3 If answer to above is no, will NMFS admit the obvious: NMFS has no stake or interest in the well being or survival of our specific local gray whales?	The new DEIS reflects the fact that project applicant has withdrawn from this proposed project (Section 5.4, Gray Whales).

PCPW66	RE: Comment:

		further north. The effect of the loss of these whales, experienced at finding food here or the fate of these whales themselves, is not explored in this DEIS.	Change in Numbers of Gray Whales in the Makah U&A and OR-SVI Survey Areas).
PCPW68	RE: Comment:	5.6 Economics "Given the current economic climate… in Clallam Country… no cumulative effects anticipated on the local economy." To avoid analysis of the potential for a snowballing boycott of the Peninsula is no surprise on these last few pages of the DEIS. But the rosy "current economic climate" described in 2006 is no longer "current" or rosy. The Peninsula Daily News Aug. 12, 2008, has coverage of a Clallam County Commissioner candidates' forum. The incumbent, Mike Chapment references to the "current economic down turn": "While paring county employment and reducing workers' hours, the current county commissioners have denied $4 million in proposed new spending." And from his opponent Terry Roth: "The economic structure of the Peninsula is not good." Additionally, the PDN, Aug 13, 2008, reports that the unemployment rate in Clallam County is now 7.4%, not the 5.6% the DEIS found in 2006. There must be an updated analysis of the Clallam County economy.	As noted above, the 2008 DEIS did not find evidence to suggest that a Makah gray whale hunt would affect the economy of Clallam County either positively or negatively (e.g., Section 4.6.3.2.1, Tourism). An action that is unlikely to have an economic impact is also unlikely to have cumulative economic impacts. The new DEIS continues to conclude a Makah gray whale hunt is likely to have little impact on the local economy (e.g., Subsection 4.6.3.2.1, Tourism). Given this conclusion, it also finds there is likely to be no cumulative economic effect, regardless of the underlying local economic conditions (Subsection 5.6, Economics).
PCPW69	RE: Comment:	5.7 Environmental Justice Nowhere in the DEIS have any potentially positive effects of the no-action Alternative on the Tribe been envisioned. Envision this: Without whaling sapping the energy, attention and funds of the Makah Tribe, it is possible that the Tribe could come	Comments noted. We did not receive any comments from the Tribe or from tribal members that are consistent with these comments.

		together and bond over other needs. In fact Ann Renker could write a whole new Needs Statement, elucidating the needs of youth, parents, elders. Needs like jobs, education, after school programs, drug rehabilitation programs, nutritional supplements, improved housing, secure water supply, assisted living houses for elders who currently have to be sent away from home for care to Forks, Port Angeles and Sequim. Neah Bay is a small community with so much going for it: spectacular surroundings, lots of sea food, lots of activities, strong families, medical and dental coverage for all, churches, a decent median household income, and lots of good people who just want a good life for their families and their community. Of course there is poverty and some people need help. This must be within the power of a caring community to do something about, given the resources and will of the Tribal government. In the Needs Statement 2007, Ann Renker reveals that the Makah Tribe has spent "675,000 of its own funds" during the 2003-2007 period on the pursuit of whaling. This has not surprisingly "placed a substantial financial burden on the Tribe," (pg. 39) and has no doubt caused many other pressing projects to go without. Several articles that appeared in the Peninsula Daily News during this time period shed light on a few of those projects:	

	June 16, 2004: "Tribal members look to help Neah Bay kids" A group of Makah tribal members is hoping to raise enough money to give elementary school children a place to play. "We need to raise about $70,000 for the new playground… All children should have a playground." The group has raised about $18,500… and the children completed a readathon to raise money. In a tepid show of support for the Tribe's children, "the Makah Tribal Council gave $5,000" towards the project. **July 18, 2005: "Tribal housing efforts face cuts"** The threatened cuts in federal funds for low-cost tribal housing would affect the Makah: Projected $300,000 loss. Housing needs for 50 families would probably not be built. Maintenance on existing units would be cut to "bare bones." Tribal members employed in maintenance would be laid off. Many families would continue to overcrowd	

	current housing, and some would remain homeless. Keeping a decent roof over the heads of all Tribal members should certainly be a top priority, even for the current “whaling” council. **Sept. 3, 2006: “Makah, Navy may resolve water crisis”** The Makah are working with representatives of the Navy to get a temporary back-up system (desalination) for drinking water, says Ben Johnson, Tribal chairman. … the Tribal Council declared a state of emergency last Tuesday. The impending water crisis has been looming for years, why was it ignored until water ran out? These three important issues: A safe playground for the children, housing for low-income and homeless Makah, and drinking water for the Tribe all came before the Tribal Council during the same time period that they authorized the expenditure of $675,000 on whaling related activities, including multiple group trips to Russia and Alaska. Here’s a question for the next Household Survey: Do you approve or disapprove of the	

		way these precious Tribal resources were allocated?	
PCPW70	RE: Comments:	5.8 Social Environment For NMFS to conclude that "it is too speculative to consider whether the issue of Makah gray whale hunting would result in substantial cumulative effects within this larger social context" is to ignore all evidence documenting the "social effect" from 1998 – 2000. PCPW has submitted stacks of news clippings over the years. There is nothing speculative about the hurt, sadness, anger, frustration, protests, threats (to both sides) and physical confrontations that are all bound to recur as a cumulating effect of whaling. To call this "too speculative" shines a light on either the bias or the laziness in effect throughout this DEIS.	The potential effect of a hunt on the social environment was thoroughly explored in the 2008 DEIS in Section 4.8, Social Environment. The purpose of the cumulative effects analysis is to consider whether there are other activities that may combine with the alternatives to result in effects to resources not already considered in the analysis in Chapter 4. Because the potential impacts on the social environment were considered in Chapter 4, revisiting them in the chapter 5 cumulative effects analysis would provide no additional information to agency decision-makers. The comment points to no effects of past, present, or reasonably foreseeable future actions that might combine with the proposed alternatives to result in effects not considered in Chapter 4. The new DEIS includes any new information regarding the social environment, which is reflected in Section 3.8, Social Environment).
PCPW71	RE: Comments:	5.11 Aesthetics "… there may be some temporary aesthetic effects to those viewing hunts." Federal and State regulations refer to whales as "aesthetic resources." The WCA states that "whales are unique resources of great aesthetic and scientific interest to mankind." The MMPA calls whales "resources of great international significance, aesthetic and recreational, as well as economic." For NMFS to dismiss aesthetics with 6 cold lines about "viewing" the hunt, and to claim "no cumulative effects" is to reduce the meaning of aesthetics to a distaste for viewing the gore of a particular kill. Thus a "temporary" effect would be expected. What	The potential effect of a hunt on aesthetics is thoroughly explored in the 2008 DEIS in Section 4.12, Aesthetics. The purpose of the cumulative effects analysis is to consider whether there are other activities that may combine with the alternatives to result in effects to resources not considered in the analysis in Chapter 4. Because the potential impacts on aesthetics were considered in Chapter 4, revisiting them in the chapter 5 cumulative effects analysis would provide no additional information to agency decision-makers. The commenter points to no effects of past, present, or reasonably foreseeable future actions that might combine with the proposed alternatives to result in effects not considered in Chapter 4. To prepare the new DEIS, we sought new information regarding aesthetics (which is reflected in Section 3.12, Aesthetics).

		does NMFS believe the declarations of the WCA and the MMPA refer to, when they extol the “aesthetic resource?” The word “aesthetics” comes from a Greek word meaning “to perceive – to feel.” Why is this word used by our codes of law to describe whales? In the same way that we value the preservation of the wilderness and the mountains so that humans can feel the awe and mystery of creation, many people feel a spiritual awe in the presence of the largest living beings on earth. The human psyche seems to crave this wonderment. It’s not just about seeing a foot-square patch of gray skin. It’s about how it makes you feel to see it. The aesthetic enjoyment of watching, photographing, and simply knowing that we live in a place where a whale might pop up at any time, is a heart-filling happiness to many. To raise children to be thrilled to the core to merely catch sight of a whale exhaling is to have hope for the future. For NMFS to reduce the aesthetic issues involved with whaling to simply the witnessing or not of the actual death of a whale is to not comprehend the words of the MMPA. Simply knowing that any whale seen in our home area could be a future target of harassment and death immensely reduces the enjoyment of seeing them. It actually creates a feeling of anxiety along with awe. To see kayaks glide gently past gray whales feeding in the neighborhood bays, revives the sad	

		feelings at the thought of whaling canoes gliding up to harpoon a whale who has known only kayaks. The aesthetic enjoyment of whales is as big and mysterious as the whales themselves. And whaling will take that magic away from so many men, women and children here and everywhere. Will there be a cumulative effect to the sadness generated with every whale death? That seems reasonably predictable. The cumulative effects of sadness will likely include frustration and anger. Aesthetic enjoyment turned upside down. We believe this would constitute a "taking" of our right to the aesthetic enjoyment of our resident whales. A right the MMPA was passed by Congress to protect, along with the whales themselves. Our resident whales must be left in peace so the non-lethal enjoyment of them can be pursued by the great majority who live on and visit the Olympic Peninsula.	
PCPW72	RE: Environment Comment:	5.16 National and International Regulatory It is fitting that the last paragraph in this uncertainly-laden and deficient DEIS is a mere 6 lines, two sentences. Each sentence containing the phrase "it is too speculative to conclude." And this on a topic of immense importance: Whether or not the authorizing of a Makah whale hunt will influence other domestic tribes or other countries to follow suit. If NMFS cannot or will not come to reasonable and informed conclusions on	The potential effect of a hunt on the National and International Regulatory Environment is thoroughly explored in the 2008 DEIS in Section 4.17, National and International Regulatory Environment. The purpose of the cumulative effects analysis is to consider whether there are other activities that may combine with the alternatives to result in effects to resources not already considered in the analysis in Chapter 4. Because the potential impacts on the regulatory environment were considered in Chapter 4, revisiting them in the Chapter 5 cumulative effects analysis would provide no additional information to agency decision-makers. The commenter points to no effects of past, present, or reasonably foreseeable future actions that might combine with the proposed alternatives to result in effects not considered in Chapter 4.

	these important questions, then NMFS has no business authorizing a Makah hunt and thereby creating a precedent for future requests.	The new DEIS includes updated information regarding the national and international regulatory environment, which is reflected in Subsection 3.17, National and International Regulatory Environment).
PCPW73	In summary, the following points are reiterated as being some of the main conflicts of interest and deficiencies in the DEIS.	This is primarily a summary of previous comments, with responses provided above. Some points raise in this summary were not made elsewhere in the comment letter. We have addressed those issues that appear to be raised only in the summary.
PCPW74	Conflicts of interest: ● Parametrix Inc.: The company itself, its preparers and sub contractors. Tourism issues are particularly suspect, as dealt with by Parametrix. ● Ann Renker Ph.D.: Her Needs Statements, her Household Surveys I and II, all references to her work in the DEIS must be peer-reviewed and reevaluated. ● Jennifer Sepez: References to her work in the DEIS represent the opinions and results of an expert with a personal bias. Taken together these three conflicts of interest completely taint the entire process and results. A new DEIS needs to be prepared by unbiased entities. The actions contemplated are too important, precedent-setting and far reaching to be entrusted to vested interests.	See the response to comments above.
PCPW75	No Analysis of: ● Which whales and how many whales are actually in the Makah U&A (near shore) in April and May. ● What is the OSP of the near shore Makah U&A? How can NMFS know how many to	See the response to comments above.

	risk removing from the small resident group without knowing how many the environment can support? ● Prey health and abundance on the outer coast of Washington in times of healthy conditions as well as during low oxygen/dead zone events? ● Alternative: whaling in migratory corridor only. ● The cumulative effect of whaling-related harassment on whales in the Makah U&A. For NMFS to conclude at 4.4.3 that the "increased risk" to the abundance of Makah U&A and ORSVI whales of Alt 2 - 6 over Alt. 1 "would be small," is not supported by fact or reason. The "1% of 20,000" argument does not hold water.	
PCPW76	No analysis of Makah proposals to: ● Not count strikes and struck and lost against quota for ORSVI whales. ● Share meat outside community. Where is analysis of the needs of those "outside community?" What percentage of harvest will leave reservation? Will there be monitoring, or will "don't ask, don't tell" be good enough for NMFS. What about meat to Vancouver Island? ● No analysis of: "Change their management plan periodically" – What does this mean? ● Likelihood of other domestic Tribe following Makah's lead; extremely important but not estimated. ● No analysis of importance of Makah U&A feeding sites during the 1999-2000 die	The comment points to no information, nor could we find information, regarding (1) the extent to which the 1999-2000 die-off differentially affected PCFG whales versus the larger ENP stock or (2) the extent to which southern feeding areas might buffer risks to northern feeding areas. Regarding the comment: "What do the Treaty words 'in common with' mean, as used by the 9th Circuit Court in Anderson v. Evans? How is 'aesthetic use' preserved by this DEIS," the purpose of the draft EIS is to analyze potential impacts of alternatives, not to explore or resolve legal debates.

	offs, considering that no identified whales were found stranded. ● No analysis of whether the Treaty of Neah Bay enshrines commercial whaling or not. Many more groups and individuals would be alarmed at this waiver request if they understood the will within the Tribe to continue pursuing commercial whaling. ● No mention or analysis of the high level of uncertainty in this DEIS. How much uncertainty is acceptable to NMFS in this precedent-setting action? ● What do the Treaty words "in common with" mean, as used by the 9th Circuit Court in Anderson v. Evans? How is "aesthetic use" preserved by this DEIS?	
PCPW77	No analysis in the DEIS of the numerous implications of the Sept. 8, 2007 "hunt": ● Tribal enforcement/Tribal court: all references need to be reassessed in light of complete failure of either to bring charges. ● "Spirituality" – whalers put a whale to death based on "frustration" – how do we forget that and go back to the story line of "spiritual hunts" when it is the same cast of characters? ● "Role models" – hard to continue justifying "need" for whaling that includes "role models." ● NMFS enforcement/investigation called into question by the utilization of John Haupt, a Makah Tribal member, to conduct the investigation.	Regarding the comment: "NMFS enforcement/investigation called into question by the utilization of John Haupt, a Makah Tribal member, to conduct the investigation." The commenter makes no connection between the analysis in the 2008 DEIS and the fact that a NOAA enforcement officer is also a member of the Makah Tribe.

PCPW78	Makah MMMP: - Jon Scordino – Makah marine mammal biologist – in spite of being tied off to the dying whale for at least 5 hours, could not or would not: - Take effective ID photos - Take tissue samples The fact that Jon Scordino is Joe Scordino's son raises many questions about conflicts of interest and vested interests between NMFS and the Makah Tribe.	Regarding the comment: "The fact that Jon Scordino is Joe Scordino's son raises many questions about conflicts of interest and vested interests between NMFS and the Makah Tribe." The comment makes no connection between the analysis in the 2008 DEIS and the fact that the marine mammal biologist employed by the Makah Tribe is related to a former NMFS employee.
PCPW79	Implication of the Tribal Council by all five Sept. 8, 2007 whalers in the decision to go whaling that weekend: - Someone is lying: the "role models" or the Tribal leaders.	Comment noted.
PCPW80	No analysis of impacts to Olympic National Park (ONP): ● Why did NMFS not consult with ONP on plans to allow whaling within the external boundaries of the Park? ● How can ONP visitor safety be ensured during hunts? ● What protocols are in place incase of a beaching of a wounded or dead whale on ONP beach? ● What will protocols be if Makah whalers pursue a whale onto the beach at ONP? ●	We did not include the Olympic National Park as a separate resource in the 2008 DEIS. Several resources we did analyze are relevant to the Park, such as recreation, tourism, safety, and aesthetics.
PCPW81	There were factors, controllable by NMFS, which made this process difficult for commentors. Years in preparation, the 900 plus page bulk of the DEIS is so unwieldy, that NMFS had to schedule special	It is common practice for federal agencies to hold public meetings during comment periods so that members of the public who wish to comment have an opportunity to interact with agency staff and better understand the documents before commenting.

	meetings, part way through the initial comment period, to help people understand how to use it. This postponed most commentors from beginning an analysis until after the meetings occurred. Extensions were requested in the 60 day comment period. There was a “likely” extension announced but no verification for some time. As the hugeness of the document and the numbers of problems to address became apparent, another extension was requested by a great many organizations. The request seemed reasonable and there were hopes it would be granted. NMFS took a great deal of time to “consider” the requests. When the refusal to extend came from Donna Darm, many were taken by surprise by her decision. Many commentors work full time in jobs other than reading through and commenting on documents such as this. It has been quite difficult to do justice to the task of adequately commenting on an issue of such long-term concern to so many. Especially for those of us who are not scientists or writers. Requests for DEIS references from the Portland office were responded to fairly quickly, but it was unfortunate that Steve Stone took a week off during this time. Some documents that we feel should have been provided were not. Some questions we asked were answered in evasive ways or not at all. Thirty more days of comment period would have been quite useful in acquiring information on our own, once we were told that is what we would have to do. More depth could have been added to topics touched on but not fully analyzed by us. Some topics had to be passed over completely due to lack of time. Hopefully the comments of others will fill the gaps in our own. Margaret Owens	We granted an extension of the comment period for an additional 30 plus days. We appreciate the time and effort demonstrated in these comments, and the efforts of the commenters in obtaining input from fellow citizens.

	Submitted for: Peninsula Citizens for the Protection of Whales 612 Schmitt Rd. Port Angeles, WA 98363	

P. Ness – Comments submitted August 15, 2008.

COMMENT CODE	COMMENT	DRAFT STAFF RESPONSE
PN1	All of the following text should be considered my comments. I will underline any direct quotes from the DEIS. NOAA, or someone, has put much effort into this DEIS, proven by it being an extremely lengthy document. I believe much of the statistics, research and text, however, was meant to cover up, manipulate and mislead the average reader from the truth. In general, when data has been listed correctly, the relevance has been downplayed or all out ignored. Overall, reading this huge document is a déjà vu experience. Once again it has been proven that NOAA is extremely biased in favor of the Makah, and has blinders on to ignore any contradicting information or research that would prove this waiver should never be granted. The stage has been set. Throughout this DEIS are threads tying together and leading to the exact same conclusion given a decade ago by NOAA…….the Makah can whale. Anywhere they want. Anytime they want. No regulations will be in place to protect the resident whales. No consideration for the negative economical effects on tourism in Washington. No adaptive management for the ill-fated consequences of too many whales being harassed and hurt. No recourse for how this will lead to numerous additional waiver requests. No limits to the amount of financial support NOAA will provide for the killing of a species NOAA is entrusted to protect. No consideration of the 'take' from tourists and the whale-loving population of the United States. No enforceable methods to oversee what the Makah tribal council does, or doesn't do, as in the case of the recent prosecutions of the illegal whalers' actions. One has to question, if NOAA is so extremely biased in favor of the Makah that none of the directives from the 9th Circuit Court matter, that none of the true science is important? This DEIS is based on inaccuracies, flimsy recommendations , decades' old research, not new research as directed by the courts, and overall will be an embarrassment in the scientific community also.	Comment noted.
PN2	<u>Negative Economic Effects</u> I have found this DEIS totally lacking in representing the negative economic and social effects returning to whaling will have in the neighboring communities of Clallam Bay and Sekiu, on the Olympic Peninsula and the State of Washington. <u>Chapter 4 - Page 97</u> <u>"Because the economic contribution of the Makah Reservation to the countywide economy is so small, the potential for any changes on the reservation under the alternatives to have a noticeable effect on economic conditions in Clallam County as a whole is negligible. Moreover, economic effects outside the reservation are expected to be negligible in the context of the countywide economy. For these reasons, potential effects on Clallam County as a whole will not be addressed in this analysis."</u> **This is not only untrue, but a major cover-up of the facts by NOAA, or someone. By minimizing the role whaling has had on the Olympic Peninsula, you have done an injustice to this EIS process.** Is NOAA only considering, and basing their faulty conclusions, on a possible positive economic effect? I will present in my comments the negative economic impact to this area, as a direct result of the Makah's return	The DEIS states that any positive effects of a whale hunt on tourism (both locally and County-wide) could be offset to some extent if opposition to the hunt resulted in boycotts of Olympic Peninsula tourism activities, including boycotts of Neah Bay specifically. However, it would be speculative to estimate the economic impact on tourist-related businesses in the area, should calls for boycotts of Olympic Peninsula tourism occur. Therefore, the text of the new DEIS is similar to that of the 2008 DEIS.

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	to whaling. I predict the future negative economic effects of whaling will be catastrophic to the economy of the Olympic Peninsula, which is already struggling. I also will show that this DEIS is inaccurate and extremely biased due to NOAA's inability to present both sides of the economic factors related to the whaling episodes between the years of 1998-2000.	
PN3	Chapter 3 – Page 179 Additionally, Olympic National Park, which has attracted an average of 3.2 million recreation visitors per year since 1990 (National Park Service 2008),….. When checking ONP's web site statistics, it shows in 1998, Olympic recorded 269,702 fewer visitors than in 1997. Again in 1999, Olympic recorded 212,741 fewer visitors than in 1998. Again in 2000, Olympic recorded 36,544 fewer visitors than in 1999. Olympic National Park took a big hit, 518,987 (over a half million) fewer visitors to be exact, in the years the Makah were actively whaling. This DEIS does not provide adequate emphasis on how many thousands of visitors to Shi Shi beach access the trailhead on the Makah reservation. This trailhead has been utilized for many decades, and is one of the most used trails in the Olympic National Park coastal strip. The trail allows hiking in from the Makah reservation to Portage head, at the north end of Shi Shi. The Makah built a new parking lot for day hikers to Shi Shi. A Makah family has provided overnight parking in their fenced yard, for a small parking fee for decades. Obtaining a Back Country Permit (ONP) is required for an overnight stay on Shi Shi. During the period 1997 to 2001, fewer backcountry permits were issued in 1999 and 2000 than any other year. In addition, these Shi Shi hikers are the most exposed to gun fire according to where the whale hunts have taken place. NOAA's theory that because there are fewer ONP coastal tourists in April and May, whale hunting is safely justified near shore. This is ridiculous. Hundreds of hikers may be on that coastline - every day. I suppose bullet-proof vests could be sold along with the recreational use permits in Neah Bay.	Data presented in the DEIS that were taken from the annual travel economic impact report produced by the Washington State Tourism Office show that travel spending in Clallam County decreased in 1999 but increased in 2000. Because a Makah whale hunt occurred in both 1999 and 2000, it is uncertain whether the spending decrease in 1999 can be attributed to the whale hunt. To reflect the uncertainty about the impacts that whaling may have had on the tourism industry, Subsection 3.6.3.1.3, Tourism, has been revised as follows: "It is unknown whether businesses experienced a decrease in sales because of negative attitudes toward whaling by whale-watchers or other tourists, but it is possible that some businesses were affected." Information on the popularity of Shi Shi Beach campground is included in the new DEIS. Subsection 3.6.3.2.4 has been revised as follows: "Shi Shi Beach is a popular destination for campers during summer months. National Park Service public use statistics show that the number of "camper-nights" at Shi Shi Beach camp area increased from 2,341 in 1999 to 7,206 in 2011 (N. Hendricks, Olympic National Park, pers. comm., December 10, 2008; B. Bell, Olympic National Park, pers. comm., June 30, 2012)."
PN4	Liability	

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	I wonder how Olympic National Park feels about assuming the liability for hikers on the coastal strip, being accidentally shot with stray bullets from tribal actions, as we know, that are protected from liability litigation? Per Chris Melly, attorney for Clallam County, in a memo on file at the Courthouse, dated 9/29/98, he states, "The US Supreme Court recently ruled that Indian tribes were not amenable to suit unless 1) the tribe waived its sovereignty or 2) congress said they were." It's going to be interesting, isn't it?	
PN5	Table 3-16 - Page 180 Please note that overnight visitors to the Olympic Peninsula enjoy sightseeing/driving tours, hiking, wildlife viewing, visiting historical/cultural site (non-Native), and shopping in greater percentages than those visiting Native American sites. The top three categories are ecologically –minded, nature-loving tourists, of which the majority, do not support whaling. To attempt to push 'whale-hunting-tourism' through to reality, by supporting even the idea this could possibly work, as NOAA has done throughout this document, is absolutely ludicrous. If NOAA or Parametrix, as the case may be, believes this hogwash, you must think all Americans are idiots. Hope NOAA hasn't paid Parametrix for this! In the October, 1999 issue of the Olympic Peninsula Business Journal, in an article on Tribal Tourism, the Makah tribe's Tourism Planner admitted whaling has had an effect on tourism. She was quoted as saying, "Tradition of whaling aside, the Makah may have difficulty marketing nature to an eco-tourist, while tribal families are killing the creatures these same tourists willingly travel great distances to see."	Comment noted.
PN6	Tourism in general on the Makah reservation has not been welcomed most of the last 40 years. Vandalism to vehicles parked at the Shi Shi trailhead was common in the '70's and 80's. My personal vehicle had all the windows, front, back and side, blown out by gunfire in 1978 at the Shi Shi trailhead, along with four other vehicles. A family with children from Iowa, who were guests at our resort in 2001, had been chased off Hobuck Beach by a group of Makah young adults, being told they were not wanted on the reservation. I personally was with a group of kayakers on Hobuck Beach in 1993, and experienced a group of Makah men throw beer bottles, breaking them against the sides of our vehicles, while yelling to get off their land. In 2000, an elderly man was chased down the Cape Flattery trail by a group of stick wielding Makah young adults. A friend teaches school in Neah Bay. One day in class, in 2006, she asked the middle school children, "What would you do first if you ruled the world?" An eleven year old replied, "I'd kill all the white people!" These young adults are being fed this hatred in their tribal homes. The anti-non-native hostility is displayed by a portion of the tribe every day. Sadly, on the other hand, anyone objecting to the killing of gray whales has been called racist. In recent years, the tribal council has finally realized there's grant money available for trails, roads and the development of tribal tourism, but convincing the tribal members of the merits of tourism has not been easy. During the last decade, the whaling issue has set a new foundation for the 'us against them' mentality of the tribe. This crevasse will only deepen in the future between the Makah and the rest of the world, who dislike the tribe over the whaling issue. Those of us who live on the Peninsula, and/or very near the Makah reservation don't look at this tribe through the same rosy glasses NOAA wears.	Comment noted.

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	In the October 1, 2000 Peninsula Daily News, an article stated "Makah not necessarily open to tourism." The Makah tribe's Tourism Planner was quoted saying, "The tribes will control the tourism, rather than tourism controlling the tribes." In this same article, the Executive Director of the Makah Cultural and Research Center stated, "the way that the tribe operates dancing has absolutely nothing to do with tourism. We're smart enough to know people would pay money to see that, but we're also smart enough not to do it." Finding a means to earn great sums of money from the commercialization of whaling, without having to deal with outsiders to the reservation is very attractive to the opportunistic tribal council.	
PN7	Chapter 3 - Page 181 The statewide growth rate of travel-related spending also slowed after 1999, with the statewide slowdown similar to the change in Clallam County (Table 3-18). This is untrue. Table 3-18 - Page 181 Clallam County, between the years of 1995-2003, only experienced a negative loss in 1999, a full two years before the State of Washington registered any significant downturn in travel spending, which occurred during 2001 & 2002. In the October, 1999 Olympic Peninsula Business Journal, the Clallam Bay - Sekiu Chamber of Commerce reported a weak June, July and August. Sequim, Port Angeles, Quilicene and Port Townsend were down also. The cartoon showed a boat, named "Tourism '99 North Olympic Peninsula", sinking. On a good note, the editorial for this issue stated Eco-tourism time has come to region, and predicts whale watching best new business. The business leaders of this Peninsula were hoping then to turn the tide towards a more beneficial economic focus. In the Peninsula Daily News, 8/15/08, appears an article by Dan Youra, President of the Olympic Peninsula Travel Association. He states there has been 123,800 fewer vehicles crossing the Hood Canal Bridge to the Olympic Peninsula, since 1/1/08. With each trip being conservatively valued at $100 spent per vehicle, this adds up to a $12 million lost in business and a $1.2 million lost in tax receipts to the North Olympic Peninsula, with $7 million missing during peak tourist season. Mr. Youra states tourism is the main industry. "We've lost timber and fishing. Now, we are losing tourists." He goes on to say, "In 30 years, I have witnessed big changes in the number of travelers to the North Olympic Peninsula. They increased in the '80's and '90's, but those numbers have been stagnant since 2000. Now they are decreasing. The situation is serious." This is not the right time to create another huge decrease in the economy of the Olympic Peninsula, by authorizing the return to the killing of gray whales, one of our most important natural resources. This can not be mitigated in any way!	Comments noted; we have updated relevant information in Subsection 3.6, Economics of the new DEIS.

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PN8	Chapter 3 – Page 19 DEIS states the Makah Cultural and Research Center averages 14,000 visitors annually. **This figure is inflated to look good.** Chapter 3 - Page 188 The Makah Museum visitations have steadily, overall, decreased over the six year period listed of 2000 - 2006. Evidently, the Makah tribal members were included in the higher statistics. The latter (page 188), were indicated as Non-Makah visitors. The significant difference between the sets of statistics has the appearance of data manipulation. Doesn't this mean fewer non-native visitors to Neah Bay are less and less interested in the culture, or perhaps they don't want to see the whale skeleton from the 1999 whale hunt? (By the way - what happened to the statistics from 2001? I would guess they revealed a significant drop?) Let's look now to the Dean Runyon study of 1995, where 15,000 – 20,000 visitors to MCRC were reported. **How can the statistics from 2000-2006 not be an indicator of a very significant economic downturn in Neah Bay itself, from the return to whaling?** Chapter 3 - Page 189 The annual recreation fishing permits sold by the tribe, have decreased yearly. In 2004, 616 permits were sold, to just 460 permits in 2006, 156 fewer permits. Chapter 3 – Page 197 It is unfortunate that NOAA believes anecdotal information from the Seattle Times is an appropriate source of economic information. A brassy reporter is not an economist. It also is a manipulation of the truth to quote Rick Hert, NOPVCB, who had indicated room tax figures from Clallam County hotels and motels appeared relatively flat during the summer of 1999. **This is inadequate and misleading information.** The truth of the matter is that room tax figures had been growing prior to that summer, therefore, 'relatively flat' (whatever that means?) indicates a significant drop in income from accommodations in the unincorporated portion of Clallam County during the summer of 1999. Regarding the Neah Bay Marina in 1999, NOAA printed: "Last, Bob Buckingham, manager of the marina in Neah Bay, was quoted as saying, "We haven't seen any sign of that [the hunt] affecting us out here. Our actual marina revenue is up from last year so far. We're getting quite a bit of tourism up here." **This is untrue.**	The statement that the Makah Cultural and Research Center receives approximately 14,000 visitors and researchers annually has been deleted in the FEIS. Data presented in the DEIS that were taken from the annual travel economic impact report produced by the Washington State Tourism Office show that travel spending in Clallam County decreased in 1999 but increased in 2000. Because a Makah whale hunt occurred in both 1999 and 2000, it is uncertain whether the spending decrease in 1999 can be attributed to the whale hunt. To reflect the uncertainty about the impacts that whaling may have had on the tourism industry, Subsection 3.6.3.3.1 has been revised as follows: "However, information about the economic effects of the Makah Tribe whale hunt on tourism is incomplete, and it is possible that some businesses experienced a decrease in sales because of negative attitudes toward whaling by whale-watchers and other tourists."
PN9	Table 3-39 – Page 272 This table indicates that during 1999, a significant drop in recreational fishing vessels was recorded in the Neah Bay Marina. This was further substantiated in the Peninsula Daily News article of July, 1999, on record. The owner of Big Salmon, in Neah Bay, stated that his business, and other resort owners had also stated, fishing business was down quite a bit from past fishing season openers. He stated he leases 200 slips in the Makah Marina and would typically fill them. This year (1999), only 75 boats have signed up. He went on to attribute the decline in part to the killing of the gray whale in May, 1999.	Comment noted.

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	In this same article, resorts contacted in Sekiu stated the number of boats on their docks were also down when compared to other years.	
PN10	Table 3-37- Page 269, Figure 3-11 – Page 270, and Table 3-38 - Page 270 Average weekday traffic counts on Hwy 101, near State Route 113, are not representative of actual traffic on Hwy 112. It is not known where these counts originate, as 'near' could mean west of Hwy 113, which would be totally irrelevant. Most visitors to Neah Bay travel Hwy 112, from west of Port Angeles, and would not be counted in the statistics of these tables. **This is non-relevant information, and typical of Parametrix style.**	Comment noted.
PN11	Chapter 3 – Page 198 Congress also found that "marine mammals have proven themselves to be resources of great international significance, aesthetic and recreational as well as economic" (16 USC 1361(6)). Congress meant live whales. Prior to the IWC meetings of 1997, forty-four members of Congress signed a declaration to the IWC to not approve gray whale hunting by the Makah Tribe. Those congressmen, representing their constituents, felt this hunt would yield negative impacts on both the tourism industry and the ecological environment of the Pacific Northwest, which it has. On June 18, prior to the IWC meetings of 2008 in Chile, Congress passed House Concurrent Resolution 350 to protect whale species. "From sea to shining sea, Americans love whales, and the U.S. has a record of leadership in whale conservation of which all our citizens can be proud. Now, American leadership is once again needed to help end commercial whaling once and for all." Also highlighted were alternative measures taken to promote whale conservation, including responsible whale watching, which IFAW analyses indicate is now a US$ 1 billion dollar-a-year industry for coastal communities and businesses in more than 90 countries and territories worldwide. "Animals and people both do better when whales are seen and not hurt. We are hopeful that with strong U.S. leadership, next week's IWC meeting will chart a new course for the commission and whale conservation in the 21st century." Are the U.S. Delegates, NOAA and the Makah listening? Do you care? The world is at odds against the countries who have returned to whaling. Country is pitted against country. The world has, in my opinion, always looked to the U.S. for strong guidance. NOAA is harming our image in the world, and you are letting all Americans down with supporting this tribal whale hunt. Your decisions will haunt those of us who live on the Olympic Peninsula for years to come. This DEIS is a disgrace to what we all stand for.	Comment noted.
PN12	Chapter 3 – Page 199 Whale-watching primarily occurs during autumn and spring, corresponding with the annual southern and northern migrations of the gray whale. **This is untrue.** It is well known that the Quileute Tribe in LaPush, has developed a significant niche in the market of eco-tourists who stay in their Ocean Park Resort during the gray whale migrations, especially in the spring. According to the Olympic Peninsula Business Journal of June, 1999, people have been coming to LaPush for	The 2008 DEIS noted that tours to see locally feeding gray whales during the summer feeding period are available from April until October or November. However, gray whale watching trips taper off in May, as many of the charter boat operators shift

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	the past 40 – 50 years to watch gray whales as they migrate north to Alaskan waters. Whale watching season is different on the Northwest Coast, when the whales feed close to shore during the summer months. Viewing whales along the coastline of the Strait of Juan de Fuca, is a significant tourist draw for the resorts between Neah Bay and Clallam Bay. From May through October, during the peak tourist season for the Northwest Coast, thousands of ecologically-minded, nature-loving tourists travel just to see a whale. They are rewarded with frequent sightings of the resident gray whales that feed up and down this coastline, not only during that period, but all year long.	their offerings to sport fishing during the summer months.
PN13	<u>PCFA</u> I believe the renaming of these whales the Pacific Coast Feeding Aggregation is ridiculous. NOAA has spent probably, hundreds of thousands of dollars trying to cover up calling these whales 'resident whales', which is what they are! Not including the Straits of Juan de Fuca in the PCFA survey areas of study was another aspect to this cover-up. One of the goals for this DEIS, was to have determined how many resident whales exist, you know how to do this - take their pictures, compare with known identity catalogs, such as those John Calambokidis has developed. Instead, NOAA claims to have a different catalog of photos. This is difficult to believe. Why was there no cooperation with the leading scientist in Washington State regarding these resident whales? If the Makah don't whale, NOAA's photo project won't even be funded. I hope the only photos NOAA plans on taking aren't those of the dead whales! Please answer why identification photos were not taken, or released, of the whale killed in September, 2007? Yet another cover-up! Or is funding the photo project if the Makah do whale, just another way to give the Makah $65,000 a year? I hope that goes out on bid. If NOAA was truly interested in conducting adequate research into the resident whale issue, perhaps the Quileute Tribe would be interested in taking these photos? They need the financial support also, and have access to most of these whales, and demonstrate an attitude supportive of these whales, with no hidden agendas. Why couldn't NOAA reveal what is already known, that these resident whales feed up and down the Strait of Juan de Fuca, in and out of the PCFA survey areas, however, remaining in the Straits for months on end. There is a great deal of good research that already has determined these whales should be protected. They are a limited resource. The courts agreed. Instead, NOAA pretended they didn't exist, and apparently, will soon allow the Makah tribe to kill the entire resident population within a few years. What a waste solely due to NOAA's stubborn arrogance! The entire topic of PCFA, and how NOAA has chosen to deal with this issue, is one of the weakest elements to this DEIS. Even the recreational fishermen state they like fishing out of Sekiu in the summer as they frequently saw the gray and humpback whales. Some summers, the fishermen actually have a difficult time maneuvering around the whales at a safe distance. That was the scene in September, 2007, off Seal and Sail Rocks, when many fishermen found themselves in the middle of a gun fight between five Makah men and one gray whale.	As part of its implementation review for gray whales, the International Whaling Commission's Scientific Committee recently reviewed the best available information regarding these whales (now referred to as the "Pacific Coast Feeding Group"), the PCFG range, and the implications of the Makah Tribes hunt proposal. The results are included in the new DEIS under Subsection 3.4.3.4, Pacific Coast Feeding Group (PCFG) of Gray Whales. Regarding the whale killed in September 2007, its identity and sighting history was later described in the report by Calambokidis et al. (2009) "Summary of collaborative photographic identification of gray whales from California to Alaska for 2007. Final Report for Purchase Order AB133F-05-SE-5570. April 2009"
PN14	<u>Safety</u>	In response to this and other comments, the new DEIS does not include an

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	Are the thousands of tourists, fishermen, divers', kayakers' and hikers' safety at risk from unknowingly finding themselves in the middle of a whale hunt? Absolutely! After witnessing how dangerous the illegal whale hunt of 9/07 became, it should be NOAA's prime responsibility to guarantee the safety of others when selecting where the Makah may hunt, if approved. Allowing whale hunting during the summer, in the Strait of Juan de Fuca, will never, ever be safe for other recreational activities. This DEIS ignores one expert, and finds another that concludes there is a safe way to shoot a 50 caliber rifle in the Strait of Juan de Fuca, without putting the tourists standing on the adjacent beach, at risk. The whalers' behaviors demonstrated in the illegal hunt of 2007, i.e., at least 16 gunshots, should be evidence that someone is going to get hurt one of these days. There is another risk factor in this equation. The whale itself could explode into a frenzy that would put any other person in the vicinity in danger. I can not fathom how NOAA can even consider allowing whaling in the Strait of Juan de Fuca.	alternative that contemplates hunting in the Strait but does explore an alternative of an offshore hunt (Alternative 3).
PN15	<u>Coastal Tourism</u> My husband and I owned a resort on this coastline, roughly 10 miles east of Neah Bay, between the years of 1996 and 2008. The majority of guests at our resort were naturalists, traveling from all over the United States and the world. They came to see this rugged coastline, and to glimpse a large whale. During periods of active whaling in September-October, 1998, May, 1999 and June, 2000, our records show numerous cancelled reservations. The reasons were always the same. We do not want to visit during a whaling episode, we don't want to witness whales being harpooned and killed, and we don't want our children to be exposed to these actions. Many were concerned with their safety from the use of high powered rifles. Some did not want to be in the middle of a confrontation between law enforcement and active protestors. By 2000, most potential guests would first ask if the Makah were whaling before they would even make a reservation. Of the tourists that did stay with us, most expressed being horrified that our government couldn't stop the whaling. I was sure to tell them that it actually was our government helping the tribe to kill the whales. It repulsed them. Hundreds of times I listened to a guest state that they had seen a whale that day, and thanked GOD it was still alive! We felt whaling had a significantly negative financial impact on our peaceful resort. Whaling deterred the very guests we were spending our advertising money trying to attract. But worst of all, those hundreds of guests that did stay, showed me the depth of despair, the true emotional sadness, the immense respect, the level of worship they all had for the whales. The feelings of all of the quiet protestors are being ignored, while it is sickening to realize how much attention has been given to the historical respect the Makah, supposedly had at one time for the whales, who now are demanding with ultimatums the right to use violence to find that respect again - the same respect the rest of us already have! Also affected are the thousands of residents of the Olympic Peninsula themselves. They know the whales are on the Northwest Coast during the summer. Day trips to hike along the beaches with hopes of seeing a Gray, humpback, minke or Orca, are part of life for the nature loving residents of the Olympic Peninsula.	Comments noted.

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	Besides lost revenues in accommodations by overnight tourists, Clallam Bay and Sekiu lost revenues in their restaurants, gas stations, and grocery stores, having already taken a hit due to the actions of the Makah tribe, they stand to lose the most by what's ahead.	
PN16	The Corridor Management Plan for the national scenic byway designation for Highway 112, produced by the Washington State Department of Transportation and Clallam County in 2000, by Parametrix I might note, states whale watching along that coastline was strongly emphasized as one of the lead activities, with even a drawing of a gray whale printed within this plan.	Comment noted.
PN17	When I first learned of Parametrix also working with the Makah tribe, to develop a tourism plan in conjunction with the tribe's scenic highway designation, I knew they would then have to change gears, and promote whaling. I was struck by the ability of Parametrix to appear so unethical, but then I realized it was just about the money…….they were being paid to say whatever was necessary - even if it wasn't true! The Clallam Bay - Sekiu Chamber of Commerce has a web site directed at appealing to tourists from around the world to visit, with whale watching listed throughout this web site, along with an award winning photo of a whale tail. Hundreds of thousands of inquiries from around the world access this web site all year long. How can the Chamber of Commerce quantify the damage through the misrepresentation of attracting tourists to come watch the whales, when less than 10 miles away these same whales are being killed? The economic fallout from this polarized view of respect for whales will have a long-term affect on the communities that share the coastline with Neah Bay. Clallam Bay and Sekiu have suffered from the cutbacks in logging and commercial fishing, and are overly dependent on recreational fishing, with imposed season cuts looming yearly. Tourism is the most viable industry to fill the economic gaps. Whaling will surely have drastic affects on coastal tourism, and will hit these small neighboring communities very hard. Is there a significant negative financial consequence to the businesses outside of the Makah reservation? Absolutely! Could this be why NOAA chose to avoid this issue for consideration? Absolutely! **This is a cover-up.**	The substance of this comment is responded to in previous responses to comments.
PN18	<u>Boycotts</u> As of today, 8/14/08, there are 96,400 web sites on Google for the topic 'whaling boycotts'. They cover around the globe, in every single country, in every single manner possible, where whaling has been, is, or will be considered. Country after country, documentation is floating to the surface that whaling has devastated tourism. Is NOAA paying attention here, or has NOAA become so blinded, or arrogant, that this huge body of information is not even being considered? I just don't understand how NOAA can continue with attempting to re-create the wheel in making statements that the negative effects will be minimal. The only conclusion I can arrive to is that NOAA doesn't care. Has there been a boycott of the northwest coastline? Absolutely! Once the Makah's whaling was stopped in court, many felt it had been stopped permanently. I believe the boycotts threatened during the active whaling episodes (1998 -2000) should be taken into consideration yet.	The substance of this comment is responded to in previous responses to comments.

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	The passionate negative comments received during the previous whaling episodes still apply. These people have not changed their minds. I've heard NMFS state, as I remember it….."well, only a few people attended the scoping meetings", or "no one has been protesting whaling in years", or "we don't think anyone objects to whaling presently". Not true! NOAA made a big deal in the DEIS of the protestors being a small group of misguided, law-breaking, rebels to be mistrusted and/or feared. Yes, a few of the active protestors may have crossed over the line in getting the attention they needed, to expose this issue to the rest of the world. Their actions worked, and it was because of their actions that the news media blitz occurred, in protest of the whaling, not in support of the Makah tribe. NOAA has minimized the harm to two of the protestors by misrepresenting what actually happened. The protestor thrown off the dock in Neah Bay, was not hurt by that action, however, when he reached shore, he was pushed down on the ground, caused a bleeding wound to his head. The second misrepresentation was over the jet ski incident, where NOAA states she ran into the Coast Guard boat, when in reality, the boat ran over the jet ski. Let's tell the truth here. The protestors were passionate - not evil.	
PN19	Whaling Protest Letters, Emails and Phone Calls I believe this DEIS minimizes and shows absolutely no regard for the millions, who themselves are to this day, protesting whaling at a different level, in a different way. Treaty or no treaty, how can thousands of American opinions mean nothing? Isn't this where the "in common with" language demands these opinions be considered? My understanding of the ruling in Anderson v. Evans is that the tribe may not exploit the whales to the detriment of other non-tribal citizens' rights to also use the whales for other non-consumptive purposes (whale watching, e.g.). As this pertains to the resident whales, the Makah do not have the right to kill them all. NOAA does not have the authority to allow that to happen. Again, this is a 'take', and against the law. **This may be one of the main issues that will return this case to court.** The DEIS included these statements and figures: - Although most letters and calls received by newspapers after the successful 1999 whale hunt opposed the whale hunt, - The *Seattle Times* reported that they received almost 400 phone calls and emails running about 10-to-1 against the hunt within hours of the Makah Tribe's successful kill of a gray whale (*Seattle Times* staff 1999). - More than 350 groups from 27 countries have expressed opposition to the Tribe's whale hunt (Oldham 2003). - Of those Clallam County residents who expressed a view during scoping, more expressed disapproval of than support for the hunt. - Another local group, Washington Citizens Coastal Alliance, based in nearby Friday Harbor, sent out a travel advisory to several hundred travel organizations, media groups, and individuals, expressing opposition to	Comment noted.

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	whaling (Hamilton 1999b). The advisory warned potential tourists to Neah Bay of recent conflicts and violence stemming from the whaling issue. - The *Seattle Times* reported that other activists have said that the controversy was ripping apart rural Clallam County and Washington as a whole (Welch 2001). - After the successful 1999 whale hunt, 25 Tribe members and the Coast Guard received emails and phone calls with death threats and anti-whaling messages (Hamilton 1999c). I would like to add that thousands of emails, phone calls, and verbal comments against the return to whaling, were received by the Makah Tribe, up to and including the present. Hundreds of emails and phone calls against the return to whaling were received by the Clallam Bay - Sekiu Chamber of Commerce, with all of them stating they would not return to the Clallam Bay or Sekiu area again, which was a tourism boycott, because of the whaling. The Forks Chamber experienced the same comments against the return to whaling, with additional tourism boycotts. Clallam County I have tallied, with the assistance of three other volunteers, all of the comments, in email, fax, letter and phone calls, received by the Clallam County Board of Commissioners concerning the Makah's return to whaling. I will be providing several comments that have been copied verbatim from the Commissioners' correspondence, that I found thought provoking. All of this information is legally on record at the Clallam County Courthouse, in Port Angeles, Washington. All of these documents were received between 12/16/97 and 6/9/99. The following countries around the world sent in comments against the return to whaling by the Makah tribe. Indicated in ( ) behind the country's name, will be the number of individual documents from that particular country submitted as comments. Some of the documents represented from one to thousands of individuals. Australia (7) Malaysia (1) Belgium (2) Mexico (2) Canada (822) Newfoundland (1) England (13) New Zealand (5) France (4) Nova Scotia (1) Germany (2) Russia (1) India (1) South Africa (2) Ireland (1) United Arab Emirates (1) -13-	

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	Here's the same type of listing for States within the United States, however, a comment may be for or against the return to whaling by the Makah tribe. Alaska (1) Arizona (3) California (167) Colorado (3) Connecticut (1) Florida (18) Georgia (8) Hawaii (7) Idaho (1) Illinois (5) Indiana (2) Kansas (1) Kentucky (1) Louisiana (3) Maine (2) Maryland (1) Massachusetts (15) Michigan (74) Minnesota (4) Mississippi (2) Missouri (3) Nevada (1) New Hampshire (2) New Jersey (3) New Mexico (1) New York (26) North Carolina (6) Ohio (4) Oregon (16) Pennsylvania (2) Rhode Island (2) Texas (7) Utah (3) Vermont (2) Virginia (4) Washington (663) Wisconsin (4) Wyoming (1) The totals for opinions were 30 people in favor of the Makah tribe's return to whaling, and 14,690 people against, with most promising to boycott the Olympic Peninsula, Washington State and/or all Washington products. Within the documents on file at the Clallam County Board of Commissioners' office were several organizational resolutions and petitions, passed against the Makah tribe's return to whaling, that were received during the period 12/97 – 6/99, from the following groups: Animal Protection Institute of America - six pages of groups opposed British Columbia, Canada, Premier Glen Clark Coastal Commission of California Depoe Bay, Oregon, Chamber of Commerce Depoe Bay, Oregon, City Council District of Tofino, British Columbia, Canada District of Victoria, British Columbia, Canada Friday Harbor City Council International Wildlife Coalition, Ontario, Canada, Vice President	

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	He provided results of a survey conducted by Vancouver, B.C. Television. Results were: 74% polled do not support the Makah's right to hunt whales, 76% polled were against a ceremonial hunt, and 92% polled were against a commercial hunt. -14- Here's a continued list of resolutions received by the Clallam County Board of Commissioners' office, passed against the Makah tribe's return to whaling. Malibu, California, City of, Resolution Monterey County, California San Juan County, Washington, Board of County Commissioners, Resolution San Juan County, Washington, Marine Resources South Island Metis Nation, Victoria, British Columbia, Petition - Chief and entire tribe of 752 members District of Vancouver, British Columbia Washington State Legislators, Morris, Dunshee and Quall Westport, Washington, City Council My conclusions, from having read through these resolution documents, are the entire western coastline of the United States, from Mexico, through California and Oregon, along the coast of Washington, throughout the San Juan Islands, and including the entire coastline of British Columbia all agree that these whales do not belong just to the Makah tribe, that they, and other marine mammals, belong to everyone. One comment stated due to the fact these whales were born in Mexico, they really belong to the Mexican government. I will now list verbatim, comments from some of the documents that came in from various countries and states within the U.S., that I found represented many of the main issues. -"A live whale will return year after year to support your communities. A dead whale loses its economic value." -"We adults preach conservation on one hand and then make decisions that baffle children on the other." -"To set a precedence of hunting whales again now would only erase all the hard work the conservationists of the world have dedicated to saving our oceans." -"You will set back the conservation efforts of the last 50 years." -"It is extremely illogical that we have an industry built around whale watching just south of the area where the Makah will kill them." -"I'm against using U.S. resources in assisting a sovereign nation to hunt whales in U.S. waters is wrong." -"The Makah tribe will survive without killing whales."	

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	-"My husband is native. We both oppose whale hunts as do all our First Nation friends and acquaintances. Cultural heritage angle does not wash." From the documents addressing boycotting this area, county or State come a sampling of those comments: -"The desire to pretend that this is the 19th century is not sufficient justification for undermining International covenants on conservation. There is now overwhelming evidence that the Makah are looking forward to the day when their trade partners succeed in relaxing regulations sufficiently to once again allow for an international trade in whale products." -"This whale hunt is making our State look pretty bad." -"Whaling is a monumental stain on the image of the State of Washington." -"I have been visiting Washington State for the past 5 summers - but no more." -"We are cancelling our trip through your state and will continue to boycott anything related to Washington state." -"We plan to stay away from the whaling capital of the U.S." -"I will not be traveling to the Olympic Peninsula." -"Just to let you know we were regular visitors to WA (from Vancouver, BC) and the area, but we will not be visiting again, or spending another dime in the States as we are disgusted by what has happened with the Makah whale hunt." -"I am not at all proud to be living in the leading bloodbath state." -"Watching the Olympic Coast be transformed from one of our favorite ocean retreats to the whaling capital of the USA, has been devastating as it will surely be to Clallam County's tourism trade. Like us, many in Washington will be spending their tourism dollars at Long Beach or Ocean Shores now." "My company has considered establishing a base in your area. We have decided we will not." "I will not be able to travel to your county even though my family loves the beach." "I will not spend one dollar in a place that advocates whale killers." "I for one will make sure that when I travel west that I will avoid your area at all costs." "I will not come anywhere near Washington State." Now – can NOAA, or any reader believe the cumulative negative economic effect from the return to whaling doesn't exist??? I have read in this DEIS, NOAA believes the effects are "minor" and "temporary" and not cumulative on the local economy. You are wrong! NOAA has also stated "boycott attempts, however could reduce any long term benefits from tourism". Now there you are right! Does this appear to be double-talking to anyone else but me? By trying so diligently to downplay, disregard, ignore and minimize the negative economic effects the Makah's return to whaling will have on the rest of the Olympic Peninsula, Washington State and the U.S., this DEIS has become a meaningless, garbled mess. The return to whaling has been already, and will always be in the future, devastating for the economy of all, including the Makah, that is, unless they make millions from the whales, then they won't feel the sting, but we all will.	
PN20	Individual Topics from DEIS	

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	Due to the lack of adequate time to prepare my comments, I will now jump from topic to topic with questions and/or comments that I did not feel were adequately addressed or answered in the DEIS. Chapter Four If individual families were to finance hunts under the action alternatives, the economic impacts on some Makah households could be substantial, given the high costs of supplies and services necessary to participate in the numerous activities related to whale hunting. Is this NOAA putting their foot in the door to finance the Makah's whaling - AGAIN? When did NOAA adopt this tribe, and agree to support it forever with my tax dollars? I speculate another known costly effect of whaling can be found by looking at NOAA's own present or future budgets?	
PN21	Renker's Needs Assessment I find this research to be biased and full of conflict of interest due to her husband being an influential member of the whaling community. I believe it possible only whaling families were questioned, altering the survey results to obtain the statistics wanted in support of whaling. She has not questioned the same number of people in true research format, however, has manipulated her R population throughout the questions. She jumps around from questioning 163 – 145 – 152 – 268 – 20 – 79 – 58 – 77 – 59 – 82 – 100 – 101 – 214 – 105 – 180, depending on the question in her survey. This research should either be removed from the DEIS, or redone. Renker's tribal survey found that 81 percent of the respondents consumed whale products (blubber, meat, or oil) obtained from the 1999 hunt, although 87 percent would like to have these products available in the future (Renker 2002). Sepez (2001) also quantified the consumption of whale products obtained from the whale taken during the 1999 hunt. The whale provided roughly 2,000 to 3,000 pounds of meat and 4,000 to 5,000 pounds of blubber, most of which was consumed at the community potlatch. Community households received approximately 1.8 pounds per capita distribution of blubber. Together with the estimated 0.55 pound of meat, Sepez calculated that the whale products consumed in 1999 equaled about 2.4 pounds per capita. All of the above calculations are misrepresented and in error. According to her assessment: - 63 (39%) of households did not receive whale meat from the 1999 whale. - 48% either gave it away or did something else besides prepared it. 32% gave it away. - 86 (52.8%) did not receive blubber and 43% of the 79 polled didn't want blubber. - 28% don't want future whale oil - 13.5% don't want future whale meat - 44.2% don't want future blubber - 75.5% do want whale bone. [Sounds to me like commercial enterprise.] One last comment regarding subsistence needs. I have purchased weekly groceries at Washburn's Store in Neah Bay for many years, as it was closer to my residence than the Clalllam Bay store, which eventually	The substance of this comment is responded to in previous responses to comments.

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	closed. Washburn's does an amazing business, provides food goods to every single Makah, and offers all the meat and vegetables of a full scale grocery. The Schwan's frozen food, home delivery, truck spends one full day in Neah Bay, every week and cleans the truck out every trip. It easily could be proven exactly how much regular good 'ole American food is consumed on a weekly or daily basis in Neah Bay. I think this data would surprise most of you, and would once again prove Renker's needs statement full of glorified misinformation. All through this DEIS, the stage has been set for the Makah to commercially sell their whale bone products within the U.S. If they are so keen on selling bone products, they could start with elk, deer or bear for example. I can not support an entire whale being sacrificed mainly for the bones, to create a market that presently doesn't exist, or to give away the food products to others, or to benefit commercially from these whales after they have been killed. What a horrible ecological waste, don't you agree? All of us who have been watching for the last decade, have few doubts that the long term plan includes, adding humpbacks into this equation at some point, sea otters and other marine mammals will be next, building the processing plant on the reservation, or purchasing a processing boat to use off shore, and striving towards commercial whaling as soon as possible. It was the Makah tribe's goal in the early '90's, and NOAA was aware of the tribe's commercial intents from the beginning. How horrible to sit back and watch how this depressing scenario plays out. NOAA is the main accomplice to this crime - and we all know it. I also can not support most of the whale meat and blubber being used for the Makah tribe to host a community potlatch for other natives. What will they be getting in return, status or money? I believe this entire process needs to be transparent, with no secrets behind the scenes. Where exactly does the dollar originate (NOAA?), whose hands does it go through (Makah Whale Research?), and who benefits (Tribal Council?) from the spending of my tax dollars? The most surprising to me was that from Renker's survey, only 35.5% want to hunt whales for nutrition or food reasons. Seems like NOAA inflated that figure significantly, didn't you? Makes me wonder just how much of this entire DEIS has been fabricated to look as if the tribe has only honorable intentions? Again, Renker's research is totally flawed.	
PN22	<u>Stinky Whales</u> NOAA needs to update information on Stinky whales. According to the IWC web site data from the 2008 meetings, the Russians presented a report, claiming the chemical compounds identified from stinky whales are used for extinguishing fires, however, are not used in Russia for fire suppression. Flame retardants appear to be the cause of the smell. Japan has asked the U.S. to identify the chemical compounds used in fighting mountain and forest fires in North America. <u>Table 3-44</u> Results indicated PCB and DDT levels were much higher in the tissue samples from the Makah whale in 1999 than from any of the other samples taken for any of the other whales tested. The text on page 3-302 appears to minimize this issue. Do the Makah have an understanding of how toxic whale meats are for their	The substance of this comment is responded to in previous responses to comments.

COMMENT CODE	COMMENT	DRAFT STAFF RESPONSE
	consumption? Has anyone developed a monitoring procedure to prevent consumption if the testing shows too much contamination?	
PN23	Treaty Issues During the protesting in 1998, while the reservation border was road-blocked, the State Patrol upheld the Treaty law, and required all vehicles coming in to the reservation to turn over all of the noticeable alcohol in the vehicles. A considerable amount of alcoholic beverages of all kinds were confiscated. The tribal police unit then obtained the alcohol from the State Police and turned it back over to the tribal members from which it had been taken. I have a problem with only bits and pieces of the treaty being upheld, while other parts are being ignored. I believe to uphold this treaty and receive the waiver to whale, the entire treaty must be honored and alcohol must be off the reservation. A second treaty conflict applies to the Makah treaty prohibiting trading with Vancouver Island. The waiver may not grant off reservation trading, gifting, selling, whatever to anyone of Vancouver Island. Even though the Makah tribe pushes honoring the treaty into the faces of all of us, they should be careful what they are asking for. Fair is fair.	Comment noted.
PN24	Drug Issues In an article on the Seattle PI on August 20, 2007, the following story was sadly told. "Neah Bay, a native fishing village at the extreme northwest tip of the continental United States, has been devastated by illicit drugs. About six in 10 homes owned by the Makah Tribe are contaminated with meth residues, according to a tribal study. Tribal police say assaults and thefts -- and fatal overdoses -- are on the rise. "It's really bad and sad to see," said tribal Chairman Ben Johnson Jr. "The children are really taking a beating. We've had meth babies born here. But it's tough to even get the FBI out here." Now let's return to the issue of the whalers who have failed drug and alcohol testing before whaling episodes. One of them has a prior felony for heroin possession, from just a few years before he was in the whaling canoe. How is NOAA proposing to regulate the clean and sober whaling crew before giving them guns to use in public areas? This is significant and needs to be transparent also.	Comment noted.
PN25	Regulation With the recent implications of the Tribal Council by the whalers themselves, it was finally uncovered that the Council had indeed given their blessings to the illegal hunt. The Council chairman had gone on record in the Peninsula Daily News, admitting he knew beforehand. How, oh how, is this whaling going to be supervised and regulated? If the power is given back to the tribe, through a reenactment of the Whaling Commission, there is a potential for chaos. Even in the waiver request, this statement was included: "Tribal regulations will include provisions requiring Tribal enforcement of the regulations. The enforcement regulations shall include criminal sanctions, including fines and imprisonment, up to the limits imposed by the Indian Civil Rights Act." This statement no longer carries any clout in any of our minds. Once the regulation of the whaling is violated, the tribe will have control over what happens next. Nothing will happen next. No one will be able to control the chaos, not even NOAA, but you can bet we are all going to blame NOAA, and rightly so.	The substance of this comment is responded to in previous responses to comments.

COMMENT CODE	COMMENT	DRAFT STAFF RESPONSE
	It remains imperative that NOAA develop a measurable criteria for appropriate contingency plans for the ongoing adaptive management of how the system will ever work, or how it can be fixed when it breaks. And it will break! It already has…..	
PN26	Hunting Near Shore Everyone but NOAA, feels there are extreme safely issues of not being able to protect any humans recreating on the water, or on the shoreline, during an active hunt episode. My questions now center on how you are planning on protecting the whales themselves; the females and calves? It is known that the females and calves will be closest to shore in the spring migration, when hunting is being considered by NOAA. Yearly whale watching in LaPush is centered on looking for those calves, just feet off shore. There is no amount of monitoring to protect these very valuable members of the Eastern Northern Pacific whales. Protecting the females should be a guarantee. It is also known from observations from the U.S. coastal migrations, that the males travel farther off shore and that 90% of the migration northward in the late spring is female and calf pairs (Herzig and Mate 1984). In the IWC Scientific Committee Report document, from Chile (2008), a couple of interesting facts were presented. First, in the summarized data from the 126 gray whales landed and utilized by the aboriginal hunters of Chukotka, in 2007, it is reported a total of 48 gray whale males, and 78 females were taken in 2007. Also reported was the landing of two "stinky whales", which were inedible. This report goes on to say: "In response to a question regarding hunter selectivity for females, it was reported that there are more females and calves in the inshore hunting area; males are farther offshore. Hunters do not take females with calves; only single whales are harvested." I wonder how the ENP whales will continue to prosper, if the Russians are opportunistically taking the females as evidenced, and the Makah follow with wanting to hunt near shore, in the middle of the female and calf late spring migration? At some point, the continued growth for this whale population will be hampered by a significant loss of available mating females. Add to this situation the additional statistics from the same IWC report: "San Ignacio based on boat surveys during several periods: 1978-82, 1996-2000, 2003 and 2005, 2006-08. Counts were greatest during the baseline period of 1978-82. Overall counts in 2008 were the lowest recorded in Laguna San Ignacio during winter." Has NOAA adequately studied the population distribution to categorically state that the ENP population is healthy, and that taking a larger proportion of females in the authorized hunts, will not cause a problem? I've heard it stated, in a film documentary on these whales, by Jean-Michel Cousteau, that the ENP whale population is not growing, but that the hazards to this population are growing. It is unknown what the long term consequences will be, from the future increase in Navy sonar testing and 'war games' within the migratory route of these whales. Needing to be added to this questionable future will be the push for oil and gas developments off shore. I was disappointed in the DEIS for not having adequately covered either of these pending risks.	The substance of this comment is responded to in previous responses to comments.

COMMENT CODE	COMMENT	DRAFT STAFF RESPONSE
	I would be remiss to also not add somewhere, that the effects on global warming, it's effects on the food chain for these gray whales, and the possibility that adding this all together will soon require a relisting of these creatures for their protection. Will there be statements within the FEIS that clearly guides this waiver to closure, when the gray whales are relisted? On the same topic of near shore whale hunting, I also found fault with Braund's conclusions: "Some Makah tribal members believe that excluding the Strait of Juan de Fuca from their hunting area would place whalers at increased risk, would prohibit them from whale hunting where their ancestors had traditionally whaled, and would affect their ability to successfully take a whale (Braund et al. 2007). The Makah traditionally hunted in the Strait, where boating conditions are safer because the weather is calm, compared to the ocean, which can have 25-foot waves (Braund et al. 2007). The restriction on location would contrast with traditional hunting, which occurred when and where the whales presented themselves, including in the Strait (Braund et al. 2007)." NOAA hired 'the big gun" from Alaska, Braund, who came to Neah Bay, visited for three days, talked with a few tribal members, and delivered platitudes of wisdom, that he really didn't know much about. He knows much about the Alaskan natives, he knows much about how to assess their needs for oil and gas development, and may be well respected in some circles. He did not demonstrate to me, that his words should now become the all important standard to comply with. I would like to contradict by saying, having lived on the Strait of Juan de Fuca, I have witnessed horrible conditions on the Straits, and that having lived on this Peninsula for 30 years, I have also witnessed hundreds of times, the ocean was totally flat and calm. Since the Makah historically have hunted whales miles and miles out to sea, I can only conclude the Braund research is extremely biased and smells like those stinky whales! The least controversial bottom line would be to hunt off shore in the migratory path, to avoid hunting the females and calves, to hunt closer to the migrating males, to hunt where their ancestors had traditionally whaled, to avoid the entire conflict of harming the resident whale population in any way, to keep the tourists, hikers, fisherman, kayakers, divers and residents along the coastline totally safe, to keep Olympic National Park out of the skillet you've put them in, to uphold the sanctuary part of the National Marine Sanctuary, and it would add an element of bravery to the image of any whaler, that could only be construed as 'in sync' with their ancient customs and societal structure. The numbers of whales harvested should be dropped to a level of documented food consumption use by the Makah tribe only, with strikes and misses, and stuck and lost whales, counting within the total given yearly, not in addition to. One last criticism would be against the line drawn in the sand by Renker and Braund that five whales - one for each village should be the golden number. Anthropologists sure get all choked-up over history don't they? Get real. There's one village now. One whale yearly for Makah Days, would be enough. However, the best bottom line of all, the one most humans on this planet would support, the option that representatives and governments of Mexico, California, Oregon, Washington and British Columbia have already gone on record supporting; the most legal outcome, would be that this waiver not be granted. The Makah should never be allowed to resume killing whales!	

Attachment 2: Additional Comments

We have carefully reviewed and considered the following comments and found that the issues they raise have either been addressed in previous responses to comments, have been addressed in the new DEIS, or are outside the scope of the EIS.

COMMENTER	COMMENT
Anonymous.pdf	Commenter provided newspaper article “Makah learn patience, hunting skills.” Claim that Makah lack the skills to hunt and the hunt is an outdated tradition.
Arnold_05-22-08.pdf	Request for comment period extension
Aulaw_05-14-08.pdf	We need to do more to protect our seas and marine life. We are stewards and the Makah are stewards of our culture. We made the treaty in good faith. – At that time life was very different for the NW Indians, (no casino’s, unlimited smoke shops, firework shops, etc.) I agree that subsistence as in Alaska natives is right. Allow Makah 1 whale/per year to be used by the whole tribe as ceremonial renewal and not wasted. We as U.S. citizens can’t control what other countries do to these animals when they migrate out of the Makah waters. How many Makah members are they (and do they include those that are only 10% Native American)?
AWI etal_07-30-08.pdf	Request for comment period extension
AWI_05-30-08.pdf	Request for comment period extension
AWI_08-08-08.pdf	Request for comment period extension
Bell_05-16-08.pdf	Request for comment period extension
Bell_08-15-08.pdf	There is no purpose in killing any whale. The National Marine Sanctuary should be protection for all the whales. NMFS should not allow any harpoon attempts. Citizens must be protected from .50 caliber rifle bullets as a matter of safety. Tourists would appreciate viewing whales.
Berass_07-02-08.pdf	Opposed to the hunt. Just because the Tribe hunted whales a thousand years ago does not mean they should be allowed to now. Circumstances are different now. We need to take a stand for our natural world before it is gone.
Bidwell_05_21_08.pdf	Our understanding is that when Federal laws and Indian treaty rights are in conflict, Federal laws must (always) prevail. These mammals are currently protected by the majesty and authority of U.S. Federal Law: The Marine Mammal Protection Act. A subsequent mandate by the 9th Circuit Court has ordered The National Marine Fisheries Service "to examine the broad effects of a whale hunt" ... - not ask the- public to .comment .on .various conditions of hunting or no hunting. My understanding is that this is strictly a matter of Federal Law, not popularity contest or straw vote by those motivated to respond. We don't know that the Mammal Protection Act has been amended or rescinded. Again, we emphasize: this is fundamentally an issue of Federal Law, not a contrived or programmatic political process exercise. The recent "deferred prosecution" for five tribal members who illegally killed a grey whale, in a particularly inhumane way, is a current example of political process judgment, at the tribal level. The press release on this simply states that "Chief Tribal Judge Stanley Myers said the charges will be dropped after a year if the five abide by conditions to be set June 30 by a Federal Court in Tacoma".So much for tribal judgment on this matter. None of us should have any delusions or illusions about where this is going, irrespective of admitted wrongdoing and Federal Statues regarding illegality.

COMMENTER	COMMENT
	We are opposed to administratively changing the prohibition regarding whale hunts and injuring or killing them, humanely or inhumanely. We do request that our letter be made part of the official record in this matter.
Big Blue Research Associates.pdf	If the whales could speak I am sure the first thing they would say is "Please stop killing us. We have never wronged you! We have been living peacefully in our ocean for over 20 million years and only wish to continue to do so. Who are you to kill us and for what reason do you do so?" And they would be talking to the Makah and the Japanese and the Norwegians who all still continue to murder these mysterious inhabitants of all our oceans. The Makah. Historic whale killers. Their rights protected in the Neah Bay Treaty of 1855. One hundred and fifty three years ago. Much time has passed and many changes have occurred. There is no justifiable reason for any country, tribe, or person to kill a whale anywhere in the world in the year 2008. Yet still the slaughter continues. Just what does this Neah Bay Treaty of 1855 say? Article 4- The right of taking fish and of whaling or sealing at usual and accustomed grounds and stations is further secured to said indians in common with all citizens of the United States etc. In 1892 Judge Cornelius H. Hanford ruled that the treaty assured the Makah "rights in common with all citizens of the United States (but) certainly such treaty stipulations give no support to a claim for peculiar or superior rights or privileges denied to citizens of the country in general" and thus their illegal seal killing was stopped at that time. "In common with all citizens of the United States ... ". The Makah rights are only the rights of all US citizens. No more. No less. In 1855, the year of the treaty, the United States was hard at it, killing whales all over the world. Some of the Makah worked on those boats like other U.S. citizens. When the U.S. finally closed our last whaling station in 1972, no citizen could go and kill whales. In common with all citizens of the U.S., the Makah clearly have no rights to murder whales. Article 13- "The said tribe finally agrees not to trade at Vancouver's Island or elsewhere out of the dominions of the United States ... " They wouldn't sell their butchered whale meat to the Japanese would they? So now the Makah want to murder five grey whales. Why? For food? In 1995 there were 1500 Makah living on the reservation. If they kill five 30 ton grey whales and utilize only half of that mass that is still 75 tons of edible meat which would give each man, woman, and child the task of consuming 411 pounds of whale meat every day for one year. Would they eat that? Do they have the freezer storage capacity? Was it legal for non-tribal people to try to help butcher the whale killed in 1999? What was sacred about that 1999 hunt/kill? Where was the need? In light of the 2008 poaching of a gray whale, have there been other killings unreported? The whale s a peaceful animal. The Orca is the largest of the dolphin family and fills the niche of predator. In fifty million years the Whale has managed to survive in its now rapidly deteriorating environment, our oceans. The Whales have never polluted their environment. Most Whales brains are at least three times the size of ours. We pride ourselves on the size of our brain over the rest of the animal kingdom. From David Rothenberg's Thousand }.file Song, p. 160, "'In humans, (brains), the anterior cingulate cortex senses pain, admits errors, and focuses attention. Also involved in the control of breathing, pulse, erections, and other involuntary responses, it directs feelings of fear, pain, and pleasure. The frontoinsular cortex is

COMMENTER	COMMENT
	active when our brains empathize with the suffering of others, as when a baby cries or another person is hurt. It also fires into action when we try to spot attempts at deception, to help us detect when someone is lying." These brain cells, called the spindle neurons, occur in exactly the same place in the brains of Whales as they do in us. For so many reasons, as we increase our knowledge of these wonderful animals, the best way to learn about them and from them is to let them live. Untouched and unharmed. Whale watching makes far more money than whale killing.
Boyd_05-10-08.pdf	Concerning the whale hunt that the Makah tribe is proposing. This is crazy! I have lived on the peninsula most of my 65 years, and have lived around and gone to school with the tribe members, they have no more right to hunt whales than I do. In fact with my ·European heritage, I probably have MORE rights to the whales, seeing that my ancestors were here long before the indians. Sounds nuts doesn't it?? I am making the point that reviving an age old heritage is something few Makah's give a damn about, and the few that do, are driven by getting there name and pictures in the paper more than reviving history. It is a damn shame that a whale has to die in order to give bragging rights, at the tavern, (not wigwam) to a few that have nothing to contribute to there tribe or our community other than a dead whale that no one eats I J Guaranteed, if no newspaper covered the event, it would stop in a few months. If all reason. goes away in this endeavor, at LEAST make the hunt proceed as in the 1 800 's with hand made weapons and dug out canoes - not with 200 horse power out boards and 50 caliber rifles - If they are sincere in there endeavor to relive the hunts of there ancestors- make them do it in the manner of there ancestors - Guaranteed H If this were to happen, there would be no further discussion of this matter.
Branum_07-07-08.pdf	I write you this letter today with deep sadness and concern of the pending Makah Tribe's whale hunt. I do not have a lot of rhetoric; I am no big time celebrity. I live in Pasadena California and pay my taxes, abide by the law. To be honest, I am just an ordinary person, deeply concerned that the US government is considering of allowing the Makah tribe to take and kill whales. I find no purpose or significance to allow this tribe, or any tribe for that matter to kill a whale. Whales at one.point were near extinction, and thank goodness the government put a stop to it. I know that many foreign countries, particularly Norway, Japan and China kill whales by the thousands. I wish there was more to be done to stop those countries. I read up on the Whaling Commission yet they do not enforce tough bans on killing whales. To have no regard for wildlife is unconscionable. The Makah tribe claims this was a cultural practice that is a tradition. I do not at all want to take away from the history of any nationality, especially the American Indians. Yes, they suffered greatly, (as did Jewish people and African Americans). However I cannot sit still and agree with them in 2008, that they need and should kill whales due to "tribal rituals". They do not live as tribesmen, in other words, most Indians tribes of today live and function like all the rest of us. They have homes, they drive cars, they work, eat beef, fish, have internet, and own casinos. If this were the time period of the 1800's maybe I would see their point. With the technology and the resources available today, why in the world do they think they have the right to kill whales and some of the whales they could potentially kill could be a young calf or a mother which would cause the young calf to be an orphan? The earth is in shambles and Mankind is responsible for it all. We have so many issues going on with Global warming, terrorist, inflation, recession, unemployment, foreclosures; all of this is so disheartening and now to read that the Makah tribe wants to take whales! It is absurd and I will continue to fight to protect the whales. I am not wealthy; do not know a lot of politicians but one thing is for certain, no one has the right to kill whales because it dates back to their ancestral days. There is no reason to kill other than it was something that the tribe did some 140 years ago. It was essential for survival back then, as they used the whales' meats, oils, skin in many ways. I doubt that is the reason now, as the Food and Agricultural Dept provides an abundance of food in this country. So please, help me understand why this is necessary. Whales have a right to live freely in our ocean waters.

COMMENTER	COMMENT
	I urge you please; please stop the Makah tribe of killing the whales. Most of our wildlife is pretty much gone and what will our children have to look forward to when mankind is killing everything, absolutely everything off. Please understand that I am a strong believer in preserving culture and tradition. But I do not believe the tradition needs to be practiced if animals are being senselessly killed. I will continue to write to any and all parties that can make a difference.
Broschart_07-02-08.pdf	Thank you for the opportunity to comment on the proposed Makah whale hunt. I fully support the Tribe's request for Alternative 2 in the Draft EIS. I strongly support native treaty rights and especially the Makah right to harvest whales. I hope that you will proceed with all due haste to approve this request and grant the Tribe their authorization.
Broughton_06-25-08.pdf	That “Makah Gray Whale Hunt” was a sad farce. The “hunters,” helped and babied by our Coast Guard, acted throughout as if it were a fraternity stunt. When they danced on the body of the female whale who’d learned to trust human beings, I’m sure I wasn’t the only one who felt sick to my stomach. You can’t be considering allowing this to happen again. You can’t.
Button_08-14-08.pdf	(I was asked to respond to an inquiry, pro or con, concerning the recent 'illepl whale hunt' by the five Makah tribal members. I have no idea who received my original letter.) I think the start should be that everyone in Washington State, especially Clallam County, read the Treaties of 1855! (It wouldn't hurt to read the Treaties of Canada also.) You will then see, and hopefully understand where the Makah are coming from. How many of you have read them? It's shameful. It's also shameful that these treaties were barely followed and in all cases the contents indiscriminately and/or purposefully not respected, promises broken, tools not supplied, health care and education pushed aside, and the land taken by money hungry, land hungry, gold/silver hungry, fish hungry (you get the point) settlers and government. Besides the written word, have you ever looked at an original map of the original reservation lands mapped out by the government? Again. shameful. And you wonder why there has been so much depression, alcoholism. drug use and suicide in Indian Country. But I do remain confident that they will continue to carry on as the Sovereign Nations they are, maintaining culture and spirit. ... regaining what was lost until they decide otherwise, with dignity and grace. Note: It also used to be against the law for Native American/First Nations to leave their reservation/reserve. The 'Pass System' existed for those that had to leave for a specific purpose, and thrown in jail if caught without it ... or worse. This existed well into the 1900's. The Residential School System is another story for another time. Shameful! Reading the Treaties is the first thing everyone needs to do. Then hopefully there will be an understanding of the Makah's position on whaling .... besides just mindlessly saying, "It's part of an old archaic Indian Treaty". It's actually fairly recent. and, it's called standing up for your rights. (Spelled out in the Treaty for whatever reason… food, spiritual, cultural...it doesn't matter.) The rest is nothing more than a personal belief on animal harvesting. (Personal position--> I don't hunt, and rarely fish. And, I love the whale as well as the deer and hate to see any of them killed. I'm also not giving a personal opinion on -whether or not I approve of unsanctioned whale hunts by Makah tribal members, or anyone else.) Reading the Treaties is the start. ... as everything else evolves from that point. Very emotional indeed! I remember Billy Frank back in the late 60's-early 70's. I was always intrigued as a teenager by his commitment and self sacrifice to the salmon issue. He was perfectly right in doing so. I couldn’t believe my luck to have met him :face-to-face a couple of years ago .... as he reached out to take my hand.
Byng_05-13-08.pdf	Leave the whales alone. The Makahs should offer to change the Treaty – real men don’t need to kill whales.
Byng_05-16-08.pdf	Position: Against Whaling by Makah Tribe My ancestors sacrificed sheep and goats, and later bulls, to the Gods/God in exchange for a successful hunt of game.

COMMENTER	COMMENT
	In some cultures around the world there were human sacrifices to ensure safety and prosperity for the tribe. It is time for the Makahs to enter the 21 51 Century and shed the yoke of superstition. To kill an innocent whale to boost your courage is insulting to the rest of the world and to the men of the Makah Tribe. If you want to be on an equal footing with the whales, take a camera instead of a weapon. See how close you can get and photograph its eye. But honor your opponent. Leave the whales alone.
Camac_06-11-08.pdf	After careful thought and review of all the materials, to me, it comes down to 'justification' for killing the whale(s). As far as the main reason given for wanting to hunt the gray whale, described as "pride, self-esteem, and for a reason to abstain from alcohol and drug abuse", I find these to be misguided, and grossly immature reasons to justify the suffering and killing of a gray whale. I recall clearly the aerial views of the killing of the whale in the late 1990s by the Makah. This haunting aerial documentation was highly disturbing and did not bring favorable view of the tormentors of this whale, the committees, or the administration who allowed it to take place. Since the 70 year moratorium on gray whales was initiated, whale-watching excursions, scientists, and animal behaviorists have taught the American public and the world about the intelligence and unique sociability of these great animals, actually dubbing them "our human counterparts of the sea." Also, being of American Indian heritage myself, I have always understood the reverence Indian tribes have always had for all the creatures they shared the Earth with, and life was only taken out of absolute necessity. This was a gentle and wise culture and therefore this application to take life unnecessarily is surprising and to some in the Indian culture, even shameful. To be a tribal member a Makah can boast as little as ten percent Makah biological identification, and this may explain some of the detraction from Indian culture. As far as killing a gray whale for sustenance, there seems to be no justification there either. All products that the killing of whales once supplied have been replaced by science and technology. I have read the material sent to me explaining the Makah detractors of the hunt incidentally finding wasted whale meat and blubber in fishing nets. The portion of the Makah Tribe who do not want the hunt as they do not consume or like whale products, and those protesting on moral grounds, should also be heard. There was much protest. We, as Americans, should be homogenizing and not allowing every subculture within our culture to renew "traditions", as then we would have to legalize other un-American rituals, such as cock fighting, dog fighting, Voodoo with its animal sacrifices, etc; exceptions cannot be made just for one group or one subculture. Certainly, traditions are not always a good thing; we had a few American traditions like slavery and witch-burning, and thankfully we have realized our shameful mistakes as a people. Time moves on, progress happens, and there comes a point where the old traditions can no longer be justified, as in the case of barbaric hunting of the gray whale. Again, thank you for allowing me to review the material sent to me and be assured I took this responsibility seriously and have made the above conclusions.
Cetacean Society International _08-15-08.pdf	With respect, Cetacean Society International (CSI) urges the National Oceanic and Atmospheric Administration (NOAA) to review and correct the overwhelming number of DE IS deficiencies, whether inaccurate, misleading, unclear or omissions of fact. We have no doubt that many of these deficiencies wilt be presented to NOAA in public comments, and NOAA professionals are certainly aware of many of them. However, the unwieldy scale of the DEIS, and the overlapping of the comment period with many other priority issues of concern, likely will preclude even the most ardent reviewers from catching all deficiencies. CSI acknowledges that our best efforts could not review this document adequately, even with an extension period, and we reserve the right to revisit the document. The mechanism for these corrections may require an eventual Supplemental EIS (SEIS), but no matter how they are accomplished, they must be done.

COMMENTER	COMMENT
	To assist with making these corrections, CSI urges NOAA to pay particular attention to the DEIS-referenced critique by the Peninsula Citizens for the Protection of Whales. Their local expertise, exhaustive review of the OEIS, and long-term familiarity with the Makah Tribe is an incomparable asset that can help NOAA avoid even more complications in this arduous process. Overall, this DEIS is the worst presentation of relevant material of any of the 23 EIS related documents I have reviewed since 1976, beating out a US Navy DEIS for midfrequency active sonar training that simply vanished after the public comment period. The reason the DEIS is so bad is that it could only be written by omitting and misrepresenting relevant facts, and the ultimate responsibility is NOAA's. The Final EIS provides an opportunity for NOAA to award a contract for preparation of the NEPA document to an objective, disassociated and knowledgeable preparer, defusing a potential conflict because of the preparation of this DEIS by Parametrix Inc., under contract to NOAA. It is obvious to many that the flaws in this DE IS may be related to the connections between Parametrix and the Makah Tribe. These are so pervasive that the DEIS is irrevocably inadequate and biased, contrary to the intent of the National Environmental Policy Act (NEPA). Parametrix's conflict of interest justifies intense scrutiny, and CSI believes this scrutiny will show, given the relationship between Tribe and company, that Parametrix could not have been objective or substantive in its preparation of the DE IS. Whether these flaws were intentional or not may be decided in court. We do not know of any DEIS intentionally prepared by an entity with such an obvious conflict of interest as with Parametrix's long-term financial and contractual interest in aiding the Makah Tribe. For example, Parametrix profited from facilitating the Juan de Fuca Byway, and in 2002 supported the Tribe's attempted annexation of their reservation road into the Byway. Public opposition to the "whaling road" stopped the annexation, so in 2003 Parametrlx had a Corridor Management Plan contract for the Makah Tribe's Cape Flattery Tribal Scenic Byway. Parametrix's motives were linked to helping the Tribe "interpret" whaling to tourists, and are clearly reflected in their self-interested emphasis on improved whaling...related tourism that they repeat several times in the DE IS ten. At one point Parametrix writers blissfully say: "Overall, it is reasonable to expect more visitors would be drawn to the area than avoid the area as a result of a whale hunt." This is contrary to an of the demographic facts CSI is aware of; watching whales being killed or butchered is not on many tourists' itinerary, and is not offered by any tour promoting services outside of Japan and Norway. CSI is aware of other links between the DEIS preparer and the Tribe. For example, the Makah Tribe in 2006 selected TranTech to administer the ten million dollar paving of the Tribal Byway through Neall Bay. TranTech is linked to Parametrix. Parametrix is also linked to the Neah Bay wave energy project NOAA was derelict for allowing this conflict of interest to happen. If another example is necessary, Parametrix's self-serving DEIS discussion of the effects of whaling on tourism focuses improperly only on the Makah reservation, not surrounding Clallam County. While the DEIS states that there is ~no evidence that calls for boycotts of Olympic Peninsula tourism had any negative economic impact on tourism in the area", locals believe there were economic impacts and the 2005 Scoping Report acknowledged the many comments about the need to analyze the effects of whale hunting on regional socioeconomics and tourism. While Parametrix serves Itself best by downplaying the current regional, US, and worldwide public perception about whaling, there should be no question that the reaction will affect tourism and necessary support for real Makah needs. Countering its own text, the DE IS even dismisses boycotts as being probable no matter what whaling alternative is chosen. Another categorical reason this DEIS is Inadequate, biased and flawed, contains comments that appear to be misleading, arbitrary and capricious, and does not satisfy requirements of the NEPA includes NOAA's failure to make public material relevant to the DE IS. For example, CSI is not aware of any public release of the agency investigation into the September, 2007 illegal whaling event. We are aware that several people have tried and failed to see it. A review of that investigation is mandatory for an adequate review of the DEIS,

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	because the event and aftermath demonstrate several fundamental reasons why permitted Makah whaling will be akin to letting an uncontrollable genie out of the bottle. The fundamental DEIS pretense that permitted Makah whaling can be effectively regulated was destroyed by the illegal whaling event. In brief, four men avoided all pretext of cultural whaling, subsistence need, and humane methods to try to kill a whale simply because they wanted to. Itis inconceivable that, within the insular and small Makah community, the Makah leadership and enforcers were not aware of or alert to the potential whaling. If they truly were unaware then they are inadequate to the responsibilities implied in the OEIS. However, additional evidence suggests that Makah Tribe officials were aware of the impending and illegal hunt in September, 2007, in addition to one convicted whaler's court testimony to that effect. Whether or not Makah authorities were aware, the whaling event demonstrated that these authorities lack the will or capacity to constrain unpermitted whaling. The Makah Tribal Court, for another example, is unable or unwilling to enforce the law. The Court had initial jurisdiction over the event, and in bringing the whalers to trial declared that the defendants would face punishment on tribal charges, to the fullest extent of the taw, of a year in the Neah Bay jail, $5,000 fines and temporary suspension of their treaty right to hunt and fish. However, after considerable trouble empane11ing a jury. tribal judge Stanley Myers agreed to waive any punishment and drop all tribal charges against the whalers in return for a year's good behavior. Myers was dismissed later. The DEIS and Needs Statement arguments for Tribe's ceremonial and spiritual needs were mocked by the illegal whaling, which obliterated all the forced connections between modern whaling and Makah whaling lore, tradition and social structure. It clarified that, to some Makah whalers, whaling is like any other hunting. To them the Tribe's ritualized ceremonies, and whaler crew selection, celibacy, preparation and special training in dedicated canoes is for museums, and the whole Makah hierarchy from whaling captains down to slaves is meant for the tourists. In fact, the illegal whaling demonstrated a fundamental flaw in the DEIS and Needs Statement: While many Makah may want to be proud of their heritage and history, they do not want to live as their forefathers did. This has as much to do with the demand for social equality for all Makah as US citizens as with the conveniences and comfort of modern living. Some American values have been accepted by the Makah, at least the many living in poverty, or from low-ranking families; no one wants to be a slave. The Makah who illegally whaled showed distain for the Tribe's heritage, custom, and hierarchy, and declared that they had a right to whale when and how they wished. The illegal whaling also demonstrated that the humane aspect of killing whales is not reinforced or regulated adequately in the DEIS or US policy. The DEIS expresses some concerns that any hunted whale be killed as humanely and quickly as possible, but the rogue whaling clarifies that it is not enough to require Makah whalers to be trained and proficient in the use of weapons, and it is not enough to give them adequate weapons. No one can deny that the wounded gray whale suffered unnecessarily for many hours before it finally died. One of the rogue whalers was a trained whaling captain. and the four men had the best equipment at their disposal, stolen or not. Nevertheless, their performance was so inept, despicable and ludicrous that the whale's time-to--death rivaled the worst cases the IWC is aware of. NOAA must find some way to ensure that Makah whaling does not cause undue suffering, and the OEIS must state how that will happen. The illegal whaling event adds to the evidence that the Needs Statement conclusions are not supported by evidence from the current lifestyles of the Makah, and their use of whale products over more than a decade. CSI contends that the Makah Needs Statement makes erroneous conclusions based on the assumption that the Makah really want to live the old way. To verify our contention we need to

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	review the full data set behind those conclusions, but they have not been made available to the public for review. This is another example of how NOAA has made adequate public review of the DE IS unnecessarily, perhaps illegally difficult. The DE IS ignores evidence that the Makah people were so unenthused with dealing with an actual whale carcass that the butchering was left to visitors, as related in comments by an Alaska Native whaler in a DEIS ignored video. The DEIS also ignores evidence that Makah whale meat has been improperly distributed to non-Native Americans, and even transported to Canada. In spite of the ritualized token sharing of whale meat to tribal members, many didn't like the taste, and most people seemed to have quietly thrown their token share away. To compare the Makah "need" to that of the Alaska Natives is an insult to a people living in a harsh environment where the shared meat is essential to their social values and diet, and the whalillg has never paused for hundreds of generations. The DEIS and Needs Statement do not demonstrate that the Makah need whale products for subsistence. Nor does the DEIS discuss the machinations with US policy, and the resultant affect on the US's relationship with other nations and treaty organizations, as NOAA attempted (and unfortunately succeeded) to have the IWC downgrade the definition of aboriginal subsistence to meet their goal of including the Makah. The science within the DEIS is biased. Overaltthreats to the Eastern North Pacific (ENP) gray whale population are not presented in accordance with the full spectrum of modem research. While scientists disagree on the numbers, affects and trends, the DEIS focuses mostly on the data supportive of killing whales. However, many scientists have been arguing that the ENP gray whale population may not be as recovered as NOAA wants us to think, often citing chaotic and accelerating trends towards climate change. Scientific evidence of significant pressures from pollution, collapse of habitat resources, high calf mortality, oil and seismic developments, ship traffic, and anthropogenic acoustical impacts have been minimized, while controversial data on the population's "recovery'' numbers have polarized some professionals. If NOAA is not aware that the 2008 gray whale population using San Ignacio lagoon was perhaps the lowest number in decades it is because NOM has not invested in gray whale population research since 1999, and prefers to cite references and exaggerated numbers that are dismissed by most experts. including NOAA scientists. The DEIS obviously stresses positive data so as to justify the Makah Tribe's "need" to take 840 grey whales every five years, primarily from Level A and B harassment. Within that five year period 20 whales could be killed and brought to shore, and 35 whales could be struck and lost. But the DE IS fails to emphasize that, due to the in-shore nature of the recent and intended whaling, and the documented evidence of individual whales that prefer that habitat returning year after year, there is a weighted potential for the impact from the takes to be mostly on one sub-population, not the total ENP gray whale population. To be adequate, the science must quantify the probability of repeat takes and subsequent impact on this subpopulation. This Quantification must also predict the probability that the struck and lost whales would either diet from injury or be reproductively lost to the population. In contrast, the IWC has expressed concerns for the impacts of strikes on small populations. As related in a DEIS footnote (1-23) that: "The annual quota from this feeding aggregation (Greenland bowhead) shall only become operative when the Commission has received advice from The Scientific Committee (IWC) that the strikes are unlikely to endanger the stock." Regarding CSI's concern that the Makah will primarily hunt within a subpopulation, CSI is puzzled that the DEIS doesn't do more to argue for the Alternative to "Hunt outside areas frequented by identified whales". As suggested by many, this should be more clearly labeled as a hunt offshore in the actual migratory corridor''. We assume the Makah don't want to venture as far to sea in power boats, with safety gear and escorts, as their forefathers did in unprotected canoes, but the DE IS support for April and May whaling in near-shore feeding sites as "designed to avoid any intentional harvest of gray whales that have been identified within the PCFA Survey area"

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	contradicts NOAA's concern for targeting "resident" whales and the mothers and calves. This period coincides With these whales arriving in the area. NOM knows of the public's concern for shooting "resident" whales, and harassing mothers and calves. The DEIS's dismissal of the potential for significant impacts on the public as well as on these subsets of the ENP population is simplistic and unrealistic. The DEIS is inadequate and misleading by evading full disclosure of the conflict of interest expressed by the personal relationships to the Tribe of two cited "experts". Renker, cited many times as an authority on the Makah's "need" to whale, is the wife of a Makah whaler. Sepez, cited many times as an authority on Makah culture and subsistence use of foods, has had a long-term relationship to a Makah whaler. Renker's two commissioned surveys do not prove that that Makah whaling is supported by the majority of Makah. The surveys merely found that a majority of respondents supported whaling. Only 163 of the total households responded in 2001 and only 152 responded in 2007. This correlates with an effort by a core Whaling group to quell dissent by using tactics like threatening to "banish" aged members from the Tribe. The whaling faction has so intimidated everyone that few openly speak against the hunt. If someone's honest answer will bring trouble why respond to a survey, particularly if the survey is conducted not by an objective Ph.D. but by the wife of a whaler? The DEIS and Needs Analysis cannot help being inadequate by stressing selective and potentially misleading data from the two Makah household surveys, and without discussing the social and economic pressures on Makah who are either neutral or anti-whaling. Regarding the permitted use of regulated whale meat the DEIS fails to define precisely what "inedible parts" can be distributed, what constitutes "authentic articles", and how off-reservation distribution and use of whale meat will be monitored and regulated. The definitions of acceptable sharing of meat based on "familial, social, cultural, or economically tied" categories require significant rewording to prevent wholesale illegal misuse of the meat. As written lt is full of loopholes. To be blunt, this is the type or wording that has consistently resulted in events leading to lawsuits against NMFS for failure to enforce laws, followed by NMFS's lament that such lawsuits absorb a significant amount of human and financial resources. This self-inflicted wound should not be made worse just to satisfy the Makah entrepreneurs. The discussion of potential public injury is particularly deficient in the DEIS. Not only has the overzealous Coast Guard caused unnecessary public Injury, but the OEIS seems to ignore expert testimony regarding the lethal range of the .50 caliber weapon the Makah would use. Comparative data shows alarming overlaps between the near-shore hunting the Makah have conducted and will conduct, the public use of shoreline areas for camping, the lethal range of the weapons. and the documented evidence that the whalers are not very good with their aim. CSI has commented on this DEIS in good faith, with no ill will against the Makah Tribe or its people. We feel we are correct to argue for the whales, in part because we believe that the Makah will suffer no harm by not killing whales. Many other aspects of their historic culture have adapted to the modern era: They do not keep slaves; they do not live and suffer as aboriginal people; and despite inefficient and blundering government services that leave the Tribe isolated and impoverished. the Makah do have constitutional rights and freedoms. However, the Makah have suffered harm, harm caused by the US government's continuous assertions that whaling was right and guaranteed in spite pf decades of strengthening political and public perceptions that whaling is inherently wrong. From the initial efforts of the Makah to reinvigorate their culture by whaling, coinciding with considerations for the ENP gray whale to be delisted as an Endangered Species, NOM has made every effort to assist the Makah. That effort has not always been legal, resulting in a chain of lawsuits. We have no doubt that, perhaps earlier than 1996, some misguided NOAA or BIA agents were reassuring the Makah that the

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	Tribe would go whaling with little delay. The frustration vented by some Makah last September is well understood in this context; they have been Jed into this mess by their government. The ultimate question CSI requests to see addressed in the final EIS is why the US has acted in a manner that has not only brought Native Americans into conflict with their American culture and alienated them further from the wider society, but has denigrated our nation in the eyes of the international community. Within the IWC context alone, policies driven by the contrived need to achieve Makah whaling have cost the US any claim to reliably supporting, much less leading the anti-whaling movement. At IWC 60 the US vote for Greenland whaling, the misrepresentation of the 2007 Makah whaling to the Infractions Committee, and the Chair's desperate efforts to keep the Makah whaler's sentencing from the IWC media added to a long chain of misguided efforts to make believe that Makah whaling was the same as Alaska Native whaling. It is not. The Alaska Native subsistence need has little in common with the contrived Makah cultural whaling. CSI has not opposed Alaska Native whaling, tacitly accepting that the inhumane aspects of their hunt had to be balanced against issues of community survival. By aggressively rewriting the rules to allow Makah whaling as if it were the same thing, the US has knowingly aided whaling nations seeking any form of whaling they could get away with. Many long-time observers would characterize the convoluted process to enable Makah whaling, including this DE IS. as a combination of two unlikely bedfellows: Perhaps fewer than 40 Americans who wanted to kill whales found eager support from government employees, economists and strategists concerned with larger implications from emerging treaty-right issues. This odd coalition has maneuvered the entire nation into a demeaning situation that has not served the national interest, and has polluted the nation's influence. CSI urges NOAA to attempt to fix the DE IS deficiencies with an objective, factual, reliable and legal final EIS.
Chance_05-20-08.pdf	Because of the ban on killing of Gray Wha1es, the Whales are making a comeback. During this time I have not heard of one Makah Indian dying of starvation. In fact I have any evidence that they ate the last whale they killed. A hundred and fifty years ago the Indians killed whales for subsistence. That is no longer the case for today. There is no law that I know of that stops any Indian tribe from having a song and dance for any reason. The Gray Whales are in danger from the pollution of the ocean they live in. To add hunting of the Gray Whales just puts another factor in the equation to speed up their extinction. Global Warming is going to be a factor in the Gray Whale population of the future. Now is not the time to start killing whales just to have a song and dance. Indians keep saying they are stewards of the land, well they need to prove it.
Cholvin_05-16-08.pdf	We strongly oppose allowing the Makah Tribe to resume hunting Gray Whales. The case for subsistence hunting is weak in that hardship has not been proven for all the years that they have not undertaken hunting whales. They would be seen as understanding and compassionate for the endangered, sentient Gray Whale species if the Tribe would initiate a new ceremony that does not involve killing a whale. These sensitive, intelligent Gray Whales deserve to have the right of freedom to live their lives and to feed, reproduce and roam in their sea. They can't defend their territory from encroachment and pollution, nor sign treaties. We need to protect them.
e_Abendroth_05-16-08.pdf	Hello, These are my feelings on the whale hunting of the Makah Indians.

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	The treaty we signed with this Indian tribe gave them the authority to partake in their whale hunts many years ago. It's part of their heritage. They had their one hunt and did it pretty well though there was some antics before the media which they could have done without doing. Then they were stopped in doing any whale hunting. Three years or more went by without the government coming to some conclusion and they became impatient. I can see that happening. With their impatience they proceeded to take part in an illegal whale hunt. That was not good but I can sympathize with them. It's time the government settled this business and allowed the Makah Indians a certain amount of whales a year to hunt. Enough of this dragging on this business and it's time to come to a conclusion over this matter. Settle it now and let the Makah's hunt their whales.
e_Acevedo_05-29-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Affleck_05-10-08.pdf	This is 2008, not 1808. All these special rights for Indians should be taken away from them. They were all made citizens of the USA in 1927. They have gone to the same schools as everybody else. Do away with the reservations and all there special rights. Let them get a job just like every body else.
e_Aghjayan_05-12-08.pdf	I am writing in opposition to allowing the Makah tribe to hunt whales. Federal Indian Policy is unConstitutional in that it treats one group of citizens different than another. The Indian Citizenship act of 1924 should have extinguished all treaty rights. How can you have treaties with your own citizens? Culture is not government and government is not culture. Slavery was once part of our culture. We do not allow for it today. The same should be true with whaling. I will be encouraging and supporting legal action on the basis of the above Constitutional issue should NOAA approve any whale hunt.
e_Airhart_05-11-08.pdf	STOP this stupid killing. Is this the same bunch that a few years ago killed a whale with the big, big outboard motor, and the rifles, bazookas, and whatever? What happened to the "old time" ways of trying.....to kill the whale? This is just a arrogant attention getter , at the DEAD whale's expense!!!

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	DO NOT AGREE TO THIS STUPID RESUMED KILLING OF WHALES....!
e_Allen_05-26-08.pdf	I am writing in support of the Makah tradition of whaling. Who are we to judge the traditions of this culture? These people have the good sense to take only what they need.
e_Alley_05-10-08.pdf	With all respect and honor for traditional ways of the Makah, respect and honor must be given to our present understanding of the nature and scarcity of whales.These are huge-brained mammals, and are to be accorded humane dignity and respect. Please reject every form, design, or plan for a "hunt".
e_Alumbaugh_08-15-08.pdf	Fact: The Makah's are not used to eating whale and they do not need it for their food source. Please do not allow any whaling. This is the 21st century. We cannot expect to do everything our ancestors did 100 or 200 years ago.. The Makahs had slaves during this time period. Is that next? Suggestion: Why don't they take tourists out to see the whales rather then kill them?
e_Alwood_05-12-08.pdf	I strongly object to the continuense of Makah Indian whaling and hope you'll deny current and future petitions of this barbaric activity, which only lines the pockets of Japanese fishing interests rather than Makah sustinance. I live less than 100 miles from the Makah reservation and have yet to meet a tribe member that eats any of the whale catch. The Makah's would benefit more by chartering tour trips to view these noble and intellegent creatures rather than killing them. Please do all you can to close the loop-hole that allows this process to continue.
e_Anders_05-16-08.pdf	I believe the Makah should be allowed to exercise their treaty right to whale. The MMPA and other agencies should not have precedence over the Makah's right to whale. Their treaty rights should be supported and upheld, without interference.
e_Anderson_05-15-08.pdf	Request for comment period extension
e_Anderson_08-15-08.pdf	Wrong version of comments
e_Angell_05-19-08.pdf	I write as a concerned citizen for Washington State’s wildlife and environment. While I respect the right of the Makah to request a traditional whale hunting ceremony, I believe that such a tradition is no longer relevant to present day and the importance of protecting marine mammals off our coast. A request to hunt Gray whale off Washington’s coast is license to harass and kill a threatened species, and under the marine mammal protection act of our country, this hunting option doesn’t exist. The only reason the Makah’s request is being considered is because of the history of tradition. But many cruel and excessive traditions are now outlawed—such as the trade in parts of endangered and threatened species. The exemption for the Makah’s request is absurd, and sets a dangerous precedent that tradition some how overrides conservation. Granting hunting rights to a particular group of people effectively nullifies the very laws that are set up to protect marine mammals. What good are laws if they can be overlooked on occasion? In today’s environmental reality, marine mammals need all the protection they can get by rule of law. From global warming affecting food availability to destructive fishing practices in international waters, there are many hazards faced by marine mammals such as whales. As much as we can the US should present an example to the world in stewardship of the marine life off our coasts, and work with other international agencies to strengthen protections of our ocean waters and the life within them. I do not agree that historic tradition outweighs the importance of protecting the whales that pass through our waters. Please turn down this request by the Makah.

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e_Arlen_08-07-08.pdf	I am writing to you to voice my deep concern for "once again" is happening in terms of "authorization" of the Makah Whale Hunt. To begin with I'd like to point out a few facts about this "alleged HUNT". The 1997 IWC quota granted for the hunting of gray whales explicitly required that any hunting must be undertaken by a native group that has a subsistence need. What exactly is the subsistence need of the Makah nation. There is NONE. This is the same ploy that is being used year after year after year. Japan, Canada and Norway are behind this. Financing the Makah nation to use their "subsistence treaty" to promote and eventually bring back "whaling" to the US. The Makah whale hunt does not meet (nor has it in the past) the "Definition" of "Aboriginal Subsistence Whaling" and was made explicitly clear by the member nations of the International Whaling Commission when the proposal was brought before them in 1996 and again in 1997. So we're looking at 10 years of inaffectual challenges to the NOAA by CERTAIN members of the MAKAH nation. There are Makah Nation members who also OPPOSE whaling - several Makah elders have spoken out against whaling and received threats. So the question I pose is why give permission to basically go out and slaughter a whale under "FALSE PRETENSES"? also: The continued VIOLATION of Aboriginal Subsistence Whaling guidlines at the IWC by permitting the Makah hunt is likely to cause SIGNIFICANT environmental imapcts worldwide by undermining an international whale CONSERVATION agreement. and we know that there is clear bias in favor of permitting a hunt - which is evident throughout the EA. NMFS must produce a full Environmental Impact Statement that truly takes a hard look at "ALL" the potential consequences of the Makah whaling proposal. I don't believe the information you have provided to me does that. Nor does it give reasonable grounds to substantiate the Makah Subsistence treaty proposal to hunt at this time. IMPORTANT: The Coast Guard in the past has acted out in extreme AGGRESSIVE manner towards activists in the past while PROTECTING the Makah Hunters (traveling in high power speed boats and using HIGH POWERED ASSAULT WEAPONS TO SHOOT AT WHALES). I brought this to the attention of then Vice President Al Gore as I was outraged to learn of the coast guards activities: I learned from the Sea Shepherd Conservation Society that activists boats were rammed and they the activists were INJURED by the USCG vessels as a whale was harpooned. The attack on activist's Erin Abbot's jet ski - running OVER her (she was eventually medi vacd to Olympia Memorial hospital) is just a TERRIBLE REMINDED of what is at stake here. World Whale Police Vessel too was rammed and crew member Julie Woodyer (a director of the VANCOUVER HUMANE SOCIETY) was injured. And though the USCG imposed a $250,000 fine and six years in prison for violations of 500 yd EXCLUSION ZONE around the hunter by activists attempting to prevent the killing of whales (several activists were arrested for violating the zone/ their vessels seized) NOTHING was DONE in terms of arrests to the Makah whalers for pulling out their .50 caliber rifle. It is beyond comprehension the length and determination of the USCG to ENFORCE AN ILLEGAL WHALE HUNT and help the Makah kill whales to the POINT OF INJURING ACTIVISTS on the water The US Dept. of Commerce obtained an aboriginal Gray whale quota from the IWC in 1997 but AVOIDED ruling on the Makah's eligibility to hunt under the "conditions of aboriginal subsistence whaling as determined by the IWC. The US Administrations unilateral assignment of the quota to the Makah WITHOUT the consent of the IWC constitutes a violation of INTERNATIONAL CONSERVATION LAW. As far back as JUNE 9th 2000 The US 9th Circuit Court of Appeals made a legal decision on the position of the Sea Shepherd Conservation Society (which the SSCS has maintained since 1996 that's 12 years ago) that the Makah whale hunt permitted by the US Administration did NOT meet the requirements of the National Environmental Protection Act. Congressman Jack Metcalf and other plaintiffs pursued this case until justice was done. Overall the hunt was permitted based on POLITICS - NOT ON SCIENCE. Once again the facts are: The Makah hunt DOES NOT MEET the CRITERIA ESTABLISHED by the IWC for Aboriginal Whaling: i.e.: subsistence need and continuous, unbroken tradition. The killing of a BABY GRAY WHALE off the coast of Washington in May 1999 was an INFRACTION of the International Convention for the Regulation of Whaling. THIS DANGEROUS PRECEDENT that you wish to allow will only lead to further abuses by self styled indigenous people such as the NORWEGIANS and JAPANESE who maintain the whale hunting is

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	both indigenous and traditional. and just how did the Makah nation purchase those expensive high powered speed boats? Once again this is simply the case of JAPAN, CANADA and NORWAY trying to UNDERMINE THE US's POSITION ON WHALING. I cannot and will never condone any excuse to allow any form of whaling. anytime nor anywhere.
e_Arlotta_06-20-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the DEIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider the fact that in the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death - especially when the death of the animal IS NOT NECESSARY to the SURVIVAL of the people. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over NINE hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Armon_08-15-08.pdf	The overriding issue is sovereignty & that the Makah Treaty rights supersede the Olympic Marine Sanctuary & Marine Mammal Protection Act. Having said that, the Treaties need to be renegotiated. Please do not allow hunting of females with calves or juvenile gray whales, as recent science is showing a decline in overall population, as well as estimated pre whaling population totals, that the previous threatened status was based on. Please identify "resident" gray whales, and also do not allow hunting of those individuals, as there are known "friendlies" that innocently approach humans.
e_Arnold_05-20-08.pdf	Request for comment period extension
e_Arnold_05-21-08.pdf	I just wanted to place on record that although Australians for Animals is on the the distribution list, we have not been formally advised of the DEIS and would not be aware of the Federal Register Notice or DEIS unless other groups had informed AFA.
e_Arnold_07-03-08.pdf	Australians for Animals Int. formally requests a further 30 day extension to the comment period. Given that international groups are unable to attend the three meetings and that there are no transcripts of these meetings, we are handicapped by our inability to pose questions in relation to the DEIS and to take on board questions and answers asked at the meetings. Given that the DEIS has taken three years to prepare and given the extent of the bibliography which I understand is now available on line, it does seem unreasonable to expect that groups who are deeply involved in the whaling issue can adequately respond to the DEIS in the time frame. As well, with IWC being held in the middle of the comment period, it does make for major difficulties in terms of focusing on all the relevant issues. Australians for Animals is concerned that the US refused to report the Makah kill as an infraction. Given the jail sentences handed down by the Judge the failure of the Administration to report the slaughter as an infraction is of concern. Further, the US delegation claimed that the slaughtered whale was part of the " Makah quota". This is not correct as no waiver has been issued. As a result we are engaging Counsel to investigate the actions of the Administration at IWC and the legal ramifications of misleading the IWC. Our in depth reading

COMMENTER	COMMENT
	of the DEIS reveals many major inadequacies and in order to address these omissions, we believe that an extension is justified. An objective examination af the DEIS and its omissions, combined with actions by the US delegation at IWC raise major issues which need to be addressed.
e_Arnold_07-29-08.pdf	Thanks for the responses to my group's questions. However, questions 2-7 were not answered and these are critically important issues. NMFS has an obligation to cite the legal experts on which it relies for opinions expressed in the DEIS. As well, the questions raised are at the heart of the ramifications to any waiver. I would like it place on record that these questions were not answered and the legal issues raised by my group have been ignored. In spite of your insistence that questions relating to the IWC needs to go to Cheri McCarty, the fact is that the US delegation insisted that the Makah kill last year was part of the tribe's " quota". If the US Administration is asserting in one arena that the kill last year was legitimate and at the same time calling for comments for a waiver of the MMPA to allow the Makah to kill whales then these are serious issues which need to be addressed. The public has a right to know who is right and if the Government is making these statements in international arenas and they are not correct, then the DEIS should spend a great deal more time addressing the ramifications of an international waiver or non waiver - both instruments apparently posing little problem to the Administration. As well, Australians for Animals Int. formally requests details of the NMFS annual budget for gray whale research/monitoring since 1999 and details of budget requests by NMFS for research/monitoring of eastern north pacific gray whale since l999.
e_Ashley_05-14-08a.pdf	We have 13 people in our environmental science class and have been learning about your whale debate. 9 of those people agree that it is wrong for this to be going on. They say that it is a cultural thing but they are not killing the way they used to. They used to kill the whales with knives and now they are using guns. If this is so cultural to them then why have they changed their method of killing? We just thought that we would voice our opinion and hope that you will take it into account.
e_Ashley_05-14-08b.pdf	The traditional hunting practices of the Makah tribe of Native Americans in the Northwest are an integral component to Makah culture, and as proposed by the Makah people, an integral factor in the physical and emotional health of the tribe. After an extensive research project, the Environmental Science classes at Fort Worth Christian School feel overwhelmingly that the government cannot justify, either morally or legally, the denial of the Makahs' right to sustain their cultural tradition of whale hunting. As a country that supposedly guarantees the free exercise of religion in addition to the pursuit of happiness, the responsibility for allowing the continuation of this cultural practice falls on the United States governmental body. The ruling in favor of the hunt as established by the Treaty of Neah Bay in 1855 is further legal support for the Makahs' claim. The support for the Makahs, both legally and morally, is undeniably clear. These are a people who seek their constitutionally guaranteed right to cultural pride through the re-instigation of an ancient and low impact practice that will ultimately have benefits for the tribe and for this country.
e_Barclay_05-12-08.pdf	As there are only two places to hear and give public comment, Port Angles and Seattle and neither are close enough to attend , Here goes. The Makah hunters broke Federal Law. The tribe did not do anything to take action against these individuals, and neither did the Government. They got a plea bargain. I bet that as a white Caucasian if I were to did some clams on a beach on tribal land , I would not be offered a plea bargain. The rest of the world does not do any whaling, with the exception of Japan, and they do it under the umbrella of Research. The International community knows this and the International Whaling commission knows this , and they know that this action is not right, and yet Japan continues on. What a crock of crap.

COMMENTER	COMMENT
	The Makahs need to come into the twenty first century. The tribe will not use these whales. Not one of the tribe will forgo a Mc Burger or a Whopper for some tasty whale blubber. Thus we have a slaughter of a whale for no good reason, treaty or not. If the whale was the only thing to eat to stave off starvation, then yes go ahead and hunt one. But no one in that tribe is starving. The actions of five individuals brought disgrace to the rest of the tribe. I myself know and fish alongside a Makah. He buys his license and obeys the laws set forth by the Dept of fish and wildlife.He is welcome anywhere on the river. He himself does not agree with the actions of these individuals, nor the tribal council. The tribe should not be given the permit to whale.
e_Basile_05-16-08.pdf	I am writing to express my opinion that the Makah, under guidance from their elders, be allowed to resume limited hunting of eastern north Pacific gray whales in the coastal portion of the Tribe's usual and accustomed fishing grounds, off the coast of Washington State, for ceremonial and subsistence purposes. Their traditions should be respected. It is not Indigenous ways that caused the problem. It is commercial whaling. Commercial whaling should be banned worldwide.
e_Bauman_05-10-08.pdf	This question of "cultural relativism" should also include the culture of the whales. I respect all cultures up to the point of doing harm to others and there is no justification for the Makah to kill whales other than to revive a cultural tradition which is harmful to others (whales). Killing or otherwise harming others to continue an outdated cultural tradition is wrong and does not belong in the 21st century. Other cultures have abandoned unsavory practices in their own traditions and I think it is time for the Makah to abandon this violent, macho one.
e_Beck_05-12-08.pdf	Please do not allow the Makahs to start whaling again. It's an old tradition which was necessary for food at one point. They do not have that need anymore. They say it's part of their tradition. There are a lot of things that are other American traditions that are not current anymore. They need to move on and not base their lives on killing a beautiful animal. They need to grow up and find other "traditions".
e_Beck_08-15-08a.pdf	I recommend the “no-action” alternative in the Makah DEIS. Here is why: —Parametrix, the firm hired to prepare the DEIS, has been employed by the Makah Tribe. This is a blatant conflict of interest and renders all the “science” and “facts” presented in the DEIS to be untrustworthy. —Whaling will disrupt the Gray whales’ migration and feeding patterns. The whales are already stressed by dead zones and algae blooms, as well as naval activities. The whales’ response to harassment makes them vulnerable to starvation and reduces reproduction. —The number of vessels and aircraft proposed in the whaling event is untenable. Tourist water craft is minuscule by comparison, and does not tax the whales. —Whaling on the Strait of Juan de Fuca would be dangerous and disrupting for those who live near or along the strait. —The resident population of Gray Whales are used to tourists, kayakers, and sightseers. These folks know the protocol of whale watching. The whales have grown to trust tourists and their patterns of feeding are not disrupted. All this would change with whaling. The whales would be passive targets. —Whaling, as proposed by the Makah, is a smokescreen for the tribe’s true intent: commercial whaling of Humpbacked whales. —The figure of 93 percent of Makah want whaling, is not true. Many Makah oppose whaling. Their voices were not represented in the DEIS. —The Makah tribe has spent $675,000 on the pursuit of whaling between 2003 and 2007. This money could be spent on education, jobs, drug rehabilitation , care for the elderly, housing, and tourism ventures. I also endorse the comments of Peninsula Citizens for the Protection of Whales.

COMMENTER	COMMENT
e_Beck_08-15-08b.pdf	[Duplicate of previous]
e_Becker_06-23-08.pdf	NO WHAILING!!! The native American are supposed to be such kind and caring people but they dropped the ball on this.
e_Bird_05-30-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: in the 21st Century, no human being needs whale meat to survive - including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable - for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty. Thank you for taking the time to read this submission.
e_Bishop_05-09-08.pdf	On the subject of Makah whaling my opinion is of course they should be able to do it but they should be required to do it in the ancient manner with no power boats, no rifles, and no modern technology and they should be required to do any ancient whaling ceremony they used to do. None of this whaling with modern weapons. It would also enrich the community if they did it the old way with the old ceremonies. It was a spiritual thing I think.
e_Blanchard_05-29-08.pdf	Stop screwing with the tribe and let them have their treaty rights. They have been more than patient with the so-called environmental bureaucracy. Typical white man selfishness and controlling.
e_Boggs_06-03-08.pdf	I have great respect for the whaling traditions of the Makah tribe in Neah Bay, but I feel at this time it is more important to protect the lives and well-being of the gray whales. First, I think whaling should not be allowed at all. We can't regulate the actions of, for instance, Japan, but we can show the world the U.S. is serious about banning whale hunting. The Makah's hunting methods seem to be rather cruel and cause extended suffering to the animals. I know there are Makah tribal members who have called for an end to whale hunting. Second, however, I think the U.S. needs to make more of an effort to provide the Makah with alternate means of making a living. If the Makah could live a decent life and support their children, maybe they could limit their traditions to the arts, and leave the actual killing of whales in the past. I know you can't do anything about the second problem, but please consider an end to whaling in the U.S. that might provide hope to the Makah.

Attachment 2

COMMENTER	COMMENT
e_Bolbol_06-29-08.pdf	As a U.S. citizen I strong oppose allowing any killing of whales; I oppose allowing the Makah tribe to kill any whales. If needed, financial compensation should be given to the Makah tribe to permanently eliminate any whaling provisions in any ancient treaty. The killing or harassment of marine mammal is a clear violation of the Marine Mammal Act and the law must apply to all; no one should be exempt from this federal law. The National Marine Fisheries Service is mandated to protect marine mammals and it must do its job and stop the Makah from ever again killing a whale.
e_Boyd_05-10-08.pdf	Concerning the whale hunt that the Makah tribe is proposing. This is crazy !! I have lived on the peninsula most of my 65 years, and have lived around and gone to school with the tribe members, they have no more right to hunt whales than I do. In fact with my European heritage, I probably have MORE rights to the whales, seeing that my ancestors were here long before the indians. Sounds nuts doesn't it ?? I am making the point that reviving an age old heritage is something few Makah's give a damn about, and the few that do, are driven by getting there name and pictures in the paper more than reviving history. It is a damn shame that a whale has to die in order to give bragging rights, at the tavern, (not wigwam) to a few that have nothing to contribute to there tribe or our community other than a dead whale that no one eats !! Guaranteed, if no newspaper covered the event, it would stop in a few months. If all reason goes away in this endeavor, at LEAST make the hunt proceed as in the 1800's with hand made weapons and dug out canoes - not with 200 horse power out boards and 50 caliber rifles - If they are sincere in there endeavor to relive the hunts of there ancestors- make them do it in the manner of there ancestors - Guaranteed !! If this were to happen, there would be no further discussion of this matter.
e_Branchflower_05-11-08.pdf	I object strenuously to the the sacrifice of whales for tribal ceremonies. Whales are endangered creatures and could soon become extinct if this is allowed to continue. All creatures feel pain and do not deserve to be tortured and slain.
e_Brandon_05-13-08.pdf	I am writing to let you know that I am opposed to whaling, period. I generally support indigenous rights, including fishing and hunting rights, but whales are the exception. Even a species of whale that is bouncing back still deserves protection. The inhumane whale hunt that was conducted a few years ago when the Makah first asserted their right to begin hunting whales again was just too horrific to bear. They didn’t just kill that whale; they tortured it. Perhaps this was not by deliberate design, but that was the result. Such cruelty cannot be permitted to continue.
e_Brown_05-10-08.pdf	Would it be possible to receive a paper copy of the Makah whale Draft EIS by mail? I live in the country and have slower download speed, so it is very inconvenient to read the document on the internet. I am with the Enduring Legacies Project, at the Evergreen State College, in Olympia, WA and have written a case study for this project on Makah whaling.
e_Brown_06-29-08.pdf	While I do not like the killing of whales, I strongly disagree with the mentality that the government thinks they OWN the whales, or that they somehow have the Gog given right to decide who harvests whales and when they do it. The Neah Bay treaty from the 1800's CLEARLY states that the tribe may hunt whales. Our government reps signed this treaty. Stop violating the constitution and legal agreements and let them go whaling. It was a CONTRACT. This is another case of the gov beating up on the little guy. You should go stop the Japs from killing thousands of whales in the name of research if you are not the fraud that this issue makes you look like.
e_Brown_08-13-08.pdf	The gray whale quota for the Makah should be zero. There is no more justification for hunting these whales by the Makah than there is for countries such as Japan, Norway, Iceland etc. to hunt whales for 'scientific research'. By illegally killing a gray whale last summer and letting the body sink to the bottom of the strait to rot, the Makah have shown complete disregard for laws, rules and regulations.
e_Browne_05-10-08a.pdf	I am OPPOSED to Makah whaling and would like to see the Makah's right to whaling permanently REVOKED for the following reasons:

COMMENTER	COMMENT
	~ The infamous Makah 5 have not only shown no remorse for illegally killing a Gray whale, but have bragged about their actions; saying they have the right to kill any whale, anywhere at anytime. They continue to go unpunished by the authorities for this conduct and have been REWARDED, by not having their whaling rights permanently forfeited.They have also made it known, publicly, that the Makah would be willing to enter into a lucrative deal with the Japanese to sell whale meat...a clear violation of their 1855 treaty and of the IWC's moratorium on the sale of cetacean products. ~ U.S. taxpayers subsidize the Gray whale 'hunt'---not the Makah; as such, U.S. citizens should have the final say in the whaling debate. Over 5 million dollars has been spent to date on whaling, with the Makah continuing to petition their 'favorite' Congressional contacts for more funds. Their latest request? A ship which would cost taxpayers ONE MILLION DOLLARS. ~ CONGRESSIONAL BRIBES PROMPT CONTINUED MAKAH SUPPORT. Former California Republican Representative Richard Pombo received $221,000 + from tribes. In return, he pushed through a resolution which calls the waiver process required by the National Marine Fisheries Service "burdensome, costly and tantamount to a denial of the [Makah] tribe's treaty rights." The resolution went on to urge Congress to express "its disapproval of the abrogation of the tribe's treaty rights, and that the government of the United States should uphold the treaty rights of the Makah Tribe." Pombo ranked third among all House members in terms of tribal donations. ~ The Makah have been REFUSED PERMISSION TO WHALE by the International Whaling Commission. They were denied because they do not fit the criteria for either 'cultural' or 'subsistence' whaling. The Makah circumvented the IWC's denial by using the political clout of then head of NOAA, D. James Baker, who brokered a back-room deal with the Russians which allowed the Makah to take a portion of the Russian Gray whale subsistence quota. The IWC, to this day, has NEVER given permission to the Makah to whale...IWC guidelines supercede Makah treaty whaling rights. ~ As a signatory of the International Whaling Commission's moratorium on whaling, the U.S. is breaking its own anti-whaling agreement and international law by allowing the Makah to continue whaling. ~ Gray whales were removed from the Endangered Species List due to the political wrangling of the Makah--NOT VALID SCIENTIFIC STUDIES. Scientists, who believe Gray whale populations are at an historical all-time low, have observed decreasing numbers each year and have serious concerns about their health. Large numbers of gray whales have recently been discovered suffering from starvation. http://www.eurekale rt.org/pub_ releases/ 2007-09/s- gwa090407. Php ~ Several elders within the Makah tribe are AGAINST whaling and in favor of WHALE WATCHING to bring income into Makah coffers. Their voices should be heard. This is their appeal: The whale hunt issue has never been brought to the [Makah] people to inform them, and there is no spiritual training going on. We believe they, the [Makah] Council, will just shoot the whale, and we think the word "subsistence" is the wrong thing to say when our people haven't used or had whale meat/blubber since the early 1900's. For these reasons we believe the hunt is only for the money. They can't say "Traditional, Spiritual and for Subsistence" in the same breath when no training is going on, just talk. Whale watching is an alternative we support. ~ The Makah Treaty of 1855; [specifically Article 4, which allows the tribe to whale], is a 152 year old document; one which pre-dates the AMERICAN CIVIL WAR BY 6 YEARS, and is therefore no longer relevant in a world where cetaceans now face overwhelming threats to their survival due to global warming, overfishing, ship strikes, sonar disturbances, pollution and disease. Slow reproductive rates and an unacceptably prolonged and cruel manner of slaughter dictate that cetaceans should be spared whaling in ANY form. ~ Makah cousins, members of the Maa-nulth First Nations, who reside on the Western shores of Vancouver Island have signed an agreement with the Canadian government in which they will honor a 25 year moratorium of their whaling rights. In return, they were given generous concessions of land and cash. If the Makah are genuinely interested in "honoring" whales, they must be committed to allowing them to

COMMENTER	COMMENT
	live in peace and safety; while helping improve the quality of life for ALL Makah--not just the privileged few who never allow the majority a voice. The entire Makah tribe should be given a vote on what types of concessions they would want in lieu of forfeiting whaling.
e_Buazard_05-29-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Bumrungsap_05-13-08.pdf	Please make a decision not to resume limited hunting of eastern north Pacific gray whales in the coastal portion of the Tribe's usual and accustomed fishing grounds. Various alternatives are still unacceptable because whale hunt is unnecessary and cruel. Please make the right decision by not allowing the whale hunt.
e_Bumrungsap_06-14-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.

COMMENTER	COMMENT
e_Burke_05-12-08.pdf	I believe the last time they killed a whale, legally, most of it's flesh was left to rot on the beach. My friends who live out that way, said they couldn't pay people to eat the blubber. I'm all for Indian rights as long as we remain back in time during the 17 and 1800's when the treaties were signed. But the world has changed since then. Those treaties might be applicable if whales and salmon were at the same population levels they were or even at the levels of 20 years ago. No outdated treaty should have precedence when those fisheries are now close to levels that go below the species threshold of genetic sustainability. For some of our waters, that genetic sustainability has already disappeared with the fish. What amazes me is that wasting a whale seems to be systemic. The Makah had a by catch of 5000 Chinook. That didn't seem to bother them that much either. I would argue that when those treaties were signed, fish and whale were bountiful. Now, because of hatcheries, no fish is even remotely the same as 300 hundred years ago. And the whale and the fisheries that do have a good genetic pool left to work from are at levels that will not sustain any population growth. Populations may be dropping faster now because of genetic inferiority, not climate change. Climate change has always been around and yet they survived. Genetics is important. Just look at what happened when the Bush administration tried to have hatchery fish counted as part of the wild fish population saying they were the same. Turns out it isn't true. They are not the same. So lets go with that decision. Then that means the fish and whale that are mentioned in those treaties are not the same fish genetically as when they were signed. The treaties should be null and void. Everything should be null and void when we are at risk for losing all of our original fisheries and are this close to extinction. The only fix is to shut down all fishing (whales or their food sources), from Nome to San Diego. Tribal, commercial and sport. When I say that, it pains me to think I may never fly fish again in my favorite river. But at least I'm not just thinking of myself and leaving rotting flesh on the beach. It would be for the greater good.
e_Burlingham_06-15-08.pdf	I'm fully in support of the Makah to maintain their treaty rights to whaling. I believe the environmental impact would be much less significant than the harm to the Makah themselves, as a people and as a nation. We (the US) agreed to the Makah's right to whale when negotiating with the tribe many years ago. We need to stand by our word. I know the US government didn't always (ever?) negotiate tribal treaties in good faith, but if we see and think more clearly now and have the integrity that our ancestors lacked, we need to make good on their words and agreements. Though I'm a Seattle resident, I grew up in a small town in New York state on a dairy farm. Many of my schoolmates or neighbors relied on hunted food for their meals. In my family, we relied on food grown in our large garden to supplement many of our meals. It wasn't a rich area. I'm comfortable with the need of some to keep food on the table and maintain a cultural heritage by taking the lives of animals. On the first day of deer hunting season, my town's school hallways were cleared out because so many kids went hunting with their families that day. That, too, is the sign of a cultural practice that receives very little notice or attention despite a similar focus on killing animals. I trust the Makah tribe to hunt in a respectful and harmonious way, notwithstanding the actions of some of their members in recent months. Every community has those who act outside community expectation and the law. The tribe as a whole has condemned the actions of a few. I believe the tribe's method of hunting would be law-abiding--tribal, US federal, and international law--and in keeping with cultural practice and maintaining environmental balance. The tribe has waited years for the results of this environmental impact statement and as a group has not hunted during that time. They have followed procedure, waiting for permission to continue a practice that is already their right. It's time for us, the US, to honor our commitment to our neighbors and "allow" what isn't truly ours to give, but what we have chosen to make ours to take away--the right to maintain and transmit to one's children the cultural practices and values of one's people.

COMMENTER	COMMENT
	Thank you for making the opportunity to comment on this process. I look forward to the day when the Makah are given the go-ahead to choose to hunt or not to hunt as they see fit. It should be the tribe's decision, not ours as US citizens.
e_Bush_06-20-08.pdf	I oppose the whaling hunt by the the Makah tribe. In considering the cold, and careless shooting of the Gray last year, as well as the botched and ill-planned hunt in 1999, I can't see any continuity of the ancestral spiritual traditions of an ancient people. This is a different world from 300 years ago and we can't go back to that age of balance and abundance. Its time for all of Humankind to create a CULTURE OF RESPECT and reverence towards the creatures we live amongst. Without it, we won't survive.
e_Bushnell_06-27-08.pdf	I urge that the Makah Tribe not be allowed to kill whales. Having such an outdated loophole in whale protection on the books calls for it to be revoked. The Makah certainly do not need to kill whales for food in these modern times. Nor should they be allowed to indulge in a destructive and ecologically unjustified practice for "old times sake." The Makah Tribe should definitely receive respect and fairness as a cultural entity, but they should not be allowed to continue the very cruel and harmful practice of killing whales. I am surprised that as native people they do not end this bad practice themselves.
e_Buslot_05-29-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter.. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Butts_05-10-08.pdf	I am not in favor of permitting the whale hunt. Whale population figures are only estimates based on meager data. Whales are also very sensitive to environmental changes; many of which could have a significant impact on the whale population in a very short period of time. Until we know that the species is plentiful and their environment stable, I do not believe it prudent to allow any activity that would diminish or stress the population.
e_Calvert_05-10-08	Request for comment period extension
e_Case_06-03-08a	If the Makah insist on maintaining their traditional "rights" to whaling, then let it be done in the traditional way with the traditional equipment. Tradition cannot be maintained using modern equipment such as power boats and power harpoons and guns. That would be using an anachronism to create a travesty of tradition. The most recent example of this resulted in 9 hours of suffering for the whale with complete loss of the animal. If people insist on tradition, then let them abide by it completely.

COMMENTER	COMMENT
e_Case_06-03-08b	If some of the whales in the oceans "belong" to people who want to destroy them, then it stands to reason that some of those whales also "belong" to people who do not want them killed. Aren't the whale killers destroying the property of the whale preservers, and isn't that illegal?
e_Chemes_06-02-08	I implore you not to allow any limited hunting of eastern north Pacific gray whales. These whales deserve protection and a peaceful life and there is no reason to hunt them when there are other resources available.
e_Christensen_05-12-08	I believe the Makah tribe should be allowed to hunt grey whales as the treaty stipulates, with the folowing parameters: 1, No motorized vessels allowed..only handmade canoes of the type and size used in 1855. canoes must be paddled all the way from village...no motorized transport to whales allowed. 2. Use only handmade spears in the hunt..no metal spear points allowed. No explosives. 3. No firearms allowed in the hunt. 4. No electronic communication devices allowed. In summary, all hunts would only use methods and equipment in use in 1855.
e_Christensen_05-14-08	As a US citizen and resident of WA state, I urge you to uphold the Marine Mammal Protection Act and to proceed with the "no-action" option in regards to the Makah's application to hunt gray whales. I understand what a delicate issue this is, and in general, believe that treaties with our Native American tribes should be upheld. In this particular instance, I feel that the needs of the whales, whose numbers have already been greatly diminished by human activity, should supersede the desire of the tribe to hunt. Truly, there is no subsistence need to hunt whales. Plenty of nourishing food is available here in Washington state. As for cultural needs, I believe that cultures must find ways to bring their people together, but that those activities also must evolve with the changes in our society's values and our environment's needs. Dog fighting, polygamous marriage, slavery, female genital mutilation, "honor" killings, and many other offensive but culturally binding activities have all been popular at one time and now are no longer acceptable to our people. I believe that the hunting of whales also falls into this category. In order for whales to survive as a species, those cultures, such as the Norwegians, Japanese and Makah, who have important history as whale hunters need to redefine themselves. While I don't want to reduce this dilemma to a simplistic answer, perhaps there is something to be learned from the gradual transition of safari hunting to photo-safaris as people begin to understand the devastation that hunting wreaks on game animals and their habitats in Africa.
e_Christiansen_05-09-08	After looking up the definition of an Environmental Impact Statement I would have to be commenting on the social implications of the Makah being allowed to hunt grey whales. Firstly, let me point out that this treaty was signed in 1855 before the end of slavery and well before much global awareness. What if southern plantation owners tried to assert a right to an economic and 'cultural' return to 1855. The very thought is repugnant. At one time cowboys shot buffalo from trains, women were denied the vote, blacks were segragated; just because a practice is part of our 'heritage' does not mean it has value by todays standards. We know that grey whales are not only intelligent but have been known to fight for their survival. With a modern understanding of these marine mammals I am repulsed that the Makah would claim a right to kill them, for any reason. What social implications and legal rights will this impart on other tribes who assert similar claims to do things based on 'heritage' or sovereignty? How much social strife will be caused in a State where the environment and all of its life are held dear? The federal

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	government needs to send the message now...that even sovereign native peoples must abide by US law, move forward into the 21st century, and sometimes only teach their children about things they once practiced.
e_Churchill_05-14-08	Things have changed considerably since the Treaty of 1855. Leave the whales alone. There are many people whose ancestors had certain habits. I, for instance, do not feel the need to paint my face blue and run around pillaging and killing in order to feel a closeness with my heritage. If permission to kill the whales is granted, it should be done in boats without motors and with only harpoons for the kill (no guns) as it was done in 1855.
e_CinderQH_05-12-08	Please do not allow the Makah or any other tribe or group to kill whales. Some traditions are to be respected (and some are not) and while this may have been a respected way to support a tribe in the past and to celebrate rituals, all societies must grow and change with the movement of time. The whales belong to all of us, and survive in familial groups. Even taking just a few individuals affects genetic diversity and the continuity of survival knowledge (yes, this is passed on from generation to generation in whales, bears, and other higher mammals). My first degree was in resource management and studies in ecology, zoology, and biology and my appeal is based on science as well as a collective sense of loss when these animals are taken. We all must make sacrifices today to retain a healthy world to live in....and some things that are incalculable today may be essential tomorrow.
e_Clark_05-29-08	No tribal custom can be justified if it causes the suffering and death of any sentient creature. The Makah do not *need* the whale, they only *want* it. Enough said.
e_Coffey_05-11-08	I read a lot about this issue and must voice my opinion at this time. If the tribes want ancestral hunting rights they should have them, but they should be required to hunt the way there ancestors did. They should be required to paddle out with paddles made like their ancestral paddles, in dugout canoes made like their ancestral canoes and use wooden spears like their ancestors did. Then they can tow the animal back to the beach with their paddles and canoes and use the materials only for themselves, they should not be allowed to sell any part of the animal or make any kind of profit from the hunt or the animal products. After all, they want the right for religious reasons, correct? If these people have to do the things their ancestors did, the way their ancestors did, they may not be so inclined. To me this just looks like another scheme for profit. The native peoples hunted these animals for sustenance, not for pleasure. The religious part was in thanks for the bounty not for the hunt. If there had been an easier way for these people to survive they would have taken it. If they want ancestral hunting rights for the correct reasons they should have them, but only using the methods used before white mans contributions.
e_Collins_05-28-08	There are millions of people all over the world who care deeply about animal welfare and who are regularly alerted to issues such as this, and will be watching closely to see what decision you make. In the 21st century, there is no justification for this primeval barbarity being inflicted on living creatures, and it is the responsibility of all civilised people to put a stop to it. You cannot allow whales to be butchered and bleed to death in agony over several hours, so for God's sake do the decent thing and outlaw this.
e_Conlan_06-22-08	I can understand the importance of whale hunting to the Makah people. It was a high honor to be selected for the whale hunts, by the Makah; and part of their tradition. IF they want to continue the tradition, then the hunt should be by traditional methods; row boats and spears - NOT using today's technology.

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e_Cooper_05-10-08	The Makahs have treaty rights to take whales. I would hope the general public, the federal and state governments will leave them alone to exercise provisions of their treaty as they see fit. They are wonderful people and have been mistreated by all in the past. Now lets leave them alone.
e_Cooper_05-11-08	Read about this in the P.I. paper and would like to say that I don't think they should be alloqwed to hunt whales, or any one else for that matter. Times have changed, and we should really look at absolving these treaties, many other treaties that the U.S. Govement have signed have been updated thru time.
e_Cope_05-09-08	Thank you for taking public comment on this issue. I do not agree with upholding the Makah tribes treaty rights to hunt grey whales off Washington coast.There needs to be significant penalties imposed on the tribe following the non sanctioned hunt last fall. I do not believe that no jail time is an ok exchange for a guilty plea. Especially when the whale they hunted suffered for ten hours. I understand that the guidelines provided to the tribe are in place to prevent the suffering of the whales during the hunt. But if you watched the hunt, like I did in 1999 you cannot say that the grey did not suffer. If the tribe feels so strongly that they need to preserve their ancestry, then they need to hunt like their ancestors. Paddle out, use a harpoon and then paddle back in towing the whale back to shore using their own strength and determination. I don't believe their ancestors used power boats to tow their kill back to shore. And if someone is injured or killed during the process it was their decision to be there and take part. Lastly I hope there is a significant look at how this will impact the whale population and environment. When our environment is facing challenges already, and those environmental issues will eventually affect the health and preservation of this species. Shouldn't we do all we can to maintain and preserve the current population of grey's.
e_Cowles_05-10-08	The Indian tribe says it is in it's heritage to be whalers. let them be whalers like their ancestors let the row a canoe, that has been built by hand, and use harpoons, thrown by hands, just like their great ancestors. IF they insist on using modern technologies, high powered boats and 50 caliber rifles to do this manly killing of innocent and limited species, then they need to abandon their centuries old claims of treaties that were signed long ago before the modern weapons were available. Hunting for ego has long been a problem for the animals that were here long before mankind and their new and improved ways of killing.
e_Crandall_05-15-08	Pay the $20 fine. Who needs a permit. Why bother.
e_Creager_05-12-08	Honor the 1855 treaty with the Makah's reserved right to take whales as they need for their purposes before any other whaling within the US jurisdiction is allowed… for many reasons, one being that this would be the easiest to uphold before the Supreme Court if the issue was before it for review.
e_Crone_05-10-08	I see no reason to hunt whales in this day and age. My input is-NO HUNT.
e_Cubala_05-30-08	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As

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	you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Curet_05-10-08	I would suggest that if the Makahs are extended the right to hunt whales they should be limited to hunt with facsimiles of the same equipment of the forefathers - not modern equipment.
e_Daisy_08-15-08.pdf	I am totally against whaling...the chase is a horrific experience for the animals, and many will be chased , injured and not caught. In this day and age, it is time to let go of the past "traditions", and teach a new generation respect for the whales.(for people who talk like nature is so dear to them, it appears the Whales are not so dear to them.) They plainly do not need the Whales for food. The government.gives money to every tribe, (I believe the Queets get 65 separate grants,) much of it doled out by the "chiefs" and is misspent. Between the handouts, and any employment some may have, they have as much or more money for " meat and fish" than the average person I know. Besides that, they get the bulk of " everybody s" fish to resale. They also have their own free dental, medical, and mental health clinics, plus they can use any of the "white mans" too. These tribesmen need to grow up , and quit the wasting of Whales lives.Most of us have had to give up traditions we had, and have become a intermingled part of our nation. Remember when one of the tribes claimed the spirit of one of their grandfathers was in a particular whale? Well maybe I think my grandfather, and fathers spirit are in some of those whales. They need to consider my feelings too. Its time to stop this chasing/ killing of our Whales, who, think the boats and humans are friends.
e_DannyMan_08-15-08.pdf	You do not need the Grey Whale to survive. I respect your traditions but accept that the day of hunting Whales should be long over. You want to bring shame to your tribe then you go ahead. Bad spirit will come your way,mark my words.
e_Daveys_07-29-08.pdf	We are totally against any more killing of the gray whales by the Makah tribe. The last whale was killed and then slowly sang to the bottom of the ocean, not even using the whale meat. It was a disgrace! We need to save these magnificent creatures instead of harpooning them and making them suffer, for no apparent reason. It's been proved time and time again, how much whales communicate with one another and how they raise families. To kill one of this beautiful animals for the sake of the hunt is horrible. The Makah have plenty of other traditions that they can continue without depleting the Gray Whale population!
e_Davidson_05-11-08.pdf	I am opposed to Grey Whale hunting by anyone off the Washington Coast.
e_Davis_05-10-08.pdf	The treaty rights of the Makah tribe to hunt whales in their usual and accustomed grounds is law. Public opinion can’t change a treaty. While affirming Makah treaty rights, in the interests of the environment and the survival of the whale population, I would prefer that the Makah tribe and its members forego their legal right to actually hunt and kill whales.
e_Davis_05-12-08.pdf	I am a lifelong resident of Seattle. I want to go on record as strongly OPPOSING ANY whale hunts/killing whatsoever, NONE ! Why? Because a native american cultural/historical past of whale hunting does not give them any more given right to kill than validifying sacrificing young maidens to volcano gods (which also done in the past) The purpose of knowledge, science and education is to use it. The past is over and whale hunting should absolutely not be taking place. Native american culture can be, and should be, maintained but within what they know now too: whales are very cognizant , peaceful life forms that must be protected.

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	I was completely disgusted at the (fairly) recent whale murders by apparently self-righteous native american killers. Disgusted!! Absolutely NO !!!! to killing whales.....no valid reason ... not acceptable.... NO !!!!
e_Decjme_08-14-08.pdf	Any and all whaling should be denied.
e_Dell-Bryan_05-18-08.pdf	It was with absolute shock and horror that I read of the cruelty towards an endangered gray whale that Makah people seem to find acceptable. This beautiful whale took an agonizing 10 hours to die! Worse still, its body has yet to be recovered. Those who waste our ocean's resources are not only perpetrating a crime against some of the most magnificent animals on earth, they are creating a generation inured to cruelty. It is difficult for civilized countries to imagine such barbarity towards endangered species of whales. Perhaps you are unaware of how they cry with pain. These are primitive and savage acts that reflect badly on the Makah tribe and United States' citizens. Your country can impact the fate of the world's endangered whales. It would be unconscionable to support a tribe of people who displayed so little compassion to those who are weak or have no voice. It is time that people were educated to realize that animals feel pain and fear. Only the very basest of human beings are incapable of recognizing this. I hope that there are educated and compassionate people in your country who will work towards making life more tolerable for whales and dolphins. Many of these animals face extinction due to hunting. It is time to permanently stop the very cruel, barbaric and horrifying whaling industry. It is time to criminally prosecute anyone who persists in whaling. This would give your country considerably more respect in the eyes of the civilized world.
e_Diane_05-21-08a.pdf	I WANT TO EXPRESS MY OUTRAGE that the 5 Makah criminals WILL NOT SERVE JAIL TIME; WILL NOT BE PROSECUTED BY THEIR OWN TRIBE or anyone else, and will be FINED--20 BUCKS A PIECE!!!!!!! for murder--THEY MUST NOT BE REWARDED by being allowed to continue whaling!! $20.00...the extent of justice; of punishment, for the murder of an innocent being which suffered for more than 10 HOURS!! before slipping beneath the waves. OBSCENE, DISGUSTING AND A MONSTROUS TRAVESTY, please don't allow NOAA, the justice system and the Makah to get away with it!!!
e_Diane_05-21-08c.pdf	I am petitioning NOAA; asking that the agency permanently STRIP Makah whaling rights for the following reasons: A) The Makah Treaty of 1855; [specifically Article 4, which allows the tribe to whale], is a 152 year old document; one which pre-dates the AMERICAN CIVIL WAR BY 6 YEARS, and is therefore no longer relevant; anymore than the past tradition of slavery, WHICH THE MAKAH TRIBE FORFEITED WHEN SIGNING THIS TREATY. That's right folks, the Makah owned slaves!! B) The Makah claim of 'subsistence' whaling [under the International Whaling Commission's criteria] is obviously false. You can not "subsist" on whales that your tribe has not hunted for over 70 years. C) The Makah right to whaling on a 'cultural' basis is no longer true or applicable. In the hunt of 1999 the tribe availed itself of speed boats; cell phones; Coast Guard cutters; "spotters" from helicopters; high powered rifles and machine guns to bring down their prey. The traditional long boats and spears used by their ancestors played a minor and incidental role in the kill. From a "traditional" standpoint, the methods employed were solidly 21st century...and a complete travesty of Makah ancient whaling practices. [It should also be noted that when the 1999 "hunt" was complete, the Makah people (other than a few elders who tasted one or two strips of flesh) left 99.9% of this whale's body to ROT on the beach].

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	D) Whale populations are being depleted at an alarming rate. Pollution, global warming, dwindling food sources, ship strikes, disease, sonar disturbances and rogue whaling worldwide, have all taken a devastating toll on a species capable of producing only one calf, per adult female, per year. No ONE group should be exempt from the global responsibility we ALL share for ensuring the continued survival of our whales. Scientists have recently admitted to miscalculating the 'success' of the Gray whales' return from the brink of extinction. They have observed several 'skinny' Gray whales and conclude that their food sources may be rapidly declining due to global warming. E) The Makah's cousins [and closest relatives, because the Makah Tribe has no connection to any other U.S. tribe], members of the Maa-nulth First Nations, who reside on the Western shores of Vancouver Island have signed an agreement with the Canadian government in which they will honor a 25 year moratorium of their whaling rights. In return, they were given generous concessions of land and cash. If the Makah are genuinely interested in "honoring" whales, they must be committed to allowing them to live in peace and safety; while helping improve the quality of life for all Makah by increasing financial and educational opportunities for their people. At a time when the world is faced with multiple species extinction; pollution; global warming and rapidly dwindling natural resources, eliminating ALL whaling is the only ethical, moral and ecologically responsible decision to uphold.
e_Diane_05-21-08d.pdf	THE MAKAH RECENTLY RELEASED A STATEMENT SAYING THEY ARE PREPARING FOR ANOTHER 'HUNT' WITHIN THE NEXT 24 MONTHS! Since NOAA nor any other government agency has yet to give them the proper waiver necessary to continue whaling, it seems evident that the Makah know something the rest of us do not!! THIS IS THE TRIBE WHO-ACTING ALONE-HAD GRAY WHALES REMOVED FROM THE ENDANGERED SPECIES LIST!!! THE MAKAH'S ONLY REASON FOR HUNTING GRAY WHALES IS TO SELL THE WHALE MEAT TO JAPAN FOR BIG $$$!! IT HAS NOTHING TO DO WITH CULTURE OR TRADITION--ONLY GREED! IT ALSO BREAKS THEIR OWN TREATY AGREEMENT AND INTERNATIONAL LAW! A MIGHTY PUBLIC OUTCRY IS NEEDED TO COUNTERACT THIS DISGUSTING, OUTRAGEOUS FARCE OF A TRIAL AND TO CIRCUMVENT THE CORRUPT POLITICAL POWER OF THIS TRIBE. PLEASE KEEP THE PRESSURE ON UNTIL MAKAH WHALING IS HISTORY! I DEMAND THAT IN LIGHT OF THIS EXTREMELY BRAZEN AND EVIL ACT, THE MAKAH IMMEDIATELY LOSE ANY RIGHT TO CONSIDERATION OF A MMPA WAIVER; THUS CLOSING THE LEGAL OPPORTUNITY FOR FUTURE WHALING !
e_Dinesen_08-15-08.pdf	Whale hunting may be the Makah's cultural tradition but if they respected their ancestors they would realize that they only hunted for what they needed to survive. To kill whales for the sport of it or to sell to Japan is a discrace to their ancestors and their tribal heritage. What happened to the last whale they slaughtered? I heard that very few tribal members could or would eat it and that much of it rotted. This may or may not be true. So what is the real reason for killing them? Who is going to eat whale if you can go to McDonald's? If they really want to keep their cultural tradition They won't kill what they do not need to survive.
e_Dishmon_05-11-08.pdf	Hi it is my idea that if they want us to honor a treaty , then they should hunt like in the 1800s no power boats, no guns. Since time has changed so should the treaty , I say there should be no hunt. What are they gonna do with the whale? in the 1800s they used EVERY part of the whale to survive and feed there people , there not starving today. Its there right as Indian's, it a right of passage to manhood. Well what have they been doing the last 100 years or so ? Are they all children? There are 24,000 whales in the whole world, the population is stable. WHY are they gonna destabilize it now? why make the same mistakes of the past .
e_Doerksen_06-21-08.pdf	I oppose the Makah hunting whales, in this day and age there is no need for it for food. To continue this to uphold tradition is unacceptable. The whale population has just re bounded and we do not know any long term result from this. To continue to hunt whales un necessarily is barbaric. Furthermore the Makah have shown little regard for the law. Their attempt at hunting a whale - unauthorized - shows that they have little consideration for the whale to be killed painlessly and quickly.

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	In the past hunting whales was part of their way of life, granted- but part of that life was also living in tents instead of houses, not having an education instead of a university degree, and numerous other differences. If tradition is that important to them , they should also give up the modern daily life as it is not in keeping with tradition. If hunting the whales was proved to be necessary for their livelihood and day to day nourishment,then I would not object but they want to hunt for tradition only. Therefore I am opposed to the Makah tribe being given permission to hunt whales. And should they take it upon themselves to "again" oppose the law and hunt unauthorized, then they should be punished to the fullest extent the law allows and the tribe should lose all and any rights or opportunities to hunt whales.
e_DOI_07-08-08.pdf	The Department of the Interior has reviewed the Draft Environmental Impact Statement for the Makah Tribe's Request to Hunt Eastern North Pacific Gray Whales off the Coast of Washington State. The Department does not have any comments to offer.
e_Domenech_08-14-08.pdf	I am writing to ask you to consider Alternative 1, the No-action Alternative to the proposed Makah gray whale hunt. There are many reasons the Makah should not be allowed to violate the MMPA and hunt gray whales. First of all, gray whales, like many other whales, face many threats. Lack of food, ship strikes, pollution, and global warming, to name a few. With all the threats they face in today's world, it simply does not make sense to add another unnecessary threat. At the EIS hearing in Seattle, the NOAA representative admitted that the threats faced by global warming and its impact on the gray whales food supply had not been addressed. Secondly, though the gray whale population appears to be stable, researchers who work with the gray whales in Mexico have reported low calf counts, fewer whales returning to breed and whales arriving at the breeding grounds very thin. None of these are good signs for the gray whale population and its uncertain future. Instead of authorizing this hunt, the U.S. government should consider working with the Makah on alternatives to hunting gray whales. The Canadian govt. worked with some First Nations tribes by offering the tribes land and mining rights if they would agree to not hunt gray whales. If the U.S. government were to consider offering fishing rights, land or some other compensation, they may be able to convince the Makah not to hunt at all. It would undoubtedly save the government money, as the cost of preparing this EIS, as well as the cost of law enforcement if the hunt does actually take place, must be quite high. The humane aspect of the hunt must also be considered. Gray whales are gentle and accustomed to humans and boats. Many of these whales have been around whale watch boats most of their lives and have no fear of humans or boats. In this day and age, there is no reason for the Makah to kill whales. Since most of the last gray whale the Makah killed was not used in any way, subsistence in not a reason. Cultural traditions can be honored without actual killing, as many of the other tribes in the area have shown. Please consider the No-action Alternative as the right alternative.
e_Drake_05-21-08.pdf	Request for comment period extension
e_Duits_06-30-08.pdf	I understand that public opinion is now being taken into consideration with regard to the decision to allow the Makah to resume the whale hunt. I understand the Makah are trying to regain some of the old ways, but I think this hunt should not be allowed. In my opinion, the fact that the last hunt was done illegally and in such an inhumane manner should also factor into this decision. Why would permission for something this unnecessary now be granted when rules and guidelines were so boldly disrespected before? Please give serious consideration to the opinion and request from those of us who oppose giving permission for this practice!
e_Eastin_06-01-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales.

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	I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Ed_05-20-08.pdf	Please support the Makah Indians in their request for whaling. It is important that we as Americans stand up and support treaties that we have made - it is called integrity. The Makah are the real environmentalists. The opposition ignores Science and their position is based on emotion and a political aganda that is not consistent with Freedom and our countries obligations to Indian Treaties.
e_Egan_05-12-08.pdf	In my world, "everybody knows" that Makahs have a treaty and the treaty says they should be able to hunt whales. The waiver should be granted for the full take request and the hunt should be resumed. In the 1855 Treaty of Neah Bay, the Makah Tribe secured an express right to hunt whales throughout their usual and accustomed areas. This Treaty has not been abrogated by any subsequent statute including the Marine Mammal Protection Act (MMPA). However, the Ninth Circuit Court of Appeals said that the Tribe must get a waiver from the National Oceanic and Atmospheric Administration (NOAA) for the MMPA before the Tribe may exercise its Treaty whaling rights. Anderson v. Evans, 371 The waiver of the take moratorium under Section 101(a)(3) of the MMPA, 16 U.S.C. § 1371(a)(3), to allow aceremonial and subsistence (C&S) harvest from the Eastern North Pacific stock of gray whales (Eschrichtius robustus) within the Makah Tribe’s adjudicated usual and accustomed grounds SHOULD NOW BE GRANTED!!! PLEASE STOP WASTING TIME! It has been THREE YEARS before the draft EIS came out. What was the hold up? Regardless, it is a shame that the Makahs have been subject to such bureaucratic nonsense. Please allow for a total take of 20 gray whales in any five-year period subject to a maximum of five gray whales in any calendar year. Grant the waiver.
e_Egger_05-11-08.pdf	We are opposed to the hunt of a gray whale There is no practical need for this whatsoever. To say it is carrying on some kind of cultural ritual is just an excuse for a bunch of macho juveniles to kill a lovely animal who is part of our ecosystem. For anyone to sanction this is to join the cult of savagery that enjoys causing death in the name of sport.
e_Erdmenger_05-10-08.pdf	Please not that I am totally against any killing of whales, so do not allow the Makah Indian Nation to kill any of them...NONE!
e_Erickson_05-12-08.pdf	I support the Makah's Tribe 1855 Treaty right to hunt Grey Whales. I tried to work my way throught the enviromental impact statement but am not a lawyer. The native people have been lied and cheated by the federal government for hundreds of years and stripped of their treaty rights one after another. As long as a minimal number are hunted in a traditional fashion they should be left alone to

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	preserve their culture. I also believe that the federal government has a duty to protect the established treaty rights by keeping protestors and news media 10 miles away from their activities. It would be nice to think that at least one treaty was not broken with the native people.
e_Evans_05-10-08.pdf	~ U.S. taxpayers subsidize the Gray whale 'hunt'---not the Makah; as such, U.S. citizens should have the final say in the whaling debate. Over 5 million dollars has been spent to date on whaling, with the Makah continuing to petition their 'favorite' Congressional contacts for more funds. Their latest request? A ship which would cost taxpayers ONE MILLION DOLLARS. ~ CONGRESSIONAL BRIBES PROMPT CONTINUED MAKAH SUPPORT. Former California Republican Representative Richard Pombo received $221,000 + from tribes. In return, he pushed through a resolution which calls the waiver process required by the National Marine Fisheries Service "burdensome, costly and tantamount to a denial of the [Makah] tribe's treaty rights." The resolution went on to urge Congress to express "its disapproval of the abrogation of the tribe's treaty rights, and that the government of the United States should uphold the treaty rights of the Makah Tribe." Pombo ranked third among all House members in terms of tribal donations. ~ The Makah have been REFUSED PERMISSION TO WHALE by the International Whaling Commission. They were denied because they do not fit the criteria for either 'cultural' or 'subsistence' whaling. The Makah circumvented the IWC's denial by using the political clout of then head of NOAA, D. James Baker, who brokered a back-room deal with the Russians which allowed the Makah to take a portion of the Russian Gray whale subsistence quota. The IWC, to this day, has NEVER given permission to the Makah to whale...IWC guidelines supercede Makah treaty whaling rights. ~ As a signatory of the International Whaling Commission's moratorium on whaling, the U.S. is breaking its own anti-whaling agreement and international law by allowing the Makah to continue whaling. ~ Gray whales were removed from the Endangered Species List due to the political wrangling of the Makah--NOT VALID SCIENTIFIC STUDIES. Scientists, who believe Gray whale populations are at an historical all-time low, have observed decreasing numbers each year and have serious concerns about their health. Large numbers of gray whales have recently been discovered suffering from starvation. http://www.eurekale rt.org/pub_ releases/ 2007-09/s- gwa090407. php ~ Several elders within the Makah tribe are AGAINST whaling and in favor of WHALE WATCHING to bring income into Makah coffers. Their voices should be heard. This is their appeal: The whale hunt issue has never been brought to the [Makah] people to inform them, and there is no spiritual training going on. We believe they, the [Makah] Council, will just shoot the whale, and we think the word "subsistence" is the wrong thing to say when our people haven't used or had whale meat/blubber since the early 1900's. For these reasons we believe the hunt is only for the money. They can't say "Traditional, Spiritual and for Subsistence" in the same breath when no training is going on, just talk. Whale watching is an alternative we support: ~ The Makah Treaty of 1855; [specifically Article 4, which allows the tribe to whale], is a 152 year old document; one which pre-dates the AMERICAN CIVIL WAR BY 6 YEARS, and is therefore no longer relevant in a world where cetaceans now face overwhelming threats to their survival due to global warming, overfishing, ship strikes, sonar disturbances, pollution and disease. Slow reproductive rates and an unacceptably prolonged and cruel manner of slaughter dictate that cetaceans should be spared whaling in ANY form. ~ Makah cousins, members of the Maa-nulth First Nations, who reside on the Western shores of Vancouver Island have signed an agreement with the Canadian government in which they will honor a 25 year moratorium of their whaling rights. In return, they were given generous concessions of land and cash. If the Makah are genuinely interested in "honoring" whales, they must be committed to allowing them to live in peace and safety; while helping improve the quality of life for ALL Makah--not just the privileged few who never

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	allow the majority a voice. The entire Makah tribe should be given a vote on what types of concessions they would want in lieu of forfeiting whaling.
e_Evans_05-15-08.pdf	A WHALE'S LIFE & AGONIZING SUFFERING = $20 PER THUG They promised tough prosecution, but in the end the Makah Nation couldn't put together a jury to try five whalers who were charged with illegally killing a gray whale off Neah Bay last fall. Tribal Judge Stanley Myers on Wednesday instead granted the men one-year deferred prosecution and promised to dismiss the charges if they committed no offenses during that time. The whalers also were each ordered to pay a $20 fine. The deferral came after the judge summoned more than 200 people from the remote village of Neah Bay on the Olympic Peninsula to serve as potential jurors. But the judge gave up on empaneling a jury because just about everyone was either related or said they had strong feelings about the case, according to one of the whalers, Wayne Johnson. ... Animal-rights activists were dismayed at the tribal judge's ruling Wednesday. "There should have been a better show of discipline here," said Naomi Rose, lead scientist with the Humane Society of the United States in Washington
e_Everett_07-07-08.pdf	I am writing this letter to express my views about the Makah Indian Tribe's request to hunt gray whales off the coast of Washington State. I attended the public hearing held in Seattle on June 2, 2008 and have reviewed a copy of the Draft Environmental Impact Statement for Proposed Authorization of the Makah Whale Hunt. I came away from the public meeting feeling torn. On one hand, I respect the Makah's history and tradition of whaling. On the other hand, I am deeply concerned about the plight of whales and want to do everything I can to protect them. I grew up in Washington State, but did not see my first whale until this summer. It was an amazing and breathtaking experience. I know that the Makah revere whales, but this is at odds with the desire to kill them. There is no truly humane way to hunt a whale (DEIS, Chapter 3). While I respect the Makah's request for a traditional whale hunting ceremony, I strongly feel that it does not fit in with the modern day's concern for protecting marine mammals. Simply put, the only reason that the Makah want to hunt whale is to take back some of their cultural heritage. There are a lot of traditions in my family's past that are no longer legal or relevant in modern day society. The Makah do not need to hunt whale for food like they would if they lived in the Arctic. The Makah Tribe is looking for a way to get a sense of strength and pride back, but killing a whale is not going to be the magic solution that cures the modern day problems the tribe experiences. How about leading traditional whale watching tours that promote the history and culture of the Makah? Or having a whale hunting ceremony that is symbolic rather than real? Or finding other creative ways to get in touch with their culture that does not involve the killing of a whale? Maybe the money that would be spent on the whale hunt could be spent on human services? I urge you to go with Alternative 1, the no-action alternative. P.S. I NOAA has presented a very well-rounded Draft Environmental Impact Statement for Proposed Authorization of the Makah Whale Hunt.
e_FacilityMaint_08-4-08.pdf	When my mother was in elementary she used to get punished for speaking our Makah language. The teacher would beat the back of her hand when she spoke our language, if she didn't cry then they would turn her hand over and beat the other side until she spoke English. This happened in the 1940's and 50's, not very long ago. Many people (including the government) have been attempting to take away our culture. It was illegal to speak our language, sing our songs, do our dances, to have Indian parties, or even gatherings for many decades. As it is now, our language is "NEARLY EXTINCT". We have no one who speaks our language fluently, all of our elders who knew it has passed away. Some of our language is recorded but much of it has been lost forever! How much more will we lose?

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	Even though the Ninth Circuit Court ruled the way that they did, there are some important facts which should be mentioned. Also, there are important facts of our treaty that aren't mentioned. Unless I overlooked it, I haven't seen Article. VI. of the US Constitution mentioned is the DEIS. Art. VI. US Constitution states "and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound.....". The US Constitution should not be optional and neither is our treaty! Alternative 6 is my choice, and this is why: 1. The judges in the Ninth Circuit Court were wrong, they never followed the US Constitution and our Makah Treaty. a. They never supported Article. VI. of the US Constitution. Even though congress is the supreme law of the land, Art. VI should have applied. There is no conservation issue for the gray whales. The gray whale population has reached the Optimal Sustainable Population (OSP). The Environmental Assessment should have sufficed. Not even the Endangered Species Act (ESA) applies in this argument. Why? Because they are not on the Endangered Species List, they are not even on the Threatened Species List! Article. VI. should be at least mentioned in the DEIS. How can they ignore Article VI of the US Constitution? b. The MMPA, Section 14 states that this will in no way alter or change any agreements or treaties with the Native Americans and the US. This is mentioned in there for a reason. Our treaty was signed in 1855, the MMPA was enacted in 1972. More importantly, a treaty is a government to government agreement just like an agreement with any other country. They are not optional. c. The agreement between our two governments (Makah & US) were very specific. In our gov't to gov't treaty agreement it stated very clearly that we gave up 275,000 acres to reserve the right to hunt whales. This to is not mentioned in the DEIS. The judges of the 9th Circuit Court never upheld our treaty. What would happen if we (the Makah's) tried to change the treaty? Our treaty is not up for public comment! 2. Native Americans established our version of the National Environmental Protection Act, NEPA, thousands of years ago. We called it culture. For salmon fishing, our culture was to take the first fish prepare a meal and bring it to the ocean or river for an offering of a good return the following season. The second fish was to be given to an elder who is not in your family. The third is to be given to an elder in your family. The fourth is to be eaten and rest will be given away or cured for winter supplies. My grandmother taught me to be a conservationist with everything I gather, whether it is herbs or anything else. If it were a conservation issue I am positive that we would abide by ESA, NEPA, MMPA, or nature. 3. I am a Makah Whaler and the religious part of the training is one of the most important part of being a whaler. I can't go into any details but we prayed many times a day. We thanked the creator for everything that we had, we even prayed for the anti-whalers. The EIS is a government document but the religious aspect needs to be considered, because whaling has everything to to with the approval of the creator to take home one of the world's most wonderful creatures. Our culture is based upon living by natures laws and the creator. Our society has been here longer than the mid-evil days, the Romans, and even King Tut himself. How many other societies can say this? Makah's have been here since the days of the Pagan's, the ones who built Stone Henge. If you want to know what life was like during the days of the Egyptians just ask a Native American, we still have the same culture and almost the same way of life. Neah Bay, Wa. Established 2992 BC. The Makah's stopped whaling more than 10 years before it was illegal to hunt whales. We are not the ones who brought them close to extinction. Some say that we just want to slaughter the whales. They forget about the term "slaughter houses". This is where steaks and

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	hamburgers come from. Some religions don't allow consumption of pork, some revere the cow as a sacred animal. Some countries have penalties for abusing cows, even punishable by death, yet they still don't impose their belief upon us. The creator gave us our language, he gave us this land to live on, our culture is the way he showed us how to take care of it.
e_Feral_08-13-08.pdf	Harvard geneticist Richard Lewontin has said: “That is the one point which I think all evolutionists are agreed upon, that it is virtually impossible to do a better job than an organism is doing in its own environment.”[1] We strongly agree. Friends of Animals (FoA), a nonprofit animal-advocacy organization, opposes hunting. Thus, as the National Marine Fisheries Service (NMFS) addresses the proposed authorization of the Makah Whale Hunt, FoA supports only Alternative 1 of the Draft Environmental Impact Statement. Alternative 1 is “the No-action Alternative, wherein NMFS would not authorize a Makah gray whale hunt.”[2] Friends of Animals urges the NMFS to choose the No-action Alternative to the draft environmental impact statement (DEIS) concerning the Makah Indian tribe’s February 2005 request to resume whale hunting, and this can be done on the basis of several factors: • Populations of eastern North Pacific gray whales (Eschrichtius robustus), which migrate from Arctic waters to the Gulf of California in Mexico, have grown substantially, and they have been removed from the Endangered Species List. Because the whales have been delisted, the reasoning goes, the species’ health would not be harmed by the hunt. Yet a report in the Proceedings of the National Academy of Sciences asserts that “large numbers of gray whales have recently been discovered suffering from starvation.”[3] The article goes on to say that “starving whales may be suffering reduced food supply from changing climate conditions in their Arctic feeding grounds.” This possibility parallels 2006 reports last year of major climate shifts in the Arctic ecosystems in which gray whales feed.[4] Given how little scientists yet know about the climate shift phenomenon, the impact of killing these whales is unpredictable. • The Makah request to resume whale killing did not take such climate shift factors into account; it pre-dated them. • The Makah request to resume whale hunting would ostensibly be for “ceremonial and subsistence purposes” only. The Makah tradition of killing whales was suspended in the 1920s, when hunting drove gray whales to near-extinction. The Makah Nation itself agreed to halt the killing. • Over the intervening decades (before the Makah were again permitted to kill a whale in 1999), the tribe has subsisted without killing whales. New traditions, therefore, have taken the place of former ones. • If the Makah tribe wishes to maintain a cultural connection with gray whales, it could do so through rituals, ceremonies, crafts, and drama, rather than by killing. Promotion of carefully planned ecotourism in the form of whale watching could also provide the Makah with a viable source of income and an opportunity for the tribe members to maintain their cultural connection with whales. It would also spare the lives of the whales. • Whale kills are a source of international controversy. Permitting the Makah to hunt eastern North Pacific gray whales would only encourage other aboriginal peoples and countries to hunt whales, legally or not. The Makah request must be seen in the context of the international effort to protect whales internationally. For the above-described reasons, and based on the above factors, Friends of Animals respectfully requests that the National Marine Fisheries Service choose Alternative 1. [1] Quoted by Richard Dawkins in The God Delusion (Boston: Houghton Mifflin, 2006), at 191. [2] Makah Whale Hunt EIS (May 2008). [3] Proceedings of the National Academy of Sciences (10 Sep. 2007).

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	[4] Release titled “Gray whales a fraction of historic levels, genetic research says “(10 Sep. 2007), issued be Steve Palumbi, Harold A. Miller Professor at Stanford; contact addresssupplied: spalumbi@stanford.edu.
e_Finley_05-11-08.pdf	I am opposed to permitting whale hunting for any purpose including "cultural preservation." The species of this entire planet are under assault by human activity, with unprecedented impact. No one can safely predict, in the current tumultuous period of global changes, what constitutes "healthy" populations. The polar bears were considered "healthy". Furthermore, there is growing evidence that whales are among the earth's most intelligent and sensitive species. I lived among the Yup'ik people for six years. They found effective ways to continue their traditions, preserving what was important to their identity, without returning to practices that endangered populations or awoke global political strife. It can be done. The United States has led the way in helping whales. Approval will only undermine the pressure against Japanese and Norwegian whaling.
e_Fisher_06-02-08.pdf	I am a resident of Mill Creek, WA, and a student at the UW. My opinion is that the Makah should be allowed to have their traditional whaling rights. I feel that enough has been taken from all American Indians over the past several centuries, and this is the least we could do for them. If there are concerns about preserving the whaling species, then perhaps a certain limit can be set each year for how many can be hunted. However, I don't feel we have the right to take this tradition away from the Makah.
e_Flohr_05-10-08.pdf	This is very simple, and there should be no argument here. What is it the U. S. Government, and others don't understand about a treaty? The treaty allows whale hunting. So let the Makah Nation hunt their whales. The way the government of the U. S. is treating our native peoples is an at home example of why this country is so disliked around the world. Worse yet, we can't, or won't honor the terms of a valid treaty.
e_Forman_06-24-08.pdf	Thank you for allowing me, a resident of Washington state, to voice my opinion regarding whale hunting by the Makah tribe. I tried to make sense of your very well done website, but suppose my argument against the hunt is based on emotion and logic more than science. I do appreciate the cultural tradition of the Makahs, but have to question their need to brutally harpoon and kill a gray whale to continue their heritage. Though whaling was an important part of the tribe's past, as the sacrificed marine mammal provided much needed nutrition and resources, no one would argue that the hunt is needed in modern day to fullfil those ancient needs. Instead, it is purely ceremonial today. The story and custom of this ancient ritual could be passed on to the younger members of the tribe in many other ways that would not involve taking the life of a gray whale. Festivals, story-telling, dance, and ceremonial rituals help nati ve Americans keep their past alive in many aspects. The tradition of whaling could be included. I strongly URGE YOU TO DENY the Makah's request for gray whale hunting. As human inhabitants of this planet, we must all evolve in our thinking as we learn and grow. The Makahs can and should be part of this human evolution, while remembering their past traditions in ceremony ritual only. Again, thank you for allowing me to express my views.
e_Frangogiannis_05-29-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifl es under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As

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	you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's pro posal to legally kill whales under their treaty.
e_Fredrickson_05-15-08.pdf	I am writing to voice my opinion on the Makah tribe's hope to resume hunting whales. If the tribe would harvest the whale ... eat the meat, process the blubber, etc. ... then the hunt might make some sense. But to just kill it, and let it sink to the bottom of the sea, is uncivilized.
e_Friedman_05-29-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the ani[end]
e_Gackowska_05-29-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The 'reinforcement of tribal identity' does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor 'treaty rights' to massacre whales. There is no rationale for 'ceremonial and subsistence' whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Gandara_06-21-08.pdf	Regardless of whether or not people agree with the act of "hunting whales" is not the issue. The Makah tribe has a treaty to hunt and that is reason enough. Over time far too many treaties and promises have been broken and bended. It is time to honor an agreement regardless of the unexpected outcome. In all honestly, Native Americans have not been the main reason behind the dwindling whale numbers. "The might is not always right!"
e_Garbato_05-30-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive — including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as

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e_Gardner_05-27-08.pdf	I would like to outline several factors as to why the Makah should not be permitted to take whales. 1.) Ecotourism: Grey Whales are a key element to ecotourism industries in Mexico, USA, and Canada. Whale watching is more profitable than whaling, making millions of dollars each year in direct revenue. It should also be taken into consideration that peoples working in these fields form attachments to certain animals. Animosity toward the Makah tribe can only increase if one of the animals who has a name, is considered a friend, etc is killed. As the whales migrate up the coast, there is now way to tell which groups have formed an attachment to which animals, and no way to tell the whales apart. Ecotourism and whaling cannot exist side by side. 2.) Population Estimates: New studies show that the Grey Whale population has not recovered to historical levels as previously thought. Recent studies of grey whale DNA indicates that between 78,500 and 117,700 grey whales existed before commercial whaling decimated the population. Current population estimates puts grey whales at 22,000, which based on the recent DNA study, puts them at one-third to one fifth of their historical levels, which is far from a recovered population. This estimate differs from the IWC estimates but should be considered far more accurate, as it uses genetic testing, current technology, and scientific knowledge. 3.) Food supply: Scientists studying the Grey Whale population have observed changes in the whales' appearance and behaviour, including emaciation, later migration, not migrating as far North, and a decrease in calf production. These are thought to be due to a reduction in food supply in the Bering Sea caused by global warming. Environmental stressors will only increase with the impact of global warming, and the Grey Whale population will suffer as a result. 4.) Public Opinion: The world is largely against whaling. Killing sentient beings has no place in a conservation-oriented society. 5.) Non-Traditional Methods: On the 1999 hunt, the Makah did not use traditional methods to kill the whale they took. If they truly wanted to hunt whales in a traditional manner, they would use all traditional methods. One can only conclude, as they are not using traditional methods to hunt, that there must be another reason. “The International Whaling Commission permits four cartridges in whaling: the and the .460 Weatherby Magnum, .50 BMG, and the .577 Tyrannosaur, which the Makah fired in the 1999 hunt.” 6.) Ceremonial and Subsistence Use: The Makah were permitted to take whales for ceremonial and subsistence use. Why, then, were the Makah considering selling whale meat for profit? As outlined above, whale watching is far more profitable than whaling. Selling the meat should be considered unacceptable, as it conflicts with the original purpose of killing whales for ceremonial and subsistence purposes. “The key to Makah economic prosperity had always been the whale trade, and the Tribal Council began to realize that a return to this trade may just prove to be the economic savior that the tribe had been waiting for. Japanese market prices pegged the value of one gray whale at anywhere from $500,000 to 1 million dollars, and since the Makah were the only Americans with a legal treaty right to hunt gray whales, they would have no competition for these dollars. According to a April 1995 memo written by Mike Tillman, Deputy Commissioner of the U.S. Delegation on Whaling Issues, both Japan and Norway had contacted the Makah about buying any potential whale meat, and the Makah were contemplating building a processing plant.” This directly conflicts with the IWC's definition of subsistence use:

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	"(1)The personal consumption of whale products for food, fuel, shelter, clothing, tools, or transportation by participants in the whale harvest. (2) The barter, trade, or sharing of whale products in their harvested form with relatives of the participants in the harvest, with others in the local community or with persons in locations other than the local community with whom local residents share familial, social, cultural, or economic ties. A generalized currency is involved in this barter and tra[d]e, but the predominant portion of the products from each whale are ordinarily directly consumed or utilized in their harvested form within the local community; (3) The making and selling of handicraft articles from whale products, when the whale is harvested for the purposes defined in (1) and (2) above." 7.) Contaminants: Whale are particularly suceptible to contamination from toxins in the marine environment. High levels of PCBs, DDT, dioxin, pesticides, and heavy metals such as mercury make whale meat unsafe for human consumption. Humans should be prevented from consuming this meat at all costs. "PCBs can cause neurotoxicity (nerve damage), reproductive and developmental disorders, immune system suppression, liver damage, skin irritation, and endocrine disruption. DDT exposure is associated with certain cancer risks and neurological and reproductive disorders. Dioxins, among the most toxic substances known, can cause cancer, metabolic dysfunction, and immune system disorders. Methylmercury consumption can cause neurological and developmental problems. The contaminants are often highly concentrated in blubber because they are lipophilic, meaning they bond easily and even preferentially to fat." In the past, whales were hunted for food by the Makah, Grey Whales for oil. There is no need to hunt whales for food in the 21st century, and there is also no need in particular for Grey Whales to be hunted for oil (as the Makah hunted them for in the past), as there are other sources of oil available that do not conflict with tourism industries and public opinion. Thank you for your consideration of my input into this matter.
e_GaryAnnieK_05-12-08.pdf	Give them what they ask for or give them the land back with interest.
e_Gilje_05-09-08.pdf	I would like to comment on the above topic. According to the research done recently by Stanford University and University of Washington: Gray Whales A Fraction Of Historic Levels, Genetic Research Shows ScienceDaily (Sep. 11, 2007) — Gray whales in the Pacific Ocean, long thought to have fully recovered from whaling, were once three to five times as plentiful as they are now, according to this article. The number of Grey Whales is already declining possibly due to environmental/changing climate effects. Opening up the hunting on them will only decrease the population even more. The study also suggests that lowered numbers of gray whales no longer play their normal role in ocean ecology. A reduced population of gray whales has likely exerted large changes in Pacific ocean ecosystems. Unique among whales, the gray bulldozes the oceans, digging troughs through the sea floor for food. In the process, they resuspend ocean sediments bringing food to the surface. Other species may feel the loss of whales as well, for example the feeding plumes of gray whales are foraging grounds for Arctic seabirds.
e_Gill_05-11-08.pdf	I have very strong beliefs about whaling, and I can't help it. This earth belongs to us all, to live in and dwell in harmony. How could a person ever even conceive of killing something as amazing and gorgeous as a whale? It is unacceptable and evil. It has been proven over and over in the animal kingdom that animals are extremely intelligent, with strong feelings. Whales are no exception. This killing stuff is so dark ages. Can't we live in love and appreciation of the beauties of the earth? Killing an innocent animal is no different than killing

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	another human being. It is all the same evil instinct, an instinct that should be so foreign to a humane person. There should be no killing at all, not of whales, seals, wolves, bison, deer, ducks, turkeys, etc. etc. etc. As far as the Makah's go, I am one eighth Nez Perce. I absolutely love my Indian heritage. But, I feel like we all are, in the United States here, under one law. Again, we're not living in the dark ages. All those living in the States should be under exactly the same laws as everyone else. There is no other way. And ALL laws should be based on morality and humanity. Man does not own or control the animals of this earth. Whales don't belong to man. Who the heck do we think we are, anyway? It is not man's place to decide on the issues of life. It is man's place to protect life. NO KILLING. NOT ONE WHALE KILLED! NOT NOW, NOT EVER!!! NO KILLING OF OUR BELOVED AND MAGNIFICENT WHALES!!!!!!!!!!!!!!!!!!!!!!!!
e_Ginsburg_06-05-08.pdf	We are strongly against permitting this whale hunt. It is unnecessary and barbaric.
e_Giovane_05-11-08.pdf	I would like to give my support to allowing the Makah Tribe to continue hunting whales for subsistence and ceremonial purposes as guaranteed in the treaty between the Tribe and the US Government. Personally, I believe that whales, and all cetaceans, are unique and worthy of protection. There should be a world-wide ban on all commercial harvesting of them. However, in the case of the Makah's right to continue the whale hunt, I am strongly in favor of allowing this practice to continue based on the following. As an archeology student, I had the opportunity to work at the Ozette site in 1975 and 1976. Just prior to my working there, House 1 had been excavated. In that house, many artifacts attributed to whaling were uncovered. One such artifact, the whale saddle (which, from what I understand, was meant never to be seen by the uninitiated), was the first bit of physical evidence showing me how important whaling was to the Makah. This was more than just hunting to "put meat on the table", so to speak. Whaling was a sacred and vital part of the entire community. At Ozette, gray whales pass by on their seasonal migrations to and from the Baja Peninsula---I remember seeing them myself and could imagine, in pre-contact times, what it must have been like to go out on a hunt. We saw the evidence that all parts of the whale were utilized by the Makah, with whalebone being used for clubs and for incorporation into the drainage systems between the houses. I learned that to successfully complete a hunt, all the members of the crew, their wives and family had to undergo many rituals beforehand to insure success. To guarantee that the harpooned whale would be easily returned to the village (and not swim out to sea), the whale was considered as an honored guest which would sacrifice itself for the good of the community—again much ritual was involved in this important aspect. With the voluntary ban on whaling, members of the Tribe kept these traditions alive in the hopes that someday, the hunts could resume. As a nonnative, my understanding of all of this is very limited, but I can see how spiritually significant whaling is to the Makah people. I also had the privilege of being a teacher at Neah Bay for over twenty years. The students that I taught were (and still are) like family to me. In the past, the school had a negative impact on the kids---I heard stories of students being punished for speaking Makah in school. I'm happy to know that today, many of the teachers are Makah, and that Makah language and culture are promoted school-wide. Growing up in Neah Bay presents many challenges for the kids. Our educational system is very future-oriented. We tell the kids, learn this stuff and some day it will help you go to college or you will use it in your job. However, to go off to college, kids must leave their family and community, and risk being forced to make a choice between two different cultures. As for work, unemployment is extremely high on the west end of the Olympic Peninsula. The time-honored occupations of fishing and working in the woods are still some of the only ways to make a living. Many kids feel that there is nothing to do, and so it's easy to fall into the trap of drugs and alcohol. However, the strong cultural ties—like the canoe club and Tribal Journeys—provide a way

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	to travel another course. I was teaching the year “the whale” was taken after whaling was allowed to resume. It was an amazing experience! Our principal, Bill Pearl, released the students to go down to the beach in the village to await its coming in. He didn’t want any of them to miss this historic event—and they would have gone anyhow. We went ourselves after school was over, to see the beach covered in people, in the rain, singing the whale ashore. This was a momentous day, not only for the Makah, but for all indigenous people in the country—a country that has historically broken its treaties with native peoples. Here, the treaty was honored and the Makah could once again experience this integral part of their culture—of “who they are”. We also witnessed the threats and abuse the Makah people had to take from the Sea Sheppard and others. Most nonnatives just don’t have a clue as to how important cultural traditions are to native people. In truth, the U.S. has become the “melting pot” it wanted to be, and so many of us have lost our own language, culture, and traditions. Hunting whale to the Makah is so much more than just hunting or fishing. It is the thread to generations past, it is what gives the Makah their unique identity. And because of this, I would like to strongly give my support to its continuation.
e_Goldbach_05-28-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Goodrich_08-08-08.pdf	First off, in the recent display of "Hunting" by the Makah Whaling Team we have learned that not only do they not know how to Whale but that they will impose significant danger to all those on land and in the water while they are exercising their "Hunting" practices. Secondly, we feel that due to Starvation, other Preditors, and Global Warming, the Whale Population has declined. There is not an adequate Scientific Count, Effect, and Solution in the Proposed DEIS. Thirdly, We are extremely concerned that if the Makah are allowed to "Hunt", it will result in the return of Whaling Worldwide. There have been violations already by the Japanese and other Nations. We would like to Propose that until Research and Global Warming effects are studied with the Declining Whale Populations and the Return of WorldWide Whaling is taken under consideration, this Proposed DEIS not be allowed. Instead, we would like to see the Grey Whale be reinlisted on the Endangered Species list.
e_Gramza_06-13-08.pdf	I am writing to express my opposition to allowing the Makah to continue their hunting of whales. I have vast respect for the cultural traditions of native peoples. But I would like to argue that inflicting so much pain and suffering on these intelligent, sensitive, and threatened animals cannot be justified. Cultural tradition should never be an excuse to abuse and torture an animal to death. Most reasonable people agree that certain "traditions" such as slavery, denying women the right to vote, etc. were rightfully abolished and should never be revisited. We should have enough respect for the Makah to realize that they can revitalize their cultural tradtions without killing whales. This hunt has global implications for whale populations. The scientific community is in agreement that whale

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	populations have been severely diminished around the world by hunting. The Makah hunt provides an open door for commerical whalers in Japan, Norway, Iceland and Russia, who seek to use this "cultural" justification as just another loophole to kill whales for their own finacial gain. Thank you for considering my comments.
e_Green_06-07-08.pdf	There is an inherent conflict of interest in the mandate of NOAA and NMFS, namely the protection and stewardship of natural "resources" (including sentient creatures), while also promoting the commercial nature of exploiting those resources. It's very telling that these agencies (including your own) fall under the U.S. Department of Commerce. One might wonder why the decision to allow the hunting and killing of gray whales would fall to the commerce department... only in America. I mention this not to belittle your position, but rather to encourage you to leave these important decisions to those who should rightfully have some authority over these matters. Magistrate Arnold has ruled the Makah's killing of gray whales illegal and disallowed any defense based on religious, cultural, or traditional bases. The hunt is illegal, period. The quibbling over how many whales you plan to allow them to kill per year is proclaiming that you will knowingly let the Makah violate federal law. Let NOAA and NMFS stick with their "commerce" mandate and leave the fate of these sentient sea creatures to impartial arbiters. If the Makah are truly hunting for "subsistence" and "cultural" reasons, and not commercial, then NOAA and NMFS have no jurisdiction and no authority to overrule a federal magistrate.
e_Gregoric_05-15-08.pdf	I believe the United States needs to honor their commitments. Native peoples have long been the butt of too many jokes played on them by capitalists. The treaty of 1855 should be upheld in much the way our Supreme Court chooses to interpret our Constitution. To the letter strictly 19th century: No motor launches. No exploding harpoons. No rifles. No chainsaws. You want to feel like a Buck you pay the dues!
e_Griffith_06-03-08.pdf	Whale hunting is part of the Makah religion, federal interference in whale hunting is as unAmerican in this case as it would be in the case of the free practice of religion by any other group of Americans. In the context of the Makah culture this is not only unfair, and unreasonable, but amounts to religiously motivated tyranny. The killing of 20 whales over a five year span will not harm the overall population levels. There is no practical reason why the Makah should not be able to resume hunting. Federal interference in Makah hunting rights, and by extension their culture and religion is the wrong thing. Stop doing the wrong thing, and start doing the right thing. Honor the original treaty. Get off the Makah's backs.
e_Guyette_05-12-08.pdf	This opinion concerns the 2008 MakahDEIS. The Makah Tribe has an 1885 Treaty Right to hunt grey whales. Since the population of whales is no longer endangered, I believe strongly that these treaty rights should be upheld and the Makah people able to practice their tradition. There are important cultural reasons associated with this tradition also. Thank you for the chance to comment.
e_Handa_06-08-08.pdf	In January 1995 I visited Guerrero Negro bay in Baja California specifically to see grey whales up close. While they are large animals I don't see any difference between whales any other large mammal like cattle, elk or moose. The bottom line is the Makah have a treaty right to harvest these whales. They are whalers. Through the treaty with the U.S. government their ancestors wanted to ensure their descendents would be able to continue their way of life. The Makah voluntarily stopped hunting the whales long ago due to over harvest by other peoples. Now that the whales have recovered in number the Makah deserve and have a legal right to resume whaling through a limited harvest of a few whales a year. The United States must honor the treaty rights of the Makah.
e_Harper_08-14-08.pdf	I am writing as a private citizen interested in preserving the population of whales in the Northwest. We have a small group of whales who are at home in these waters, and they should not be harassed in any way. Chasing them, hunting them, shooting at them should all be considered harassment. The Makah are no longer a tribe making a subsistence living from whaling and gathering. They are a modern people, living in the modern world, and do not need to kill whales. While I appreciate their desire to keep some of their ancient customs alive, this is not an appropriate way to do that. The whale that was illegally killed at Neah Bay was chased with modern boats, shot at

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	with high-powered weapons, harpooned and left to suffer and die over a period of many hours. This was inexcusable, by any people, at any time. Please do not give in to "political correctness" and make a decision that endangers our precious fellow earth dwellers so that a group of people can make a point -- we all get the point already, and more suffering in the world is only going to make the Makahs disliked.
e_Heath_05-27-08.pdf	Please do not allow this whale hunt to occur. I think that it is very cruel and unneccessary. Many of the gray whales are very tame off the Washington coast and it just is not a fair playing field as the whales are not afraid of humans. I don't see why the Makah people feel that this is the only way to satisfy their traditions. There are many more interesting and productive ways to do it such as learning their language or cooking traditional food or working on their beautiful arts and crafts . There is too much killing and bad things going on in the world so please don't let this happen to these beautiful and trusting animals. We should take care of them and not destroy them intentionally.
e_Hebert_05-10-08.pdf	There is no need, at this point in time, for the Makah tribe to continue to whale. The destruction of life simply for the purpose of embracing one's culture is obscene. This is not a concept Americans, both indigenous and naturalized, should be embracing. It must be asked if cultural heritage has the right to trump a categorical imperative? Or do outmoded traditions, found to be inconsistent with modern knowledge and morality, deserve to be abandoned and outlawed? Culture is not a static concept. Societies are fluid, forming and reforming their constructs as times and conditions change. This is simple cultural evolution. There have been many traditions throughout history and in all societies that have been lauded as moral and culturally just only to be considered, by current standards, to be morally repugnant and deserving of reformation through civil rights and/or animal rights laws. Makah whaling is no different than many outmoded traditions that deserve to be given a place in history rather than an active role in current society. To do otherwise threatens protective sanctions that have been established for ecological/environmental benefits worldwide. While the Makah tribe deserves to retain their cultural identity, they must also be willing to evolve that culture to embrace the changing world in which they live. Reenactment of the Makah's cultural traditions through non-violent methods is entirely obtainable and should be mandated. To do anything other than outlaw the Makah killing of whales is to set an alarming precedent of moral and political hypocrisy of which our country should be ashamed.
e_Herner_05-12-08.pdf	I want to send you my comments. I ask you to not allow these people to be allowed to hunt the whales. This should not be aloowed and you must stop this insanity. Isn't there eough of killing of whales out there? Do not allow this. Look forward on hearing from you.
e_Herner_05-16-08.pdf	I ask you to stop the Whal's Life and Agonizing death of whales. You must stop this by the so called natives who think they have a right to kill whales. STOP THIS INSANITY
e_Herner_05-28-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling

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e_Herron_06-04-08.pdf	I have read the DEIS on Makah Whale hunting requests. I have the following concerns: Page 2 of the Overview of the Makah Tribes Waiver Request bullet 5 states: Provide detailed photographic monitoring etc..... Question: Who will provide this photographic monitoring and what non-tribal source will ensure the accuracy of such reporting? Same page bullet 9 states: Restrict the use of whale products to local consumption. Question: What processes or audits are in place to ensure that these products are not exported and if members of the Makah tribe are found to have engaged in export, what penalties are proposed, and what external corresponding processes exist. Same page last bullet states: .....requiring Tribal enforcement of Tribal regulations. Observation: The Makah Tribe was unable to prosecute or seat a jury against their members that hunted illegally last year, that hunt resulted in the mutilation of a whale. In my view their wavier should be suspended for any violation given that their own Council is unable and or un-willing to prosecute obvious transgressions against the law. The rationalization that was reported in the press was that all of the actors were related to some one in the tribe so therefore there was a conflict of interest with respect to seating a jury. With Respect to the Document Titled Application For a waiver etc submitted by the Makah Tribe I have the following questions and or comments. Page-iv- The definition of the word "Strike". Specifically " A harpoon blow counts as a strike if the harpoon is embedded in the whale" Comment: For what length of time. If a whale is struck and after two or three hours the harpoon becomes dislodged is it then not a strike? What is to prevent the "hunters"(sic) from removing the harpoon in favor of a different animal or to avoid having the strike count? Page 3 paragraph two: "during the 1999 hunt these methods resulted in a time to death of approximately eight minutes". Comment: I would call your attention to last year's illegal; hunt when the whale suffered for hours and died, the method of capture was, to my knowledge as described in this paragraph. Clearly this is an erroneous and disingenuous statement. Page 4 paragraph two states: "tribal monitoring....etc. Comment: Who monitors the Tribe, where is the independent oversight of this process and what is the documented audit plan. Page 4 last paragraph "Tribal Enforcement...etc Comment: I re-iterate the point above the Tribe was unable to enforce or punish their own commensurate with the serious nature of the offenses associated with the illegal hunt last year. Furthermore, the Seattle Times has frequently documented the Makah Tribes inability to enforce basic law. They indicated in an Article this year that 50% of the houses on the reservation are contaminated with Meth-Amphetamine residue. In that same article the Tribe was bemoaning the absence of Law Enforcement Resources from the BIA. So whom is going to enforce these new regulations, clearly there is not process capability and or resources for adequate oversight of the incremental burden of tribal whaling.

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	In addition to this throughout the application the Makah indicate that there will be training and certification for the whalers. If basic needs, ie health safety etc are not being met by the current economic situation, where are the resources going to come from for this certification and training process. Furthermore where is the curriculum and associated processes? Page 5,section A regarding: cultural renaissance and provide significant nutritional resources. Comment: Cultural renaissance. The primary premise throughout this application is that the Tribe will receive social benefit and relief by participating in these efforts. What measurements are in place and or anticipated to measure this? It seems to me that if the Government were to grant this waiver to the Marine Mammals Act, then there should be evidence of the benefit. Examples are numerous, unemployment rate, domestic violence, reduction of vandalism to no-tribal vehicles visiting Point of the Arches, High School graduation etc. But there are no measurements. I can accept since I am a white man, it is difficult if not impossible to understand the cultural significance, however, demonstrable success would not only further the continuation of whaling but generate tangible goodwill in the non-tribal community. Their own statistics indicate that only 39% of the Tribe participated in the ceremonial rights of the last kill, indicating that this renaissance theory is questionable at best. Comment: Significant nutritional benefit. The Tribes own document indicates that 30% of the tribe cooked the meat of the whale killed in 2005. How are the Makah Tribe going to consume five whales worth of meat a year. In my view the rest will be wasted for the non-measured esoteric "cultural renaissance". Clearly five animals a year is an excessive harvest irrespective of the overall whale population. With respect to the NOAA EIS, Chapter 2 "Alternatives" section 2-8 lines 2-3. Comment: Grenades? How can this even be considered from a human safety standpoint, not to mention incremental impact adjacent aquatic and avian life. Given the emotional nature of this issue, and the fact that previous hunts have been attended by individuals protesting and or attempting to disrupt the hunt arming one side with explosives seems to me to be inane. Summary: I oppose this Waiver. However if it must go on, then the points I have raised above need to be thought through and implemented. The Makah request lacks depth, relative to specific process oversight, funding for incremental programs and third party validation of compliance with the Waiver. The reality is that the Makah cannot afford, manage or enforce their own Tribal concerns today, and our unable to even mete out punishment to recognized violators of the law, ie rogue whalers. What changes our going to occur all of a sudden to provide them the resources and process capability to fulfill their responsibilities under this application. The fact is nothing will, it will be business as usual in the pursuit of "cultural renaissance" at the expense of fifty whales.
e_Higdon_05-29-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers.

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	Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Hnilo_07-07-08.pdf	We vehemently oppose allowing the Makah to hunt whales. It is inhumane, immoral, cruel and illegal. Do the Tribes now get to pick and choose which laws they want to adhere to? It's bad enough that they are allowed to practice gill netting and selling dangerous fireworks. What's next? Allowing this slaughter to proceed in the name of preserving cultural heritage is disingenuous at best. The survival of the tribe's culture is not dependent on killing whales. Many human ancestors committed what would now be considered atrocities as part of "heritage," including blood sacrifice, cannabilism, slavery, etc. Is this allowed to continue? Of course not - it's inhumane, immoral, cruel and illegal. Further, if this really had to do with preserving a primitive part of their heritage, then one would think that the use of modern boats and weaponry would not be included in the proposal. In light of the changes in the ocean's temperature and chemical composition due to global warming, we don't know what the effect on whale populations might be. Allowing hunting of them is irresponsible.
e_Hobson_05-14-08.pdf	I whole heartedly support the 1855 Treaty of Neah Bay regarding Makah tribe whaling.
e_Hockenbury_05-10-08.pdf	I wish to hereby weigh-in on the proposal to allow the Makah Indian Nation to hunt Pacific gray whales off the Washington coast, in the affirmative. This is a proposal that has been too long in coming, and it is time that this Indian Nation be allowed to pursue it's 1855 treaty rights to whaling. It is my opinion that the tribe could take at least 5 whales per year without harm to the whale population, other wildlife species and the general environment. As reported by Brian Gorman, a fisheries service spokesman in Seattle, the total population of gray whales, "...seems to be stable... it is considered a healthy population." Considering the positive economic, ceremonial, subsistence and cultural impacts to the tribe, I recommend that approval for resumed hunting of the gray whale by the Makah Indian Nation be approved as soon as possible in respect of the 1855 Treaty with the Makahs.
e_Hoenig_06-23-08.pdf	Several comments and statements embedded in e-mail
e_Hogg_05-12-08.pdf	Marine mammals are not special from land mammals. We eat land mammals, so no problem eating a marine mammal. I hope you get the right to hunt the food you want to.
e_Hogue_05-12-08.pdf	I think they should be allowed to hunt the whales as long as they use the technologies employed by their ancestors. They should be able to keep their traditional right as long as they use their traditional methods. It doesn't seem that would be too much to ask. After all the right was granted based on assumptions regarding their capabilities at the time, wasn't it? No internal combustion engines, no fancy exploding harpoons, no spotting from aircraft or modern vessels. No radios, radar or sonar. Perhaps they should be allowed modern life jackets, but short of that everything they use in every aspect of the hunt should be "traditional".
e_House_06-01-08.pdf	I'm conflicted over this b/c American Indians have been so unfairly treated since day one, however, whales have been treated the same way. No more killing whales. Not for any reason whatsoever. Stop destroying the environment.
e_Houston_08-14-08.pdf	I am strongly opposed to the proposal of restoring the hunting of gray whales to the Makeh Tribe for the reason of "tradition". Times change, traditions change, and people change with them or become obsolete. There is great concern for the preservation of a rare and fragile species which should out weight any considerations of a folk "tradition."

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e_Hoyer_05-12-08.pdf	I am not in favor of allowing whale hunts. This is the 21st century a treaty composed and finalized in the late 1800's could not have foreseen the advancements of civilization in the following 100 years. The original intent of the treaty must have been to assist in the nourishment, native tools or other implements that comprised the Indians normal living conditions. Today Indians are subsidized with cash and tax-free incentives to assist with their "needs". Killing of the whales is not a "necessatity", they wish to kill the whale in order to uphold a provision in an "out dated" treaty (which should be revised in accord with advancements in civilization). If they need food, go to the grocery. This reflects the same treaty scenarios regarding fishing, the original treaties were initiated when Indians used spears and the bow/arrow to catch fish and not modern monofilament nets. If the Indians wish to exercise the rights granted by treaties over a 100 years old then they should use the same technologies that where used during the time the treaties where initiated. Do the original treaties also require the government to provide blankets, cooking utensils, crop seeds and such? If so why aren't the tribes calling for these "rights"? Why do they always take aim at some unique provision? When all they need to live is in the local grocery or departmental store. If anything the Indians need more motivation to integrate into society, which is what my grandparents did when they came to this country in the 1904. Maybe a proposal to give up some of the Federal funding, which is provided to help subsidize "daily living" in lieu of modern hunting privilidges.
e_Huelsbeck_06-03-08.pdf	I believe the requested waiver of the MMPA should be granted. None of the proposed alternatives will harm the population of gray whales. It is my understanding that the population is now so high that it may be necessary to implement management efforts for the benefit of the whales. If the Makah resume practicing their right to hunt whales, it is unlikely to have a negative impact on whales elsewhere in the world. If anyone proposing to hunt whales, conducts the kind of review represented by the document under review, we can be certain that populations will not be threatened. The US Government can not impose regulatory authority outside of the United States, but the world can use the Makah gray whale case as a standard. If the request is not granted, it will harm the US Government's relationship with the Makah Tribe and probably with most, if not all other Native American Tribes in the United States, and with First Nation Peoples around the world. Most non-Native Americans do not realize how important treaties and treaty rights are to Native Americans. I personally support the least restrictive alternative. There is nothing in the Makah Treaty that imposes the kinds of restrictions proposed in the Makah Tribe's request. Having said that, I am not about to second guess the wisdom of tribal leaders in structuring their request. The Makah Tribe's request for a waiver of the MMPA should be approved.
e_Ionta_06-21-08.pdf	Please don't allow the makah to hunt whales. I respect the traditions of the makah, but not to the point where they hunt whales.
e_Isbell_06-07-08.pdf	Please accept our comments regarding the Makah Indian Tribe's appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the defenseless animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, provided the offenders violated no laws the following year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. In the 21st Century, no human being needs whale meat to survive - including the Makah Tribe, who until recently, mercifully left the gray whale unmolested for over 70 years. The "reinforcement of tribal identity" does not justify blatant slaughter. Whales are typically harpooned or blasted with high-

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	powered rifles under the guise of "cultural" whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please do not honor "treaty rights" to massacre whales. We urge you to deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Jackson_05-26-08.pdf	I have read the DEIS and my conclusion has come about because of these problems: A recent "hunting bungle" occurred when a group decided to kill a whale without permission. The whale, wounded, was left to die a miserable death. What assurances are in place to make certain that the whales killed are not either pregnant or nursing? If the tribe itself is not going to oversee or share in the cost of a whale kill, then the danger to allow families to kill will likely result in more bungles. "Warriors" heading out to kill have limited skills for harpooning and would wind up with motor boats and modern methods of eliminating whales, all disruptive and cruel. Would open up whaling to other indigenous groups and countries anxious to harvest whales for commercial purposes. Most of the $140 million tourist dollars come from festivals in Port Angeles and Sequim. Nobody tours in Neah Bay except to visit the local museum. There's not much to see there. Whale watching events should be totally banned anywhere. Such events are strictly for the dollar and are not at all concerned with the disruption they cause to marine wildlife. No clear cut economic benefit to tribe. As with other indigenous peoples, rituals can be carried out in "mock" events on the reservation. The only people interested in watching whales being slaughtered would be those bearing witness to a wanton, cruel act. The average tourist wouldn't get near such an event. $2.1 million dollars to secure the area by US Coast Guard and other law enforcements agencies is way too much money to spend with taxpayer money. There are many more pressing uses for those dollars than killing whales. The Makahs have to find another way to subsist other than whale kills. If whale hunts are allowed, nothing but bad can come of it! I VOTE ABSOLUTELY NO WHALE HUNTING!
e_Jackson_07-03-08.pdf	We are long time residents of Clallam County living at Freshwater Bay about 55 miles E. of Neah Bay. We have become acquainted with the Makah Nation and are deeply moved by their culture, traditions and strong character. We have studied the meaning of whaling to the Makah and it is a very sacred tradition which is part of the spiritual history of the tribe. One has but to marvel at the artifacts uncovered at Ozette to appreciate the richness of the whaling tradition. The Makah have petitioned for recognition of their treaty rights; NOT to engage in commercial exploitation of these great mammals. This petition should be granted; the 9th circuit court is wrong in this instance. We urge you to support the Makah. Thank you.
e_Jacobs_05-12-08.pdf	Thanks for the opportunity to comment on the Makah's right to resume whaling. The Makah Tribe signed a treaty with the United States in the 1800's which, like all treaties ratified by the Congress, is the supreme law of the land. There is no doubt that it is valid, and the language is very clear. They are a legitimate sovereign Indian Nation. They were coerced to give up rights to occupy hundreds of thousands of acres of ancestral lands . They reserved the right to whale. In the 1920's, after white whaling interests decimated the gray whale population, the Makahs halted whaling to help preserve the species. They did no whaling for 70 years so that the resource could recover.

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	In 1974 the gray whales had recovered enough so that they were removed from the Endangered Species list. The population was then estimated at around 20,000. By 1992 the population was at 24,000. In 1999, the tribe was “allocated” the “right” to take up to five whales per year. Although they were under no treaty requirement to comply, or even to ask for approval, they elected to cooperate with Federal authorities. As a sovereign Indian Nation, they were guaranteed the right to whale. Still they elected to cooperate and to quietly wait for an OK to do what was guaranteed in the Treaty. After waiting for years, a single whale was taken, out of a population of 24,000. It was shared with all interested tribal members, as was the case for hundreds of years. The skeleton was cleaned and then mounted in the Tribal Heritage Center, as a permanent display of their historical tie to the whale. What could possibly be wrong about that? The United States Government has no jurisdiction to require this sovereign Nation to comply with such regulations. Neither the Marine Mammal Protection Act nor Fisheries Service regulations can be legally enforced. For confirmation, please refer to United States vs State of Washington and the decision rendered by Judge George Boldt. Follow the Treaty language, backed up by Federal Court cases, and stop attempting to prevent this Tribe from exercising their guaranteed treaty rights.
e_Jamison_05-15-08.pdf	Japan whales, USA can afford to honor the treaty they made with the Makahs. US government over the history of treaties has broken too many already, NO MORE. Our founding fathers never broke their word to the Native Americans. We need to honor this treaty, it is about freedom of religion because you can't seperate their culture from their religion.
e_Jansen_06-02-08.pdf	I ask you to resume limited hunting of eastern north Pacific gray whales in the coastal portion of the Tribe's usual and accustomed fishing grounds, off the coast of Washington State, for ceremonial and subsistence purposes. The DEIS, prepared under the National Environmental Policy Act (NEPA), considers various alternatives to the tribe's proposed action.
e_Jay_05-19-08.pdf	Under no circumstances should the Makah ever be allowed to kill another whale. They have proved to be liars, dishonorable, opprobrious and disgusting. My comments are: NO INDIGENOUS WHALING FOR ANY GROUP! This is a new era, a new paradigm where the land, the waters and the beings who live on and in them have been killed to the brink of extinction and some right on over it. ENOUGH! Someone has to have the balls to say NO MORE! There is no reason to save a stupid, mean and cruel culture. Cultures must grow with the times. That gray whale slaughtered by Wayne Johnson languished in agony for 6 hours chocking on it's own blood. This MUST not ever happen again. I have asked before and I am asking again that all whaling be stopped by this country at once. There is no reason to continue brutalizing whales. Culture is the least of it. All living must live and change, including indigenous tribes. Especially indigenous tribes. I am opposed to the opprobrious and unconscionable behavior of both the tribes and the US government that permits the killing of whales. NO WHALING! We've just spent 8 years under an idiot with no morals or brain. It's time someone stood up and made a positive difference. It's time. Do it. Be the one with the balls. Save the whales.
e_Jeb_05-10-08.pdf	I would like to make my statement of support for the Makah and their right to a Grey Whale Hunt. I am an eco-minded person, but I also agree with a sovereign nation being able to make good on a promise the United States has made to them. It is our duty to uphold the document and treaty we agreed to in 1855.
e_Jenkins_05-12-08.pdf	As much as I love to see the whales out on the ocean and they should be protected, I don't think a few taken by the Makah tribe will make that much difference. They do in fact have treaty rights to do so but have been very aware of public opinion and restrained from continuing their cultural hunts. And as long as its not for any commercial profits, I think they should be allowed to take their whales

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	according to tribal customs. I also think it was very unfortunate that a few tribe members took things into their own hands recently. They should suffer the worse fate the tribe can give them and lose their rights to ever hunt again.
e_Jenkins_08-14-08.pdf	I am in support of the Makah Nation's treaty rights to hunt the whales. We have lived on the Olympic Peninsula for 36 years. In no way, do we feel we can tell the Makah's how to live their lives. Treaty after treaty has been broken by our government. The destruction of the sea life and forests has not been at the hands of the Makahs or the S'Kallam tribes. No one but the Makahs should decide what is or is not part of their culture. I am tired of the effort to rule over the Makahs but the anitwhalers. Please side with the rights of the Makahs. This is a chance for justice for the tribe and an effort to realize their history of preserving the earth and the seas.
e_Johnson_08-14-08.pdf	No more killing of whales by the Makahs or anyone else.
e_Johnston_05-23-08.pdf	I'm all for the Makah Tribe having pride in its existence, but there are other ways to accomplish this than by pointlessly killing gray whales. Some people don't seem to get it that their heritage, their old cultural patterns are not viable in the world of today. Ceremonial practices to celebrate the history of the Makah could certainly be developed without actually killing animals FOR NO REASON! And what is this about "how many could be struck but not killed"? That is really ugly. The whales are protected by law; keep them protected and do not allow hunting just for the fun of killing something.
e_Jones_05-12-08.pdf	You are being lied to by the Indian Industry. 1. As of the Indian Citizenship Act of 1924, there are no more "Indians" within the original meaning of the U.S. Constitution 2. The U.S. Constitution makes for no provision for the national government to 'make or continue to observe' treaties with "Indians" as there are no more Indians only U.S. citizens with Indian ancestry. In short, there is no Constitutional legitimacy for acceptance of an 1855 treaty as any justification for permitting U.S. Citizens with Indian ancestry to hunt whales! This whole thing is pure rubbish!
e_Jordan_05-29-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Jordan_05-31-08.pdf	Please add my voice to all those who wish to thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. Please consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all

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	charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty. Thank you for your time and consideration.
e_Judge_05-28-08.pdf	I am strongly opposed to the unnecessary killing of whales. Please don't allow the killing of such strong creatures.
e_Karen_08-14-08.pdf	Attached is my response to the subject document. Subject line named the attachment as “DEIS Makah.doc” [It is now saved it in the T-Drive folder named “_Attachments for Whale Comments.” The name Karen Haarstick was added to the letter name for easier identification.]
e_Kastel_06-12-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Kelly_05-10-08.pdf	There aren't enough whales left in the world. It is time to end this "hunt".
e_Kennedy_08-04-08.pdf	Pertaining to the public comment or vote on the proposal of the Makah Tribe to kill gray whales in the north Pacific, I am very appalled that this is even on the table. The Gray Whale of the Northwest is low in numbers, and with all of the old and new environmental threats (i.e. offshore drilling, and warming of the oceans), I believe to allow this kill would be very irresponsible! My opinion is a resounding NO! Please consider that traditions are not a good reason for killing gray whales at this time, as we do not know what effects the warming of the Earth will have upon species even in the next 10 years. The best scientists we have do say that if the human population doesn't change its carbon habits drastically and immediately, over 50% of all plant and animal life will be gone from this planet in 30 years time. We also know the ecosystem will be destroyed.
e_Kenoyer_06-21-08.pdf	After all of the many bad things my white-man forefathers have done to the American Indian, one of the VERY LEAST things we can do is respect and adhere to the treaties we signed with them. The Makahs should be allowed to hunt whale as often as they want to, whenever they want to, right up to the point where the whale numbers are endangered. It's part of their heritage. They were hunting

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	whale long before my forefathers got here and stole so many of their lands and rights away from them. We should remove the bureacracy and make it easy for them to hunt whale.
e_Kerchner_05-09-08.pdf	Before the white man came to this land the indians were hunting whales for subsistance purposes. they did not over hunt, they took only what they could use/eat. Then the white man came and slaughtered the whales just like he slaughtered the buffalo. He used part of the whale only (oil), the rest he threw away. The whale population was decimated, not by the indians, but by the whites. Now the whites act contrite and want to prevent anyone from hunting whales because of the white man's imprudence. The law should prevent any whites from hunting whales, because whites are callous people, as history shows. But the indians had revered the whale and took only what they needed, and they should be allowed to hunt the whale as long as this is so.
e_Kinch_08-12-08.pdf	No one could doubt indigenous americans have the right to interact with remaining indigenous plants and creatures without interference from other races/cultures...What is to be hoped for is a transformation in the way all humans interact with cetaceans...Hopeful is the fact that a 'calling in of the whales' by tribal elders earlier this year saw, "Moms and babies in the surf,spy hopping and playing in the waves off LaPush.." The Penninsula Dailey News ran an article, "Gray Whale Malnutrition Linked To Ocean Warming.." on it's front page over a year ago.. Newstrack_Science reported: 'Skinny Gray Whales Swim Pacific Coast' citing altered food supplies.. An anecdotal story in the San Francisco Chronicle described the actions of a humpback whale arduously rescued from a tangle of crab traps..."When she was free, ... she swam in what seemed like joyous circles.. she then came back to each and every diver, one at a time, and nudged them....some said it was the most incredibly beautiful experience of their lives.".....While eating whale meat/blubber was essential in the time of native forefathers, it is no longer likely safe to eat..(See articles on 'stinky whales', PCB's, and toxin levels in marine mammel tissue..) Perhaps the Tribal Council could ask their ancestors whether it is time to reconnect with their ocean brothers in a new and sacred manner ..... it would seem they could use our help and understanding.
e_Klein_06-17-08.pdf	I'm concerned over the possibility of allowing more whales to be hunted by the Makah tribe. To be honest, I struggled as to whether to write this because I do respect the fact that these are indigenous people who were doing these rituals long before I or probably the majority of people writing you were here and I understand this is part of their cultural and spiritual belief system. I very much respect their beliefs and feel I even understand why they feel it is so important to conduct these whale hunts. Yet, I still feel strongly that whales need to be protected. Since the tribe's livelihood or need for sustenance is not directly tied to having these whale hunts, I can't sit by quietly while whales are hunted and killed in what appears to be tortuous ways. Please consider stopping this practice.
e_Kobak_06-27-08.pdf	I am married to a Native American man. Both of us feel very strongly that in this day of declining fisheries and habitat, a hunt of 5 whales per year is an outrage. If the tribe could use all of the whale as in years past, then yes, we would agree with the hunts. But very few members partake of that whale. It is sold commercially for a large sum of money. It may be cultural to hunt that whale but it is against all traditional values of the past to sell that whale for profit. Greed has hit the Makah and is reflected by these for-profit hunts. Please, in this age of dwindling marine life and habitat, do not allow these hunts. 1 whale only, with no allowable sale of any part, may be acceptable. Even that is to much in this day and age. Everyone has to adjust to a changing world, not just the Makah. Please do not let this go forward.
e_Koehl_05-29-08.pdf	First, I would like to thank you for allowing me the opportunity to make my concerns hard in regards to the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I have recently learned that

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	the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I most respectfully ask you to PLEASE consider this fact: In the 21st Century, no human being needs to consume whale meat to survive; including the Makah Tribe, who until recently, have left the gray whale to live in peace for over 70 years. The "reinforcement of tribal identity" certainly does not justify murderous slaughter. Whales are most often harpooned or blasted with high-powered rifles under the guise of "cultural" whaling. Holidays are "observed" with whaling contests and races. No celebration can ethically justify animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine agonizing hours of suffering. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you are aware, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. Please, it is unacceptable for the Neah Bay whale and others who will suffer an agonizing and prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please, I urge you to deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Koppelman_06-08-08.pdf	I do not support allowing the hunting of whales by any citizen of the United States, including members of the Makah tribe. Article IV of the 1855 Treaty with the Makah states “The right of taking fish and of whaling or sealing at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the United States… (emphasis added).” Currently, the citizens of the United States do not have a right to hunt whales. If there is no right of the citizens of the United States to hunt whales, there is no right in common that exists for the Makah to have. Stated in another way, if there is no right in the first place, there is no right for the Makah to hold in common. Supporters of Makah whale hunting seem to have conveniently ignored the language of the treaty that preserves the right in common. But words in treaties and legal documents can not be ignored for convenience; every word has to be read and accorded its full weight. While the federal agencies have stated that the September 2007 illegal hunt by five members of the tribe have no bearing on the current DEIS, I believe that the five men’s actions can not be ignored. Four of the five men involved in the illegal hunt were involved in the sanctioned 1999 whale hunt. Thus, these men were the tribe’s chosen representatives to conduct the sanctioned hunt. Yet in September 2007, there is no evidence that what the five men did was ever a serious whale hunt. It was grown men with high-powered weapons out to take uncoordinated shots at whales. Moreover, whaling involves more that the gun crew; it involves others to tow the slaughtered whale to shore to “harvest” the meat. There is no evidence that there was any support crew or boats involved. Without those, how can these five men argue that this was a serious hunt to harvest food for sustenance? Rather, that hunt, conducted primarily by men chosen by the tribe as its premier hunters, was a cruel and thoughtless thrill ride that involved shooting at defenseless animals. While supporters of whale hunting argue that the gray whale populations are healthy, some scientists argue that gray whale populations are actually declining. Researchers at Sanford University and the University of Washington are concerned that gray whales that they have observed in recent years are starving. With the general unhealthiness of the world’s oceans, this is not surprising. Further, scientists now estimate that gray whales once numbered 96,000 in the North Pacific Ocean. Although there has not been an official count of the population since 2001, the gray whale population may be as low as 15,000, or as high as 22,000. A population of 20,000 is hardly a resurgent population of an animal that once numbered close to 100,000. Until the National Marine Fisheries Services does conduct a scientific count of the gray whale population, unfounded estimates should not be used to sanction killing an animal that has been on the endangered species list. Indeed, it may be that a count will indicate that the gray whale should be back on the endangered species list.

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	Finally, hunting is not about swiftly and efficiently killing every animal. As the illegal hunt shows, hunting involves the wounding and prolonged death of many animals, more than just the one that is successfully killed and brought to shore. Since experienced tribal hunters in September could not manage to swiftly kill a whale even though they struck it four times with a harpoon and shot it at least 16 times with a high caliber rifle, we can expect that many whales will be wounded and die painful, prolonged deaths at the hands of Makah whalers. If the Makah do not hunt whales, they do not have to lose their whaling culture. Rather, they can take positive actions to protect whales, and promote the wonder and value of live whales, rather than killing them. The Makah could take the forefront in promoting the restoration of large and healthy whale populations, and promote compassionate treatment of marine animals by all peoples. Drawing on their traditional knowledge and culture of whaling, tempered with the modern sensibilities of valuing animals' lives and American's anti-whaling values, the Makah could advance their whale culture into the 21st century.
e_Kraus_08-15-08.pdf	Killing whales cannot be justified for cultural ceremonies. Traditions need to be updated and changed to the current times. To allow whale hunting to resume will just open the door for whale hunting nations to increase their whale hunting activities and assume that whales are plentiful. There may indeed be a reason for subsistence hunting in some parts of the world but certainly not for the Makah in Washington.
e_KristiH_05-30-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Kristy_05-12-08.pdf	The stupid Makah should NOT be allowed to ILLEGALLY kill highly intelligent whales! Do not allow the damned Makah to ILLEGALLY kill amazing whales! That would be barbaric! The numerousness of a species should NOT be "THE" indiction, on whether or not to ILLEGALLY kill an animal! Period. And they have not ILLEGALLY killed spectacular whales in a really, really long time! There is no "need" for them to do so now! Their "culture" does NOT ILLEGALLY include special whales now!
e_Kuba_06-27-08.pdf	I strongly oppose the murder of Whales by the Makah Tribe or any tribe or individual. The Makah most evolve and learn to leave in harmony and peace with all of earth's creatures. Not doing so is barbaric and an act of savagery. Tradition most not reconsile any one to atrocities! NO WHALE MURDERS! NO ANIMAL TERRORISTS! Defend Animals Coalition Alfredo Kuba, President 650-965-8705 defendanimals@gmail.com "All beings are ends; no creatures are means. All beings have not equal rights, neither have all men; but all have rights. The Life Process is the End-not man, nor any other animal temporarily privileged to weave a world's philosophy. Non-human beings were not made for human beings any more than human beings were made for non-human beings. A universe is, indeed, to be

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	pitied whose dominating inhabitants are so unconscious and so ethically embryonic that they make life a commodity, mercy a disease, and systematic massacre a pastime and profession." Professor J. Howard Moore CLICK THESE LINKS FOR THE ENVIRONMENT, ANIMALS AND HEALTH. http://www.nytimes.com/2008/01/27/weekinreview/27bittman.html?_r=1&em&ex=1201842000&en=7490d3223d2f16cb&ei=5087%0A&oref=slogin www.GoVeg.com www.meat.org www.pcrm.org http://www.petfoodshop.com/
e_Kundu_06-03-08.pdf	This correspondence represents the collective opinion of the eight-member board of advisors for Project SeaWolf Coastal Protection, a federally-registered non-profit environmental advocacy group based in Marysville, Washington. Specifically, the opinions cited represent the views of Michael Kundu, Robert McLaughlin, Robert Wood, Patricia Woodfin, Wanzellia Clark, Anna Tyo, Brandy Knight, and Arun Kundu-Thomson. We are in collective opposition to NMFS/NOAA issuing the Makah Tribe permission to resume a limited hunting of eastern north Pacific gray whales in the coastal portion of the Tribe's usual and accustomed fishing grounds, off the coast of Washington State, for ceremonial and subsistence purposes. Our opposition, includes a deep concern that accurate population assessments, and changes, in eastern north Pacific gray whale stocks has not recently been reviewed; opinions recently expressed by researchers indicate that the estimated population may be lower than previously suggested, and that starvation may be impeding the recovery of the Pacific Gray whale population [reference at http://environment.newscientist.com/channel/earth/dn12623?DCMP=NLC-nletter&nsref=dn12623]; moreover, changes in coastal climatic conditions and oceanic quality have not been factored into the determination of a 'viable' harvest number established for this proposed hunt. On a more pragmatic basis, we are also deeply concerned that the Makah Tribe have shown an inability to maintain control over the individual actions of tribal members, While we understand thatch this unauthorized hunt is a separate matter to this EIS, we maintain that the subsequent response taken by the Makah Tribe to address the action of the hunt has a very significant impact on the potential outcome of any decision made by NMFS/NOAA on this EIS. Members of the Makah Tribe who undertook this unauthorized hunt, and who continue to express their intention to hunt gray whales despite any restrictive action of either tribal or federal governments, have not been adequately controlled by the Makah Tribal government. We are very concerned that, when unlawful or illegal hunts do occur outside of both tribal and federal protocols, the tribe has shown an official 'unwillingness' to hold their members accountable for the legal violations of marine conservation rules, federal/tribal agreements, and the federal Marine Mammal Protection Act - based on recent violations by the renegade whaling crew headed by Wayne Johnson, there can be no assurances that the tribe will hold accountable, nor legally enforce against, any member of the tribe who violates the co-operative laws governing wildlife conservation or marine mammal protection in the waters off Neah Bay and the Olympic National Park Marine Sanctuary. In the absence of any 'good faith' willingness for the tribe to sanction or adequately penalize any of their own membership who have violated both tribal and federal laws, any agreement between NMFS/NOAA and the Makah Nation cannot be considered binding nor viable. Given the nature of our concerns, it is our hope that the NMFS/NOAA will select the 'No Action' course of response in this EIS: selection of this response will result in the Makah Tribe being held to the same level of accountability (in reference to marine mammal conservation laws) that other US citizens are subject to. Since the conservation of cetaceans and other marine mammals must be conducted on a level playing field by all residents and constituents of any given region, we believe that this action would be the appropriate one to pursue. Thank you for the opportunity to present our perspectives.
e_Kusy_05-10-08.pdf	While I do not have the time or inclination to read the entire DEIS, I am aware of the issues surrounding Makah whaling and treaty rights. I was on the Makah reservation the day after the whale was "illegally" taken in September 07. I have seen their land and their waters, their people and their community. I fully support any plan that allows the Makah to undertake whaling insofar as it helps to strengthen and preserve their way of life. I could go on and on about why I feel this way, but you will likely get a lot of feedback so I'll

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	keep it short. Animals and living things have rights, yes, but cultures also have rights, and one of those rights should be not to be judged by an external culture, especially one so destructive as the larger North American industrial consumer culture.
e_Kusy_06-03-08.pdf	I am writing simply to let you know that I support the rights of the Makah to whale in their traditional waters around Neah Bay as outlined in their treaty rights. In my opinion, as the constitution says that treaties are the supreme law of the land, this matter should be closed as soon as possible and not up for further discussion. That the Makah have been sensitive to the environmental impact of whaling since the 1920's is a kind gesture on their part, but not one that they were legally obligated to make. They have been patient in waiting for this issue to resolve itself. Furthermore, there has been too much cultural imperialism in this matter. Let the Makah decide what is right for their tribe while mainstream Americans can decide what is right for our "tribe."
e_Lambert_06-02-08.pdf	The world's whale populations continue to decline from various causes. It is no longer appropriate for the Makah nation to hunt whales merely as a continuation of tribal practices. Whales of all species are very long lived, and every one is now necessary to ensure adequate reproduction and sustainability of the species. The argument that the tribe needs this ritual whale hunting to maintain its tribal identity is not justified; there are much better ways for the tribe to do this that do not jeopardize the future of our whale populations. I strongly urge that whale hunting by the Makahs be prohibited.
e_Langley_05-28-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's appeal to hunt Pacific gray whales in coastal waters off of Washington State. I am writing to ask that you deny their request to kill these whales. No human being needs whale meat to survive, the Makah Nation has long existed without the hunting of whales, and "culture" never justifies the horribly cruel slaughter of animals. When the Makah whalers illegally shot and harpooned a gray whale in 2007, the animal took nine hours to expire. The Makah Nation predictably dismissed all charges. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Laws must change to reflect social norms and increased understanding of other animals. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Larsen_05-13-08.pdf	I honestly don't really think that whale hunting is really needed, it's not like we're living in Japan or China - not like they should be doing it either but they're eating it...Gosh, I just think that people need to leave the animals well enough alone.
e_Larsen_06-03-08.pdf	My comment: it's very simple, hunting to survive is honorable. Killing for sport or pleasure or even for cultural identity is wrong. To find a way to move your culture in to the future is simple too. But it is you who must make that choice, and soon; now that the issue is raised. May you chose well, for your children's sake. May you lead us all down the honorable path.
e_Larson_08-14-08.pdf	Attached please find official comments regarding the 2008 Makah DEIS from the Whale Watch Operators Association Northwest. Please let me know if you have any trouble opening the attached Word document. Thank you for the opportunity to provide our thoughts on this matter. [Attached Letter named "2008 Makah DEIS WWOANW.doc"]
e_Lelievre_05-10-08.pdf	Any possible more I can do, I will, but not at the sacrifice of living, warm blooded whales. The Makah tribe has existed a long time without killing whales, what they've already done was done illegally. Might this not open a series, where, based on precedent acts, will induce many other "tribes" illegal or not, to even kill the whales and harvest for profit. Plus, and mainly, it is immoral. Please consider this as a vote against the Makah Tribe and all they represent.
e_Leshner_07-10-08.pdf	I attended the June meeting in Seattle. I am not a member of any particular group--just an interested citizen. Initially, I was supportive of the Makah's taking of a whale but I realized that that was because I just didn't know the facts of the proposal. I thought they might be

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	proposing to take one whale but not annually just to maintain that part of their culture and to exercise their treaty right. When I read that the proposal was for 20 whales during a 5-year period, my support vanished. I know that you are studying the impact of this proposal on the number of whale population as well as other affected species and how it affects the environment of the ocean. Then there is the Whaling Commission and the global need to protect whale populations. It is complicated, I know. I do not think that the Makah's proposal is a good one. Thank you for your consideration.
e_Lewis_05-10-08.pdf	It is my opinion that killing whales for any reason should not occur. I would like to remind everyone that the one whale that was killed in 1999 was not taken care of appropriately, was not respected by the majority of the Makah tribe, and most of it was left on the beach to rot under a tarp. Does anyone else remember, in 1999, as it was butchered and served, how many of the tribe spit it out and complained about it's flavor and texture? I would hope that both nations, the Makah and The United States of America have come a long ways together since 1855. We now have women's rights, slavery is outlawed, there are child labor laws, and it's time to quit hunting and killing the tame, gentle whales.
e_Lindley_05-18-08.pdf	It is a travesty that a beautiful animal went through hours of hell by the Makah whalers. It is time that whaling is stopped completely and that this nightmare is not repeated again. Justice was not done by the prosecution and 5 Makah criminals got away with a slap on their hands for slaughtering a feeling beautiful being. At times I am ashamed to be a HUMAN being when I hear of atrocities that we inflict on other living beings. No more Makah whaling.
e_Linger_05-10-08.pdf	You have got to be kidding me. How can you allow a Tribe to hunt whales when they are protected under the Marine Mammal Protection Act? Isn't America supposed to be a civilised society? Or, are we like Japan where we can do whatever we please and skirt around the laws in spite of the reasons that they were put in place? This sort of skirting of the laws really makes me ambarrassed to be an American. No whaling should be allowed in American waters.
e_Livingston_08-03-08.pdf	This treaty must be renegotiated. The "ceremony" of butchering beautiful creatures already in danger of extinction was tragic 150 years ago. Today it is indefensible. Depending on whale hunts for subsistence is not a 2008 reality....it's an excuse that hunters of many innocent creatures use to justify their sick form of entertainment.
e_Lorin_05-29-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Lowe_06-03-08.pdf	I have spent time in San Ignacio Lagoon with Grey Whales. The mothers lay under our small boat while their baby came up to us and allowed us to stroke her. To allow the slaughter of ANY whales in this day and age is criminal, no matter what the rational. So-called

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	"tradition" is never an excuse to continue this cruel and unnecessary activity. Let us stop this nonsense now, and get on with the business of protecting all sea creatures, before its too late.
e_Lowery_05-10-08.pdf	I fully support the Makah Tribe's cultural and treaty right to take whales. Such action can not possibly have a significant impact on the gray whale population. As a society, we surely can find more important and useful things to do with our resources than to continue the wrangling over such a trivial matter.
e_LPC_06-14-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Lyons_07-18-08.pdf	We live in a world that is slowly adopting Indian perspective toward the earth and wildlife. Please adhere to your sacred regard to animals. You do not need to kill whales to survive in this world. The whales are so lovely and already so many destroyed. Please give them a chance to live, raise their young and enjoy their ocean home. You have many great cultural beliefs that are healthy and considerate--killing whales is not one of them.
e_Macdougall_05-20-08.pdf	Let the Makah make their own decisions regarding whaling. They are given this right by treaty, and this right should not be interfered with. 1) It's a treaty right 2) Whales, while wonderful, are also part of the cycle of life: they get eaten by other animals, and also by us (and besides, it's a treaty right anyway) 3) It's a treaty right. I'm not sure why we are even being asked our opinion, as it is the right of the Makah to hunt whale, but as it seems this DEIS has a legal impact, for some non-treaty reason, my opinion is that the Makah, as a sovereign nation, be allowed to choose their own path regarding whaling.
e_Mar_05-11-08.pdf	I am writing to request an extension on Makah comment period so we may have time to review it .We would like a 90-120 day extension to allow us to review this thoroughly. As it has taken 3 years to complete, we find it very difficult to read with any less time since we also hold other jobs & businesses. Thanking you in advance of this consideration!
e_Margie_05-10-08.pdf	I think the whales should be allowed to live. It feel that the tribal member will kill for sport. than for ceremonial and subsistence purposes

COMMENTER	COMMENT
e_Markus_05-22-08.pdf	I attended a meeting in Los Angeles at the Autry museum several years ago, when JJ was still at Seaworld. The Makah presented their pitiful justification for resuming whaling, and their preparations for it. They got their permit, JJ was released, and later that summer, the Makah killed a whale that "just came up to them". Have you considered who that whale may have been? I have.
e_Marques_06-03-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Marshall_08-15-08.pdf	Thanks to you for extending the deadline to comment on the request of the Makah tribe to add to their collection of whale bones at the Museum in Neah Bay. Sorry, but in a world that is over-populated with many people wanting to take away from that which enriches us all, I have to express my strong opposition to allowing this “tradition” to continue. If allowed, this hunt sets a dangerous precedent to re-define the meaning of “subsistence” hunting. It weakens our protests against the Japanese hunts for “scientific” purposes. It accelerates the loss of a treasure that cannot be replaced. We are running out of time to stand up for those creatures that cannot speak for themselves. (Although in the case of the whales, they speak, we simply do no yet have the knowledge to understand.) Please put my voice in amongst those who find this hunt unnecessary and cruel. The children in school in Port Townsend near me were brought whale meat to sample from that last hunt. Many of their parents found that objectionable and I agree with them. That animal should still be swimming free with the rest of his kin. They are whales, not cows!
e_Mathwizb_05-12-08.pdf	I think we should stay out of the Makah whaling issue, because of a few reasons: 1) We've already agreed to let them hunt. We already told them, 'yeah, it's okay to hunt', and now we're telling them they can't? that's just wrong. 2) The whale population is stable, and these hunters are killing twenty whales over five years. That is a ridculously small number to be concerned about. These Indians had been doing this for so many years before we colonized this area, and it did not kill off the whales. It keeping the natural order of balance essentially. It's not like they're killing hundreds like the Japanese are. That's what we need to be concerned about. Hunts that kill hundreds of whales. We need to get our priorities straight! thank you for taking the time to hear comments, and i hope you will take them all into consideration and make the choice that is best for our enviroment.
e_Maurer_06-23-08.pdf	I endorse the no-action response to the Makah Indian tribe’s request to hunt gray whales.
e_McAlister_05-28-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe,

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e_McCaffrey_05-11-08.pdf	Please DO NOT approve a continuation of whale hunting. What we now know of the complex social structure of whales and their language and intelligence should nullify a treaty that was signed in the 1800's. Plus, the Makah no longer need whales to survive. Does it make sense to approve a Makah treaty to murder whales while the rest of the population goes on whale watching excursions to marvel at the magnificence of them?
e_McCann_06-07-08.pdf	Please accept our comments regarding the Makah Indian Tribe's appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the defenseless animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, provided the offenders violated no laws the following year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. In the 21st Century, no human being needs whale meat to survive - including the Makah Tribe, who until recently, mercifully left the gray whale unmolested for over 70 years. The "reinforcement of tribal identity" does not justify blatant slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of "cultural" whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please do not honor "treaty rights" to massacre whales. We urge you to deny the Makah Nation's proposal to legally kill whales under their treaty.
e_McClanahan_05-11-08.pdf	There is no reason to not allow the Makah Tribe to participate in their treaty right of whale hunting. Their treaty right trumps congressional law. And, the grey whale is no longer endangered and are being hunted by the Japanese and Russians right now. The Makah have stated that they only want a few whales a year. Do not penalize the whole tribe for the stupid and bone-headed actions of a few of their tribe who lost patience and went maverick. They are paying the price. Give the Makah a 10% mortality rate and allow them to harvest up to 5 whales with a minimum of 1 per year when the whale's migrations bring them close to the Makah Reservation controlled areas.
e_McDowell_05-11-08.pdf	Please enlighten me regarding your intention to kill grey whales. In this time and place in history do you really need any part of this animal to eat or wear? What could you possibly need that you do not get abundantly right now? You can say it is your right, but the pride of the original American is that WE have always respected the earth and Our ancestors hunted for survival only. These whales and much of our marine life is in serious threat of extinction. This intended SPORT killing is a shameful thing. Twisted pride has entered into it and my Sioux heritage gives me license to say SHAME ON YOU. I was not there to speak out for the Bison, but there are many of us ready to take a strong stand for the protection of whale now! Please convince me I am wrong on this. There is much at stake here.

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e_McEnerney_08-11-08.pdf	Knowing that my voice is miniscule in the process of either granting or not a waiver for the Makah to kill resident whales in a marine mammal sanctuary, my intention is to speak for those who cannot. Also, I wish to express the killing of the 1st whale and the rogue whaling sent me to a place of grief beyond description. Surely it is not in my heart to deny anyone's rights as long as those rights don't infringe upon my rights to live happily in the beautiful Pacific Northwest. When the Makah Treaty was set forth, people needed to kill the whales for subsistance. Were the treaty writer's visionaries?Probably not. Did they know whales were actually sentient beings, capable of feelings? Probably not. Did they know that man would destroy the earth in his quest to have whatever he wanted? Probably not. Did they know man would come to a place where, eventually, he learned he needed to respect an d protect his environment or it would be gone forever? Probably not. But that time is here now. The Makah tribe's contention they need whales to subsist doesn't make sense - they have subsisted quite nicely without whale whale meat for decades. To kill a beautiful creature for a ceremony is not conducive to one's consideration of one's environment either. Who knows what the future will be? Will offshore drilling begin and furthur destroy the whales habitat? We can only circumspect what the future holds but we are NOW visionaries and it is time protect what little we haven't already destroyed. It is in your hands now, to make the decision that this country doesn't grant a waiver to take away protection to that which is protected in a marine sanctuary, no matter what! "What is man without the beasts? If all the beasts were gone, man would die from great loneliness of spirit. For whatever happens to the beasts, soon happens to man. All things are connected." Chief Seattle
e_McFarlane_05-09-08.pdf	I just wanted to voice my opinion on the Makah Tribes' request for whaling permits. If the Makah wants to whale because of Tribal tradition, because their forefathers did, I believe they should whale as their forefathers did - sans high powered rifles or technologically superior archery equipment - they should use the spears and bows/arrows of their forefathers as well. Then, tradition would be followed. I don't believe they can have it both ways - 2008 technology in a "traditional hunt". If they want to carry on Tribal traditions, as they do their dance, celebrations and customs, the whale hunt should be based on the original traditions as well. I also believe they should be limited to one whale per season. It's my understanding that when they got their whale in 2003(?), a lot of it went to waste because no one wanted, or could use, the blubber and other parts of the whale. One whale should be sufficient to teach the younger members of the Makah Tribe the traditions of their elders.
e_McGuane_05-09-08.pdf	Why are special interest still allowed to violate laws that everyone else has to live by here? If anyone else asked for this right, it wouldn’t even be considered! When is someone in the courts going to stand up to the outdated treaties, and finally cancel them. So much for ‘all men are created equal’. Please do not let these issues even become a topic of conversation
e_McKay_06-08-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe’s February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe’s proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive — including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The “reinforcement of tribal identity” does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as

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e_McManus_05-10-08.pdf	I fully support the Makah Indian tribes request for continued limited treaty-right hunting of eastern North Pacific gray whales (Eschrichtius robustus) and I believe the proposal submitted by the Makah Indian Tribe is the alternative action that should be selected by NOAA Fisheries Northwest Region for the following reasons: 1. The right of whaling at usual and accustomed grounds is a Makah tradition secured by the 1855 Treaty of Neah Bay. 2. Makah whaling dates back at least 1,500 years, well before the eastern North Pacific gray whale population was severely reduced by commercial whaling. 3. With international and national legal protections, the eastern North Pacific gray whale distinct population segment has now recovered.
e_McManus_06-30-08.pdf	I understand that public opinion is now being taken into consideration with regard to the decision to allow the Makah to resume the whale hunt. I understand the Makah are trying to regain some of the old ways, but the old days are gone and maybe it's time for spiritualness without the suffering and killing of such an important member of our planet that was pushed to the brink of extinction not long ago. In my opinion, the fact that the last hunt was done illegally and in such a flagrantly inhumane manner should also factor in on this important decision. Why would permission for something this unnecessary now be granted when rules and guidelines were so boldly disrespected before? Please give very serious consideration to the opinion and request from those of us who GREATLY oppose giving permission. In addition to the importance of this decision to our local area, we have a tremendous responsibility to the rest of the world in setting such a precidence that will have far reaching effects, surely resulting in negative impact to the newly recovering whale population. Consideration of this fact should not be overlooked.
e_McMullin_05-10-08.pdf	Is the purpose of hunting whales to supply food? It seems that there are many other sources of nutrition, including protein, which do not require the killing of whales. But we're told that the whale hunt is really about cultural tradition and religion, and that the hunting of whales fulfills some spiritual need. I'm sure that the Aztec priest felt spiritually fulfilled when they tore the hearts out of living captives to offer to their gods. I doubt that the persons sacrificed universally thought of the procedure as spiritually edifying. For the whale hunters there may be a deep spiritual significance. But for the non-volunteering whale it is probably a matter of terror and inhumanely painful death. Is it really necessary that probably intelligent and certainly innocent creatures be subected to that? Must they suffer and die for the sake of the religious traditions of other beings? Necessary killing of animals for food is one thing. Killing them, cruelly, for fun or for cultural/religious tradition is quite another. In fact I consider it unambiguously evil.
e_McNulty_05-29-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the

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e_Menzies_05-11-08.pdf	As a conservationist and non-native member of the public, I am in guarded support of the Makah peoples' rights and ability to kill and eat a gray whale or two every year within the limits set by the 1995 agreement. After reading the DEIS I am persuaded that there is sufficient monitoring and oversight to keep the hunt from sustaining or stimulating international demand for whale products (my biggest concern). But I do worry that whalers and their communities in places like Japan will be able to redefine themselves as "aboriginal" to take advantage of any loophole in the international moratorium on whaling, and I am also concerned that native people could become proxies for corporate/commercial whaling interests, allowing the abuse of tribal rights for commercial purposes. I know the report covers the latter issue, but I wonder if there isn't some way of monitoring exactly what sort of international precedent is set by the hunt--i.e. if a provision should be added that requires the monitoring of international court cases which reference the hunt as a precedent for allowing other whale hunts. I also object to the Makah's at this point unsupported claims that eating whale meat would improve the health of tribe members who allegedly "need" whale meat due to genetically-ingrained dietary needs. Though the tensions between culture and genetics in native politics are often almost inextricably complex, in this instance a clear distinction between the two should be maintained. Additionally, I'm not convinced that there is any economically-defined need to eat whales either, since at this point in time tribal housing, subsistence, foodways, lifestyles, desires for many of the same goods (cars, boats, TVs, etc.) and services (energy, education, health care, etc.) are irremediably "westernized" and linked to the same production and distribution networks as any other community in the US--impoverished or not. Though the whales may feed hungry people, and I understand some natives' desire for autonomy, I don't think that whale hunting is an appropriate way to address entrenched tribal poverty or hunger. I'm most persuaded by the Makah's desire to shore up the tribe's cultural identity, establish a small degree of historical parity, and celebrate its unique history--as long as the hunt and its effects on the whale population are very closely monitored. For better or for worse, the tribe's effort to create or maintain a cultural identity distinct from the surrounding cultures of the state and nation is one thing the hunt will most definitely augment. The hunt is such a polarizing issue in the state, country, and world at large that non-native antipathy towards the tribe should have the internally-galvanizing effects on tribal identity the tribe seeks...though I'm unsure whether this benefit will offset the heightened hostility and outright racism directed towards the tribe and native North Americans in general. In any case, the tribe itself should obviously be free to decide on this particular issue. Finally, one thing I did not see in the report that I wonder about are the impacts--either positive or negative--that culling this particular species of whale may have on other whale species. I would guess that maintaining a smaller number of Gray Whales may help other whale populations recover, but I wonder too if there are endangered species who depend in some way on these whales' migrations or feeding habits etc.
e_Metcalf_05-11-08.pdf	I find myself torn in this issue. I personally find the idea of killing whales repugnant and unnecessary. I also can see the cultural notion of the fishery and know that Alaskan tribes take whales. My repugnance wins, however. I do not support the activity and would make personal efforts, such as contributions to causes and speaking out, to condemn the practice. I feel that the negative public opinion has a strong detrimental effect on the tribe’s welfare.

COMMENTER	COMMENT
e_Meyn_06-21-08.pdf	I am in favor of such a hunt or hunts, since the Gray Whales are in no-way endangered, are a renewable source of animal protein and have been traditionally hunted for centuries. Wastage laws should be observed. I am not an Indian, nor am I a vegetarian. As a matter of fact I wouldn't mind tasting a piece of whale meat myself.
e_Michelson_08-15-08.pdf	The Makah state that they want to resume Whaling for tradition, cultural, health, and to bring pride back to there young people. It comes down to the fact that it is the Makah's have the treaty rights to harvest whales. But it is also the only treaty right that they wish to follow. After this treaty right is settled. A revue is do of all treaty rights should be done. They were breaking a lot of there treaty rights then and now, that is another subject. The fact remains that do to there treaty of 1855 they have that right, and they do not need permission, permits, or to comply with any new regulations set-up by the States,or Federal Government. It is stated in a book written by the Olympic Peninsula Intertribal Cultural Advisory Committee: Native people of the Olympic Peninsula.(WHO WE ARE). Quote: The Marine Mammal Protection Act "does not in any way dimish or abrogate existing protected Indian Treaty fishing or hunting rights." (Marine Mammal Protection Act 1995:17) It is up to the Tribe to develop regulations regarding tribal marine mammal take. With that said The Makah's right to hunt whales should not be challenged. If and when they decide to resume hunting which they state is for food, traditional, culture, and to bring pride back to the young people of the tribe. If the Makah People truly wish to reintroduce whaling traditions to their young people, then doesn't it stand that the use on non-traditional equipment defeats the purpose? Will all the traditions and rituals, before, during, and after the whale hunt be taught and followed? Wouldn't that be wonderful for the youth of Neah Bay to learn and understand the strength, dedication, and heritage of there ancestors.(*see reference material) The way that it is stated on the hunt that if the whale is struck with a harpoon anywhere then it can be shot, that is not traditional. All the traditional ways should be done first, then after a set amount of time then the whale should be shot. High powered rifles and powerboats are not tradition. When hunting is resumed the Makah Tribe should be required to provide there own security, not use the Coast Guard as there own police force at tax payers cost. If the Coast Guard is used then it should the Tribe should pay the cost of the service and it should go into the Operations Fund for the Coast Guard, just as oil spill incidents have to reimburse the Coast Guard. The cost should not come out of Non-Native funds. With the new state House Bill 2514 which requires all vessels to approach no closer than 100 yards of whales. This should keep the protesters far enough away so as not to interfere with the hunt. If they do break that distance then they should be fined the maximum amount of the fined. If they continue to break that law then there vessels should be seized and put up for auction. I attended the Meeting in Port Angeles on May 28th 2008, it was a very informative meeting. I talked to several of the Makah Elders at that meeting about whaling, sealing etc. one of the questions that I asked concerned drift whales, and why didn't they use them, it was stated that they never used drift whales and didn't want to use them because they didn't know the cause of death and how long it had been dead. In the research that I have done it stated that drift whales that washed up on the beach were thought of as a gift, and that they also pray for a whale to wash up on the beach. They didn't know back then how the whale had died, or how long it had been dead but they used it anyway. It that is true then any drift whale should be concerned and as much as possible used and considered a bonus. Another thing that should be considered about drift whales, and other dead whale is when the tribe starts hunting again, if a whale is struck and gets away and later washes up on a beach along the migration route, and it is proven that it had been harpooned by the tribe then they should be held responsible for the removal of the dead whale from the beach anywhere along the coast from California to Alaska including Canada. In closing I spent approximately 5 days a week for 3 years from Sept 1999 - Sept 2002. on the reservation an

COMMENTER	COMMENT
	got to know a great many Makah tribal members. The whaling subject did come up in many conversations, most of the members that I talked to about the eating of whale meat said that they didn't like it. The tribe states that the majority of the tribe wants the hunt and the meat, that survey was taken by the tribe. A survey should be taken by a netural party that is not assossated with the tribe to find the true feelings. The survey would help determine how mant whales need tobe taken each year for the tribes needs. Referance Book: Traditions & Change on the North Coast, The MAKAH, NUU-CHAH-NULTH, SOUTHERN KWAKIUTI AND NUXALK By Ruth Kirt. See Whaling: Pgs 133-138, 143, 165-171.
e_Miller_05-12-08.pdf	The Makah tribe should be allowed to hunt whale on their terms based on cultural and spiritual life styles, and the agreement in the treaty for the Makah's retain and maintain their life style by hunting whales. The article states the whales are in a stable pattern at this time. The culture of the tribe is based on a faith and love of all food sources from shell fish, land game and whales. They live the culture; it is not a lost or forgotten life style. I have seen their dances and ceremonies, listened to their teachings and prayers about the whales. They have deep respect for the whales. They have retained the right to hunt whales, they never gave it away, nor did the treaty give them the right, 'they retained the right' to hunt them and they agreed to stop due to the numbers getting low from over harvesting by the outside world, not over harvesting by the Makah's. The fact they agreed to stop hunting the whales is a sign of respect for the whales, and to societies concerns for the numbers of whales. The whales will provide food of course to the tribe but it will also provide a cultural food for the foundation or soul of the tribe as well. The idea that one race has control of another's culture is a travesty and a frightening aspect of the white society over all indigenous people. Should a race be in control of the Makah's culture? I resoundingly say 'hell no!' The idea is to look at the history of the tribes, and how long they have hunted whales. The number of years would be thousands of years longer than the development many of the European countries, and the coming of Jesus and all of Christianity, let alone the United States. I am all for the United States, but I am opposed to the condescending nature and attitude of the United States toward the first people living within this great country. The United States needs to begin supporting and respecting indigenous cultures to include the food they eat. Not taking them to court time and time again. One only has to look at the Judge Boldt decision and later rulings over shell fish harvesting. All those hearings over food the tribes have held sacred.
e_Miranda_05-13-08.pdf	Please honor their treaty rights and their ability to honor their subsistence and cultural past.
e_Moretti_05-30-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.

COMMENTER	COMMENT
e_Moretti_06-28-08.pdf	I strongly oppose the killing of whales by the Makah Tribe. Tradition is not an excuse to reconcile atrocities. The Makah Tribe should evolve and persue humane ways of living in harmony with nature, without harming any other living species. The Makah did not kill whales for many years and to return to this barbaric and savagely attitude is not acceptable. Our species must strive to respect and protect all other life, not destroy it and not to grant barbaric priviledges to blood thirsty savages. The earth and its creatures do not belong to any one or groups of people. Hunting is terrorism! NO MAKAH WHALE MURDERS
e_Morishima_08-14-08.pdf	I am writing in response to the request for comments on the draft environmental impact statement regarding Makah whaling which was released in May of this year. MORI-ko has provided professional services relating to management of natural resources for over thirty years. The DEIS presents information factually, clearly, and concisely while minimizing the potential for distractions and confusion. Undoubtedly, given that whaling is an emotion-charged issue for some, there is a strong potential for issues to become clouded by red herrings that will be ingrained in numerous and varied individual opinions from the public. Scientifically, it is clear that there is no evidence to suggest that the impact of the Makah's proposed hunt could even remotely pose a threat to the continued existence of the species. Federal courts have repeatedly held that the exercise of treaty-protected rights can be restricted by non-tribal authority only when there is clear evidence of the need for conservation, as carefully and narrowly defined to exclude "wise use" considerations. It is inconceivable that the Makah would jeopardize a resource that has been central to its culture, diet, spirituality, and economy for countless generations. Since the Makah Tribe itself proposed the guidelines and restrictions on the right to hunt whales under Alternative 2, the Makah's request should be granted. The Makah hunted whales for thousands of years. By the 1920's, non-Indian whaling had severely depleted several species of whales. The Makah voluntarily ceased whaling despite the enormous social cost to their community and kept that moratorium in place for seven decades. In 1970, the USFWS listed the gray whale as one of the baleen whale species in danger of extinction. In 1994, ESA protections of the gray whale were removed as it was evident that the population had recovered to reach or exceed historic (pre-European contact) levels. The Makah painstakingly endured lengthy domestic and international processes to regain the ability to resume whaling in the late 1990s and the tribe managed to take a single whale in 1999. Yet some anti-whaling interests persist in mounting violent protests and filing challenge after challenge in the courts and administrative proceedings. Scientifically, the Makah's modest proposal to resume whaling under Alternative 2 poses no threat to the resource. Socially, the ability to hunt whales would serve as a unifying and revitalizing force for the Makah community. Politically, approval of the proposed action would affirm the commitment of the United States to honor its obligations and responsibilities under its treaty with the Makah.
e_Motichka_05-12-08.pdf	As there are only two places to hear and give public comment, Port Angles and Seattle and neither are close enough to attend , Here goes. The Makah hunters broke Federal Law. The tribe did not do anything to take action against these individuals, and neither did the Government. They got a plea bargain. I bet that as a white Caucasian if I were to did some clams on a beach on tribal land , I would not be offered a plea bargain. The rest of the world does not do any whaling, with the exception of Japan, and they do it under the umbrella of Research. The International community knows this and the International Whaling commission knows this , and they know that this action is not right, and yet Japan continues on. What a crock of crap.

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	The Makahs need to come into the twenty first century. The tribe will not use these whales. Not one of the tribe will forgo a Mc Burger or a Whopper for some tasty whale blubber. Thus we have a slaughter of a whale for no good reason, treaty or not. If the whale was the only thing to eat to stave off starvation, then yes go ahead and hunt one. But no one in that tribe is starving. The actions of five individuals brought disgrace to the rest of the tribe. I myself know and fish alongside a Makah. He buys his license and obeys the laws set forth by the Dept of fish and wildlife.He is welcome anywhere on the river. He himself does not agree with the actions of these individuals, nor the tribal council. The tribe should not be given the permit to whale.
e_Neely-Walker_08-14-08.pdf	I believe the United States government should uphold and honor the treaty rights of the Makah Indian Nation. Allow the Makah to hunt gray whales in their accustomed places.
e_Nelson_08-15-08.pdf	I recommend the “no-action” alternative in the Makah DEIS. Here is why: —Parametrix, the firm hired to prepare the DEIS, has been employed by the Makah Tribe. This is a blatant conflict of interest and renders all the “science” and “facts” presented in the DEIS to be untrustworthy. —Whaling will disrupt the Gray whales’ migration and feeding patterns. The whales are already stressed by dead zones and algae blooms, as well as naval activities. The whales’ response to harassment makes them vulnerable to starvation and reduces reproduction. —The number of vessels and aircraft proposed in the whaling event is untenable. Tourist water craft is minuscule by comparison, and does not tax the whales. —Whaling on the Strait of Juan de Fuca would be dangerous and disrupting for those who live near or along the strait. —The resident population of Gray Whales are used to tourists, kayakers, and sightseers. These folks know the protocol of whale watching. The whales have grown to trust tourists and their patterns of feeding are not disrupted. All this would change with whaling. The whales would be passive targets. —Whaling, as proposed by the Makah, is a smokescreen for the tribe’s true intent: commercial whaling of Humpbacked whales. —The figure of 93 percent of Makah want whaling, is not true. Many Makah oppose whaling. Their voices were not represented in the DEIS. —The Makah tribe has spent $675,000 on the pursuit of whaling between 2003 and 2007. This money could be spent on education, jobs, drug rehabilitation , care for the elderly, housing, and tourism ventures. I also endorse the comments of Peninsula Citizens for the Protection of Whales.
e_Nicol_05-29-08.pdf	The Indians do not need to hunt any grey whales. they have lost almost all of their other traditions, it is preposterous to think that they could be permitted to kill such a magnificent animal that is so important to the sea. They have no need to do it. Yeah their ancestors hunted whales, but they don't have rely on grey whales, and other natural resources to survive anymore. They have everything they could want. Please don't let them kill the whales, it isn't fair to let them go around shooting whales with automatic rifles. If they want tradition, then why don't they hunt with traditional weapons? As you know our ecosystem is so fragile, why let them take another important animal from our waters, each one matters. There is enough killing already.
e_Niles_05-19-08a.pdf	Mark, I require a hard copy of the referenced draft EIS. I am hoping you are able to mail one to me at P.O. Box 2594, Olympia WA 98507. Please advise. Thank you.
e_Niles_05-19-08b.pdf	Yes; thanks. Good luck. DN -----Original Message----- From: Steve Stone [mailto:Steve.Stone@noaa.gov] Sent: Monday, May 19, 2008 12:07 PM To: Dennis Niles Subject: Re: Draft EIS on Makah Whale-Hunting Dennis - We have an extremely limited number of hard copies and these are very expensive to produce. The document is available on CD and I can mail one to you today - will that suffice? Otherwise it is available online and at several libraries (see http://www.nwr.noaa.gov/Marine-Mammals/Whales-Dolphins-Porpoise/Gray-Whales/Makah-DEIS.cfm) Steve Stone

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e_Nothnagle_07-21-08.pdf	Attached please find a letter sent by Congressman McDermott to NMFS regarding a request for extension of the comment period for the Makah DEIS. Friends of the Gray Whale are requesting an extension until October 8, 2008.
e_NWIFC_08-16-08.pdf	[Duplicate – see NWIFC_08-15-08.pdf]
e_O'Brien_05-10-08.pdf	I would like to express my DISAPROVABLE of a whale hunt for the Makah tribe. It is a selfish, self-serving endeavor on their part to take the life of a precious whale for "Ceremonial and subsistence" purposes. The tribe is now assimilated into modern culture and should not use the EXCUSE of ceremony to slaughter a whale. Secondly, I seriously doubt if any member of the tribe has not had enough subsistence. They all look well fed to me.
e_O'Conell_08-15-08.pdf	I think if Native Americans want to restore their cultural roots they should go after a symbolic whale. They do not require the whale for food. What they want is money! Protect these whales who don't deserve to die needlessly and in great suffering!
e_O'Connell_05-15-08.pdf	Thanks a million- I appreciate your time and speedy response with getting the CD out to me, I'll shoot you an email when I get it. I do request an extension, I understand that it is quite a large document and it will still essentially be two or three weeks in the post round trip and I will need time outside of my normal day to day commitments in order to go through it and reply.
e_O'Donnell_05-12-08.pdf	I am writing to express my opposition to any authorization to allow the hunting and killing of gray whales by the Makah Indian Tribe. The gray whale is protected by the MMPA and the MMPA should continue to be reinforced by the United States government. The US has participated along with many other countries in discontinuing the practice of whaling; and many, many people in the US and around the world object to continued whaling by countries such as Norway and Japan. As a nation, we cannot make exceptions for our own citizens. Scientific discovery in the area of oceanographic research is providing new information about the underwater ecosystems and its inhabitants every day. Our knowledge has broadened immeasurably with regard to the intelligence and habits of the large marine mammals and much remains to be learned. One thing for sure is that in the twenty-first century it is totally unnecessary to hunt and kill whales for most peoples even where traditions exist. This especially holds true for the Makah who although have historically hunted whales have not done so for generations. There would seem to be options available to the Makah to celebrate their heritage that would not involve killing whales. Symbolic no-kill hunts could be a viable option. I ask that NOAA take the no-action alternative and not approve the Makah Tribe's request for a waiver of the MMPA moratorium with regards to hunting and killing whales or any other protected species.
e_Olsen_06-16-08.pdf	I am deeply concerned that the permission for whale hunting may be approved for the Makah tribe. I feel that some traditions need to be modified or no longer practiced in this day and age. We now know how intelligent these creatures are, we now understand the complexities of their life and family units, the whale numbers are getting low and it just doesnt make sense to allow whale hunting at this time.
e_O'Neil_06-07-08.pdf	Please accept our comments regarding the Makah Indian Tribe's appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the defenseless animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, provided the offenders violated no laws the following year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. In the 21st Century, no human being needs whale meat to survive - including the Makah Tribe, who until recently, mercifully left the gray whale unmolested for over 70 years. The "reinforcement of tribal identity" does not justify blatant slaughter. Whales are typically harpooned or blasted with high-

COMMENTER	COMMENT
	powered rifles under the guise of "cultural" whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please do not honor "treaty rights" to massacre whales. We urge you to deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Orca Network_08-15-08.pdf	Please take into consideration our comments on the proposed Makah Gray Whale Hunt DEIS: Orca Network is an education and advocacy non-profit organization, our projects include a Whale Sighting Network (for orcas, grays, humpbacks & other cetaceans in the Salish Sea and along the Pacific Coast), and the Central Puget Sound Marine Mammal Stranding Network. We are very involved in following the status of Gray whales in the Pacific NW; our stranding network responded to a dead stranded gray whale in December 1998, which had died of starvation - this was the first of hundreds of gray whales to die during the next few years, bringing the gray whale population down. We have since responded to 1 - 2 dead gray whales each year in the Central Puget Sound region. We also closely track the travels of our "local" Saratoga Gray whales - 10 - 12 gray whales identified by Cascadia Research as coming into the waters of Puget Sound each spring to spend three months feeding in Saratoga Passage and Possession Sound. The same whales return each year to feed in their usual and accustomed feeding areas - this population often fares better than the larger "Resident" or migrating whale population, because they are a small group that rely on these specific feeding areas for three months (this year it was four months for several of them) during the year. Many of these whales have been documented by Cascadia Research since 1990, returning all or most years to feed in Puget Sound, and the residents of Island County anxiously await the arrival of these grays each year, as they feed very close to shore providing excellent shore-based whale watching opportunities. Although Orca Network respects the Makah Tribe and their culture, and we support efforts to revive and renew their cultural activities, we do not support their Gray whale hunt. We propose they take actions such as their neighbors, the Quielieutes, who instead of reviving their history of whaling, look into eco-tourism and whale watching as a way to celebrate their tribe's history and connection to the gray whales. The Makah do not rely on whale meat, and this is not a true subsistence hunt. We hope the Makah will move more toward conducting whale research, monitoring the whales' movements and population over the years, rather than conduct a hunt to kill whales that could likely be a part of the very small community of Saratoga Grays, or the larger but local Resident population of grays that feed off the Washington Coast. When our whale stranded in 1998, we assembled the skeleton for educational purposes. Members of the Makah Tribe came to some of our work sessions for advice and practice on assembling the skeleton of the whale they killed in their first hunt, which now hangs in their cultural center. We would like to see the Makah focus on showing people the natural history and beauty of the gray whales - including their history of hunting the whales and their spiritual connection to them, but realizing that not all cultural traditions should continue through the years. Keeping slaves and other cultural practices by many races in our country have been abandoned as we become more enlightened, and given the changes in human attitudes toward whales over the past fifty years, it is time for the Makah Tribe to take a close look at their plans and alternative options, and do the right thing for the whales and for their people. There is much scientific disagreement about what the population of our gray whales actually is at this time, or what direction it is heading - and with added unknowns such as effects of global warming, decline of many species, and the recent dip in the Gray whale population because of lack of food, we do not believe whale hunting on any scale should be allowed. Gray whales are difficult to identify, even by researchers who know them individually very well - killing one of the local Saratoga Resident grays would take away 10% of the population of that group. The proposed action could take nearly 30% of the larger Resident Pacific Aggregate population in a period of 5 years. On the human-side of this issue are the public safety issues - with increasing numbers of recreational boaters on our waters, a whale hunt could easily harm people in the vicinity. The unauthorized hunt that took place in Sept. 2007 was an example of how things can go really wrong. The hunters obviously didn't have control of their weapon, were shooting it in the Strait of Juan de Fuca with other boaters on the water, in an area where gray

COMMENTER	COMMENT
	whales had been observed for months by local residents, often doing shore-based whale watching. The authorization of this hunt also weakens the US' efforts at try to keep other countries from whaling. If we allow this as a subsistence hunt, when it clearly is not a case of this tribe needing the whale meat to survive - we are only making a case for other countries to hunt whales. And when we allow the Makah to conduct an unauthorized whale hunt without consequence, our country is making the case for other countries to continue to flaunt the IWC whaling ban. Therefore, Orca Network submits the following: **Alternatives 2 - 6 are entirely unacceptable. The only alternative that would not cause substantial harm to Washington's Resident Gray whale and the Saratoga Gray whale populations is Alternative 1 - No Action.**
e_Orr_05-10-08a.pdf	Please voice my opinion in support of Makah Whaling rights. This small group of people should be allowed to hold on to their heritage which has been passed down through the generations. How can a Nation built on personal and Religious freedoms, impose restrictions to those very cornerstones on a small group of people who have lived here centuries before the annexation of their way of life by immigrants from abroad? Heritage and pride are central to the identity of the Makah's. Teaching and involving their young in these things helps to instill pride, which in turn, builds better communities. As long as gray whale populations are healthy, there is no justifiable reason to block the Makah's ancestral and religious ceremonial hunts.
e_Orr_05-10-08b.pdf	Please voice my opinion in support of Makah Whaling rights. This small group of people should be allowed to hold on to their heritage which has been passed down through the generations. How can a Nation built on personal and Religious freedoms, impose restrictions to those very cornerstones on a small group of people who have lived here centuries before the annexation of their way of life by immigrants from abroad? Heritage and pride are central to the identity of the Makah's. Teaching and involving their young in these things helps to instill pride, which in turn, builds better communities. As long as gray whale populations are healthy, there is no justifiable reason to block the Makah's ancestral and religious ceremonial hunts.
e_Owens_05-16-08.pdf	Here is our local paper's front page headline's article. http://www.peninsuladailynews.com/article/20080516/NEWS/805160303 I guess one person's "minimal impact" is another person's worst nightmare,
e_Owens_05-23-08.pdf	Another reason we are fighting so hard, and you folks know this is their goal, along with commercial whaling, you know it! Here is an article about the resurgence of the humpbacks. Margaret asked Wayne Johnson (IWC meeting). Why is there a humpback on your jacket? He said, "why eat hamburger if we can eat steak" ? See attach. http://ap.google.com/article/ALeqM5jWFkQCL_vHK6YpzN4u_OGxhZdm6AD90R7UIO0
e_Owens_05-29-08.pdf	Hi Donna, Here is our local paper's article on the meeting last night. Margaret believes you when you said that you want this to be a honest document with nothing swept under the carpet. She has only been saying the nicest things about meeting you last night.
e_Owens_08-13-08.pdf	[Duplicate; see PCPW_081408.pdf]
e_Paddison_05-10-08.pdf	I am against ANY whaling by the tribe. They showed it was a mockery and butchered the last whate illegally. They couldn't even bring it in and allowed it to sink. What a waste. They showed their true colors and shouldn't be given a second chance. What kind of tribal tradition is using hand grenades on a stick?
e_Parker_06-30-08.pdf	ALONG TIME AGO, BEFORE THEM PRESENT DAY ORGANIZATIONS OF TODAY CAME INTO BEING, A TREATY IS PUT INTO PLACE FOR THE PROTECTION OF A PEOPLES HUNTING AND FISHING RIGHTS, A TREATY WE TRUSTED WOULD DO JUST THAT FOR THE PROTECTION OF

COMMENTER	COMMENT
	OUR RIGHTS THAT OUR FOREFATHERS SAW AND SOMEDAY WOULD HELP US GET THRU WHAT IS HAPPENING NOW WITH THE MAKAH, FOR THE PROTECTION AGAINEST THESE ORGANIZATIONS THAT WERE`NT IN PLACE WHEN THE TREATY FOR OUR PEOPLE WAS SIGNED BY THE UNITED STATES GOVERNMENT. BROKEN PROMISES STILL AND PROBABLY WILL ALWAYS EXIST FOR THE NATIVE PEOPLE OF THIS LAND THAT WAS ONCE OUR`S, UNTIL WE NO LONGER EXIST AND THAN YOU`LL BE HAPPY WHEN THAT OCCURS, AND THAN THE JUDGEMENT. BUT I FOR ONE, AM APPALLED WITH WHAT IS HAPPENING TO A PEOPLE THAT THIS SHOULDNT BE HAPPENING TO FOR THE SIMPLE FACT THAT ITS A TREATY THAT IS BEING VIOLATED, AND YOUR LETTING IT HAPPEN AND PAINTING A PICTURE FOR THE PUBLIC THAT WILL NEVER UNDERSTAND RIGHTS OF A PEOPLE THEY WISH NOT TO KNOW. I`M PULLING FOR A LAW SUIT FOR WHATS TRANSPIRING AGAINEST WHAT IS ALREADY IN PLACE AND SHOULD BE RESPECTED BY ALL.
e_Parker_08-15-08.pdf	Hello and thank you for taking public comments on this very serious request from the Makah Indian Tribe. I am not an expert on the matter but I have been active in the conservation and restoration of Pacific Northwest water environments, connecting environments and the health of the marine life population for many years. I understand the basic facts that the Makah Tribe want to resume hunting Gray Whales for both financial and cultural reasons. I can not speak to the cultural reasons as I am not Makah nor Native American. As a resident of these lands and waters however, I appreciate the opportunity to have my opinion heard on the hunt in terms of the financial concerns of the Tribe. While the US Government historically has been incredibly unfair, harsh and even cruel in the treatment of our Native Americans this does not justify the killing and/or slaughter with high-powered, large-caliber rifles of our endangered Gray Whales. I understand Japanese Whalers can profit 500K or more from one Gray Whale; however, this does not justify sanctioned killing of whales. Many countries vehemently oppose and are active in their opposition to the Japanese Whale hunting. It is an immoral act to to hunt and kill endangered animals, particularly for profit. The Makah Tribe continue to have a very serious financial crisis coupled with high unemployment, crime and substance abuse. My response does not address the long battles the Makah tribe have faced and continue to and it not that I do not care or am not concerned. But the issue today is about the killing of an endangered animal and the negative environmental impact it has on us all. I do not see how the entire populace, humans and marine life, as well as our very fragile ecosystem in the Pacific Northwest benefit in any way from a sanctioned hunt minus a short term financial boon to the Tribe. The long term negative repercussions to our fragile ecosystem of all whale hunting is felt by us all. I do not support the issuance of limited killing of Gray Whales.
e_ParkerA_06-17-08.pdf	Please note my opposition to any harvest of whales by the Makah Tribe in 2008 or any year. I am involved in commercial vessel construction including whale watching vessels, we consider whales a co –clients.
e_ParkerW_06-17-08.pdf	There is no longer a need to hunt Whales,You can't go back.
e_Payne_05-13-08.pdf	I am writing to voice my objection to allowing the Makah Indians hunt any more whales this year. They need to deal with the reality that we can not live in the past, but must address the future. My ancestors used to hunt and fish for special occasions, for subsistence and for trade. Because we are white, it is no longer possible. I would voice less objection, however, if they allowed only Indians that were 100% native instead of sometimes 1/9th, hunted whales as their ancestors did in wooden carved boats with oars and used harpoons, instead of guns. Now they use state-of-the-art boats and weapons that just does not make sense. Lastly, they should wake up and realize that we are one nation, instead of thinking they can have the best of two worlds. Our planet is at a critical juncture where we have to unite and follow a course that is best for all species, not just humans, and our planet, earth.
e_PCPW_05-15-08.pdf	From Chuck Owens, President, Peninsula Citizens for the Protection of Whales

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	First we are asking to re-schedule the meeting in Port Angeles Wa. to a later and more convenient date. The May 28th meeting to help us "navigate" the DEIS is only relivant in context of a lengthened coment period. Next we are requesting that the time period for the DEIS comment period be extended 90 days to allow we who have jobs and other important things in our lives time to read, decifer and research the 900 pg EDIS document. NMFS has had 3 years to make this document, show some respect and please give us a fair amount of time to do what we need to do.
e_Pearen_05-28-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Pefaur_05-11-08.pdf	I believe that the Makah acted within their rights to hunt for the whale, despite the federal government's assertion that the right to regulate that action was within their authority. I don't pretend to understand why anyone would want to hunt a whale, but I do believe that the right to do so must be protected if it was promised to the tribe.
e_Peirson_08-15-08.pdf	Why should our Native Americans have the right to abuse, and treat inhumainly a Whale who was created to be a friend to Man Kind. To Chase this Mammal until it is Exhausted, and then to Murder it is totally un-American in nature, and The Native American Indians should not have that right. They do not own the animals. GOD does!
e_Pen_05-13-08.pdf	We as a global community oppose whaling, of any kind. These magnificent creatures have endured centuries of slaughter and mutilation from people, and we will no longer tolerate this brutality. These mammals are gorgeous, and should be protected not brutalized, for the enjoyment of humans. We no longer feel that "tradition" is an excuse for the murder. Previous cultural traditions have included wife burning, and we have stood against this barbarism too. I urge you to publicly declare your opposition to whaling and respectfully request you take immediate action to encourage any community to cease its whaling activities.
e_Penn_08-14-08.pdf	I am sorry for the destruction that the indigenous cultures have suffered, but I strongly urge you to stop the Makah from hunting gray whales any further. We have no idea how climate change and pollution may effect the populations of gray whales in coming years and decades. As a citizen of the US, I want the Makah whale hunts to be blocked now and in the future.
e_Pierce_06-02-08.pdf	I a citizen concerned about the Makah request to legally hunt whales. I consider myself to be an environmentalist in favor of protecting whale populations. However, I support a limited hunt if it would not pose a danger to the population and it does not become a commercial (as opposed to cultural, spiritual) operation by the Makah. The Makah lived here for thousands of years before Europeans

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	and others posed a threat to whale populations with technology. They were not the cause of threatened populations. I believe it is within the spirit, if not also the letter of their treaty rights to hunt whales as a way to maintain their cultural identity.
e_Pierce_08-15-08.pdf	Why not have symbolic rituals and let the noble creatures live out their lives! My ancestors had traditions that I would no longer do but I can respect them in other ways. You have lost much respect, locally and across the continent with your stupid, senseless killing and torturing of the whales. Stop it!!!!!
e_Pilger_05-14-08.pdf	Please extend the comment period regarding the Makah Whale Hunt. An extension of 90-120 days would be appropriate. The EIS took 3 yrs, so how is it possible for everyone to read it and attend the hearings in just a few weeks? The public has a right to an extention, as well as the whales -- their lives hang in the balance.
e_Pine_05-12-08.pdf	I am a linguistic anthropologist currently affiliated with Pacific Lutheran University as a Faculty Fellow. I will be taking up a tenure-track position at Western Washington University in the Fall. I have had the opportunity to visit Neah Bay and been priviledged to spend some time with the team of people who are engaged in reviving the Makah language. I am writing to express my complete support for a solution which permits the Makah to whale according to their tradition and within the guidelines set forth by the International Whaling Commission. I realize that you are recieving a significant amount of mail on this topic. I will, therefor, keep this note brief and address only four specific topics, drawing from what I have read recently of arguments in opposition to completely legal Makah whale hunts. I note that many opponents argue that Makah people were not necessarily unanimously in favor of resuming whale hunting. This is in no way an argument for depriving the Makah people of the right to decide, independently, on a course of action that is within their legal rights. Currently, the Democratic Party is deeply divided over its choice of candidate for the upcoming presidential election. This in no way authorizes the Republicans (or the British, for that matter) to make a choice for the Democrats. The argument about the thinking, feeling nature of grey whales is romantic, and applicable only if you feel that you must not eat things that think and feel. If, as many native peoples including the Makah, you have traditionally assumed that you are part of a web of life within which thinking, feeling creatures eat other thinking, feeling creatures this argument holds no water. Again, even if there is some debate among the Makah themselves this in no way authorizes outsiders to come in and make a choice for them. Pigs are also thinking and feeling creatures, more intelligent than dogs in many ways. If you choose not to eat pork, that is your choice, but you are in no way authorized to take my bacon off my breakfast plate. The argument that the whale might not be eaten entirely, or that not every Makah individual would enjoy their first taste of whale, also does not requre that the Makah be further deprived of the legal right to make their own decisions regarding whaling. A great many foods which are good for us are acquired tastes. People may spurn brocolli, turn up their noses at salmon, refuse to touch a pizza with anchovies when they first encounter these foods, only to discover that over the course of time they have grown to enjoy them. Acquiring, over time, a renewed appreciation for whale meat, a taste which would be shared with many cultures around the world, is, I would argue, an implicit right protected by the treaty of 1855. There are those who argue that whale hunting ritual could take place without actually killing an individual whale. Perhaps these same folks would like to attend a nearby Catholic Mass and inform the congregation that their traditional sacramental meal can take place without any actual wine or wafer. The experience of hunting and consuming Whale, a sacramental meal associated with ritual, might change over time, if Makah culture changes, just as in some Protestant congregations grape juice is substituted for wine in the interest

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	of avoiding alcohol. The central issue here is that Makah people have the legal right to make this decision for themselves, and all others are prohibited by treaty from interfering in the legitimate decision making process. Finally, with regard to treaty rights "giving" something to the Makah, I must point out that this is factually inaccurate. When the treaty was written, it in fact took away many rights. The rights protected by the treaty, including the right to hunt whales, are those few rights which the Makah at the time deemed absolutely inalienable, while those same elders ceded other rights. Just as we respect the decisions of elders who drafted our Constitution, we must respect the decisions of elders, Makah and non-Makah, who drafted the 1855 treaty.
e_Pippinger_08-13-08.pdf	It is my strong opinion that whale hunting by the Makaha tribe should be forever banned! I respectfully request that all petitions for the hunt be denied by the dept. of fisheries & Noaa.
e_Povah_05-10-08.pdf	Here is my "substantive" comment on the "subject" of the "Draft EIS on Makah whale-hunting request"...specifically, the "subsistence" aspect of it. All of those "subs", of course, raise the question, "Will submarines be the Makah whalers' next weapon of choice?" After all, the very traditional 50-caliber anti-tank gun only has a success rate of 50% so far...at least in terms of the retention of the two gray whales (that we know about) which slowly died after being shot with that weapon. Torpedoes would likely be much more efficient, especially if they hit the whale somewhere near the head. Before you press the "delete" button, please read on: All sarcasm aside, I do want to pass along a few unequivocal FACTS! If "ceremonial and subsistence purposes" (emphasis mine) is the best argument the Makah whalers and/or NOAA can come up with, to justify this 21st century barbarism, then I say, "UBI$TENCE -- and ceremonial purpo$e$ -- MY A$$!" Just in case the above requires any translation/clarification, it means: The hunt has nothing whatsoever to do with culture, heritage, tradition...or subsistence: It is solely and exclusively about money! I, personally, don't have any direct evidence. That said, some time in early/mid 1999 -- as a volunteer crew member on board the Sea Shepherd Conservation Society vessel Sea Shepherd III, in and around Neah Bay, WA -- I heard that the Japanese had paid the Makah whalers $1 million to kill a gray whale. The Japanese had no interest in the whale itself or getting any of the meat. "Why would the Japanese do that?", you might wonder. So glad you asked! Until May 17, 1999, Japan and Norway were the only two illegal/pirate whaling nations in the world. And, until that same date, the U.S. had been one of the strongest voices -- opposing any and all whaling -- at the International Whaling Commission. >From the Japanese perspective, what better way to simultaneously 1) make whaling appear to be more globally acceptable/palatable and 2) quash the U.S. voice at the IWC? "Ceremonial and subsistence purposes" is to the Makah whalers what "scientific research" is to the Japanese! It's fraudulent! It's a scam! Don't be duped! Choose the "no-action" alternative!
e_Pratum_05-20-08.pdf	Please do not allow whales to be hunted. It's not ok! The animal rights issues here are a major problem, but also the safety of people involved is at risk, and that's not ok.
e_Prudden_06-06-08.pdf	This letter is to urge and implore you to not allow any whale hunting by the Makah Native American Tribe, for any reason at all, at any time now or in the future. Many other people on the earth have spiritual and cultural practices which have been voluntarily given up to benefit the best interests of human beings as well as animals and nature and the environment. The Makah should be required to do likewise for the benefit of the environment and lives of the whales. The killing of whales stands out against all the natural instincts of God and nature and for the US Government to allow such beautiful creatures as whales to die for such unneeded tribal practices and purposes is a national tragedy.

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	Thank you for your consideration of this urgent request to disallow any hunting or killing of the whales by the Makah Tribe,
e_Puckett_06-02-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours -how would you like to suffer like this ????? These whales have hearts therefore they feel too!!! The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is not RIGHT!! Tell them to eat vegetables and fruit!! This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Rae_06-14-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to MURDER whales. I respectfully ask you to consider this fact: In the 21st Century, **NO human being needs whale meat to survive** -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years! The "reinforcement of tribal identity" does NOT justify slaughter! Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over NINE hours!! The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is totally UNACCEPTABLE -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales!! There is NO rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally MURDER whales under their treaty.
e_Redmon_05-30-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, and I don't eat whale meat, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death.

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	After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Riley_05-10-08.pdf	Treaty, or no treaty, I strongly oppose allowing any hunting of whales by the Makah. Even if the whales are not endangered at this time, whaling is brutal. It appears as if it is impossible to make a clean kill of a whale. There has to be considerable suffering as long as the whale doesn't die instantly. Is something inhumane acceptable just because it is "tradition"?
e_Robey_05-28-08.pdf	Please consider my position in favor of permanent revocation of Makah whaling rights for the following reasons: A) The Makah Treaty of 1855; specifically Article 4, which allows the tribe to whale, is a 152 year old document; one which pre-dates the AMERICAN CIVIL WAR BY 6 YEARS, and is therefore no longer relevant. B) The Makah claim of 'subsistence' whaling [under the International Whaling Commission's criteria] is obviously false. You can not "subsist" on whales that your tribe has not hunted for over 70 years. C) The Makah right to whaling on a 'cultural' basis is no longer true or applicable. In the hunt of 1999 the tribe availed itself of speed boats; cell phones; Coast Guard cutters; "spotters" from helicopters; high powered rifles and machine guns to bring down their prey. The traditional long boats and spears used by their ancestors played a minor and incidental role in the kill. From a "traditional" standpoint, the methods employed were solidly 21st century...and a complete travesty of Makah ancient whaling practices. D) Whale populations are being depleted at an alarming rate. Pollution, global warming, dwindling food sources, ship strikes, disease, sonar disturbances and rogue whaling worldwide, have all taken a devastating toll on a species capable of producing only one calf, per adult female, per year. No ONE group should be exempt from the global responsibility we ALL share for ensuring the continued survival of our whales. Scientists have recently admitted to miscalculating the 'success' of the Gray whales' return from the brink of extinction. They have observed several 'skinny' Gray whales and conclude that their food sources may be rapidly declining due to global warming. E) The Makah's cousins, members of the Maa-nulth First Nations, who reside on the Western shores of Vancouver Island have signed an agreement with the Canadian government in which they will honor a 25 year moratorium of their whaling rights. In return, they were given generous concessions of land and cash. If the Makah are genuinely interested in "honoring" whales, they must be committed to allowing them to live in peace and safety; while helping improve the quality of life for all Makah by increasing financial and educational opportunities for their people. At a time when the world is faced with multiple species extinction; pollution; global warming and rapidly dwindling natural resources, eliminating ALL whaling is the only ethical, moral and ecologically responsible decision to uphold.
e_Robinson_05-27-08.pdf	I am writing in opposition to the Makah whaling proposal. If the Makah people were to use the whale products in their culture, eat the flesh and use hunting modes available when the treaty was written, I would be more inclined to agree with 1 whale per year. I do not believe that the people at the time of the treaty used high-powered speedboats with high-powered harpoons to chase down the whales as do the modern Makah. In a time of ecological trauma to

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	our earth, we should celebrate the resurgence of any whales and not use that resurgence in population as an excuse to kill them. We do not know how long that resurgence will last in today's ecological climate. If they must have this "religious" experience, they should show reverence for their ancestors by using the traditional methods of capture available at the time of the treaty.. By the way, 5 tribes of American Indian flow in my veins, but I show reverence to my ancestors in ways that do not harm nature.
e_Roehr_05-15-08.pdf	I am opposed to issuing a permit to the Makah tribe for the purpose of hunting and/or killing whales. It is possible for them to continue their traditions, ceremonies & culture, as has been done for decades, without killing whales. There is no economic benefit to the Makah tribe from killing whales & there is no logical reason to hunt & kill whales simply to maintain a treaty right. The hunting & killing of whales as proposed is inhumane nor does it reflect the Makah tribe's real intentions in supporting the whale hunt. I believe that the Marine Mammal Protection Act should be upheld & no whale hunting or killing should be permitted by the Federal government under any circumstances.
e_Ross_05-16-08.pdf	Please do not allow these terrible killings. We have come a long way since the 1800's and it would be ingnorant of us to allow the Makahs to kill innocent intelligent beings.
e_Rossiter_08-15-08.pdf	Thank you for the opportunity to comment on the “Draft Environmental Impact Statement (DEIS) for Proposed Authorization of the Makah Whale Hunt”, May 2008. With respect, Cetacean Society International (CSI) urges the National Oceanic and Atmospheric Administration (NOAA) to review and correct the overwhelming number of DEIS deficiencies, whether inaccurate, misleading, unclear or omissions of fact. We have no doubt that many of these deficiencies will be presented to NOAA in public comments, and NOAA professionals are certainly aware of many of them. However, the unwieldy scale of the DEIS, and the overlapping of the comment period with many other priority issues of concern, likely will preclude even the most ardent reviewers from catching all deficiencies. CSI acknowledges that our best efforts could not review this document adequately, even with an extension period, and we reserve the right to revisit the document. The mechanism for these corrections may require aneventual Supplemental EIS (SEIS), but no matter how they are accomplished, they must be done. To assist with making these corrections, CSI urges NOAA to pay particular attention to the DEIS-referenced critique by the Peninsula Citizens for the Protection of Whales. Their local expertise, exhaustive review of the DEIS, and long-term familiarity with the Makah Tribe is an incomparable asset that can help NOAA avoid even more complications in this arduous process. Overall, this DEIS is the worst presentation of relevant material of any of the 23 EIS-related documents I have reviewed since 1976, beating out a US Navy DEIS for mid-frequency active sonar training that simply vanished after the public comment period. The reason the DEIS is so bad is that it could only be written by omitting and misrepresenting relevant facts, and the ultimate responsibility is NOAA’s. The Final EIS provides an opportunity for NOAA to award a contract for preparation of the NEPA document to an objective, disassociated and knowledgeable preparer, defusing a potential conflict because of the preparation of this DEIS by Parametrix Inc., under contract to NOAA. It is obvious to many that the flaws in this DEIS may be related to the connections between Parametrix and the Makah Tribe. These are so pervasive that the DEIS is irrevocably inadequate and biased, contrary to the intent of the National Environmental Policy Act (NEPA). Parametrix’s conflict of interest justifies intense scrutiny, and CSI believes this scrutiny will show, given the relationship between Tribe and company, that Parametrix could not have been objective or substantive in its preparation of the DEIS. Whether these flaws were intentional or not may be decided in court.

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	We do not know of any DEIS intentionally prepared by an entity with such an obvious conflict of interest as with Parametrix's long-term financial and contractual interest in aiding the Makah Tribe. For example, Parametrix profited from facilitating the Juan de Fuca Byway, and in 2002 supported the Tribe's attempted annexation of their reservation road into the Byway. Public opposition to the "whaling road" stopped the annexation, so in 2003 Parametrix had a Corridor Management Plan contract for the Makah Tribe's Cape Flattery Tribal Scenic Byway. Parametrix's motives were linked to helping the Tribe "interpret" whaling to tourists, and are clearly reflected in their self-interested emphasis on improved whaling-related tourism that they repeat several times in the DEIS text. At one point Parametrix writers blissfully say: "Overall, it is reasonable to expect more visitors would be drawn to the area than avoid the area as a result of a whale hunt." This is contrary to all of the demographic facts CSI is aware of; watching whales being killed or butchered is not on many tourists' itinerary, and is not offered by any tour-promoting services outside of Japan and Norway. CSI is aware of other links between the DEIS preparer and the Tribe. For example, the Makah Tribe in 2006 selected TranTech to administer the ten million dollar paving of the Tribal Byway through Neah Bay. TranTech is linked to Parametrix. Parametrix is also linked to the Neah Bay wave energy project. NOAA was derelict for allowing this conflict of interest to happen. If another example is necessary, Parametrix's self-serving DEIS discussion of the effects of whaling on tourism focuses improperly only on the Makah reservation, not surrounding Clallam County. While the DEIS states that there is "no evidence that calls for boycotts of Olympic Peninsula tourism had any negative economic impact on tourism in the area", locals believe there were economic impacts and the 2005 Scoping Report acknowledged the many comments about the need to analyze the effects of whale hunting on regional socioeconomics and tourism. While Parametrix serves itself best by downplaying the current regional, US, and worldwide public perception about whaling, there should be no question that the reaction will affect tourism and necessary support for real Makah needs. Countering its own text, the DEIS even dismisses boycotts as being probable no matter what whaling alternative is chosen. Another categorical reason this DEIS is inadequate, biased and flawed, contains comments that appear to be misleading, arbitrary and capricious, and does not satisfy requirements of the NEPA includes NOAA's failure to make public material relevant to the DEIS. For example, CSI is not aware of any public release of the agency investigation into the September, 2007 illegal whaling event. We are aware that several people have tried and failed to see it. A review of that investigation is mandatory for an adequate review of the DEIS, because the event and aftermath demonstrate several fundamental reasons why permitted Makah whaling will be akin to letting an uncontrollable genie out of the bottle. The fundamental DEIS pretense that permitted Makah whaling can be effectively regulated was destroyed by the illegal whaling event. In brief, four men avoided all pretext of cultural whaling, subsistence need, and humane methods to try to kill a whale simply because they wanted to. It is inconceivable that, within the insular and small Makah community, the Makah leadership and enforcers were not aware of or alert to the potential whaling. If they truly were unaware then they are inadequate to the responsibilities implied in the DEIS. However, additional evidence suggests that Makah Tribe officials were aware of the impending and illegal hunt in September, 2007, in addition to one convicted whaler's court testimony to that effect. Whether or not Makah authorities were aware, the whaling event demonstrated that these authorities lack the will or capacity to constrain unpermitted whaling. The Makah Tribal Court, for another example, is unable or unwilling to enforce the law. The Court had initial jurisdiction over the event, and in bringing the whalers to trial declared that the defendants would face punishment on tribal charges, to the fullest extent of the law, of a year in the Neah Bay jail, $5,000 fines and temporary suspension of their treaty right to hunt and fish. However, after considerable trouble empanelling a jury, tribal judge Stanley Myers agreed to waive any punishment and drop all tribal charges against the whalers in return for a year's good behavior. Myers was dismissed later.

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	The DEIS and Needs Statement arguments for Tribe's ceremonial and spiritual needs were mocked by the illegal whaling, which obliterated all the forced connections between modern whaling and Makah whaling lore, tradition and social structure. It clarified that, to some Makah whalers, whaling is like any other hunting. To them the Tribe's ritualized ceremonies, and whaler crew selection, celibacy, preparation and special training in dedicated canoes is for museums, and the whole Makah hierarchy from whaling captains down to slaves is meant for the tourists. In fact, the illegal whaling demonstrated a fundamental flaw in the DEIS and Needs Statement: While many Makah may want to be proud of their heritage and history, they do not want to live as their forefathers did. This has as much to do with the demand for social equality for all Makah as US citizens as with the conveniences and comfort of modern living. Some American values have been accepted by the Makah, at least the many living in poverty, or from low-ranking families; no one wants to be a slave. The Makah who illegally whaled showed distain for the Tribe's heritage, custom, and hierarchy, and declared that they had a right to whale when and how they wished. The illegal whaling also demonstrated that the humane aspect of killing whales is not reinforced or regulated adequately in the DEIS or US policy. The DEIS expresses some concerns that any hunted whale be killed as humanely and quickly as possible, but the rogue whaling clarifies that it is not enough to require Makah whalers to be trained and proficient in the use of weapons, and it is not enough to give them adequate weapons. No one can deny that the wounded gray whale suffered unnecessarily for many hours before it finally died. One of the rogue whalers was a trained whaling captain, and the four men had the best equipment at their disposal, stolen or not. Nevertheless, their performance was so inept, despicable and ludicrous that the whale's time-to-death rivaled the worst cases the IWC is aware of. NOAA must find some way to ensure that Makah whaling does not cause undue suffering, and the DEIS must state how that will happen. The illegal whaling event adds to the evidence that the Needs Statement conclusions are not supported by evidence from the current lifestyles of the Makah, and their use of whale products over more than a decade. CSI contends that the Makah Needs Statement makes erroneous conclusions based on the assumption that the Makah really want to live the old way. To verify our contention we need to review the full data set behind those conclusions, but they have not been made available to the public for review. This is another example of how NOAA has made adequate public review of the DEIS unnecessarily, perhaps illegally difficult. The DEIS ignores evidence that the Makah people were so unenthused with dealing with an actual whale carcass that the butchering was left to visitors, as related in comments by an Alaska Native whaler in a DEIS-ignored video. The DEIS also ignores evidence that Makah whale meat has been improperly distributed to non-Native Americans, and even transported to Canada. In spite of the ritualized token sharing of whale meat to tribal members, many didn't like the taste, and most people seemed to have quietly thrown their token share away. To compare the Makah "need" to that of the Alaska Natives is an insult to a people living in a harsh environment where the shared meat is essential to their social values and diet, and the whaling has never paused for hundreds of generations. The DEIS and Needs Statement do not demonstrate that the Makah need whale products for subsistence. Nor does the DEIS discuss the machinations with US policy, and the resultant affect on the US's relationship with other nations and treaty organizations, as NOAA attempted (and unfortunately succeeded) to have the IWC downgrade the definition of aboriginal subsistence to meet their goal of including the Makah. The science within the DEIS is biased. Overall threats to the Eastern North Pacific (ENP) gray whale population are not presented in accordance with the full spectrum of modern research. While scientists disagree on the numbers, affects and trends, the DEIS focuses mostly on the data supportive of killing whales. However, many scientists have been arguing that the ENP gray whale population may

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	not be as recovered as NOAA wants us to think, often citing chaotic and accelerating trends towards climate change. Scientific evidence of significant pressures from pollution, collapse of habitat resources, high calf mortality, oil and seismic developments, ship traffic, and anthropogenic acoustical impacts have been minimized, while controversial data on the population's "recovery" numbers have polarized some professionals. If NOAA is not aware that the 2008 gray whale population using San Ignacio lagoon was perhaps the lowest number in decades it is because NOAA has not invested in gray whale population research since 1999, and prefers to cite references and exaggerated numbers that are dismissed by most experts, including NOAA scientists. The DEIS obviously stresses positive data so as to justify the Makah Tribe's "need" to take 840 gray whales every five years, primarily from Level A and B harassment. Within that five year period 20 whales could be killed and brought to shore, and 35 whales could be struck and lost. But the DEIS fails to emphasize that, due to the in-shore nature of the recent and intended whaling, and the documented evidence of individual whales that prefer that habitat returning year after year, there is a weighted potential for the impact from the takes to be mostly on one sub-population, not the total ENP gray whale population. To be adequate, the science must quantify the probability of repeat takes and subsequent impact on this subpopulation. This quantification must also predict the probability that the struck and lost whales would either die from injury or be reproductively lost to the population. In contrast, the IWC has expressed concerns for the impacts of strikes on small populations, as related in a DEIS footnote (1-23) that: "The annual quota from this feeding aggregation (Greenland bowhead) shall only become operative when the Commission has received advice from The Scientific Committee (IWC) that the strikes are unlikely to endanger the stock." Regarding CSI's concern that the Makah will primarily hunt within a subpopulation, CSI is puzzled that the DEIS doesn't do more to argue for the Alternative to "Hunt outside areas frequented by identified whales". As suggested by many, this should be more clearly labeled as a "Hunt offshore in the actual migratory corridor". We assume the Makah don't want to venture as far to sea in power boats, with safety gear and escorts, as their forefathers did in unprotected canoes, but the DEIS support for April and May whaling in near-shore feeding sites as "designed to avoid any intentional harvest of gray whales that have been identified within the PCFA Survey area" contradicts NOAA's concern for targeting "resident" whales and the mothers and calves. This period coincides with these whales arriving in the area. NOAA knows of the public's concern for shooting "resident" whales, and harassing mothers and calves. The DEIS's dismissal of the potential for significant impacts on the public as well as on these subsets of the ENP population is simplistic and unrealistic. The DEIS is inadequate and misleading by evading full disclosure of the conflict of interest expressed by the personal relationships to the Tribe of two cited "experts". Renker, cited many times as an authority on the Makah's "need" to whale, is the wife of a Makah whaler. Sepez, cited many times as an authority on Makah culture and subsistence use of foods, has had a long-term relationship to a Makah whaler. Renker's two commissioned surveys do not prove that that Makah whaling is supported by the majority of Makah. The surveys merely found that a majority of respondents supported whaling. Only 163 of the total households responded in 2001 and only 152 responded in 2007. This correlates with an effort by a core whaling group to quell dissent by using tactics like threatening to "banish" aged members from the Tribe. The whaling faction has so intimidated everyone that few openly speak against the hunt. If someone's honest answer will bring trouble why respond to a survey, particularly if the survey is conducted not by an objective Ph.D. but by the wife of a whaler? The DEIS and Needs Analysis cannot help being inadequate by stressing selective and potentially misleading data from the two Makah household surveys, and without discussing the social and economic pressures on Makah who are either neutral or anti-whaling. Regarding the permitted use of regulated whale meat the DEIS fails to define precisely what "inedible parts" can be distributed, what constitutes "authentic articles", and how off-reservation distribution and use of whale meat will be monitored and regulated. The

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	definitions of acceptable sharing of meat based on "familial, social, cultural, or economically tied" categories require significant rewording to prevent wholesale illegal misuse of the meat. As written it is full of loopholes. To be blunt, this is the type or wording that has consistently resulted in events leading to lawsuits against NMFS for failure to enforce laws, followed by NMFS's lament that such lawsuits absorb a significant amount of human and financial resources. This self inflicted wound should not be made worse just to satisfy the Makah entrepreneurs. The discussion of potential public injury is particularly deficient in the DEIS. Not only has the over-zealous Coast Guard caused unnecessary public injury, but the DEIS seems to ignore expert testimony regarding the lethal range of the .50 caliber weapon the Makah would use. Comparative data shows alarming overlaps between the near-shore hunting the Makah have conducted and will conduct, the public use of shoreline areas for camping, the lethal range of the weapons, and the documented evidence that the whalers are not very good with their aim. CSI has commented on this DEIS in good faith, with no ill will against the Makah Tribe or its people. We feel we are correct to argue for the whales, in part because we believe that the Makah will suffer no harm by not killing whales. Many other aspects of their historic culture have adapted to the modern era: They do not keep slaves; they do not live and suffer as aboriginal people; and despite inefficient and blundering government services that leave the Tribe isolated and impoverished, the Makah do have constitutional rights and freedoms. However, the Makah have suffered harm, harm caused by the US government's continuous assertions that whaling was right and guaranteed in spite of decades of strengthening political and public perceptions that whaling is inherently wrong. From the initial efforts of the Makah to reinvigorate their culture by whaling, coinciding with considerations for the ENP gray whale to be delisted as an Endangered Species, NOAA has made every effort to assist the Makah. That effort has not always been legal, resulting in a chain of lawsuits. We have no doubt that, perhaps earlier than 1996, some misguided NOAA or BIA agents were reassuring the Makah that the Tribe would go whaling with little delay. The frustration vented by some Makah last September is well understood in this context; they have been led into this mess by their government. The ultimate question CSI requests to see addressed in the final EIS is why the US has acted in a manner that has not only brought Native Americans into conflict with their American culture and alienated them further from the wider society, but has denigrated our nation in the eyes of the international community. Within the IWC context alone, policies driven by the contrived need to achieve Makah whaling have cost the US any claim to reliably supporting, much less leading the anti-whaling movement. At IWC 60 the US vote for Greenland whaling, the misrepresentation of the 2007 Makah whaling to the Infractions Committee, and the Chair's desperate efforts to keep the Makah whaler's sentencing from the IWC media added to a long chain of misguided efforts to make believe that Makah whaling was the same as Alaska Native whaling. It is not. The Alaska Native subsistence need has little in common with the contrived Makah cultural whaling. CSI has not opposed Alaska Native whaling, tacitly accepting that the inhumane aspects of their hunt had to be balanced against issues of community survival. By aggressively rewriting the rules to allow Makah whaling as if it were the same thing, the US has knowingly aided whaling nations seeking any form of whaling they could get away with. Many long-time observers would characterize the convoluted process to enable Makah whaling, including this DEIS, as a combination of two unlikely bedfellows: Perhaps fewer than 40 Americans who wanted to kill whales found eager support from government employees, economists and strategists concerned with larger implications from emerging treaty-right issues. This odd coalition has maneuvered the entire nation into a demeaning situation that has not served the national interest, and has polluted the nation's influence.

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	CSI urges NOAA to attempt to fix the DEIS deficiencies with an objective, factual, reliable and legal final EIS. Thank you for considering these comments.
e_Ruggiero_08-15-08.pdf	I am writing to comment on the Draft Environmental Impact Statement for the Makah's request to hunt Gray Whales, and to strongly urge you to deny their request for the following reasons: 1) Section 1.2.2 states that the treaty of 1855 "expressly provides for the right to hunt whales". This is an incorrect statement. The wording of the treaty is, at best, vague. It states that "the right of taking fish and of whaling or sealing at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the United States". This means that the Makah were expressly given the same rights as other U.S. citizens in regards to whaling. U.S. citizens are required to follow the Marine Mammal Protection Act, and therefore by the wording of the treaty, the Makah should have the same requirement without exception. This particular sentence in the treaty has repeatedly been ignored during the ongoing process of granting the Makah permission to hunt Gray Whales. This is likely due to a sense of guilt over the number of other native treaties already abrogated by the U.S. government. However, Gray Whales should not have to pay the price for the mistakes of our ancestors. Furthermore, the only reason the Makah were given a quota for Gray Whales was because of a backdoor trade with Russia exchanging part of their Gray Whale quota with part of the U.S. Bowhead quota. This trade should have been illegal under CITES. 2) The law clearly states that Washington and Oregon have some ability to limit the exercise of Indian treaty rights for conservation purposes. Gray Whales clearly fall under this category: a) Gray Whales are the only species of whale to have lost entire populations due to whaling. Two Atlantic populations have been gone for centuries and the Western Gray Whale is on the brink of extinction and listed with the IUCN as critically endangered. This leaves the Eastern Pacific population, representing a mere ¼ of the historical population, as the only viable one left in the species. This fact alone should be enough to offer them permanent protection for conservation purposes. b) A recent study by the SeaDoc Society (University of California at Davis) shows that Gray Whales are extremely important to the survival of declining seabirds. This also should be enough to offer them permanent protection for conservation purposes. c) There have been some alarming observations recently in the migration patterns of the Eastern Pacific Gray Whale. Some scientists believe that the benthic food source of Gray Whales is disappearing in the Bering and Chukchi Seas, possibly due to global climate change, and the whales are having to travel further north into the Beaufort Sea to find food. This causes them to reach their feeding grounds later and they must stay longer in order to build up enough blubber to sustain them through the winter. This could be throwing off the timing of the migration and, indeed, more calves are being born along the migration south than is normally seen. In addition, more skinny and emaciated whales are being observed in the breeding lagoons of Baja California. None of these issues have been mentioned in the DEIS but they need to be looked at more closely and scientists who study these whales at every point in their migration need to compare and share data.

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	d) There is a special group of Gray Whales that returns to Puget Sound each spring to feed on Ghost Shrimp. They appear around Whidbey and Camano Islands in March or April and remain in the area for several months before they depart for areas unknown. One of these whales, #49 "Patch" has been photographed in Puget Sound for over 20 years. John Calambokidis of Cascadia Research does not consider these 10 to 12 "resident" Gray Whales to be part of the Pacific Coast Feeding Aggregation as they have never been seen anywhere except Puget Sound. It is unclear where they are coming from and where they go once they leave Puget Sound. It is obvious that more research needs to be conducted to learn more about these whales. The possibility that one of them may be killed by a Makah harpoon is completely unacceptable. These 10 to 12 whales were not accounted for in the DEIS and nothing has been done to ensure their protection. According to the current wording of the DEIS, the death of one of these whales would not even count toward the predetermined number of whales the Makah are allowed to take from the PCFA before the hunt is stopped. This needs to be looked at much more closely. 3) The Makah claim "cultural rights" to whaling. The last two whales they took were NOT done in any traditional way, not spiritually or in the old tradition. They didn't even "use" the whale food. Slavery used to be a cultural right, child labor used to be a cultural norm. This is the 21st century and killing these gentle giants for any reasons is barbaric. 4) There is no humane way to kill a whale. It cannot be done quickly or painlessly. These are sentient animals who feel pain and quite likely grieve for one another. The explosive harpoons or grenades mentioned in the DEIS as a humane alternative are anything but. Japan and Norway, who both use these devices, report that 60% and 20% of whales respectively do not die instantaneously from these weapons. The explosive harpoons and grenades can penetrate the whale's body up to a foot before it explodes, which then tears the whale apart from the inside but doesn't always kill it. Frequently a second explosive harpoon is needed because the first one causes massive injuries and shock but not death. Dr. Harry Lillie, a whaling ship's physician in 1946 was quoted as saying "The gunners themselves admit that if whales could scream the industry would stop, for nobody would be able to stand it." I contend that the whales do scream and if we were in their world listening, we would hear it. 5) It is unsafe to use an explosive harpoon or a high caliber rifle in the areas where this hunt would be occurring. Endangered Killer Whales and Humpback Whales frequently traverse these regions. Within the last month there have been reports of Southern Resident Killer Whales swimming right by Neah Bay and Cape Flattery, with photos to prove it. These animals can literally pop up anywhere with no warning and could end up in the crossfire of a Makah hunt. With only 87 Killer Whales in this endangered Southern Resident population, the risk is unacceptable. I strongly feel that the Makah's request to hunt Gray Whales should be denied for the above reasons. However I do feel that they should be compensated for their loss in some other way, whether monetarily or with assistance in establishing another industry. But since that alternative was not considered in the DEIS the only option is vote for alternative 1: no whaling.
e_Rushkin_05-10-08.pdf	I have been following this issue for years and find it outrageous that we are considering allowing the Makah to hunt whales off the coast of Washington. There is an international ban on whaling which most countries, including the U.S. respect. I understand it was part of

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	their culture at one time and they believe it will help bring their culture back to their families and community. However, whales are a very intelligent animal that build strong family bonds (certainly stronger than many human families we see in the U.S. today). To kill them just to invoke "that's what we used to do" just doesn't make any sense. It is true the Makah used to kill whales but that was when it was necessary to provide sustenance to their community. There are numerous communities around the world that used to be headhunters and cannibals yet we don't encourage them to bring back their old ways to enhance their current community. So of course some would say there's a big difference between the two because one is killing people and the other is killing whales. But what gives us the right to make that decision. Are we really more intelligent? On average, probably yes. But I would certainly question that in many cases and it is noteworthy the great whales do not kill each other. If only we could say the same!
e_Russell_05-10-08.pdf	there almost any number of reasons I oppose whale hunting by the Makah Tribe, or anyone else, for that matter. The one uppermost in my mind is that whales are beautiful benign creatures of nature. We live in the 21st century. Killing whales isn't part of our civilized world any longer.
e_Russell_08-03-08.pdf	I am the author of "Eye of the Whale" and in the course of researching my book, paid several visits to the Makah reservation. I strongly believe that what happened this past year - the illegal hunt undertaken by tribal members - should preclude any further consideration by NOAA toward authorizing further gray whale hunting by the Makah. I uncovered evidence indicating that Japanese interests, intent upon undermining the American role at the IWC, had visited the reservation at one time and urged (if not "bribed") members to seek renewal of a hunt under their alleged "treaty right." Given that hunting gray whales is NOT necessary for subsistence of the Makah tribe (a very different situation than that faced by the native peoples of Chukotka for example), again I would like to go on record opposing this practice.
e_Sachau_05-09-08.pdf	the scandal plagued us dept of commerce noaa division has a proposal to kill whales by makah tribe. it is time for the makah to come out of the stone age.the whales are all vanishing. the makah are americans. no american of any kind should be killing whales in 2008 and beyond. none.
e_Salazar_05-18-08.pdf	KILLING WHALES IS BARBARIC MURDER! WE NEED JUSTICE FOR THEM!
e_Schanfald_06-02-08.pdf	I wish to comment on the Makah Tribe hunt of gray whales. While I respect tribal needs and understand this country has treated tribes shabbily and inhumanely and have much to be ashamed of an embarrassed, I do not believe in killing, and I do believe that marine life has been treated as disrespectfully and shabbily. The human use and disrespect for marine life and the shape the waters are currently in supports this. Here there is a situation where the Makah Tribe is split down the middle; many tribal members oppose killing the whales. I support that faction of the Tribe. I support NO killing of whales by this or any other Tribe or nation. Human beings have ruined over 50% of the marine habitat; these whales and other marine life are now as polluted as "we the people." I question the judgement of the pro-whalers, why they would want to eat contaminated gray whale meat . It makes no sense. And NOAA's support of this hunt saddles a U.S. agency with agreeing to continued pollution and illness of these people. Therefore, for the reasons of "take no life and do now harm," of disagreeing that humans rule over other life and therefore have the right to take those lives, and for not wanting to see contaminants spread from one species to another -- in this case whales to humans, I support a NO KILL policy. This should be an option and, it indeed is, the most humane and intelligent one.

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e_Schenkenberger_05-16-08.pdf	1) Please do not allow any future whaling by the Makah until they follow through on their word to prosecute the law breakers who illegally took the whale. Allowing the Makah to whale would be no less than rewarding a tribe that lies to protect it's members from lawful prosecution for a crime. 2) Also, it should be considered that the Makah abandoned whaling for more than 30 years, of their own will. Not to protect the whales, they still had the right to hunt whales, but because more money was to be made hunting seals. Early, they hunted whales for food. Later they hunted to trade whale meat and blubber with other tribes. This was not a "spiritual" quest when hunting whales for the Makah. Also, they must abandon modern conveniences and hunt them in the "traditional" way if they are to be considered sincere about needing to do this for "spiritual" purposes. Are they willing to hunt them in the same manner as their ancestors???? I think not! This is how the Makah's ancestors huntied whale and utilized them: "Hunting whales was no easy task. It was made all the more difficult by the complicated rituals that the Makah hunters would observe in preparation for their hunts. Prior to the hunt, Makah tribesman would ritually bathe themselves in the icy waters of the Pacific. They would rub their skin raw on sharp mussels and barnacles. A few days before their hunt they would often dig up a fresh grave and dismember a corpse. During the hunt the they would secure the torso of the corpse on their backs-a gesture indicating their respect for their dead brethren. On the hunt a Makah whaling crew would silently intercept a migrating whale, usually either a humpback or gray, and plunge a massive harpoon into its back. Attached to the harpoon would be a long line; attached to the line were several air bladders made of gutted seals. The hope was that the inflated seal skins would prevent the whale from diving. After the whale died, a diver would plunge into the icy water and sew the giant's mouth shut, preventing air from escaping during the tow back to the village. When the whale arrived on the beach, the whole village clamored towards the dead beast. The wives of the hunters were certainly relieved; during the entirety of the hunt they had been instructed to remain motionless in their beds, not eating, sleeping or talking. The whale meat and blubber would be divided up among the villagers according to a strict tribal hierarchy. If it was a humpback, most of the whale would be eaten. If it was a less tasty gray whale, much of the carcass would be rendered for oil. The Makah would often potlatch much of their whale meat and oil with other Nootka tribes on the western side of Vancouver Island. This active trade of whale meat, as well as fish, seal, and other sea-derived products, naturally allowed the Makah to become savvy traders when the first Europeans began arriving in the 1700s. The Makah aggressively traded whale meat and oil through the mid 1800s. In 1855, the Makah signed a treaty with Washington territorial governor Isaac Stevens. The Treaty of Neah Bay is the only Native American treaty that explicitly granted a tribe the right to hunt whales (though it also forbade them from trading whale meat internationally)."
e_Schneider-Chance_05-12-08.pdf	good afternoon - I would like to comment on Indian Whaling, per an article posted in the Seattle/PI. First may I thank you for the opportunity to comment! I am totally and absolutely against the killing of our whales in this era of our lives. Back when it was necessary for the Indians to feed their families, I am sure that is what God had intended - HOWEVER, I see no reason for the senseless killing of these beautiful mammals, other than pure SICK enjoyment of the hunters. The shameful killing of one of these mammals last year was sickening and cruel!!! Can you tell me if this was indeed the only way of feeding the tribes, did they indeed eat the meat or feed it to the dogs? Did it lay in waste on the beach or in some warehouse rotting? Times have changed, our world's environment has changed, if the Indians are indeed the stewards of the land, how can they truthfully be true to themselves with this shame on their hands?

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e_Scholtes_05-28-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. I urge you to please ban all Makah whaling.
e_Schubert_05-30-08.pdf	I have attached a letter submitted by a coalition of animal protection/conservation organizations seeking an extension in the comment deadline for the Makah Draft Environmental Impact Statement. Thank you in advance for considering this request. [There is an attached document labeled, “MakahDEISCommentExtensionRequestDraft5-30-08Final.doc”]
e_Schubert_06-09-08.pdf	Nice to meet you both last week. Since the list of questions I gave you in hard copy was not printed on letterhead, I thought I would submit a copy (attached) on letterhead so that when added to the record there would be some indication as to the organization that submitted the questions. The attached copy is identical to the copy provided to you except for the letterhead and the header at the top of pages 2 and 3. [Attachment labeled, “Draft Questions for Makah Public Meeting.doc”]
e_Schubert_07-22-08.pdf	Please find attached a request for an extension in the deadline for public comments on the Makah whale Draft Environmental Impact Statement submitted on behalf of the Animal Welfare Institute, The Humane Society of the United States, and Peninsula Citizens for the Protection of Whales. Thank you in advance for considering this request. [There’s an attachment called, “Request for Extension in Comment Deadline 7-21-08 Final.doc” The email and likely the letter are addressed to Jim Balsiger at NOAA]
e_Schubert_08-16-08a.pdf	Please find attached the draft comments of the Animal Welfare Institute, Cetacean Society International, and the Earth Island Institute International Marine Mammal Project on the Draft EIS on Makah whaling. In order to submit these comments by the deadline, important issues and analyzes had to be removed from the comments or not undertaken. In addition, due to the deadline a thorough review of the comment was not possible. To remedy these issues, it would be most appreciated if NMFS would be willing to accept an amended version of this comment submitted on August 18, 2008. Thank you for considering this comment letter. [The attached letter is labeled, “DraftCommentsAugust_15Rev1.doc”]
e_Schubert_08-16-08b.pdf	Please accept this revised comment letter submitted by the Animal Welfare Institute, Cetacean Society International, and the Earth Island Institute International Marine Mammal Project on the Draft EIS on Makah whaling. Upon submitting the previous version of the comment letter, it was realized that there remained on sections of the letter that had not been completed and some formatting issues had to be addressed. AWI et al. still intends to submit an amended version of this comment letter on August 18 and requests that it, once submitted, be the official comment letter reviewed by NMFS. Thank you for your understanding. [The attached letter is labeled, “DraftCommentsAugust_15Rev2.doc”]
e_Schubert_08-20-08a.pdf	On behalf of the Animal Welfare Institute, Cetacean Society International, and the Earth Island Institute's International Marine Mammal Project I would like to respectfully request that NMFS accept the attached amended comments on the Makah whaling Draft EIS. The attached comments should replace the revised comments sent electronically to this website at approximately 1:00 am on 8/16/08 which followed submission of the original comment letter at approximately midnight on 8/15/08. As requested in the cover e-mail that accompanied the original comment letter, AWI et al. requested the opportunity to submit an amended comment letter in order to have a chance to further proof the original letter, complete certain sections of the document, correct or clarify statements/claims in the document, and to otherwise correct deficiencies in the original comment letter. This request was made in light of the urgency which had

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	to be assumed to complete the original comment letter. Please note that while corrections, additions, and clarifications were included in this amended draft, no substantive new issues were raised in this amended comment letter. Thank you for considering this request and for replacing the original and revised comment letter with the attached amended version of the AWI et al. comment on the Makah DEIS. [Attachment is called, “Final Comments on Makah EIS August 15.doc”]
e_Schubert_08-20-08b.pdf	I noticed that the Makah DEIS e-mail address is no longer valid based on a delivery failure associated with my last e-mail. I trust that my e-mail was successfully sent to you. I have attached it again to this e-mail just to be safe. Please note that the version attached to this e-mail does not include footnote 30 which was not relevant and was removed from the letter. [His attachment is called, “Final Comments on Makah EIS August 15.doc” (just like previous email’s)]
e_Schultz_05-30-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Scott_05-09-08.pdf	I am a 33 year old white male. Living in everett area. I say let them take ytheir quota of whales. Granted in their treaty rights. They stopped hunting when the anilmals were marked endangered and now that they are not endangered alsw the tribe the right to again teach their young ones the ways of the tribe alow thier heritage to continue on....
e_Scott_05-12-08.pdf	ARTICLE 4 The right of taking fish and of whaling or sealing at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the United States, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands: Provided, however, That they shall not take shell-fish from any beds staked or cultivated by citizens. Makah Treaty Jan 31, 1855 Isaac Stevens Gov. and Head of Indian Affairs Various Elders representing Makah and other local tribes "…in common with…": Everybody took whales then, this treaty grants the tribes the right to hunt "in common with" everybody else. As far as I know the rest of us aren't hunting whales anymore. In fact it’s against the law, and as it should be.. If indeed the Makah wish to kill whales as a cultural experience, it should be required that they use the same tools, weapons and boats as used at the time the treaty was signed. Use of modern boats and firearms, exploding harpoons, etc. should not be a part of the hunt,

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	and butchering should be with ancient stone or bone hand tools. Drying and preserving the harvested flesh should also be done with the same traditional methods. Anything less negates the cultural value of the hunt, which is the basis of the Makah's reason for the hunt. If the Makah wish to use modern powerboats, rifles and whaling techniques, their permit should be denied.
e_Sender_05-10-08.pdf	Obviously the tribe cannot police its own people. The trust is broken. Their hunt is no longer tradition it is greed to win a ruling.
e_Shake_05-09-08.pdf	Please apply the "No-Action" alternative ! Do Not Let The Makah Kill Any More Whales Under Any Condition. Killing Any Whale Of Any Kind Is Just Wrong !!!
e_Shirley_05-10-08.pdf	No. I see no reason why the Indians should be allowed to hunt, hurt and kill the Whales. It is against the law, and they should not be above the law.....
e_SimonsBuss_07-03-08.pdf	My husband and I are Vashon Island residents of many years. We have been following the Makah whale hunting issue for a long time. We would like to give our full support to the approval of limited hunting of grey whales by the Makah tribe for two simple reasons. We entered into a treaty the assured them the right to hunt the gray whales and there are no longer extenuating circumstances which would call for suspension of their rights. The gray whale is no longer endangered and limited taking would not harm the species. The United States should honor its treaties. I expect that you will hear a great deal of organized and orchastrated opposition to this proposal. That is why I think you should know that there are many of us who sit on the sidelines and don't make much noise but who believe that our country should do the right thing and honor its treaty.
e_Sinclair_08-14-08.pdf	I totally oppose the Makah Tribe's proposal to return to hunting gray whales.There is nothing traditional about hunting gray whales with mechanized canoes and high powered rifles. There are certainly other ways to p reserve their cultural without threatening one of the last viable populations of gray whales.Why not teach the beauty of their history, language,religion and culture.Positive traditions. All cultures must adapt to change. We no longer need to hunt to survive. Whale meat has not been a staple in the Makah diet in ages.There is no positive value to the tribe or the public in approval of this proposal.
e_Smith_05-09-08a.pdf	I lived on the Olympic Peninsula for most of my life, and I know many members of the Makah tribe. I read about the upcoming decision regarding Makah whaling, and I felt compelled to voice my opinion. The Makah are a vibrant people who have held on to many of their cultural traditions; whaling was one of the most essential aspects of traditional Makah culture, and the tribe insisted on keeping the right to whale when they negotiated with the United States government for treaty rights and their reservation. Though I favor restriction of commercial whaling ventures that endanger vulnerable species, I strongly support the right of the Makah to take a small number of whales from their traditional waters. The tribe have been good stewards of the land; they seek to hunt whales to continue tribal traditions and strengthen their community. The article that I read suggested that NOAA was considering several options. In my opinion this option makes sense: 2. Allow killing of four whales per year on average (a max of five per year) and up to 20 whales in a five-year period. Hunting would occur from December to the end of May. The maximum number of whales struck in any year would be seven, and the max struck and lost would be three. I believe it is wise to set guidelines; I hope that the rules used will be fair to the tribe and will protect the whales from overexploitation. I urge you to allow the Makah to hunt whales in accordance with their long tradition.

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e_Smith_05-09-08b.pdf	The Makah should be allowed to hunt grey whales per their treaty rights. The grey whale population is stable. The Makah are a small tribe that poses no tangible threat to the grey whale. The Makah should not be restricted any longer. Thank you for your time and consideration.
e_Smith_05-10-08.pdf	I understand that you are soliciting comments about Makah whaling: This may be an unpopular opinion, but I believe that modern Native Americans should have to live by the same rules as everyone else in the United States (I'm part Native American, although not Makah). To do otherwise merely "enables" them, in the bad sense of the word -- it's time that *all* native peoples figured out how to live in the real world, not in the world of yesterday. And no, I'm *not* a whale lover either -- I really don't give a hoot one way or another about whales. If they went extinct I really wouldn't care (extinction is a natural part of evolution, and humans are a part of evolution too), unless it messed up some other significant thing that we humans need to survive. But having special privileges for certain groups of people seems outdated and it doesn't really help them either.
e_Smith_05-11-08.pdf	My family & I DO NOT support ANY Whale Killing!!!!!! We are 4th generational Washingtonians with Indian blood who do not support whale hunting under any conditions, traditional or not. Wildlife needs to be protected for everyone & for our future children!
e_Sorensen_05-14-08.pdf	I'm just an ordinary citizen with no special expertise in treaty rights or marine life or endangered species. So, if you're interested in the opinion of someone like me in your review, here goes. I do understand the need to honor treaty rights to native Americans, especially in view of our horrendous history. However, I am extremely disappointed that the Makah feel the need to exercise their rights in the matter of killing these whales. The following are my reasons: 1. It makes no sense from the perspective of their tribal customs, since the whale hunt was a long forgotten practice and custom, and had ceased during several decades, by the tribe's own volition, and not by the U.S. government's forcing. How can they still claim it as a cultural tradition? What makes them want to revive it at this time? It is not a proud or honorable pursuit. 2. The hunt has become anachronistic, both as an historical custom, and by the ultra-high-tech manner in which the hunt is now conducted. It brings no honor to the tribe who now takes superior weaponry and speedy transportation to the hunt, rather than the highly trained skill, time and effort by which the hunt was conducted by their ancestors. 3. In view of worldwide depletion of natural resources and protection of all species (including human), it is increasingly obnoxious to contemplate someone wanting to go out a kill these peacful, magnificent creatures who cause no harm to anyone. The whales have come to trust humans within the context of whale watching citizens who seek them out only to appreciate their beauty. Then to have these Makahs approach them and suddenly want to kill them in this brutal manner is such a betrayal of the trust we have tried to establish with them. 4. It is a public relations disaster for the Makah, to have themselves be recognized as the people who want to do these terrible things to beautiful creatures of nature. How do they think they can sell this as an acceptable native custom? They have no use for the whale meat or any other part of it. Is selling the carcass to the Japanese going to be viewed as an honorable native tradition? The world is watching, and it will be difficult to interpret their motives as an honorable cultural one. It will also be difficult to rehabilitate their image after they realize how they are viewed. 5. If the tribe wants to honor their past tradition as a whaling tribe, perhaps they can think of more constructive ways to be involved with the gray whale: encourage artistic pursuits involving the whale theme, hosting whale watching expeditions, etc. I recall that a few

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	years ago these thoughts were advocated by one of the tribe's female elders who has since passed away. Why was she not listened to? Is blood sport really necessary in this critical time, which already more destructive to nature than we can even imagine?
e_Sorg_05-22-08.pdf	On behalf of the Canadian Marine Environment Protection Society, I am writing to respectfully request that NMFS extend 90 days the comment period allowed for us to have more time to review the 900 page document regarding the Makah DEIS.
e_Spomer_05-19-08.pdf	I have been involved in the Makah whaling issue for over ten years. I have submitted comments on the previous Environmental Assessments re: Makah whaling, and, in fact, was a plaintiff in Anderson v. Evans. I fully intend to submit comments on this Draft EIS, as well. In short, my involvement with this issue is long-lived and substantial. However, given the immense size and scope of the 2008 DEIS, I respectfully request that NOAA grant a 90-day extension for public comments. There simply is too much material involved to properly research and respond to such an enormous document in such a short amount of time. The current comment deadline does NOT give adequate time to reply with substantive comments, and in fact, would deprive the public of the chance to thoroughly review the document. Given the complexity of this issue, I can think of no logical reason why the public comment period should not be extended 90 days. Should you have any comments or questions, feel free to contact me at your convenience. Thank you for your time and consideration.
e_Spomer_07-07-08.pdf	Given the rather bizarre events that transpired before and during the recent sentencing of the five Makah who illegally killed a gray whale last year, it was become increasingly difficult to submit substantive comments by the deadline set by NMFS. On one hand, you have statements attesting to the fact that the Makah Tribal Council knowingly approved- even encouraged- the illegal hunt of last September. On the other hand, comments from the Tribal Council conflict with that claim. And key players in the episode have been conspicuously silent of late, notably Bender Johnson, Jr. and Keith Johnson. I honestly believe that NMFS should extend the comment period even further to allow the public time to gather additional information regarding this bizarre series of events, and I ALSO think that NMFS should launch an investigation to find who is telling the truth here. Are the whalers and/or affiants lying? Or is the Tribal Council lying? Much rests on the truth here, and would become a very important- if not the MOST important- component of any EIS. I do not see how anyone could submit meaningful comments or information about this episode by the present comment deadline of August 15. I look forward to your reply. Thank you for your time.
e_Spomer_08-15-08.pdf	I read through the Draft EIS several times, and have one major issue with NMFS: I want those hours of my life back again. The more things change, the more they stay the same. Thus, I am recycling my PREVIOUS comment letter to you in response to NMFS' recycling of their previous work. This issue seems to have more in common with a Class B horror movie than with official government policy. In a class B movie, just when you think it is safe to relax, the zombie leaps back from the dead to terrorize the principles. Also like a poorly made horror movie, the zombie can (and will) come back just as often as the director can get away with it in the script. If he so desires, the director can have the zombie killed twenty times, but make it arise from the dead yet again and scare the audience twenty one times. It is the nature of low-brow, low-quality films to get the most bang for the buck, which usually leads to illogical, implausible plot twists to keep the audience from leaving the theater. And that's really what we're dealing with here: The Makah whaling issue is the zombie, NMFS is directing a very poorly made horror film, and the American public is being forced to "look in the basement" one more time, even though everyone watching this pathetic movie knows exactly what is going to happen when we do get down to the basement. In this particular half-witted production, the only way the public is going to get anything acceptable is for another director to step in.

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	NMFS is incapable of producing anything even remotely unbiased on this issue and should step down from any involvement with this DEIS. A documented history of bias, lying, redacted documents, moronic public quotes and blatant institutional bias leave NMFS no other choice but to step aside. However, If NMFS does continue as the lead agency in the production of this DEIS, I am convinced it will have as much "pro-whaling bias" as the original and subsequent Environmental Assessments (EA) issued in 1997 and 2001, because NMFS has never shown a willingness to take the "hard eyed look" at this issue that logic, common sense (not to mention the Ninth Circuit Court of Appeals) demands. NMFS has twice now opted for a predisposed and politically influenced finding of "no significant impact," even as the agency has lost twice in federal court in trying to justify their obviously flawed position. NMFS and NOAA have acted shamefully and have betrayed the trust of the American people for well over nine years now on this matter. It remains quite remarkable that the only reason the agency is now complying with the National Environmental Protection Act (NEPA) and the Marine Mammal Protection Act (MMPA) is because of legal action brought by concerned citizens. Said another way, ordinary citizens had to force the agency to do its job. We protest in the strongest possible manner the behavior of NMFS and NOAA to date on this issue. While paying lip service to the concept of "public involvement," NMFS and NOAA have shown a blatant and callous disregard for any opinion, comment or question that dares to cross over the "company line," namely, both agencies' biased and predisposed attitude on this issue. If you don't believe us, simply read the rulings of the Ninth Circuit Court of Appeals in the two previous court decisions, or listen to the audio recording of oral arguments in front of that same court on October 28, 2002. There, the justices noted that: "They [NMFS] switched gears because the TRIBE switched gears." (Emphasis ours) NMFS' record on the Makah whaling issue is nothing short of embarrassing: • The original EA, issued in 1997, was challenged in court shortly thereafter, and was convincingly struck down by the Ninth Circuit Court of Appeals in June of 2000. • The second EA, issued in 2001, was challenged in court shortly thereafter (again), and was convincingly struck down (again) by the Ninth Circuit Court of Appeals in December of 2002. If this DEIS is as defective in process or content as previous assessments, or displays anything other than an "objective evaluation free of the previous taint," as ordered by the Ninth Circuit Court of Appeals, we are certain that this DEIS will also be challenged in the U.S. courts, a venue where NMFS' record is not very impressive lately. Two assessments, two lawsuits, followed by two convincing losses by the federal government? Is this the perception that NMFS chooses to present to the American people? Is NMFS so stubborn and bent toward a predisposed result that they will waste the resources of the American people in blindly pursuing a course of action that makes a mockery of the public's involvement? When will NMFS get the hint that the very basic premise of their position just might be wrong, illegal and unjustifiable? What will it take for NMFS to come out and say, "Look, our position is obviously flawed, and in order to fulfill our agency's obligations to the American people and uphold federal law, we're going to take another look and see if we just plain made a mistake in promoting this whale hunt?" Interestingly, it should be noted that NMFS has found itself on the wrong end of the law on a growing number of occasions. One report concludes that ten percent of NMFS staff is involved defending the agency from lawsuits! TEN PERCENT! Also of note, NMFS is experiencing an increasing number of losses in court, as detailed in a report issued by the National Academy of Public Administration. Whereas NMFS was winning 83 percent of its cases prior to 1997, from 1998 to 2001, their record is 19 wins and 23 losses. While numbers like that will get you fired in private business and professional sports, apparently it is "business as usual" for NMFS. We think these numbers indicate an agency-wide management problem, which should be at least discussed in the DEIS.

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	The Academy concluded that “appropriate alternatives must be studied, developed and described when preparing EAs and EISs.” The Academy report also noted the following: “In recent years, NMFS’ record under NEPA has not been good. Courts have become increasingly adamant that the agency must conduct adequate EAs that consider reasonable alternatives and cannot use EISs dating back fifteen to twenty years. The cumulative effects of the many federal actions impacting fisheries must be considered.” NMFS representatives have certainly done nothing to clear the “previous taint” or “pro-whaling bias” from previous assessments, either in 1997 or 2001. On February 1, 2001, NMFS spokesman Brian Gorman stated: “One unalterable fact exists that the anti-whaling groups can't stomach. The Makahs have an absolute treaty right to whale. We can't ignore their treaty. We can't say that a large portion of the population doesn't want you to go whaling, so we are going to ignore the contract we signed with you 150 years ago." Further media reports indicate the completely expected predisposition and bias of previous assessments: “Although one of the alternatives under consideration rejects the hunt completely, there is virtually no chance the Fisheries Service will go that route.” The following memo shows yet another example of institutional bias regarding the Makah whaling issue. It should be noted that this memo was written before the 2001 Final EA was released: “National Ocean Service (NOS) Olympic Coast Sanctuary staff is finalizing the consultation process for the Makah whaling Environmental Assessment. Whaling is anticipated to resume sometime this summer.” (Emphasis ours) We are left wondering just how the NOS came to this conclusion before the Final EA was even released! On August 25, 2005, Brian Gorman again indicated the outrageous pro-whaling bias of NMFS by stating “that it might be months more to grant a waiver (after the EIS) from the MMPA” as if it were a done deal, and "the bottom line is, we support the tribe's treaty right to hunt whales. " And after the Ninth Circuit Court’s decision in Anderson v. Evans, Gorman was quoted as saying; “Clearly, we're disappointed." Disappointed? Why? Is NMFS disappointed because the Court upheld federal law? What kind of statement is that coming from the official NMFS spokesman? Could Gorman possibly be any more blatant in confirming the institutional bias in NMFS inherent to this issue? Now NMFS has the gall to ask the American people to trust them as the agency prepares a DEIS? The responsible agencies are bound here by court mandate and federal law to comply with the National Environmental Protection Act (NEPA). NEPA is the "basic national charter for protection of the environment." 40 C.F.R. § 1500.1. The fundamen¬tal objective of NEPA is to ensure that an “agency will not act on incom¬plete infor¬mation only to regret its decision after it is too late to cor¬rect.” Accordingly, agencies are obligated to “make relevant environmental information -- including ‘[a]ccurate scientific analysis’ and ‘expert agency comments’ -- ‘available to public officials and citizens before decisions are made and before actions are taken.’” The purpose of these requirements is to ensure that agencies do not use the NEPA process to “rationalize or justify decisions already made,” or take action prior to the NEPA process that “limit[s] the choice of reasonable alternatives.” Among the critical purposes of the statute are to "insure that environmental information is available to public officials and citizens before decisions are made and actions are taken," and to "help public officials make decisions that are based on understanding of environmental consequences." Id. at § 1500.1(b)-(c)

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	In determining whether an Environmental Impact Statement (EIS) is required, the agency must analyze both the "context" and "intensity" of the impacts of the proposed action. Id. at § 1508.27. As to "context," the agency must consider such factors as whether the action has impacts on "society as a whole, the affected region, the affected interests, and the locality." Id. at § 1508.27(a). As to "intensity," the agency must consider whether the action involves "[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands [and] ecologically critical areas," Id. at § 1508.27(b)(3); "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial," Id. at §1508.27(b)(4); "[t]he degree to which the action may establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration," Id. at §1508.27(b)(6); "the degree to which the action is related to other actions with . . . cumulatively significant impacts," Id. at § 1508.27(b)(7); and whether "the action threatens a violation of Federal . . . law or requirements imposed for the protection of the environment." Id. at § 1508.27(b)(10) The presence of one or more of these factors should result in an agency decision to prepare an EIS. (Public Service Co. of Colorado v. Andrus, 825 F.Supp. 1483, 1495 (D. Idaho 1993)). If, after fully evaluating these factors, an agency decides not to prepare an EIS, “it must supply a convincing statement of reasons to explain why a project’s impacts are insignificant.” This “statement of reasons is crucial to determining whether the agency took a ‘hard look’ at the potential environmental impact of a project.” We are pleased to make NMFS aware of the CEQ regulations at §1508.13, which defines a "Finding of No Significant Impact (FONSI) as a document "presenting the reasons why an action . . . will not otherwise have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared.” We wish NMFS in general, and NMFS spokesman Brian Gorman in particular, to take note of the highlighted term “human” and the context in which it is used. [T]o prevail on a claim that [a federal agency] violated its statutory duty to prepare an EIS, a ‘plaintiff need not show that significant effects will in fact occur.’ It is enough for the plaintiff to raise “substantial questions whether a project may have [a] significant effect’ on the environment.” (Emphasis ours) In our previous comment letters in response to previous EAs, we stated that “an Environmental Assessment alone does not properly address the issue of Makah whaling; an Environmental Impact Statement is not only necessary from a logical point of view, it is required by law. “ At least NMFS is finally, if not begrudgingly, complying with at least one federal law- NEPA. It only took two orders from Ninth Circuit Court of Appeals to make that happen. It is an undeniable fact that this issue has had a major impact on "society as a whole, the affected region, the affected interests, and the locality." It is an undeniable fact that the effects of this issue "on the quality of the human environment are likely to be highly controversial." Based on two separate court rulings, it is quite obvious that this issue "threatens a violation of Federal . . . law or requirements imposed for the protection of the environment. INTERNATIONAL WHALING COMMISSION We now wish to comment in advance on what will no doubt be a cornerstone of NMFS strategy in the pending DEIS, repeatedly (and wrongly) championed in previous assessments, and stated thusly in the 2001 Final EA:

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	"In 1997, the International Whaling Commission (IWC) approved a quota of 620 gray whales for an aboriginal subsistence harvest during the years 1998 through 2002 ." This statement was misleading, is misleading and continues to be misleading. If NMFS continues to use this line in their efforts to confuse and befuddle the American people, we will continue to strongly oppose that deceptive practice. Now NMFS is stating that: “At its 2002 annual meeting, the International Whaling Commission (IWC) approved a quota of 620 gray whales for an aboriginal subsistence harvest for the years 2003 through 2007. The basis for the quota was a joint request by the Russian Federation (for a total of 600 whales) and the United States (for a total of 20 whales). The subsistence and ceremonial needs of the Makah Indian Tribe were the foundation of the United States' request to the IWC.” In a low-brow horror film, this is where the door starts creaking and the sound of menacing footsteps approach. The casual reader of the above paragraph could perhaps ascertain that there was a quota for NMFS to “give” to the Makah, when it fact, that is untrue. We will document this quite thoroughly (below), but stated quite simply here, NMFS will need to do a far better (and more thorough) analysis of this crucial point in the pending EIS than it has done in the past. We suggest a good starting point for NMFS would be to tell the truth for once. It is well established that the U.S. government, at the behest of the Makah Tribe, submitted requests to the IWC in 1996 and 1997, requesting a quota of gray whales for the Makah Tribe. It is also well established that the U.S. government was forced to abandon this request at the 1996 meeting due to strong opposition from the member nations of the IWC, the Congress of the United States, and a large number of citizens, both from the U.S. and abroad. The U.S. delegation, forced to abandon its 1996 and 1997 efforts on a “stand-alone” Makah quota, was forced to resort to “back-door” dealings with the Russian delegation. The details surrounding this "Russian deal" are gradually coming to light, but it should be noted that the U.S. government has been less than enthusiastic in releasing the full story, preferring instead to parcel out various memos and notes, many of them redacted. In fact, the responsible agencies have been rather stubborn in sharing any factual evidence on this “Russian deal” whatsoever. None other than former Makah Tribal Chairman Ben Johnson, Jr. wrote: "To go to the length of negotiating with the Russian government to obtain an agreement to share the gray whale quota was remarkable..." Remarkable, indeed. Other adjectives that come to mind are “illegal” and “unethical.” We are convinced, based on the small amount of information made available by the U.S. government so far, that the truth of the "Russian deal" will eventually reveal a willful and deliberate attempt on the part of the U.S. government to circumvent federal law. It’s only a matter of time before the truth will come out. Typical of this subterfuge is the following e-mail: "Dr. Baker, after leaving you in Tokyo, Bob Brownell and I traveled to Barrow for what we thought were going to be fairly routine meeting with the AEWC and with representatives from Russian Native groups and the Russian Government.” (PAGE AND A HALF REDACTED ”The following plan has been discussed with the IWC team and all agree that it is a promising approach. If you agree, then we will take action as noted below under implementation. The U.S. proposal: In 1997, the U.S. and Russia would jointly seek bowhead and gray whale quotas which meet the combined needs of our respective Native groups for each species;” (REDACTED) “These quotas would begin in 1998 and last for as long as possible- AEWC suggested 10 years!"

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	(TWO PAGES REDACTED) "If all U.S. parties agree, then the IWC team needs to flesh out the proposal in preparation for a bilateral meeting in Russia to develop the joint proposal to IWC and agree on its bilateral aspects. In Barrow, we tentatively spoke of meeting in Moscow in July to do this." Here is another example of how the U.S. government is keeping details of the "joint quota" strategy away from the public: "The Makahs are aware that the U.S. can work with Russia and present a "combined" request with the Russian Federation at this year's IWC meeting. The Makahs are very receptive to a sharing arrangement in which they are on an equal footing with the Russian natives." (THREE AND A HALF PAGES COMPLETELY REDACTED) On a side note, I contend that NMFS has produced more redacted documents on the Makah issue then the entire federal government has produced on any number of classified or controversial issues! NMFS claims that a joint quota was given to the Chukotka and Makah tribes, but after repeated requests by conservation and anti-whaling groups, the U.S. has still not released any documentation that corroborates this claim, even though such documentation would go far in strengthening their position. The Ninth Circuit Court of Appeals addressed this issue three separate times in the December 20, 2002 opinion in 'Anderson v. Evans': • "…it appears that the IWC quota language concerning the aboriginal subsistence exception was left purposely vague. The quota issued jointly to Russia and the United States was limited to whaling by aboriginal groups "whose traditional aboriginal subsistence needs have been recognised." Conspicuously absent from this phrase is any delineation of who must do the recognizing or how." • "We cannot tell whether the IWC intended a quota specifically to benefit the Tribe. (emphasis ours) Even if timing and specificity were no problem, the surrounding circumstances of the adoption of the Schedule cast doubt on the intent of the IWC to approve a quota for the Tribe." • "Because the IWC adopted the "has been recognised" language in response to opposition to the Tribe's whaling, and because it was not a foregone conclusion that the Tribe would satisfy the definition of aboriginal subsistence whaling, the IWC's intent to approve a whaling quota for the Tribe has not been demonstrated. (emphasis ours) The "expressly provided for" requirement of § 1372(a)(2) is not satisfied." It must be noted that at this point, there exists not ONE SINGLE DOCUMENT to corroborate the U.S. government's claim of an IWC-approved "quota" for the Makah Tribe. We invite NMFS to prove us (and the 9th Circuit Court of Appeals) wrong on this matter, as much of the government's legal justification of the Makah whale hunt rests on this vital point. However, the onus is on NMFS to prove such authorization exists, NOT on the public to prove it does not. Obviously, personal opinions and vague interpretations by various individuals have been floating around for some time on this issue. However, the American public demands that the evidentiary lack must be filled from the text of IWC resolutions and the debate of record. Instead of proof, NMFS offers instead a press release crafted by the U.S. IWC delegation during the 1997 IWC meeting in which they unilaterally claim IWC approval for whale-hunting activity by the Makah Tribe. The press release states, in part; "The International Whaling Commission today adopted a quota that allows a five-year aboriginal subsistence hunt of an average of four non-endangered gray whales a year for the Makah Indian Tribe."

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	This press release is an entirely inaccurate interpretation of what actually transpired at the 1997 IWC meeting. Not only do we reject this document as misleading and utterly false; we claim that NMFS issued this press release as part of well-orchestrated campaign to mislead and confuse the American people. The U.S. claim of a "quota" via this press release is further undercut by comments in a letter from the Department of Justice regarding that document: "[The press release] is not an official document of either the federal government or the IWC. The "press release" does not represent the final official action of the IWC. This document is no more relevant to the federal decisions in this case than a newspaper article reporting on the events at the IWC." (Emphasis ours) To date, NMFS has refused to address a very specific question regarding this matter: We ask that question again here: If the one and only existing document offering "proof" of an IWC-approved quota for the Makah tribe is not recognized as an official document by the U.S. Department of Justice, nor as official action of the IWC, why does NMFS continue to insist that such a quota was given? We demand that NMFS properly address this question in the pending EA, and put a halt to the trickery and confusing misinterpretations previously (and currently) put forth to the American people. We contend that the U.S. government has absolutely no documentation to back their claim of an IWC-approved quota that could possibly apply to the Makah Tribe and challenge NMFS to produce such documentation. We further demand that such documentation be submitted, included and discussed IN DETAIL within the pending DEIS. Further, if NMFS wishes to gain the trust of the American people on this matter, they must make available the redacted documents mentioned above, as well as any other relevant redacted documents. We demand that NMFS do just that, and do so immediately. These documents MUST be made available in the pending DEIS. Why does NMFS continue to claim that their behavior and decision-making in the Makah whaling issue has been above-board and honest, yet the agency still feels compelled to redact a great number of documents associated with that issue? We would like to add that a number of member nations of the IWC have gone on record stating that they recognize a quota given in 1997 to the Chukotka people of Russia, but that they explicitly do NOT recognize any such quota given to the Makah Tribe. The Australian IWC delegation issued a statement in response to the US delegation's press release, declaring that; "The Australian delegation made it clear that it accepted the Chukotka Natives' request and claim clearly met the requirements of the… amendment in relation to the recognition of both traditional subsistence and cultural needs; whereas the request and claim of the Makah people did not." (Emphasis ours) Further in the statement, the Australian delegation questions the accuracy and, indeed, the integrity of the US delegation, especially as it applies to the U.S. delegation's 1997 press release; "The Australian delegation has noted a News Release issued by the United States delegation which claims, inter alia, that the Commission has: "Adopted a quota that allows a five year aboriginal subsistence hunt" by the Makah people; Indicated "its acceptance of the United States' position that the Makah Tribe's cultural and subsistence needs are consistent with hose historically recognized by the IWC", and "Recognised the cultural and subsistence need of the Makah Tribe."

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	"The Australian delegation explicitly rejects each of these claims as false (Emphasis ours) and as giving an entirely erroneous interpretation of both the schedule amendment as passed (with the Australian further amendment) and the decision of the Commission itself." Further comments from the Australian delegation: "Claims that the passage of the schedule amendment (as further amended by the Australian initiative) constitute an acceptance or recognition by the Commission of the validity of the Makah claims are false." (Emphasis ours "Clearly the Commission, as the only competent authority in the matter, has recognised the claims of the Chukotka Natives but not those of the Makah people." (Emphasis ours) We note also that the Australian delegation was not alone in contesting the US delegation's falsehood. The IWC delegation from the United Kingdom stated that in agreeing to the referenced quota, it "made it clear that our agreement did not imply that we accepted the validity of the case made on behalf of the Makah." (Emphasis ours) Even Dr. Ray Gambell, then Secretary of the IWC, wrote in 1997 ; "The IWC has specifically not passed a judgment on recognising or otherwise the claim by the Makah Tribe, since the member nations were clearly unable to agree." (Emphasis ours) We further note that other countries expressed grave doubt and concern over the Makah issue at the 1997 IWC meeting. Herewith are a number of comments from the minutes of that meeting: "Many delegations… referred to previous debates on this issue concerning the lack of continuation and the inability of the Makah to show that the nutritional need met the criteria required under aboriginal subsistence. They were sympathetic to the efforts of the indigenous people… but still felt that the aboriginal subsistence criteria had not been met. The strict requirements for aboriginal subsistence had not been shown." "Spain queried the legal aspects of the domestic treaty and USA international obligations under the ICRW." "A number of delegations expressed the view that the domestic obligations of the US Government were not to be considered by the IWC and should in no way affect the USA's obligations under this and other international treaties." "Many delegations drew a distinction between the (Chukotka and Makah) requests." "(Australia) called on the USA to prevent a resumption of whaling by its citizens." The Netherlands, Switzerland, Spain, Chile, Brazil, South Africa and the Solomon Islands indicated that they would not break a consensus, reservations were expressed on the Makah need." "New Zealand also supported the Chukotka request but a personal visit by the Commissioner failed to find the Makah need and was disappointed with the link between the two requests." Further, the Marine Mammal Commission has verified that a serious discrepancy exists in the U.S. claim. In reference to the 1997 IWC meeting, the Commission states that; "Other delegations at the meeting, however, were less sure that the IWC had acted to recognize the subsistence and cultural needs of the Makah and contended that the tribe was not entitled to take gray whales." (Emphasis ours) We also direct your attention to an Amicus Brief filed in the Metcalf v. Daley case, in which Chris Stroud of the Whale and Dolphin Conservation Society states: "…As a signatory to the ICRW, the USA has recognized that the IWC is the only competent body to issue quotas for aboriginal subsistence hunts, and that only the IWC can authorize an aboriginal subsistence claim through its recognition of a " needs " claim. Hence, the addition of the phrase " whose traditional aboriginal subsistence and cultural needs have been recognized "-- even without

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	the extra words " by the IWC "--should be sufficient to establish that the IWC must specifically recognize each group's aboriginal subsistence needs before it can be authorized to hunt whales." (Emphasis ours) Ex-congressman Jack Metcalf (R-WA) stated on the floor of the United States Congress: "The United States intends to take four gray whales from the Russian quota and allocate them for harvest by the Makah tribe in Washington State. However, many delegates to the IWC are now saying that they did not approve the controversial Makah proposal." (Emphasis ours) "Evidently, as I stated on the floor, on the House floor last night, the United States has tried to go through the back door by cutting a deal with the Russians and their quota, because they were facing almost certain defeat if the Makah issue were dealt with on its own merits. The U.S. delegation leader, Will Martin, stated at a press conference in Monaco that the Makah hunt had been approved. He has since been forced to back away from this statement. (Emphasis ours) This is another example of a misleading statement of fact by the U.S. delegation in Monaco. Throughout this process, they have relied on strong-arm pressure tactics, misleading information and clever propaganda to distort this issue. The Makah just have not demonstrated and aboriginal subsistence need, which is what the IWC regulations have always required. The Australians have stated that their amendment, which was added to the United States - Russian proposal was added to prevent the Makah allocation, due to a lack of demonstrated subsistence need. The Makah have claimed a cultural need as subsistence. If accepted, this will now open the door for more quota increases around the world. Japan has already stated the desire to allow four villages on the Taiji peninsula with no subsistence need to be granted a cultural quota. Iceland, Ireland, Norway, China, where will it end?" In summary, NMFS can proceed no further in either approving or disapproving whale killing by the Makah Tribe before undeniable documentation of an IWC-approved quota for such activity is released to the public and included in this process. NMFS is presently acting illegally and in violation of its obligations as a member nation of the International Whaling Commission. Indeed, NMFS has acted capriciously and with much sleight-of-hand on this issue, and we insist that the issue be addressed honestly, fully and directly. We are pleased to remind NMFS that the U.S. government may not assign its domestic aboriginal tribes the right to hunt whales unilaterally without the recognition of the IWC. The U.S. Whaling Convention Act of 1949 explicitly requires IWC recognition of subsistence need for any U.S. tribe that intends to kill whales. We add this reference to assist NOAA and NMFS in their search for further information while addressing this issue in an open, honest and unbiased manner. If NMFS cannot provide proper documentation of IWC recognition in the pending EA, then their actions on behalf of the Makah Tribe must be considered illegal. Given NMFS' extensive and continuing record of deception, political chicanery and sleight-of-hand on this issue, we regrettably anticipate further trickery at upcoming IWC meetings. It can not be stated enough times that NMFS is duty-bound to the American people (and ordered by the Ninth Circuit Court of Appeals) to address this issue openly, honestly and in an unbiased manner. We also would like to bring your attention to the assertion made in Section 2.2 of the 2001 Makah whaling draft EA, and subsequently endorsed in the Final EA; "The ICRW specifically states that the IWC may not allocate specific quotas to any particular nationality or group of whalers." We respectfully disagree. We challenge the accuracy of this statement and protest its' anticipated use in the pending EA. We insist that NMFS provide proper reference to this statement- very general references were made to this point, but not in any helpful detail.

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	The ICRW does state that; " (The Commission) shall not involve restrictions on the number or nationality of factory ships or land stations, nor allocate specific quotas to any factory or ship or land station or to any group of factory ships or land stations." Nowhere does the ICRW refer to "specific quotas to any particular nationality or group of whalers," but only to factories, ships or land stations." The 2001 Final EA is incorrect on this matter. Such generic quotes serve only to mislead the public, and deny citizens the chance to properly research and respond to such assertions. Regardless, we are pleased to share with you the fact that the IWC does, in fact, specify quotas based on nationality. We refer to an easily accessed page on the IWC web site entitled; "Catch limits for aboriginal subsistence whaling," whereby the IWC "reviewed catch limits of stocks subject to aboriginal subsistence whaling." The following limits have been agreed: "Bering-Chukchi-Beaufort Seas stock of bowhead whales (taken by Alaskan Eskimos and native peoples of Chukotka) - The total number of landed whales for the years 1998, 1999, 2000, 2001 and 2002 shall not exceed 280 whales, with no more than 67 whales struck in any year (up to 15 unused strikes may be carried over each year)." "West Greenland fin whales (taken by Greenlanders) - An annual catch of 19 whales is allowed for the years 1998, 1999, 2000, 2001 and 2002." "West Greenland minke whales (taken by Greenlanders) - The annual number of whales struck for the years 1998, 1999, 2000, 2001 and 2002, shall not exceed 175 (up to 15 unused strikes may be carried over each year)." "Humpback whales taken by St Vincent and The Grenadines - for the seasons 2000 to 2002, the annual catch shall not exceed two whales." It should also be noted that none other than the State of Washington officially reports; “The IWC aboriginal subsistence whaling category currently allows whaling by indigenous people in Russia, The United States (Alaska), Denmark (Greenland), and St. Vincent and the Grenadines.” We note with interest the minutes of the 1997 IWC meeting, which indicate; “The USA renewed its request for a quota of up to five gray whales for the Makah tribe.” This begs the obvious question: If a specific quota was not required, why was it sought? These specific examples clearly negate the U.S. government's assertion (Section 2.3) that a joint quota "is the only mechanism by which the Commission recognizes the needs of an aboriginal group…" This assertion is misleading and utterly false. Apparently, NMFS would have the American people believe that the IWC may not issue quotas to any particular group or nationality, yet the record indicates the U.S. government sought exactly that at the 1997 IWC meeting. The U.S. abandoned this effort in favor of subterfuge only when it realized that it would fail. We again state that we are still investigating the circumstances surrounding the "Russian deal" and, based on the small amount of information made available by the U.S. government so far, are convinced that the truth of the "Russian deal" will reveal a willful and deliberate attempt on the part of the U.S. government to circumvent federal law. The record also indicates that quotas based on nationality are not only allowed, they are commonplace. They are also commonly referred to by any number of governmental bodies and authorities. Further documentation reveals the true nature of the US government’s activity in obtaining a specific quota for the Makah Tribe. Again, the U.S. government’s argument carries no weight and raises the glaring, obvious question: If a specific quota was not required, why was it sought?

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	We direct your attention to the following documents, which clearly indicate that a specific quota was not only sought by the U.S. government, such a quota was considered vital: "…Notwithstanding these points, we are willing to seek IWC approval for our interim ceremonial and subsistence whaling proposal…" "Shall we seek IWC approval of a U.S. gray whale hunt? …the IWC has never given the U.S. a gray whale quota… the United States told the IWC in 1990 that it had no further interest in taking gray whales." "NOAA, through the U.S. Commissioner to the IWC, will make a formal proposal to the IWC for a quota of gray whales for subsistence and ceremonial use by the Makah Tribe." "NMFS is promulgating a proposed rule to revise 50 CFR part 230… it proposes to broaden the current mechanism for regulating whaling authorized by the International Whaling Commission (IWC) to allow for the future possibility that the IWC would grant quotas to the United States for Native American groups other than the currently authorized Alaska Eskimo Whaling Commission." (Emphasis ours) Are we to believe that the DEIS will speak truthfully on this matter when, in fact, the actions of the U.S. government indicate that it is knowingly being less than truthful? And are we to believe that NMFS' assertion in the 2001 Final EA that "The U.S. delegation has never discouraged other countries from raising the (Makah) issue" is truthful, when, in fact, a number of first-hand accounts indicate otherwise? How does NMFS explain away the words of none other than Makah attorney John Arum, when he stated openly, publicly and on the record in front of the Ninth Circuit Court of Appeals that "There is some ambiguity about what the IWC did" and that the Makah Tribe "did not" receive "explicit" approval from the IWC? The wholly unresolved question of any IWC-approved quota spotlights the most glaring and fatal defect underlying the actions and history of the U.S. government on this issue. The question of IWC approval and recognition of the Makah whale hunt MUST be clarified and documented before the U.S. government proceeds further on this issue. In summary, NMFS' previous assertions that the IWC may not allocate specific quotas to any "particular nationality" or "group of whalers" are entirely and utterly false. We have shown that such quotas are not only allowed, but are routine enough to be displayed prominently on the IWC web site. We have also shown that the U.S. government sought exactly just this kind of quota at the 1997 IWC meeting. LOCAL IMPACTS The pending EIS must do a far better job of addressing the impact of the Makah whale hunt on the people of Clallam County, the economy of the area, and the shocking impact it has had on the lifestyle of the citizens of Washington state. Indeed, in the 2001 "Public Comments to Draft EA" attachment, NMFS fails to spell the word "Clallam" correctly even one time, although they corrected it later. The 2001 Final EA states that the Makah Tribe has a treaty right to "continue whaling at its usual and accustomed grounds." We disagree, and challenge the use of this kind of misleading statements in the pending assessment. The court ruling in 'Anderson v. Evans' clearly shows the statement is untrue. NMFS must not continue to state such opinions as fact in the pending EIS. Trust us: we will be reading every sentence. The Makah Tribe had abandoned all whale killing at its "usual and accustomed grounds" by the early 20th century, a hiatus of some seventy-three years before they killed a three-year old juvenile gray whale in 1999. And in response to NMFS' assertion that the Makah abandoned whaling because of alleged pressure from non-tribal commercial whaling activities, there is evidence that the Makah

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	abandoned their whaling activities in order to take part in the more financially lucrative activity of sealing. The historical context of the Makah whaling abandonment needs to be researched and discussed in detail in the DEIS. POTENTIAL COMMERCIAL WHALING We also point out that the Makah leadership has repeatedly stated that they assert a right to kill whales for commercial purposes. Having been given the opportunity to retract or abandon that position, they have steadfastly refused to do so, and the public record indicates that this is still the Makah Tribe's official position. The possibility of commercial whaling by the Makah Tribe must be thoroughly dealt with before the U.S. government proceeds further. NMFS states in the 2001 Final EA that “The (Makah) Tribe has renounced any interest in commercial use of the products of any subsistence hunt through the year 2002.” We are not comforted with the wording of that terse (and now expired) line. For example, an e-mail from a NMFS employee states: "We never spoke again about the problems of Washington State indians wanting to take gray whales. Yesterday, Doug DeMaster told me that it is his understanding that the indians want to sell the meat to the Japanese. Do you have any information on the Japanese sales?" Another one states; "Joe Scordino informed me this am that, some while ago, Rollie Schmitten had signed a letter setting policy regarding the NW Treaty Tribes' rights to take marine mammals for ceremonial and subsistence purposes. I believe that this would establish the basis for working with the Makahs on an IWC aboriginal subsistence whaling proposal for use at a future Commission meeting. I am told, however, that Rollie's letter does not address the commercial use of marine mammals and that this issue remains open." (Emphasis ours) The Makah Tribe has publicly stated; "It should be emphasized, however, that we continue to strongly believe that we have a right under the Treaty of Neah Bay to harvest whales not only for ceremonial and subsistence but also for commercial purposes. Our decision to seek IWC approval for an interim ceremonial and subsistence harvest only should not be construed in any way as a waiver or relinquishment of our treaty-secured whaling rights." Currently, the Makah Whaling Management Plant states; "It is the Tribe's intent to provide for the gradual development of ceremonial and subsistence whale hunts over the five-year period so as to allow for the development of Tribal management capabilities, refinement of hunting methods, and assessment of the Tribe's cultural and subsistence needs. The Tribe intends to utilize the experience and information collected during the five-year term of this plan to develop a second multi-year plan, pending IWC review of the current ICRW Schedule. The conservative management approach provided for in this management plan is not intended to limit, waive or modify any of the Tribe's whaling rights under the Treaty of Neah Bay and any such construction of this plan is improper and unauthorized." The pending assessment must address the issue of any future proposal that might be presented to the IWC. The future whaling ambitions of the Makah tribe- and whatever form they might take- must be considered and accounted for in this assessment. That must included a detailed analysis of any commercial ambitions by the Makah Tribe. One indication of future Makah whaling ambitions is indicated in the following e-mail: "The time period for the quota would possibly be the fall hunt in 1996 plus all of 1997. The Makahs don't want to get "locked in" to a three-year block, because they might soon want more than five a year." (Emphasis ours) But most telling of all is this report: "The Makah contemplate a year-round hunt and do not wish or intend to whale only during the spring or fall migration period. In particular, they wished to take at least one whale in August for their "Makah Day" celebration. This implies that the Makah could kill resident whales what are the basis of whale watching operations in the Seattle area."

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	"The Tribe agreed that it would not sell the whale meat for the duration of the cooperative agreement. This includes agreement that the meat would not be sold in restaurants. It was clear, however, that it wished to keep this option open for the future." (Emphasis ours) Were the Makah Tribe to kill whales for commercial purposes, it would be in direct violation of the 1855 Treaty of Neah Bay, where the Tribe is forbidden to trade outside of the United States. As the commercial use of whale products is forbidden in the United States, that would leave the Makah Tribe only the option of trading with foreign countries. This practice would be in violation of any number of international, federal and state laws. One federal law that comes to mind immediately is the Marine Mammal Protection Act (MMPA). Such practices would also be in violation of the international moratorium on commercial whaling, of which the United States is a party through the IWC. If the Makah are allowed to kill whales for commercial reasons, it would also gravely jeopardize the United States' position within the IWC. Certainly, NMFS should require that the Makah tribe promise in a contract- one then made accessible to the American public- that the Makah tribe will not engage in any commercial whaling before the agency pursues this issue further on their behalf. It is difficult to believe that NMFS continues to advocate for the killing of whales by the Makah tribe on one hand while promising to the American people that no commercial whaling will be done on the other hand, even as NMFS refuses to ascertain whether that is, in fact, the position of the Makah tribe. Of significant importance is whether such a contract would bar commercial whaling activity only through the time period addressed in the pending assessment, or if it would, in fact, bar commercial whaling for an extended period of time. To summarize, it is entirely implausible for NMFS to continue to maintain that the Makah would kill whales only for cultural and subsistence purposes, when in fact, the Makah continue to state that they have the right to commercially kill whales, and fully intend to do so. This must be resolved openly, honestly and in an unbiased manner in the pending EIS. HUNTING ON OTHER WHALE SPECIES BY MAKAH TRIBE NMFS must fully address a newly raised issue, namely that of an expanded hunt by the Makah tribe on other whales species. Makah official Dave Sones recently submitted a funding request to Rolland Schmitten. In this letter, Sones wrote: "The Makah Tribe submits this request to purchase a Marine Research and Enforcement Vessel… This research boat will contribute to existing and additional studies that provide important information on the status of gray whales other whales and marine mammals to maintain the Tribes (sic) scientific and cultural relationship with these species. These scientific studies are needed for the Tribe's preparation of actual litigation threatened by non-governmental organizations against the Tribe's exercise of its treaty right. " We questioned why the Makah Tribe was in need of an ocean-going vessel capable of operating in "rough seas 40 miles off the Pacific coast, along the continental shelf, rich in many species of whales and other marine mammals…" We questioned exactly with which species the Tribe wishes to enable a "cultural relationship" at that distance from the coast, and to NMFS' credit, this request was denied, with the exception of some relatively smaller funding for "other" purposes. These kinds of funding requests (and responses) must be included in the pending EIS. Other questions to be answered are if the Makah Tribe continues to request funding for whaling-related salaries, when NMFS itself promises in the 2001 Final EA that "NOAA regulations and the Makah management plan stipulate that no person may receive money for participating in whaling. The Tribe has given assurances that it will not make payments to the crew for whaling or associated activities in the future." (Emphasis ours)

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	TAXPAYER BURDEN OF ILLEGAL WHALING BY MAKAH TRIBE Given that the American public has spent over $5 million in direct and indirect costs on the Makah whale hunt thus far, we demand that NMFS more fully account for the expenditures of federal, state and local funds that have supported this hunt since at least 1995. How much has the Coast Guard spent? How much has local law enforcement spent? How much money has the several legal actions cost the federal government? In other words, how much has this whale hunt cost the American taxpayer from inception until present? This very basic question must be addressed fully in the pending EIS. VALIDITY OF "NEEDS STATEMENTS" In the original and subsequent Needs Statements, authored by Ann Renker, are many claims and promises. We would like NMFS to thoroughly discuss and review the legitimacy and accuracy of these Needs Statements before throwing more taxpayer money into ANOTHER Needs Statement. In other words, do the facts bear out Renker's claims and conclusions in these Needs Statements? Given that NMFS and the Makah Tribe will depend heavily on a Needs Statement at upcoming IWC meetings, we demand to see just how accurate these Needs Statements have been. And we vigorously disagree with NMFS' assertion in the 2001 Final EA that "The IWC granted the gray whale quota on the basis of this needs statement." Primarily, it must be noted that the IWC did not grant a quota. Secondly, the majority of member nations at the 1997 IWC meeting soundly rejected the needs statement. MARINE MAMMAL PROTECTION ACT The mere fact that NMFS is attempting to champion a waiver for the Makah Tribe is stunning and unprecedented. Never has any person or group been granted such a waiver. Indeed, as a leading scientist notes; "This could absolutely be precedent-setting," said Naomi Rose, a marine mammal scientist with the Humane Society of the United States, one of several plaintiffs that succeeded in court in delaying the tribe's hunts. "If they win (a waiver to the law), it's not just the Makah that will be impacted," Rose added. "This will lay the ground rules for anyone who tries to seek an exception to go whaling in the future." We challenge NMFS' continuing position, detailed in the 2001 EA; "Although gray whales are also protected under the MMPA, Section 113 of the MMPA specifically states the provisions of the MMPA are in addition to, and not in contravention of, existing international treaties, conventions or agreements." Further, "The Makah Tribe believes that the whaling provisions of the Treaty of Neah Bay have never been abrogated and that the U.S. obligation to the Tribe takes precedence over U.S. obligations under the ICRW." This topic must be more fully addressed in the pending DEIS. It was difficult to respond to these assertions when the 2001 EA made no reference to the source for them. It appears that NMFS is continuing to insert very generalized statements in an effort to mislead and confuse the American public. We are also troubled by the fact that the U.S. government still feels compelled to support whale killing by the Makah Tribe based on what the Tribe "believes." Surely there must be some documentation to support the US government's position other than what the Makah Tribe "believes." The Makah Tribe is not exempt from MMPA. Perhaps the most glaring problem (and associated convoluted logic) for NMFS in its continuing efforts on behalf of the Makah tribe is the Marine Mammal Protection Act (MMPA), but the Ninth Circuit Court of Appeals cleared that right up for NMFS, did it not? The MMPA represents Congress's most expansive explication of the nation's commitment to the "protection and conservation" of whales and other marine mammals.

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	The MMPA imposes a moratorium on the taking and importation of marine mammals and marine mammal products. The MMPA did, however, provide a limited number of exceptions to the moratorium, a waiver procedure, and a conditional exemption for native Alaskan subsistence takers. Neithr the moratorium nor the waiver process apply or have been used by NMFS to justify the Makah hunt until now. It is their last resort- a “Hail Mary” play at the end of the game, which for all intents and purposes, is nothing more than a desperate exercise to promote one agenda over the long-term health and stability of the MMPA. The native Alaskan exemption is inapplicable to the Makah hunt because this provision only covers taking by "any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the Northern Pacific Ocean or the Arctic Ocean." Neither NMFS nor the Makah Tribe has successfully explained why whaling activities by the Washington state-based Makah Tribe might be included within this exemption. To the contrary, NMFS has failed a number of times to explain whether or not the MMPA abrogates the whaling rights claimed by the Makah under the Treaty of Neah Bay. Indeed, NMFS cannot explain this even to themselves, as the following e-mail to D. James Baker, former NOAA administrator, states: "The Tribe has a treaty with the United States giving it rights to whaling. It is not clear whether the domestic treaty or the later international treaty establishing the IWC takes precedence." (Emphasis ours) (THE NEXT FIVE PAGES ARE COMPLETELY REDACTED) Given NMFS’ continuing penchant for redaction, how, then, does the American public determine the truth in this matter? NMFS’ confusion is clear in that memo, but it is of note that the agency maintains their current interpretation of this issue on the NMFS web site, as follows: "The Act's moratorium on taking does not apply to taking by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking is for subsistence purposes or for creating and selling authentic Native articles of handicrafts and clothing, and is not done in a wasteful manner." (Emphasis ours) The Olympic Coast National Marine Sanctuary apparently has had an equally troubling time determining the alleged validity of the Makah treaty: “NOAA recognizes that, given the standard for abrogating treaty rights enunciated by the Supreme Court in United States v. Dion, 476 U.S. 734 (1985), the provisions of the MPRSA do not abrogate the coastal Tribes' treaty fishing and hunting rights. However, it is unclear whether Congress intended the MMPA and the Endangered Species Act (ESA) to abrogate these rights.” (Emphasis ours) However, at least one NMFS employee has a very clear understanding of the relationship of the MMPA to Native Americans, as the following testimony indicates: "Section 119 (of the MMPA) states that cooperative agreements may be entered into with ANOs (Alaskan Native Organizations) to conserve marine mammals and provide for the co-management of subsistence use by Alaskan Natives." We ask NMFS to note the singular emphasis on the term “Alaskan Natives” in the context of cooperative agreements. We also encourage NMFS to refrain from such indefensible positions as stated in the 2001 “Public Comments to Draft EA”, specifically: “The Marine Mammal Commission is on record as not taking issue with the conclusion that the treaty rights of the Makah may not have been abrogated by the MMPA (letter from John Twiss to D. James Baker, September 4, 1997) It must be made clear (and acknowledged in the pending DEIS) that Congress, and Congress alone, has the power to abrogate treaties. Whether or not NMFS, NOAA or the Marine Mammal Commission thinks that Makah treaty rights “may not have” been abrogated is of

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	no consequence. One need only investigate the intent of Congress to obtain a definitive answer. We find it incredible that we must remind NMFS of this basic fact. The standard of Congressional abrogation is found in United States v. Dion. The court ruled that Congress enacted a "sweepingly framed" prohibition on the hunting of eagles except for limited Native American religious purposes enumerated under the Bald and Golden Eagle Protection Act (BEPA). The Court reasoned that "the provision allowing taking of eagles under permit for religious purposes of Indian tribes is difficult to explain except as a reflection of an understanding that the statute otherwise bans the taking of eagles by Indians…" The Court concluded that the BEPA had in fact abrogated Indian treaty rights. The relationship between the MMPA and the Makah treaty is identical. The MMPA provides an absolute ban on the taking of marine mammals except by "…any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the Northern Pacific Ocean or the Arctic Ocean," conditions the Makah Tribe clearly does not meet. Hence, under MMPA, and like the BEPA, "Congress… considered the special cultural and religious interests of Indians, balanced those needs against the conservation purpose of the statute, and provided a specific, narrow exception that delineates the extent to which Indians would be permitted to hunt… " The Makah Tribe's legal representative has stated; "In sum, the Court concluded that the Bald Eagle Protection Act represented an "unmistakable and explicit legislative policy choice that Indian hunting of the bald or golden eagle, except pursuant to permit, is inconsistent with the need to preserve those species," and therefore abrogated Indian treaty hunting rights." Accordingly, the claimed whaling rights by the Makah Tribe were abrogated by the MMPA just as the Sioux Tribe's hunting rights were abrogated by the BEPA. None other than the Solicitor General of the United States has stated; “The BEPA and ESA are general statutes which, by their terms, do not exclude Indians from their coverage. Indeed, by creating certain exceptions… Congress indicated its intention that the restrictions of both Acts apply to Indians. To hold otherwise would render these carefully limited exemptions meaningless.” In footnotes to the same brief, the Solicitor General also adds; “As we explain in our opening brief (at 30), the Alaskan native exception was enacted in response to the Alaskan natives’ unique dependence on species, such as the bowhead whale, likely to be regulated under the ESA. See 119 Cong. Rec. 25677 (1973); see also Cong. Rec. 8400-8401 (1972) (describing a similar exception for Alaskan natives under the Marine Mammal Protection Act, 16 U.S.C. 1371(b).” (Emphasis ours) The Makah tribe has put forth a rather feeble defense of the alleged Makah whaling treaty right based on several salmon and fishery-related issues. But we find no instance in which both NMFS or the Makah Tribe has responded in a meaningful way to queries regarding the legal quandary posed by the MMPA, and there is no substantive dealing with this issue in the 2001 Final EA. Even the Ninth Circuit Court of Appeals weighed in on this issue in the December 20, 2002 opinion in ‘Anderson v. Evans’: “We do not believe that Congress subordinated its goal of conservation in United States waters to the decisions of unknown future foreign delegates to an international commission.” Then, any questions that NMFS may have on whether the MMPA supersedes any claimed preference by the Makah Tribe was laid firmly to rest once and for all with a string of very clear statements: “The federal defendant’s view so clearly offends the express, unambiguous language of [the MMPA] (emphasis ours) that the statutory interpretation offered by NOAA and the federal defendants cannot properly be afforded deference…”

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	"…it must be assumed that Congress intended to effectuate policies for the United States and its residents, including the Makah Tribe, (emphasis ours) that transcend the decisions of any subordinate group." "To effectuate the purpose of the MMPA… we conclude that the MMPA must apply to the Tribe, (emphasis ours) just as it would apply to any other person within the jurisdiction of the United States." Still not satisfied? This one will clear up all doubt: "The Tribe has no unrestricted treaty right to pursue whaling in the face of the MMPA." (Emphasis ours) In short, NMFS has failed to explain how the Makah Tribe's treaty rights can possibly supersede the MMPA, which clearly demonstrates Congress' "narrowly written exceptions for Alaskan Indians." NMFS has also failed to explain how Makah whaling is permitted under the MMPA even while U.S. courts have held that nearly identical statutes "virtually require the conclusion that Congress intended the Act to cover Indian activities." NMFS has never adequately explained their position that the Treaty of Neah Bay was not abrogated by Congress's "specific, narrow exception" to the MMPA, which quite obviously does not include the Makah Tribe. NMFS must either fully defend their position- or abandon it- in the DEIS. Regardless, NMFS must do so openly, honestly and in an unbiased manner within the pending assessment. Most importantly, the pending DEIS absolutely must fully explore what, if any, treaty rights the Makah have to hunt whales in light of the particular language in the treaty, how that and similar language has been construed by federal courts, and how that language applies to a situation where the hunting of whales has now been generally prohibited by federal statute. OLYMPIC COAST NATIONAL MARINE SANCTUARY Killing gray whales within the boundaries of the Olympic Coast National Marine Sanctuary (OCNMS) is inconsistent with the public acceptance of the term "Sanctuary." No authority exists that would allow OCNMS personnel to permit hunting of ANY marine mammal species within the borders of the Sanctuary. The hunting of marine wildlife in Sanctuary waters by any parties must not be permitted. Additionally, whale killing using modern methods was not identified as an acceptable activity in the development of OCNMS policies nor during the inception of the OCNMS. Further, in light of the Anderson v. Evans opinion, the OCNMS must re-evaluate its present position on hunting activity within the borders of the Sanctuary by the Makah Tribe or any other party. It is our opinion that OCNMS regulations ban the illegal hunting of marine mammals, and the recent court opinion (re: the MMPA and the Makah Treaty) obviously clarifies the fact that any hunting within the Sanctuary is illegal. OCNMS Regulations state: "Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 et seq., the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 et seq., and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. § 703 et seq., or pursuant to any Indian treaty with an Indian tribe to which the United States is a party, provided that the Indian treaty right is exercised in accordance with the MMPA, ESA and MBTA, to the extent that they apply." "Possessing within the Sanctuary (regardless of where taken, moved or removed from) any historical resource, or any marine mammal, sea turtle, or seabird taken in violation of the MMPA, ESA or MBTA, to the extent that they apply." In this case, it is very obvious that the MMPA DOES apply. The entire relationship of claimed treaty hunting rights and Sanctuary policy must be fully addressed. LACK OF COOPERATION BY THE MAKAH TRIBE

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	The 2001 Final EA stated in relation to the Metcalf v. Daley decision and subsequent order to rescind its cooperative agreement with the Makah Tribe; "The Makah Tribe responded on August 31, 2000, that it does not accept NOAA's rescission of the agreement." The Makah Tribe did not accept an action that was ordered by the United States Ninth Circuit Court of Appeals? It is beyond our comprehension how a U.S. government agency can continue to be involved in any way with a party that refuses to honor the laws of the United States. Bound by an order of the Ninth Circuit Court of Appeals in July, 2000, NMFS did, indeed, rescind the cooperative agreement. However, the Makah Tribe simply refused to abide by the ruling of the Ninth Circuit Court of Appeals. The failure of the Makah Tribe to abide by the decision of the court, flaunting the laws of the United States, is troubling enough. However, it is beyond comprehension that here NMFS proceeds yet again on their behalf. This demonstrates a continuous and repetitive institutional bias of NMFS toward the pro-whaling agenda of the Makah Tribe. How can the American people trust NMFS in what should be an unbiased process, when NMFS has done everything within its power to yet again achieve a goal that has reeks of bias and predisposition? The willingness of NMFS to yet again advocate for the wishes of the Makah Tribe, even as that Tribe has previously defied the agency, the United States courts, and a lawful order of the court, is beyond belief. The continuing bias inherent in this issue- and the nonchalant attitude of the Makah Tribe to the legalities thereof- is best summed up in a statement from Makah attorney John Arum, who stated; “The Makahs are participating in the [EA] process “primarily for PR.” (Emphasis ours) And in regards to the fact that the MMPA supersedes the Treaty of Neah Bay, Makah attorney John Arum could only reply “we just think it’s unfair. ” No, John. It’s the law. In addition, the events of September, 2007 should make it painfully clear to anyone with an open mind that the Makah Tribe can NOT be entrusted to honor or carry out even the simplest of “management plans.” A THROUGH INVESTIGATION must be conducted re: the Makah Tribal Council or individual Council members’ complicity in approving the illegal whale hunt with a “wink and a grin.” While NMFS may be safely tucked away behind vast government walls, some of us that actually LIVE in this area were made aware right at the beginning that Council members WERE complicit in allowing this hunt to take place. Some of us ALSO know that NMFS will conveniently sweep this issue under the carpet, and no more shall be said about it. I would be pleasantly surprised… shocked, even… to see this issue dealt with substantively. MANAGEMENT CONCERNS In regard to IWC regulations, one other matter that needs serious discussion is NMFS’ statement in the 2001 “Public Comments on Draft EA” where the agency states: “NOAA agrees that it is not possible to ensure that a humane death occurs during a hunt.” In regard to the Makah Tribe’s Whaling Management Plan, NMFS must ensure that any changes made said plan must be made public, preferably in the Federal Register. We noted a large number of changes to the Plan over the past several years, most of which passed without attention, without comment and with no questions asked. At no time in the past or in the present has NMFS seriously considered the situation of Washington resident whales. At various times in the past decade, both NMFS and Makah officials have denied even the existence of Washington resident whales, even as well-known gray whale experts continue to express concern over this sub-population.

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	We insist that the word "resident" be used when discussing these whales in the pending EIS, as the vast majority of concerned citizens refer to these gray whales as such. It is notable that the Makah tribe has never shown an ability to differentiate between a migratory gray whale and a resident gray whale. The Makah Tribe has been aware of the existence of a resident gray whale population for many years, and this 1996 e-mail certainly points out that they were concerned about the impact they might have on the resident population: "We request that NMFS-Northwest Region implement this (gray whale) research program cooperatively with the Tribe so that mutual needs can be addressed. In particular, we would like to gain information to allow us to avoid harvesting the non-migrating whales." PRECEDENTIAL IMPACTS The record is replete with news items and documentation of other tribes (both U.S. and Canadian) who may wish to pursue whale killing in the future. This must be addressed fully, openly and honestly in the pending assessment. NMFS continues to mislead the American people in claiming that Makah whaling will not lead to similar precedents in other tribes. This assertion has been proven wrong by continuing reports in the Canadian media that the Nuu-chah-nulth Tribe of British Columbia has initiated plans to emulate the Makah hunt, and that they would begin potlatch ceremonies to assist the Makah tribe in trading whale products outside of the United States. The World Council of Whalers is certainly eager to begin hunting up to one thousands whales per year, according to spokesman Tom “Happynook” Mexsis. Interestingly, the World Council of Whalers has had previous (and enduring) contact with the Makah Tribe. Indeed, one intriguing item begging for further research appears prominently on the World Council of Whalers website: "In this spirit of community and cultural need, the Alaska Eskimo Whaling Commission (AEWC), a co-management/support organization for Eskimo whalers, assisted the Makah nation in acquiring its gray whale quota from the International Whaling Commission (IWC). This was made possible through the generosity of the Alaskan Eskimo whalers, who agreed to share their bowhead quota with the Chukotkan whalers, who in turn provided the Makah gray whale quota from their own.” (Emphasis ours) That is truly a remarkable claim, one never before addressed by NMFS in ANY EA, EIS or public process. In fact, NMFS has denied (and continues to deny) that there was a “trade” of any kind, between any party, for any species. What exactly happened up in Barrow during those meetings? NMFS needs to release a great number of redacted documents to shed light on the facts surrounding these events. The Ninth Circuit Court of Appeals ALSO addressed this issue in ‘Anderson v. Evans’: “…we cannot agree with the agencies’ assessment that because the Makah Tribe is the only tribe that has an explicit treaty –based whaling right , the approval of their whaling is unlikely to lead to an increase in whaling by other domestic groups. And the agencies’ failure to consider the precedential impact of our government’s support for the Makah Tribe’s whaling in future IWC deliberations remains a troubling vacuum.“ (Emphasis ours) These issues certainly should be further investigated before the U.S. government proceeds further on behalf of the Makah Tribe. The possibility of the Makah actions weakening international whale protection laws and trade regulations should be of paramount importance to NMFS. PUBLIC SAFETY The 2001 Final EA does not fully address the impact on humans (pun not intended) of the use of a .50 caliber anti-armor rifle by the Makah Tribe in their whale-killing activities.

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	Of all the issues neglected in the past, the use of a .50 caliber rifle by improperly trained persons with known histories of substance abuse and domestic violence aboard a pitching, rolling small boat seems to rank right at the top. The dangers presented to persons both aboard vessels and on shore need to be substantively addressed in the pending assessment. The U.S. government has long maintained that the .50 caliber weapon would not adversely affect anyone outside of a 500-yard circle (hence the U.S. Coast Guard's RNA). However, documentation has recently come to light that disproves that notion. The Royal Canadian Mounted Police mentioned concerns about the weapon as early as 1998, when it stated that; "It's a powerful weapon, and its bullets can travel quite a distance." In a recent letter, noted ballistics expert Ray Kline states: "As this SDZ shows, NO firings should be conducted within 6100 meters of the shoreline or any surface vessel. Restricting firing away from the shoreline is NOT a solution since a ricochet can travel almost 1700 meters off the line of fire and, carelessness and inattention could easily result in a bullet being fired in the general direction of the Peninsula." A local anti-whaling group responded immediately: "After being made aware of the very real dangers involved with the firing of a .50 caliber weapon (and other large caliber and experimental weapons and ammunition) on inside waters, local and state governments have a duty to protect their citizens…. At a minimum, the local and state governments of Washington State and the Canadian Government should demand that the United States Federal Government prepare an Environmental Impact Statement (EIS) to address this very serious issue of public safety. It could be a matter of life and death to citizens of Washington and Canada." We agree whole-heartedly. The use of an anti-armor weapon (and ammunition) by whale-killers in such close contact with persons aboard vessels and on land is a topic that must be dealt with in the pending EIS. News clippings and videotape from previous Makah hunts clearly show that the Makah many times were hunting very close to shore. Videotape from the May 1999 hunt clearly shows at least one .50 caliber projectile ricocheting off of the water. We find it unconscionable that the U.S. government would act in a manner to potentially place in grave danger many thousands of residents, visitors, boaters, campers, hikers and children within the "danger zone" of the .50 caliber weapon. During the September, 2007 illegal whale hunt, it is plainly clear that Makah whalers were operating their rifles in an unsafe manner-unsafe to themselves AND anyone who happened to within range. It is beyond belief that NMFS wishes to give carte blanche to a group of whalers that were forced to cease fire ONLY under direct orders of the US Coast Guard. In light of the September, 2007 illegal whale hunt, any NMFS official who still maintains that the Makah Tribal Council and/or Makah individual whalers are responsible, law-abiding, respectful and trustworthy should SERIOUSLY consider submitting themselves for immediate drug testing. ILLEGAL USE OF WHALE PRODUCTS We do not agree with NMFS' previous assertion that "almost all edible portions of the meat and blubber were removed from the whale by tribal members. Videotape (available widely) indicated that, in fact, there were times where NO Makah tribal members were present, leaving NMFS employees the duty of overseeing and performing the removal. We also do not agree that "[T]he meat and blubber were consumed by Makah Tribal members and during tribal ceremonies." In fact, much of the meat and blubber was thrown away during an alleged freezer failure in the summer of 1999. No mention is made of this in the 2001 EA, even though some tribal members allege that the act of throwing the meat away was done on purpose, in order to create the illusion that the tribe "needed" to kill more whales. We are aware of at least one Makah individual who witnessed this staged

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	“freezer failure.” If we are able to learn of this, it seems reasonable that the far vaster resources of NMFS and the federal government should be able to find the truth about this matter. NMFS needs to investigate this item in a full, open and honest manner. Further, eyewitness accounts indicate that at least some meat and blubber was consumed off-reservation, in towns such as Forks, Port Townsend and Sekiu. We personally know a handful of non-native Washington residents that not only sampled whale meat in 1999, but BOUGHT whale meat from Makah tribal members. Newspaper articles from 1999 indicate that meat and blubber were consumed in a Port Townsend public school by unwitting schoolchildren, forcing the school principal to issue an apology to outraged parents. The mere fact that whale meat and blubber has been so easily and nonchalantly distributed throughout a wide geographic area does not reassure us in light of Makah and U.S. government "promises" that the meat and blubber will be consumed only on the Makah reservation. It also raises grave doubts about the U.S. government's ability to prevent any meat or blubber from making its way out of the country. This shortcoming is not addressed at all in the 2001 EA, but is of the highest priority. INACCURATE REPORTING TO IWC We are extremely concerned that NOAA/NMFS acknowledges a physical contact strike upon a gray whale during the 2000 spring hunt, but this strike is not counted as an official “strike.” This example of inconsistency suggests that the agency does not yet have an accurate definition of the term "strike" and leads to concern that the agency is not reporting information accurately to the IWC. A strike should be a strike. In short, NMFS needs to stop quietly changing the rules each and every time they or the Makah Tribe encounter some perceived “difficulty” that threatens to undo this house-of-cards they call a whale hunt. Whaling regulations should NOT be written in pencil with plenty of erasers nearby for handy changes. This practice must be halted. CONCLUSION The only option for NMFS at this point is to abandon all agency support for what is clearly an illegal whaling program. There can be no other choice.
e_Stagman_07-09-08.pdf	Thank you for the opportunity to offer comment on the Draft Environmental Impact Statement for proposed authorization of the Makah tribe’s grey whale hunt. I urge you to adopt the No Action Alternative which would deny the Makah tribe any authorization to hunt grey whales. Under Section 101(a)(3)(A) of the Marine Mammal Protection Act there is a currently active moratorium prohibiting the take of marine mammals. There is no valid reason to waive this moratorium to permit Makah hunting of grey whales. The claim that treaty rights require that this hunting be permitted under the claim of aboriginal subsistence whaling is invalid for at least two reasons: 1) The Supreme Court has upheld the ability of the MMPA to pre-empt treaty hunting rights if the marine mammal conservation goals of the MMPA are jeopardized; 2) claims by the Makah that they must be allowed to pursue aboriginal subsistence whaling are a sham since traditional whale hunting no longer exists among the Makah. The definition of “aboriginal subsistence whaling” under the International Whaling Commission includes 1) personal consumption and utilization of whale products and 2) barter, trade, or sharing of whale products among family or closely related members, and 3) the making and selling of handicraft items made from whale parts. The Makah have not eaten whale meat or performed traditional ritual whale hunting in some 80 years. There was absolutely no interest by the Makah people in consuming the flesh of the grey whale killed in an authorized hunt several years ago, and the carcass rotted in the local dump. Additionally, there was no traditional Makah ritual associated with that hunt as the rituals had long ago been discarded and forgotten. The grey whale killed illegally by rogue Makah hunters last September was lost on the ocean floor after four hours of agonizing suffering as the hunters were completely incompetent.

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	The grey whale has only recently escaped from the jaws of extinction, and its population numbers remain tenuous and subject to wide fluctuation. Calf mortality is up significantly. Highly successful ecotourism in grey whale watching, an opportunity offered to and refused by the Makah, has created a migratory population of grey whales habituated to and actually seeking out people. Abandonment of the strict United States prohibition on whaling would send a disastrous message to groups all along the grey whale migratory route encouraging hunting with potential ruinous consequences for the species. Reinstituting currently extinct ritual Makah whaling would require a total re-education of the entire Makah population in consuming and utilizing whale products. Numerous Makah seniors who have protested the resumption of whaling have been subjected to physical and psychological intimidation by militant whalers. The conservation goals of the MMPA plus the existence of the Olympic Coast National Marine Sanctuary must be utilized to deny any authorization for a Makah tribe grey whale hunt. The prospect of a bloody and cruel hunt of these gentle giants to appease the egos of a small cadre of militant hunters is outrageous and unacceptable. Adopt the NO ACTION ALTERNATIVE.
e_Stanley_05-10-08.pdf	I think there should be no question about this. The treaty signed way back when gives them the right to hunt whales, and denying that right is going back on our word. That is inconcievable, as far as I am concerned.
e_Steve_05-10-08.pdf	Of course I support the Makah whaling. I would, in fact, hold that the Makahs have every right to whale without any special consent by the federal government. The Makah are a whaling people. It is a connection of spirit and sustenance with roots thousands of years old. When they signed the Treaty of Olympia a century and a half ago, they specifically reserved the right to whale. To deny them this sacred right of their heritage would clearly be a violation of that treaty. Treaties are binding contracts between nations which, according to our own federal Constitution, are the supreme law of the land. By what right would we therefore deny the Makah this right, which goes to the very heart of their identity? It is no secret that the United States has violated every Indian treaty it ever made, and that is a shameful scar on our history. If we are to evolve as a just and righteous nation, we must keep our word. Being a subject of God's royal kingdom, I avidly support the respect, protection and restoration of habitat needed to sustain our fellow creatures on this planet. I stand up to be counted on the side of the animals whenever their survival is at stake. What people so often forget is that the Makah have always done the same. When they, the Whaling People, chose to suspend their whaling more than seven decades ago, it was like cutting their own hearts out. But they did so because they knew their brother whales were in trouble. The whales faced possible extinction--not because of anything the Makah did. It was the non-Indian highly commercialized whaling that brought the Grey Whale to that brink. Yet the Makah did it because they knew it was the right thing to do for the sake of the whale and for future generations. They stood tall and straight in the effort to restore the whale population. And even though the Makah have the clear right to whale on the strength of their heritage and their treaty, they chose to jump through the hoops of federal and international approval. Why? Because they know it's a complex world in which examples must be set. A world in which government-to-government relations are critical to the effort to respect and protect the various species of life. Through these and so many other measures, the Makah have continually distinguished themselves as good managers and good people. What people so often forget is that the Makahs are the best friend the whales have. We all know that the allocation afforded to the Tribe is very small, and that it's the result of reallocation--that the proposed harvest by the Tribe has little if any impact on the now recovered Grey Whale population. While I can understand the perspective of the protesters--at least to a degree--I believe their actions are ill-advised and shameful. So, yes of course, I support the Makah whaling, and as a citizen of the United States I demand that

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	the federal government (including the judicial system) no longer presume to have authority over the Makah right to reconnect with the deep and abiding spirit of their ancestry.
e_StMarie_05-10-08.pdf	To be succinct, no proposal permitting whale hunting is acceptable at this time. Permitting whale hunts will undercut the Marine Mammal Protection Act and our diplomatic position with regard to the Japanese factory whaling lightly disguised as "research". That said, the Micah have an valid right under the 1855 treaty to engage in traditional whaling. The federal government should engage in negotiations with the Micah to compensate them for the loss of rights under the treaty. If no agreement is reached, then they must be held to the precise letter of the treaty, whaling with hand-thrown harpoons from unpowered wood boats. However, the international treaty obligations of the United States to the rest of the world ultimately trump the treaty with the Micah, and the Senate should take action to legally void it.
e_StMarseille_06-04-08.pdf	1. The International Whaling Commission (IWC) specifically allows aboriginal whaling only when there is an unbroken tradition and only for subsistence purposes. The whales must be a necessity for food. The Makah do not qualify because they voluntarily broke their tradition and they have no need for whale meat for food purposes. They argue that the need is cultural. This is not a recognized need by the IWC. 2. The Makah say they have a treaty right with the United States to slaughter whales. However, the USA effectively abrogated this treaty in 1946 when they joined the IWC and did not represent the Makah as they did the Yupik and other Alaskan native communities. The Makah have a legal right to sue the U.S. for not representing them, although they did not request representation at the time and have never made a protest about this lack of representation. Whaling is governed by international law and falls under the authority of the IWC, and therefore, the USA no longer has the legal right to grant permission to any peoples to slaughter whales within or outside the territory of the United States. 3. If the Makah establish a quota of gray whales they will seek to establish a quota for humpbacks, minkes, and orcas in the future because gray whale meat is not considered to be palatable as a food animal. Most of the whale meat that came from the killing of the young whale name "Yabis" (killed on May 17, 1997) was discarded and wasted. Initially, the Makah admitted to having this objective of seeking additional quotas. 4. If the Makah establish a quota for whales and are permitted to kill whales by the USA, it will motivate the tribes on Vancouver Island in Canada to develop whaling plans of their own. In 1998, thirteen native communities on Vancouver Island said that they would be interested in establishing whaling operations should the Makah do so. 5. If the Makah establish a quota for whales it will further strengthen the positions of Japan, Norway, and Iceland to escalate their illegal whaling activities and it will weaken the United States, as it has already done so, as an international voice for whale conservation. 6. The original plans by the Makah were to establish commercial whaling activities to sell whale meat to Japan. We must ensure that this must not happen. 7. There is no quota granted to the Makah by the IWC and there never was. There is a quota given to native communities in Siberia. The Makah and the United States traded bowhead quotas from Alaska with gray whale quotas from Siberia. This was a horse-trading deal outside of the IWC. 8. If a whale quota is established at Neah Bay, it will threaten the local populations of resident whales that will surely be targeted by the Makah unless specifically protected by legislation. 9. The resumption of whaling by the Makah will cause stress in the migratory and resident populations and this could lead to dangerous situations for whale-watching participants that could be exposed to wounded or stressed animals.

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	10. There are many Makah opposed to the resumption of whaling, and the whaling initiatives have been advanced by elite Makah families without full democratic tribal participation. 11. Tradition and culture must not be the basis for slaughter. The ancestors of the Makah killed whales because they had to do so for survival. There is no survival necessity today to justify such killing. The treaty that the Makah cite as evidence of their right to whale specifically states that they have the right to whale "in common with the people of the United States." When the treaty was signed, all Americans had the right to kill whales. When whaling was outlawed for all Americans it included the Makah as the rights are "in common" and not separate. There cannot be unequal rights granted in a system that promotes equality under the law. This is tantamount to extra special rights for a group of people based on race and/or culture and is contrary to the guarantee of equality under the law as guaranteed by the U.S. Constitution. 12. Whales should not be slaughtered anytime or anywhere by any people. These are socially complex, intelligent mammals whose numbers worldwide have been diminished severely. 13. Tourism in California and Mexico revolves around the gray whale migration and will be adversely affected by a resumption of the killing of these creatures. 14. Allow the Makah to open a casino to make up for any loss of future income they would have derived from slaughtering gentle gray whales and selling the meat to Japan.
e_Stone_05-15-08.pdf	Please do not issue the Makah tribe a permit to continue to hunt whales. The tribal members who blatantly killed a gray whale have shown a total disrespect for this process.
e_Stopthehunt_08-15-08.pdf	I am writing to comment on the Draft Environmental Impact Statement for the Makah's request to hunt Gray Whales, and to urge you to deny their request for the following reasons: 1) Section 1.2.2 of the DEIS states that the treaty of 1855 "expressly provides for the right to hunt whales". This is an incorrect statement. The wording of the treaty is, at best, vague. It states, "the right of taking fish and of whaling or sealing at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the United States". This means that the Makah were expressly given the same rights as other U.S. citizens in regards to whaling. U.S. citizens are required to follow the Marine Mammal Protection Act, and therefore by the wording of the treaty, the Makah should have the same requirement without exception. This particular sentence in the treaty has repeatedly been ignored during the ongoing process of granting the Makah permission to hunt Gray Whales. This is likely due to a sense of guilt over the number of other native treaties already abrogated by the U.S. government. However, Gray Whales should not have to pay the price for the mistakes of our ancestors. Furthermore, the only reason the Makah were given a quota for Gray Whales was because of a backdoor trade with Russia exchanging part of their Gray Whale quota with part of the U.S. Bowhead quota. This trade should have been illegal under CITES. 2) The law clearly states that Washington and Oregon have some ability to limit the exercise of Indian treaty rights for conservation purposes. Gray Whales should fall under this category because of the following: a) Gray Whales are the only species of whale to have lost entire populations due to whaling. Two Atlantic populations have been gone for centuries and the Western Gray Whale is on the brink of extinction and listed with the IUCN as critically endangered. This leaves the Eastern Pacific population, representing a mere ¼ of the historical population, as the only viable one left in the species. This fact alone should be enough to offer them permanent protection for conservation purposes. b) A recent study by the SeaDoc society shows that Gray Whales are extremely important to the survival of declining seabirds due to their method of feeding. This is also a reason why they should be protected for conservation purposes.

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	c) A recent study found that the historical population of Eastern Pacific Gray Whales might have been much higher than originally thought, possibly closer to 100,000 than 20,000. This study has not been mentioned in the DEIS but it seems like more research should be conducted on that subject before any more management decisions are made and certainly before whaling is approved. d) There have been some alarming observations recently in the migration patterns of the Eastern Pacific Gray Whale. Some scientists believe that the benthic food source of Gray Whales is disappearing in the Bering and Chukchi Seas, possibly due to global climate change, and the whales have to travel further north into the Beaufort Sea to find food. This causes them to reach their feeding grounds later and they must stay longer in order to build up enough blubber to sustain them through the winter. This could be throwing off the timing of the entire migration and, indeed, more calves are being born along the migration south than is normally seen. In addition, more skinny and emaciated whales are being observed in the breeding lagoons of Baja California. None of these issues have been mentioned in the DEIS but they need to be looked at more closely. Scientists who study these whales at every point in their migration should start comparing and sharing data, similar to the project SPLASH done with Humpback Whales. e) There is a special group of Gray Whales that returns to Puget Sound each spring to feed on Ghost Shrimp. They appear around Whidbey and Camano Islands in March or April and remain in the area for several months before they depart for areas unknown. One of these whales, #49 “Patch” has been photographed in Puget Sound for over 20 years. John Calambokidis of Cascadia Research does not consider these 10 to 12 “resident” Gray Whales to be part of the Pacific Coast Feeding Aggregation as they have never been seen anywhere except Puget Sound. It is unclear where they are coming from and where they go once they leave Puget Sound. It is obvious that more research needs to be conducted to learn more about these whales. The possibility that one of them may be killed by a Makah harpoon is completely unacceptable. These 10 to 12 whales were not accounted for in the DEIS and nothing has been done to ensure their protection. The death of one of these whales would not even count toward the predetermined number of whales the Makah are allowed to take from the PCFA before the hunt is stopped for the year. This needs to be looked at much more closely. 3) There is no humane way to kill a whale. It cannot be done quickly or painlessly. These are sentient animals who feel pain and quite likely grieve for one another. The explosive harpoons or grenades mentioned in the DEIS as a humane alternative are anything but. Japan and Norway, who both use these devices, report that 60% and 20% of whales respectively do not die instantaneously from these weapons. The explosive harpoons and grenades can penetrate the whale’s body up to a foot before it explodes which then tears the whale apart from the inside but doesn’t always kill it. Frequently a second explosive harpoon is needed because the first one causes massive injuries and shock but not death. Dr. Harry Lillie, a whaling ship’s physician in 1946 was quoted as saying “The gunners themselves admit that if whales could scream the industry would stop, for nobody would be able to stand it.” I contend that maybe whales do scream and if we were in their world listening, we might hear it. 4) It is unsafe to use an explosive harpoon or a high caliber rifle in the areas where this hunt would be occurring. Endangered Killer Whales and Humpback Whales frequently traverse these regions. Within the last month there have been reports of Southern Resident Killer Whales swimming right by Neah Bay and Cape Flattery, with photos to prove it. These animals can literally pop up anywhere with no warning and could end up in the crossfire of a Makah hunt. With only 87 Killer Whales in this endangered Southern Resident population, the risk is unacceptable. I strongly feel that the Makah’s request to hunt Gray Whales should be denied for the above reasons. However I do feel that they should be compensated for their loss in some other way, whether monetarily or with assistance in establishing another industry. But since that alternative was not considered in the DEIS the only option is to vote for alternative 1: no whaling.

COMMENTER	COMMENT
e_Sullivan_06-21-08.pdf	After reading the article in the Seattle Times today about the Makah Indian Tribal members getting off with a $20 fine for killing a whale, it occurred to me that Gig Harbor (being a Maritime City) and everyone else in the world, should be outraged. I would encourage you to write an article voicing my concerns and soliciting concerns from others in our community as well in hopes of putting a stop to a senseless act. As it turns out, the Tribal Courts were unsuccessful in finding Jurors that would participate in a trial against one of there own for killing a whale illegally, hence, they were let go with a slap on the wrist. Funny thing, what would happen to all the drug dealers, murderers and rapists if they were tried by prison inmates? First of all, shame on our Government for failing to insist that they all be tried in a Federal Court. Second, we should have revoked all tribes from whaling now and in the future. As far as I am concerned, these men that killed the whale are no better than thugs with immunity based on a treaty that was signed back in 1855. You know they are all laughing at us right now. Their Attorney was quoted as saying that this action shouldn't adversely affect their chances of continuing to hunt whales in the future. If we don't set an example of these men, this will continue. Treaty my ass!! This kill, along with all others they make in the name of religious and traditional beliefs makes no sense at all. There is no shortage of food on local Tribal lands, especially after our Government allows them to sell cigarettes, fireworks and now set up shop all around our City's with Casinos. This kill and our indulgence of letting them get away with it is nothing short of corruption and needs to stop. I also like to fish, however, I no longer can like the way I did when I was a kid. The answer is that there is a shortage of salmon. Well, global warming, toxic waste in our waters can be addressed and possibly reversed. How about the Indians that stretch nets across the mouths of rivers they lay claim to. Spawning salmon are decimated by these Indians, however, we continue to turn a blind eye. Shame on us and shame on them for not taking responsibility for our land like they fought for back in the late 1800's and currently under the name of there fore Fathers. I hope that others out there are as outraged as I am and will pull together to put a stop to this senseless behavior.
e_Sundberg_05-13-08.pdf	I am a resident of Langley, Washington. Gray whales come by our town every year, feeding on ghost shrimp. I strongly oppose allowing any whale hunting by the Makah. This is not needed for subsistence in this day and age. Their traditions can be better respected with other ways of interacting with the whales, for instance well regulated whale watching businesses. The recent rogue killing of a gray whale by a group of Makahs was a travesty, but even without that event I am in strong opposition to this proposal.
e_Swain_05-21-08.pdf	Following the behaviour of the five Makah criminals who illegally killed a grey whale off Neah Bay last year in an incident which caused the creature to suffer for 10 hours, for which I understand they will serve no jail time, nor be prosecuted by their own tribe, nor anyone else, I wish to state that I feel no further Makah whaling should be permitted. I also feel it is outrageous that these five criminals should be fined only 20 dollars each for their barbaric behaviour towards this creature. It is for these reason that the Makah should be prevented from ever whaling again.
e_Tagland_06-09-08.pdf	Hello: The article I have included below written several years ago talks about the stress on current Whale populations & at that time estimated to be about 22,000 individual Whales.

COMMENTER	COMMENT
	Summary Attn: 2008 Makah DEIS MakahDEIS.nwr@noaa.govWhale article population Hello: The article I have included below written several years ago talks about the stress on current Whale populations & at that time estimated to be about 22,000 individual Whales. Other articles refer to Whale populations in the last century being about 100-200,000 Whales. Recently Japan wants to capture & kill at least 50 Whales. June 8, 2009 Attn: 2008 Makah DEIS MakahDEIS.nwr@noaa.govWhale article population A recent comment by a Seattle fisheries service spokesman refers to the fact that the population "It seems to be stable. When a population starts to reach its natural peak, it will fluctuate a few percentage points," said Brian Gorman, a fisheries service spokesman in Seattle. "It is considered a healthy population." I question that the population only “seems” to be stable. Other articles refer to Whale populations in the last century being about 100-200,000 Whales. The United Nations currently lists the number of countries in the world at about 190. Therefore, if each country took 20 whales a year, for example, 3,800 whales would be taken in a year & in 10 years, 38,000. Recently Japan wants to capture & kill at least 50 Whales. Today, a news item reports 100 whales beached on Madagascar and it is suggested that some kind of testing explosion by industry in the area is the cause. As much as I think it is good for all people to express their cultural values, we must not do so at the expense of the world’s fauna in the light of current knowledge. I would hope that the Makah will accept, a “CEREMONIOUS” Expression of this ritual…which will not result in stress or harm to Whales. All Americans need to adjust to the present. None of us live a lifestyle as in the last century. Indeed the world is not at all the same as in the last century. The extinction of many animals, plants & the exploding population levels are facts of our present time which cannot be denied. Please consider these thoughts in making a decision which I hope will not permit the Killing of Whales.
e_Tagland_06-12-08.pdf	Hello: The article I have included below written several years ago talks about current Whale populations cast doubt over suggestions that existing whale populations have recovered enough to allow whaling to resume. I hope you will not endorse the future Killing of Whales as requested by the Makah Tribe. Whether or not a “Treaty” was signed, the people “back then” had very different ideas & values. Now we have more information & historical perspective. Present day Universities, Community Colleges & public education in general & the Internet did not exist as does today. With much more insight & knowledge about our natural world, we must use our knowledge & apply it correctly. I am hopeful “We” can work together as Americans & as part of the Global Community to save our natural resources, including biological diversity such as still exists & in our power to protect or destroy. I am hopeful the Makah Tribe can ceremoniously display their connection to the Whales without killing them. Research claims staggering drop in number of whales By Steve Connor, Science Editor 25th July 2003 The Independent When an English Puritan minister crossed the Atlantic Ocean to the New World in 1635 he marvelled at the sight of "mighty whales spewing up water in the air, like the smoke of a chimney" Richard Mather's journal also records him rejoicing in the "multitude of great whales, which now was grown ordinary and usual to behold".

COMMENTER	COMMENT
	For years whaling experts have relied on such eyewitness accounts, along with the log books of whaling captains, to assess the size of the whale population before large-scale hunting began in the 19th century. Now it seems reliance on such travellers' tales may have led to a serious misunderstanding of whale populations at the time - possibly underestimating numbers by as much as 10-fold. The International Whaling Commission (IWC), for example, estimates that the population of humpback whales in the North Atlantic now - about 10,000 - is about half of what it was prior to whaling. However, two marine biologists have questioned the basis of these estimates after a study of the genetic diversity of three species of baleen whales - humpback, fin and minke - living in the North Atlantic. According to their findings, the number of humpback whales in the Atlantic prior to 1800 was not 20,000 as the IWC suggests, but a staggering 240,000. The implications of the research - published today in the journal Science - are that many whale populations hunted by humans are far more precariously balanced than once thought. Stephen Palumbi, professor of biological sciences at Stanford University, who carried out the study with Joe Roman, a graduate student at Harvard, said that the findings cast doubt over suggestions that existing whale populations have recovered enough to allow whaling to resume after a 17-year moratorium. "The IWC is the main organisation that regulates whaling, and its policies allow for the resumption of commercial hunting when populations reach a little more the half of their historic numbers," Professor Palumbi said. The problem is that the IWC bases its historic estimates on records dating back to the mid-1800s. "Whaling logbooks provide clues, but may be incomplete, intentionally underreported or fail to consider hunting loss," he said. The two scientists analysed DNA samples taken from 188 humpbacks, 235 fin and 550 minke whales in the North Atlantic to estimate the amount of genetic diversity among these whale populations today. The two researchers calculated how many breeding females would have been necessary to accumulate such genetic diversity, and extrapolated these figures to estimate historical population sizes. They found that pre-whaling numbers of fin whales in the North Atlantic alone were probably about 360,000, roughly 10 times higher than the IWC's estimate, and that minke whales once numbered at least 265,000, roughly twice the number recorded as the natural population size by the IWC. "The genetics we've done of whales in the North Atlantic says that, before whaling, there were a total of 800,000 to 900,000 humpback, fin and minke whales - far greater numbers than anybody ever thought," Professor Palumbi said. Even though the population of humpbacks today is small because of whaling, the genetic signal measured by the scientists persists for a long time "And that past signal is far higher than it should be if there were only 20,000 whales in the North Atlantic," he said. A similar conclusion can be made about fin whales. The IWC estimates that there are bout 56,000 fin whales in the North Atlantic, which is about 16,000 whales more than its estimated historic population of 40,000. "Somehow we have to reconcile those numbers. That's going to require going back and looking at the whaling records. Are they complete? Have there ever been large hunts of whales that weren't recorded? These are things that we have to find out," he said. The study only looked at North Atlantic whales, but the scientists said the figures can also be used to assess historic global populations. Worldwide, the humpback population was once as high as 1.5 million, more than 10 times bigger than the IWC estimates, they said. However, the researchers do not know precisely when whale numbers reached such levels and why they plummeted. Some researchers suggest that it is quite feasible that whale numbers were much greater hundreds of thousands of years ago, but fell to smaller numbers long before the invention of large-scale whaling.

COMMENTER	COMMENT
	Despite acknowledging this weakness, the two researchers are adamant that commercial whaling should not be allowed to resume. "In the light of our findings, current populations of humpback or fin whales are far from harvestable," the professor said. Boris Worm, a marine biologist at Kiel University, said: "This new [study] shows us that, despite recent population increases, we are still far away from our goal of allowing whales to recover fully from relentless exploitation." Species under threat: HUMPBACK WHALE Humpback whales feed on krill and small fish. Each whale eats up to 1.5 tons of food a day. It has a series of 270 to 400 fringed overlapping plates hanging from each side of the upper jaw, where teeth might otherwise be found. FIN WHALE The fin, or finback whale is second only to the blue whale in size and weight. Among the fastest of the great whales, it is capable of bursts of speed of up to 23mph, leading to its description as the "greyhound of the sea". MINKE WHALE Minke whales eat a wide range of fish and squid, as well as krill and other plankton. The minke whale is the smallest of the rorquals, measuring between 8 and 10m in length and weighing between 8 and 13.5 tons.
e_Taylor_05-09-08.pdf	The united states made a treaty with the makah in the 1800's. I believe that the US should live up to its word. Just because its not mainstrea america's belief, it been the makah culture long before mainstream knew what mainstream was. In others words let the Makah whale and preserve there history
e_Taylor_05-10-08.pdf	I support the Makah Tribe's request to resume limited hunting of gray whales in their usual and accustomed fishing grounds. It is a traditional cultural practice guaranteed by treaty, and should be allowed to proceed. Thank you for the opportunity to comment.
e_Telander_05-11-08.pdf	This is the message I have sent to all my friends and anyone else I receive an email from. You must stop this whale killing. How can we tell other nations to ban the killing of whales if we allow this. Please, please, please. If you don't do anything else this month, sent an email to MakahDEIS.nwr@noaa.gov expressing your outrage that we, as a nation, would allow this tribe to continue whale killing when we are asking other countries to ban it. The Makah Tribe claim this is their heritage and right, however, they are doing it with speed boats and high power rifles. I maintain that is just a step away from some Tribe claiming killing white men is their heritage and right and they should be allowed to kill a certain number each year for ceremonial purposes. This is wrong and it is time this tribe grew up and join the rest of this country.
e_Thomas_05-10-08.pdf	Thanks for this opportunity to comment on the Makah Tribeˆs desire to resume whaling. I favor Alternative 1 (No-action). · While the tribe has a treaty right, the tribeˆs stated reasons for resuming their killing of gray whales are more than offset by the fact that they have not done so for more than one human generation. Few of the Makah now alive and able to participate in this activity have done so; the tribe has claimed no harm to their health or welfare because of this fact. · Particular reference to “dietary” impact has been made by the tribe. It is difficult to see the adverse impact of foregoing ceremonial consumption of whale blubber. Had the tribe been living almost entirely off whale blubber for the past 30 years, their argument would make sense. However, they have not … and their claim of dietary necessity is ridiculous. If the tribe must eat whale blubber, they can consume drift whales provided by the agency as noted on page 2-21. · Because of the time elapsed since the tribe killed whales on a regular basis, the Makahˆs claim that they seek to live in accordance with their culture is false. · Tribal enforcement of whaling regulations is suspect at best. While current proceedings against tribal members who killed a gray whale recently are incomplete, news articles clearly demonstrate the tribeˆs reluctance to take action against its members in any meaningful way. Early promises of “swift action” proved to be false; more recently the tribe suggested dropping charges against the alleged and admitted killers of the whale.

COMMENTER	COMMENT
	· The tribe appears to have a commercial motive (sale of ‘non edible’ materials to non-tribe members) · The proposed restriction of “sharing” to those with whom local residents have “familial, social, cultural, or economic ties” is meaningless. I could purchase whale products from a tribe member and create an “economic tie”. · That the Makah Department of Fisheries Management is to monitor the tribe’s whaling activities is farcical. The tribe has demonstrated and inability and unwillingness to monitor and control its members quite recently. With respect to other alternatives · The number of whales allowed to be struck but not ‘taken’ is excessive in all instances. · The tribe should pay … in advance … any and all costs associated with “a hunt observer, and for federal, tribal, state, and local law enforcement agents and resources (e.g. helicopters and boats) to monitor the hunt and manage and protest activities.” Whaling is not an activity permitted to me or a vast majority of U.S. citizens; the costs associated with this activity should be borne by those who initiate the activity. · That the tribe wishes to “apply the full range of knowledge associated with whale hunting…” is irrelevant. This is not a commercially or socially useful body of knowledge. · Whatever “spiritual connection” to whaling is claimed, it has been lost over many years of non-whaling.
e_Thomas_05-11-08.pdf	s consideration for extending the whaling opportunities for the makah is debated, i would respectfully ask that past behavior regarding the last whale be seriously considered. what you will find is: - the whale was cut apart and distributed to tribal members - the majority of that whale was eventually disposed of in their garbage dump - today's makah really don't have a 'taste' for whale meat - this is not a question of subsistence fishing - this is all about the makah seeing a golden opportunity to market that whale to japan i would also ask you to consider the overall behavior of the makah fishermen. just one year ago this spring several reliable sources observed a makah troller, this is selective fishing at it's best, kill over 300 wild coho. as you are well aware, the mixed stock fishing of puget sound continues into the strait of juan de fuca as well as the areas fished by the makah. there was no reason whatsoever to kill what could be ESA listed fish. an inquiry by myself led me to a conversation with the northwest indian fish commission where i was informed that: - they could kill whatever they wished, whenever they choose, for whatever purpose, including commercial sale, and - i just didn't understand. the makah have CHOSEN to live in a prior century. many native american groups in washington state have stepped into this century and moved aggressively to invest in opportunities and start the important process of taking care of their tribal members. unfortunately, the makah are not among this group. instead they somehow believe that clinging to an outmoded believe in the killing of whales will heal their tribe. it is incumbent on you to take the firm position that whales remain threatened and killing of these animals should continue to be banned by U.S. based fishermen, no matter their ethnic background. we all know that the returning north bound gray whales are in desperate physical condition and this is likely to worsen with over all climate change. do your part for our environment and the creatures of the sea and once and for all ban whaling by everyone.

COMMENTER	COMMENT
e_Thomas_05-16-08.pdf	I have revised my comments slightly (fourth bullet) in light of recent events … Thanks for this opportunity to comment on the Makah Tribeˆs desire to resume whaling. I favor Alternative 1 (No-action). · While the tribe has a treaty right, the tribeˆs stated reasons for resuming their killing of gray whales are more than offset by the fact that they have not done so for more than one human generation. Few of the Makah now alive and able to participate in this activity have done so; the tribe has claimed no harm to their health or welfare because of this fact. · Particular reference to "dietary" impact has been made by the tribe. It is difficult to see the adverse impact of foregoing ceremonial consumption of whale blubber. Had the tribe been living almost entirely off whale blubber for the past 30 years, their argument would make sense. However, they have not … and their claim of dietary necessity is ridiculous. If the tribe must eat whale blubber, they can consume drift whales provided by the agency as noted on page 2-21. · Because of the time elapsed since the tribe killed whales on a regular basis, the Makahˆs claim that they seek to live in accordance with their culture is false. · Tribal enforcement of whaling regulations is suspect at best. As a tribal judgeˆs decision states, the tribe is unable to take any action against its members due to the tribeˆs small size and extensive inter-marriage. Early promises of "swift action" were not matched by actions; the final result renders any concept of 'effectiveˆ tribal management ludicrous. The tribe is not able to govern its members whaling activities. · The tribe has a commercial motive (sale of 'non edibleˆ materials to non-tribe members) · The proposed restriction of "sharing" to those with whom local residents have "familial, social, cultural, or economic ties" is meaningless. I could purchase whale products from a tribe member and create an "economic tie". · That the Makah Department of Fisheries Management is to monitor the tribeˆs whaling activities is farcical. The tribe has demonstrated and inability and unwillingness to monitor and control its members quite recently. With respect to other alternatives · The number of whales allowed to be struck but not 'takenˆ is excessive in all instances. · The tribe should pay … in advance … any and all costs associated with "a hunt observer, and for federal, tribal, state, and local law enforcement agents and resources (e.g. helicopters and boats) to monitor the hunt and manage and protest activities." Whaling is not an activity permitted to me or a vast majority of U.S. citizens; the costs associated with this activity should be borne by those who initiate the activity. · That the tribe wishes to "apply the full range of knowledge associated with whale hunting…" is irrelevant. This is not a commercially or socially useful body of knowledge. · Whatever "spiritual connection" to whaling is claimed, it has been lost over many years of non-whaling.
e_Thomson_05-10-08.pdf	I am writing today to submit my comments on the Draft Environmental Impact Statement on the proposal for Makah whaling regulations. I am a professional cultural anthropologist, however my area of expertise is outside the northwest region, so I write as an informed and concerned citizen of the region with a particular and relevant set of comparative views. Through my colleagues at Pacific Lutheran University I have become more aware of the background and history of this situation, but the views presented in this letter are entirely my own.

COMMENTER	COMMENT
	Having reviewed the DEIS through the website, I feel strongly that, Alterative 2, the regulations proposed by the legitimate and representative authorities of the Makah Tribe, should be recognized and endorsed. The restrictions and regulations they propose appear to be reasonable and legitimate. It is incumbent on the US government to fulfill and support the exercise of the rights enshrined in treaties with sovereign nations. The efforts of the Makah to preserve and invigorate their traditions and community life should be commended and encouraged as enriching the diversity of the American experience. As clearly indicated, these cultural goals can be accommodated without endangering the viability of the gray whale populations and clear safe-guards are in place should such a condition arise. I see no reason to support any of the more expansive alternative plans, numbers 3, 5, or 6, if they were not requested by the tribe at this time. The additional restrictions proposed in Alternative 4, while offering additional environmental protections, should not be endorsed because of significant impact it would have on the practicality and safety of the hunt. Given the limited number of incidents annually and the overall regard for the natural environment evidenced in Makah attitudes and practice, I see no need for these provisions. If possible, I would encourage dialog with the appropriate Makah authorities to adopt additional voluntary guidelines to acknowledge these concerns and outline appropriate techniques for mitigating these impacts without restricting whale hunting activities in these areas.
e_Throop_08-13-08.pdf	I Dean Throop having been a friend of the Makah sovereign nation since 1970 having fished tuna and salmon with many descendants of ancient lineage and was a voice of encouragement to their urchin industry do endeavor to inject understanding into this emotive departure from truth The nauseous and complete disregard for their heritage is flatly not helpful Weird arguments about caliber and safety are silly distractions when I'm talking about a people's heritage . Heritage of the Makah nation is grandly expressed in Washington D.C. they are not a people to be treated disrespect ably. Nowadays honest groups who want something that belongs to someone compensates the other entity in some way ; this is not greediness on the side of the group par say who is truly giving something up . I have talked to Wayne Johnson the whaling captain in captivity ; he understands well that I want compensation for his relatively poor, isolated people . They have one deadly road that often takes their children . When the road is washed out or rockslides or accidents happen people have to go to extreme measures to be evacuated for medical care . The local economy is difficult even for a people renowned for their bravery .The individuals were courageous not rogue; for love of their people they did risk freedom to confirm the Makah Nation' agreement with the U.S.A. Surely nothing justified the lame government response to do something in a timely manner . The matter festered away as the kind of people who will never agree to whaling even beneficial whaling ; rested on their haunches I propose to end this ideological and disagreeable impasse that the whaling quota be converted to an economically respectable annual deference payment . I as an (white) American think it honest and correct to pay 7 million annually adjusted for inflation and retroactive Payment to the persecuted to be included ; This is the honest way to end this impasse of impasses . This is a inexpensive answer that treats the tribe honorably ; not a sending them away to a white school
e_Thulin_08-14-08.pdf	It is hard to comprehend why a country would want to continue a practice (lifestyle, “right”, whatever you want to call it) that does not improve the future of its people. It has been argued that the training for the “hunt” involves mental and physical strengthening and the honing of personal discipline. However, the ultimate goal of all this preparation is the destruction – most likely maiming – of a marine mammal that is on the decline. Will tourists flock to see two whales a year being hauled up on the beach after being shot? It won’t be a Kodak moment. The perception by people here and abroad that this is an offensive act will be stronger than the temporary thrill of the hunt.

COMMENTER	COMMENT
	A few years ago I had an interesting conversation with a docent at the superb museum in Neah Bay. He spoke of the tribe's efforts to lure visitors to the town - with every idea offered being scrutinized and evaluated. The resumption of whaling cannot be the best that they can come up with. What are they thinking?
e_Toivonen_05-10-08.pdf	I don't believe the whale hunt should be allowed because times have changed. They don't really need the whales to live. That has already been proven because they have gone a long time without hunting the whales and have gotten by just fine. Saying it is their culture is not a good reason because all cultures have changed with the times. Their culture has changed too so it's not right to bring up the parts of their culture that are in the past and out dated.
e_Tonkin_08-13-08.pdf	Normally I am a great defender of Native American Tribes and their treaties, which have been broken time and time again by many US government administrations. However, the 19th century treaty with the Makah tribe that guarantees them the right to continue whaling was agreed to before humans learned about the high level of intelligence, social structure and emotional life that whales have. We must abrogate the whaling provisions of the treaty and deny the Makah's request. Not only would killing whales merely for the sake of tradition and religion be tantamount to murder, but it adversely affects entire families and pods of whales. What is even worse, in order to kill some, the Makah would be allowed to wound and chase hundreds over just a five year period. What kind of civilization can we claim to be if we allow that? The rights of the Makah to practice their religion and pursue their treaty rights do not outweigh the rights those poor whales should have to survive without harassment and violence. We cannot be hypocritical in our efforts to stop the Japanese and others who hunt whales only to let our own Native Americans do it. The only valid reason we could possibly have for killing whales is to cull pods that are overfeeding their feeding areas and are starving to death or likely to starve to death as a result. Let the Makah wait for those opportunities if they ever present themselves. Until then, they can hunt whales with a camera. Please deny the Makah tribe's request.
e_Triggs_05-12-08.pdf	I support the Makah Tribe in subsistence whale hunting if there is a reasonable expectation that doing so will not damage the overall health and reproductivity of the whales (as a regional species) that they hunt and harvest.
e_Turney_06-17-08.pdf	How can I get more information on stopping the Makah whale hunts?.. Unfortunatly the old days are gone, whale meat is not needed for survival and as far as the spiritual aspects, we as people grow and change with time, maybe the spiritual needs could be met without the suffering and killing of such an important and majestic being. The illigal hunt showed the desrepect and lack of skill of the hunters.
e_TwoFeathers_05-11-08.pdf	Their rights have almost been eliminated entirely. Let them fish and leave the tribe alone. Don't the Feds have better and MORE important things to do???
e_Tyler_05-30-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers.

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	Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Vandernoort_06-01-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter.. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Vandervoort_06-15-08.pdf	Thank you for accepting public opinion on the Makah Indian Tribe's February 2005 appeal to recommence hunting Pacific gray whales in coastal waters off Washington State. I understand the Draft EIS weighs a range of options to the tribe's proposal to kill whales. I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter.. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_VanDyke_05-17-08.pdf	Thank you for the opportunity to weigh in over the recent controversy regarding Makah whaling. From my perspective, the fact that there is controversy over whether the government should honor a treaty that it itself made - especially when we are talking about a maximum hunt of 20 whales/yr in a population of 20,000+ whales - is truly a sign of just how far we still have to go over a society. There isn't nearly this much controversy over oil rigs and longstanding air and water pollution, which could all represent an actual risk to the whales. Traditional foods and ways should be fostered and encouraged. I have heard no credible argument - and I have been listening - for why the Makah should not have the right to celebrate the ceremonial and cultural significance of reviving the whale hunt. I know I speak for many of my classmates and colleagues when I ask that the 1855 Makah treaty rights PLEASE be honored.
e_Vierkoetter_05-12-08.pdf	If the Makah feel they can justify killing defenseless whales because of a treaty from 1855, over 150 years ago, then let them live as they did over 150 years ago: ● No government funding ● No welfare/TANF

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	● No unemployment ● No Section 8 rental/housing assistance ● No free rent, electric, gas, water, phone and cable ● No free rides ● No food stamps ● No free medical/Dental I can't justify, nor can they probably, killing 1 whale a year. If it is to prolong a tradition, so be it (please use the motorless canoe and hand thrown spears-no modern tools-traditional). These tribes need to come to terms with evolving with the civilized world. Do the Mayans still sacrifice humans? Can other tribes still kill roaming buffalo?? Let's put an end to this senseless killing.
e_Villa_06-28-08.pdf	I strongly object to the Makah Indian Tribe's proposal to hunt gray whales! It is not environmentally responsible. It is also very cruel to a sentient being. The last (illegal) whale hunt ended in the long, painful death of a beautiful creature! A culture can be preserved without continuing in ALL of the historic activities. Many cultures thrive in the USA maintaining their traditions through language, music, dance, food and other customs. Killing is not a cultural value that needs to be passed on from generation to generation. Whales are among the endangered species, their numbers have been drastically reduced in the last 200 years. There is no reason, excuse or argument that can make a case for the Makan Indian Tribe's proposal to hunt gray whales! I hope is it not allowed.
e_Vittorio_06-05-08.pdf	After much thought, it is my opinion that the gray whales should be left in peace. I am against the Makah renewing their "traditions" and "rituals" to feel "pride and self esteem and as a distraction from drugs and alcohol consumption". If all of our subcultures within our culture were permitted to return to their rituals and traditions there would have to be legal cock fighting, bullfighting, dog fighting, even animal sacrifice, and slavery. During the 70 year moratorium on hunting gray whales, scientists and animal behavorists have taught us so much about the incredible social aspects of whale pod and family ties and the intelligence of this magnificent creature, referred to as our human counterparts in the sea. American citizens have come to appreciate our kinship with whales through whale watching and many documentaries over recent years. Our history of killing whales is shameful to most. We now have substitutes for every product the whale used to provide. I believe to allow the immense suffering of these great animals to appease a misguided belief that it will restore a sense of "pride", is just wrong. It is wrong and everyone knows it is wrong.
e_Voss_05-11-08.pdf	This is to let you know that I am very opposed to the Makah tribe wanting on-going whaling privileges. While I sort of understand their tribal history about this subject, this is a new world and they just need to join. Don't like it, too bad. By this email I am requesting that you disallow such activity.
e_Vulovic_06-22-08.pdf	Hi, I am a Washington State resident and firmly opposed to the lift of the moratorium on whale-hunting for the Makah Tribe. To allow even limited hunting of a species that is already at risk due to current and impending climate changes, which affect sea life more than any other ecosystems, would be shortsighted. At a time like this we cannot afford to loosen the restrictions that protect any wild animal's survival, least of all sea mammals made vulnerable by their positions at the top of the food chain and by the effects of global warming. We are living in a world that is strained by every additional "harvest" of the seas and our planet. The "right" to exploit the seas and our planet cannot be interpreted as liberally these days as it has been historically. In the context of our changing environment and increasing scarcity of resources all over the globe, to open doors to hunting a previously protected whale species is a retrogressive

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	action. We should be focusing on increasing protection of marine life. Thank you for taking the present-day situation of the marine environment into account and for listening to the voices of your constituents.
e_Walker_05-11-08.pdf	Whale Killing is a totally abhorant practice and should be stopped NOW! This is in no way a "right" and our Govenrment should stop it immediately!
e_Weber_08-15-08.pdf	[Duplicate of NWIFC_08-15-08.pdf]
e_Weinstein_05-10-08.pdf	Request for comment period extension
e_Weso_05-13-08.pdf	In weighing its decision to grant whole or partial exercise of the Makah Tribe's treaty right tohunt gray whales, I urge the NOAA's National Marine Fisheries Service (NMFS) to read the U.S. Constitution and, above all else, the Supremacy Clause of the U.S. Constitution: Second Clause: "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding", emphasis added. Third Clause: "The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States," emphasis added. Secondly, I urge the NMFS to consider the 1855 Treaty of Neah Bay, which was approved by the President and ratified by the Senate. This treaty gave the Makah Tribe the right to hunt gray whales and as such, is the supreme law of the land. Although the Judicial branch has rendered decisions and the Legislative branch has acted in such a way over the past 153 years to render the supremacy clause and the oath of office seemingly moot, a sober reading of the Constitution reveals that not only is the Supremacy Clause alive and intact, many acts of Congress and decisions of the Judicial branch are unconstitutional. Thirdly, I urge the NMFS to consider Executive Order 13175, entitled "Consultation and Coordination With Indian Tribal Governments" and dated November 6, 2000, which requires federal agencies to "honor tribal treaty and other rights" and encourages federal agencies to consider waivers. Finally, I urge the NMFS to keep in mind that it wasn't overhunting by the Makah Tribe that caused the gray whale to become an endangered species. The Makah Tribe has been whaling for well over 1,500 years. Overhunting was an act committed by other nations that had no regard for life and sustainability. What the Makah Tribe is asking for is reasonable and sustainable. Thank you for the opportunity to submit written comments on this very important matter.
e_Westenberg_05-10-08.pdf	I have read the lengthy Makah Draft DEIS and feel I can summarize same in one word: nonsense! Well-crafted arguments by the Makah using great prose and of course legal in form. But nonsense. Subsistence? Weak argument. We as a species have come a long way in 1,500 years and have available to us much more efficient ways of fulfilling our requirements for nourishment. Whale hunting made sense 1,500 years ago, but the usefulness of that activity today is non-existent. Ceremonial value? Slaughtering mammals for ceremony is primitive, pure and simple. I acknowledge that Native Americans have needs. Are not those needs better met by providing proper education to the youth in fields that will allow them to earn a livelyhood in the modern world? Controlling addiction has to be high on the list of "things that need to be

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	done". Leading a productive life and practicing good values will give these folks the sense of self-worth and value that they seek. I don't see the slaughter of mammals as having the same impact on individual lives. I would support symbolic ceremonies that allow the proud past of a people to be recognized and remembered. Symbolism certainly has been used successfully in many cultures. So, the Makah don't have to forget their past. But they should recognize that some things done by our ancestors were done out of a necessity that does not exist today. And, given the choices available to us today, I doubt that their ancestors would choose to hunt whales. For background, I am 60+ and have spent many enjoyable days and nights in our Olympic Mountains and on our salt water. I am not ultra conservative, but just don't agree with senseless killing. The Makah people would be better served by stepping out from behind their curtain of "tradition" and put their focus and energy into something more useful to their survival.
e_White_05-30-08.pdf	Concerning the slaughter of whales here in the Northwest, I am against the murderous decision. The waters belong to aquatic life yet we still believe, as a whole, the world is ours to do with what we desire. People very well ought to be beyond that eleventh century thought process. We ALL need to get with the times, past the year 2000, and move on. I am strongly against allowing the murder of the small number, if not any, whales; animals and wildlife for that matter. Instead, we need to pen-up death row inmates and have at them for game. They deserve it. As opposed to peaceful and beautiful whales who do not deserve anything other than life just as peaceful and beautiful as they. The world is exceedingly OVERpopulated with our arrogant race fighting for superiority; we ought let tribes and hunters have a go at inmates.
e_WilAllen_08-15-08b.pdf	I am writing to encourage you (and I mean “to bring courage”) as you make decisions regarding Makah whaling. The petition to resume whaling argues that it is for “ceremonial and subsistence purposes." SUBSISTENCE A group of Makah elders addressed this subject much more directly than I would have, saying: “We think the word ‘subsistence’ is the wrong thing to say when our people haven’t used or had whale meat-blubber since the early 1900s…. We believe the hunt is only for money.” Far more money, as well as good will, would be generated from developing whale-watching and eco-tours. The gray whale that was last killed in an official hunt was swimming only a mile and a half from shore, as gray whales usually do. Because they tend to approach boats with curiosity and great interest (and without fear, since they have not been hunted here since 1946), gray whales make perfect subjects for whale watching. Humpback whale watching in Hawaii brings in more than thirty million dollars a year. CEREMONY The last (organized) whale hunt exemplified little regard for ceremony, particularly in practicing respect for the whale through traditions as seemingly onerous as staying up all night praying for the recently killed whale. The whalers didn’t even stick around to do the butchering, or to participate in it. Robert Sullivan from National Marine Fisheries was the only person willing to step in when the hired butcher asked for assistance. TRADITION The Makah are asking to harvest whales using modern technology. In the last official kill, the U.S. Coast Guard retrieved the whale, which had sunk to the sea floor. Tradition was and is not an issue to those who want to resume whaling. It could be, though. In 1915, when European whalers had decimated the gray whale population, it was the Makah tribe, before anyone else, who recognized the

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	need to stop killing in the hope that gray whales would recover. While considerable recovery is unfolding, gray whales are not yet secure enough for Makah to consider taking from their numbers. Not only have they suffered inexplicable declines, as great as thirty per cent recently, but also there are very small populations among the gray whales, which are local, and are far too small to consider safe to diminish purposely. One that returns from Mexico only to Puget Sound is no greater than 10 members; another group of around 250 is also considered a “resident” population. Unless the Makah are able to distinguish from among the varying populations, as sone scientists can, what tradition would risk destroying such small but intact populations? The Makah tradition here is one of restoring, not of destroying. RIGHTS, and WHO GETS TO BE HEARD If you asked the women of the tribe, the discussion would be over. They are not for quick fixes. I suspect that white people of government employ are responding to the demands of young people who have lost some of the deeper perspectives of their culture—entirely the fault of whites over long periods of history—wanting to say “yes, you can hunt” because, indeed, young men of the Makah tribe are restless and in great need of the constraints and spiritual fulfillment that their culture used to offer them through the discipline of The Hunt. Honor, Respect, Courage,--these do not come from killing but from diligent growth in discipline. By handing over to these young men the right to decimate an already struggling species, and a very friendly and trusting one, white people are burdening them with a wrong that they will not be able to right when they finally grow up. We know better; throwing in five whales a year to be slaughtered for their boisterous entertainment (as demonstrated previously) and for quick money will do nothing for them nor for the tribe we are perhaps attempting to help. Having the courage to say “NO” is the only help we can offer in an official capacity. CONCLUSION I beg you to listen to scientists regarding the fragility of this species. I beg you to find out what the Makah really want and help them find it in constructive ways. These are the difficult solutions. The easy one is just to say “yes.” You, too, will not be able to rectify that mistake in your lifetime here. This is your opportunity to stand on the side of courage.
e_Wilkin_05-09-08.pdf	Please consider not approving the tribe's request; taking the "no action" alternative.
e_Williams_08-15-08.pdf	In the matter of the 2008 Makah DEIS, my organization requests that the Makah DEIS be declared invalid immediately. The public has not been served properly with an unbiased and thorough document by a contractor that has no connections to the tribe. The public is not able to respond properly to this document. The DEIS fails to meet the guidelines NEPA and requirements. The preparation of the DEIS by Parametrix, Inc. invalidates the DEIS for numerous reasons. It is inadequate, misleading and biased in favor of whaling. As it is, the DEIS is inadequate for public review. Parametrix, Inc., was contracted and paid through NOAA/NMFS by US taxpayers, to provide an objective, unbiased, thorough and knowledge-based document on this issue to the public. Yet the document is neither thorough, objective, unbiased or knowledge-based. As a matter of fact, it was discovered that Parametrix, Inc. has such numerous deeply-entrenched and visible financial connections to the tribe that awarding this contract to them was a miscarriage of justice to all US citizens. Indeed, such a contract makes a mockery of the environmental review and SEQRA process, negates everything except a wholly superficial conformity to NEPA guidelines. This DEIS is an insult to everyone. Parametrix, Inc. has very publicly supported whaling by the Makah as seen during their Corridor Management Plan which was to help the tribe "interpret" whaling to tourists. They in fact stated several times in the DEIS that their intentions were to "improve whaling-tourist relations". Parametrix, Inc.'s role as a DEIS preparer was not to promote whaling, but

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	to report objectively on the impacts that whaling would cause. Parametrix, Inc. was incapable of presenting objective information and again reaffirms that this document must be declared invalid. Parametrix states in its unacceptable DEIS that "more visitors would be drawn to the area than avoid the area as a result of a whale hunt," an absurd statement since watching whales being slaughtered is on no other "whaling" nation's tourism agenda, and we have seen the numerous adverse impacts that a whale hunt on nearby whale-watch boats. Parametrix, Inc.'s closely-related company, TranTech, was in charge of overseeing the $10 million Tribal Byway paving project through Neah Bay. This and Parametrix Inc's connections with the Neah Bay wave energy project which would also benefit the Makah, would have been sufficient grounds for NOAA/NMFS to avoid mention of Parametrix, Inc. in the DEIS. One wonders how could NOAA/NMFS choose Parametrix, Inc. to prepare this document? Parametrix, Inc. did not even report on the impacts of a whale hunt on tourism in the surrounding county (Clallam); however, local residents have stated on the record that there were negative economic impacts. Unbelievably, Parametrix Inc. dismisses national and international public opinion which has found that 83% of the US public is opposed to whaling! Since NOAA failed to provide the most essential information to the public in order to facilitate proper comments, this DEIS must be declared invalid. Perhaps the most relevant event that occurred just recently and prior to the DEIS comment period was the September 7, 2007, illegal slaughter of a protected gray whale by 5 renegade Makah. The whale was shot 16 times and languished for a dozen hours. Yet NOAA/NMFS did not release information about the case to the public, which would have only fairly given commentators an important glimpse into the tactics of Makah whaling! The proposed law states the whales "struck but not taken" will not count! That means whales could be used for target practice by like-minded tribesmen simply because" it's legal. So what? " This can never be allowed to happen. We strongly and vehemently oppose enacting any law that states that a wounded whale "would not count" in the overall take. Since this reduces the action of inflicting a gunshot wound to a whale as "legal"; whales could be exterminated with impunity. It is widely understood that the Makah tribe, centered around the waters of Washington State in the US Pacific Northwest, do not present a subsistence need for whale meat. It is well-known that the Makah ceased regular whaling activity in the early 20th century. It is also well-known that only a handful of Makah tribe members are proponents of the whale hunt. Is this a case of a few bullies in the tribe - a few mean-spirited individuals not ashamed to inflict hours and hour of torture on a suffering whale? Of the case in question, the 5 Makah, which many call "inept", shot the whale 16 times but did not kill it! Could they have been inebriated or having some kind of party? What could have been sacred about this? Whatever, they acted alone - the whale hunt was in defiance of Makah tribal law as well as US law and the Marine Mammal Protection Act! The DEIS fails to acknowledge that the tribe's people were so unaffected and disinterested in the killing of the whale that it left the job of butchering to visitors! It was even reported that most did not like the taste and quietly threw it away! What's more, the whale meat was distributed to non-Native Americans, even taken to Canada. Again, what kind of sacred tribal ritual was this? This information was omitted from the DEIS as well. Some believe that the pro-whaling faction within the Makah have intimidated those who openly oppose resuming a whale hunt. The question remains why do a few want a whale hunt? Is it because there is a lucrative trade in whale meat to Japan or Norway? Or is it more likely because the Japanese might subsidize the whale hunt, and use the Makah issue to gain small coastal whaling rights with the IWC? Indeed, at the IWC, pro-whaling groups scream about the indigenous rights; they could scream in this case also even though there is no tradition of whale hunts in the Makah tribe. What is at stake is a species of whales that are said to be "in recovery". However, the latest estimates are raising new fears, as whales are struggling through the seas plagued by oceanic dead zones, pollution, overfishing and global warming, that gray whale numbers are again falling. In fact the most recent population estimates show the gray whales may be in trouble again. There is no justification to allowing a take of gray whales by this tribe. Regardless of the status of the gray whale population the DEIS is a miserable failure of a document and must be declared invalid immediately.

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e_Wineland_05-10-08.pdf	How arrogant this government is in this regard. Yes, the Makah people should be able to hunt whales as their culture calls for and the original treaty allows. I see no difference in hunting whales that I do in hunting deer or elk.
e_Woods_05-10-08.pdf	I am writing in support of allowing the Makah tribe to resume hunting whales for ceremonial purposes. I think it is important to honor the 1855 treaty rights and the Makah cultural and religious traditions. I am reassured that the size of the gray whale population has increased and is stable, and that the limited whaling allowed under the treaty and the DEIS provisions will not threaten their survival. Please approve one of the 4 DEIS options that allow Makah whaling to resume.
e_Wosk_05-17-08.pdf	$20.00 is the extent of justice? Of punishment, for the murder of an innocent being which suffered for more than 10 HOURS!! before slipping beneath the waves? Are you on crack? OBSCENE, DISGUSTING AND A MONSTROUS TRAVESTY, please don't allow NOAA, the justice system and the Makah to get away with it!!! The Makah whalers need to be SEVERELY PUNISHED for attacking and brutally slaughtering innocent whales. Such barbarity is inexcusable -- especially knowing how intelligent, sentient and precious whales are. "Tradition" must evolve when faced with enlightenment; it's not to its detriment, but rather to its benefit. Read the following, below, and take proper, ethical action to punish these cruel savage Makah for murder: "Until we stop harming all other living things, we are still savages." ~~ Thomas Edison "If a man aspires toward a righteous life, his first act of abstinence is from injury to animals." ~~ Albert Einstein "We can judge the heart of a man by his treatment of animals." ~~ Immanuel Kant "Compassion for animals is intimately connected with goodness of character ... he who is cruel to animals cannot be a good man." ~~ Arthur Schopenhauer
e_Wright_06-17-08.pdf	Times have changed, there is no real reason to kill these beautiful peaceful creatures. If you need to have the ceremony, then do it in effigy and eat salmon. I used to camp on the Makah reservation years ago and found the people very wonderful and warm. I don't want to think that these same people would want to make a whale suffer and die.
e_Wright_06-30-08.pdf	I understand that public opinion is now being taken into consideration with regard to the decision to allow the Makah to resume the whale hunt. I understand the Makah are trying to regain some of the old ways, but the old days are gone and maybe it's time for spiritualness without the suffering and killing of such an important member of our planet that was pushed to the brink of extinction not long ago. In my opinion, the fact that the last hunt was done illegally and in such a flagrantly inhumane manner should also factor in on this important decision. Why would permission for something this unnecessary now be granted when rules and guidelines were so boldly disrespected before? Please give very serious consideration to the opinion and request from those of us who GREATLY oppose giving permission for this archaic practice! In addition to the importance of this decision to our local area, we have a tremendous responsibility to the rest of the world in setting such a precidence that will have far reaching effects, surely resulting in negative impact to the newly recovering whale population. Consideration of this fact should not be overlooked.
e_Yolton_05-28-08.pdf	I am vehemently opposed to the Makah's continued desire to have another whale hunt. This practice is an outdated, unnecessary killing of these great mammals. These people are no longer subsistence tribes. Why can't they "act out" the harpooning of these animals in ceremony, without actually killing them, as we see other Native Americans perform their ancestor's rituals. Please do not allow this "hunt" to take place.
e_Young_05-11-08.pdf	I understand your position and role; I also understand the Makah. I don't believe any of us have a right to say anything about the Makah hunting of whales and it is extremely considerate of them to include the Marine Fisheries in their decisions whether to hunt for whale or not. It is a treaty right that they hunt and this is a sovereign act. Our problems with our wild life populations have nothing to do with the

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	indigenous hunts, they are our problems alone. Since they have desired to include you in their decision, I say not to give your permission, as they do not need your permission, but give them your blessing to whatever hunt they desire to do.
e_Young_05-29-08.pdf	I respectfully ask you to consider this fact: In the 21st Century, no human being needs whale meat to survive -- including the Makah Tribe, who until recently, left the gray whale alone for over 70 years. The "reinforcement of tribal identity" does not justify slaughter. Whales are typically harpooned or blasted with high-powered rifles under the guise of cultural whaling. Holidays are observed with whaling contests and races. No celebration warrants animal suffering and death. After five Makah whalers illegally shot and harpooned a gray whale off Neah Bay in 2007, the animal gradually bled to death over nine hours. The Makah Nation dismissed all charges, as long as the offenders violated no laws for the next year. Federal prosecutors offered a plea deal that asked the tribal court to waive prosecution. As you know, the tribal judge ignored the federal plea deal, ordering the five whalers to instead stand trial in a sympathetic Makah courtroom. This is unacceptable -- for the Neah Bay whale and others who will suffer prolonged death at the hands of Makah killers. Please do not honor "treaty rights" to massacre whales. There is no rationale for "ceremonial and subsistence" whaling in the contemporary world. Please deny the Makah Nation's proposal to legally kill whales under their treaty.
e_Zeff_08-15-08.pdf	We are strongly opposed to any whaling activities by the Makah tribe on the North Olympic Peninsula. the Whales are magnificent creatures and should be protected. They are an asset to our area and should not be killed or harassed.
EPA_07-28-08.pdf	The EPA has reviewed the Proposed Authorization of the Makah Whale Hunt Draft Environmental Impact Statement (EIS) in accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. Section 309, independent of NEPA, specifically directs EPA to review and comment in writing on the environmental impacts associated with all major federal actions. Under our policies and procedures we evaluate the document's adequacy in meeting NEPA requirements. The EIS evaluates five alternatives considering various components of the hunt including the time when whale hunting would occur, the number of whales harvested, locations where hunting would be restricted, and the number of strikes that would be permitted. The EIS identifies Alternative 2 as the Proposed Action. Alternative 2 would allow hunting between January 1 through May 31, in the Makah Tribe's usual and accustomed hunting area west of Bonilla-Tatoosh line I, allow for a total of 5 whales harvested each year with no more than 20 whales harvested in five years. We have assigned a rating of LO (Lack of Objections) to the draft EIS. This rating and a summary of our comments will be published in the Federal Register. A copy of the rating system used in conducting our review is enclosed for your reference. If you have any questions or need additional information, please feel free to contact me at (206) 553-1601.
Friends of Animals_08-13-08.pdf	[Duplicate - same as e_Feral_08-13-08]
Griffith_06-20-08.pdf	After careful and thorough review of the draft EIS, I recommend the adoption of-Alternative 1, the No-action Alternative As you can see, I reside in proximity to the Makah reservation. I have attended the several information sessions, and I often meet and discuss the subject with both Tribal and community members. I attended many of the events prior to and following the 1999 Makah take. Further many years ago, I was active in the Sierra Club's national "Save the Whales" program of the 1950s. My understanding of the issues, background, actions, and consequences lends unusual substance to this recommendation. You should be aware of "where I come from": the NEPA always is the underlying statement of principle The MMPS, a comprehensive, hard-won statement, demands preservation in its entirety, no waivers or exceptions. The pending Makah request cannot be considered

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	favorably within these guides. The 1855 Treaty of Neah Bay is irrelevant. Six generations later it is another scrap of paper in the dustbin of history, along with dozens of other treaties and agreements published in a earlier and evolving World. Today's Makah tribe can no longer attach valid "cultural and subsistence" claims to the proposed hunt. The latter were refuted in earlier litigation and, in any event, contradict the status quo. The cultural claim is less easily dismissed. It may have limited significance to the larger fraction of the tribe now living in Port Angeles (now well integrated into the local economy). For those living on the reservation, I contend that a very small group is employing this action to reinvent a troubled Indian community. Note that several of the tribal elders have come forth to disassociate themselves, a sentiment that prevails among the Makah students in the local college.
Hasbrouck_07-07-08.pdf	Concerning the request of the Makah Indian Tribe to kill gray whales in the North Pacific, let my voice be heard for a definite and resounding NO! Today many of the Makah Tribe members are less Makah than I am, and I happen to be 1/16th! This is a barbaric and embarrassing so-called tradition, which should be laid to rest with all other bad traditions humans have had throughout history. We know now that the whale is a magnificent animal in every sense of the word, and all of the products from the whale have been replaced by technology and science. The portion of the Makah tribe members who believe that the killing of a whale will miraculously restore “pride and self-esteem, and help them refrain from drinking and taking drugs” – are having “magical” thinking. To rekindle the manhood they seek through destruction of an innocent animal will not do it; and in fact in the minds of most Americans killing whales is shameful, not prideful. Rekindling manhood comes with ideas for improving the Makah economy for a better life for all. This may involve an ironic turn of following the whales with ships and tourists. This would be a continuous cash flow and a prideful business. The Makah know the migratory patterns of the whales and should profit from their great knowledge. I plan on writing to my local editor to rally the troops to send letters about this request being just plain ‘wrong’; it is wrong and we all know it is wrong.
Haugland_07-07-08.pdf	My name is Rachel Haugland, and I am an incoming senior at Sequim High School in Sequim, Washington. This past year I have been participating fervently in a nation-wide competition called National History Day (NHD). In this competition, middle school and high school students from across the country make projects based on a theme in history. Students can participate in the categories of: historical papers, performances, documentaries, exhibits (display boards), and websites. This year's theme was conflict and compromise in history. Living only a couple hours from Neah Bay, my partner Olivia Boots and I decided to pursue the subject of Makah Whaling for our group documentary. We weren't entirely sure what to expect when we started the project. To tell the truth, I hadn't had a clue that the 2007 hunt had even occurred at the time. This being our fifth year competing in NHD, we were somewhat arrogant (as little as I'd like to admit it) about the whole thing. We knew the routine, and we knew what it took to make a good documentary. Most importantly was access to interviews, and the closeness of both the Makah and the environmental groups was more than convenient. However, neither of us ever anticipated that we could actually become passionate about the topic. As we progressed in our research, it became painfully obvious that the Makah have been taken advantage of time and time again by the colonialist views of not only the government, but also environmental groups. I'd like to take this time to share a little bit with you about what I've learned. I believe that I may have a unique point of view, coming from a third party, and being a mere high school student. No one told the Makah to stop whaling in 1926; they voluntarily stopped. Makah Paddler Darrel Markishtum explained to us, "when you have to go farther and farther out to fmd a whale, it becomes obvious that it's time to stop." The Makah have proven themselves to be able stewards of their resources, and as the DEIS proves, the Makah's proposed plan of action will have very minimal impact on the environment, and virtually no impact on the whale populations. The Makah have even agreed to not hunt a whale from the Pacific Coast Feeding Aggregation, where the loss of a whale could have an

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	impact. We took the time to contact Margaret Owens, the wife of one of the most outspoken antiwhaling protesters in our area. Listening to her arguments, it was quite easy to blow holes through them. Her first complaint was that Japan will call the United States hypocritical for supporting the Makah's hunt, but voting against their whaling. First of all, the United States government would really rather not have to grant the Makah whaling rights, but the fact of the matter is, they're held to the treaty Isaac Stevens signed in 1855, specifically stating the Makah's right to whale. Furthermore, Article VI of the constitution seals the deal, stating that Indian treaties are to be read as "the supreme law of the land." If Japan had treaties stating those very same words, then they would have a valid argument. Her second complaint was that by allowing the Makah to whale, other aboriginal groups would see this as an excuse for them to do the same. Again, this could not happen because no other aboriginal group specifically states the word "whaling" in their treaty. Margaret's last concern was that this hunt would weaken efforts to end commercial whaling in other countries. I very strongly disagree with this point. Because this hunt is of cultural value, as much as it is sustenance, the strong emotions tied to it would strengthen efforts to end commercial whaling. Although I believe the Makah should have the right to sell their whale meat and oil for economic reasons, it's obvious that this is an unlikely goal, whereas the nation-wide resistance to any form of commercial whaling is phenomenal. One of the most important things we have learned through this experience, however, is about the Makah people themselves. Researching the social values of their ancestors, it became clear that not only their economy and culture, but also their social structure, depended directly on the whale. When the lack of whales forced the Makah to stop whaling, their entire community saw a decline. The youth became disengaged in anything culturally related, leading to increased drug use, alcoholism, violence, crime, and overall care for the world. If you've taken a trip out to Neah Bay lately, the people are in pretty bad shape. The housing is mostly run-down. The people don't have a whole lot to live for anymore. As we talked to the families who were involved in the 1999 hunt, however, the positive changes it had incurred remained obvious. Whalers have to have the mindset of being completely one with nature, free of hate and all negative thoughts. They value their family and their culture, and it shows in the way they live their lives. Talking to Janine Bowechop at the Makah Cultural and Research Center (the museum from the Ozette dig), it was fascinating to see how both the Ozette findings and 1999 hunt sparked a revival of culture among the Makah people. However, those Makah not directly involved in keeping whaling alive have begun to fall into the same pattern of decline that affected their nation in the 1940's. When their rights were again taken away, many began to grow restless, such as the men who shot the whale in September. While these men should be persecuted to the full extent of the law, this is a painfully clear example of this social and cultural depression. Who is it that has the right to decide whether it is more important to save the lives of 4 whales a year, or an entire people? While I am aware that you may have heard many of these arguments countless times before, I'd really like you, and anyone else whose hands this letter falls into, to realize that I am not just blowing hot air here. I have done the research, and have a 23-page bibliography to show for it. You have done the biological research, and have a 909-page document to show for it. The U.S. Government has a constitutional responsibility to honor their word to these people. As a U.S. Citizen, the refusal of this right makes me fear what will become of my own rights. The fact that this is so painfully clear really makes me wonder how much integrity is left in our government. I pray that my words will not fall on deaf ears, and that this letter will get to the people who need to hear it. Because honestly, if, a 16 year-old, can see this and worry about my liberties being compromised, why is it our elected officials cannot? Thank you for your time, and I have included the 10-minute documentary that was the result of our research, along with our process essay and annotated bibliography. I hope you have time to look at both, and to consider what I have said.
Howells_08-12-08.pdf	It would help if the native whaling were to be allowed only with pre-European tools and boats - to allow them to use modern (European) weapons and boats is an insult to the tradition they wish to keep.

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Kennedy_06-11-08.pdf	Thank you for sending me the CD to view the request from the Makah Tribe for permission to resume the hunt of gray whales. After reading all very carefully I cannot. in good consciousness, agree with allowing the hunt to proceed. I do not believe any more whales should be taken. There seems to be no good reason or justification for killing the gray whale in any of the material! read. Although the Makah ancestors may have had to kill whales for survival, I find it offensive that a group of people want to kill a whale for reasons of "self esteem or pride" and particularly "to abstain from alcohol and taking drugs." I find the link between killing a magnificent animal unnecessarily and 'pride' hard to connect. In fact, I would think the opposite to be true in that the word "shame" comes more to mind. With this attitude we stand to lose more than a great whale, but our <'humanness" is also on the line. I think it would callous and a detriment to our civil society to allow this hunt to take place.
Kennedy_06-20-08.pdf	I am strongly opposed to the Makah whaling hunt. They do not hunt for subsistence or cultural tradition. They hunt commercially. All hunting of all whale should be stopped permanently.
Kennedy_07-07-08.pdf	Thank you for hearing my public comment about the proposed gray whale hunt. Research shows that the Northwest Gray Whale has low numbers, according to the scientists at the World Wildlife Fund. The numbers range from 100-200 whales. In addition to that, it seems whales and all marine animals are facing new challenges with the rudimentary beginnings of global warming already in place and as all the climatologists predict, things are only going to get a lot worse and within only 20 years a mass extinction (over half of all known species) of our animal and plant life. The new unrelenting digging for oil and gas feeding grounds of whales will be devastating. Also with the continuing frequent oil spills and pollution from pesticides and other chemicals, the whale populations are shown to have an increasing rate of cancers upon necropsy beached whales; even very young whales. I have to also mention the 'bycatch' problem which kills many whales every year, collisions with large ships, fishing apparatus, and, of course, the international hunting of whales from Norway, Japan and Russ , who flew in the face world opinion even after a moratorium was declared seventy years to bring our whales back from over hunting and the brink of extinction. Personally, I find that the intelligence the whale combined with the social bonds of the whale demonstrate this iconic animal as one to be revered and not sacrificed for the Makah's reasons of ~self-esteem, pride and a distraction against alcohol and/or drugs". I actually find this reasoning to be surprisingly immature and even offensive. I can speak of this as I have Iroquois lineage myself. The Indian Culture always revered life and nature, with animals at the top of the list, and only killed animals out of complete necessity, which no longer exists. The American Indians, as you probably know, found the American settlers somewhat amusing, I'm sure, at the concept of a man owning a tree! One also has to consider the sector of the Makah Tribe who are very against hunt and do not want it to take place in the name of their tribe. They have offered that the whale meat and blubber had been wasted and later found floating and caught by fishing nets. They have protested that they do not use whale products and do not like whale products. With all that is going on in our climate in combination with the old existing threats to whales, and the complete lack of justification for the Makah to take a whale, it is my public comment the hunt should not now or ever take place again. The last aerial footage of the whale being taken by the Makah was horrifically brutal; the Northwest Pacific waters turning red with the blood of this terrified, innocent animal who suffered an agonizing death for 27 minutes according to the anchor person. I believe the people of this country who have compassion for other living things should also have a "say" in what happens to our treasured wildlife - not just those who would kill and exploit. And as a last point, if we allow one subculture to resume old traditions, we must allow all subcultures within our culture to restore their traditions and whatever mayhem that would create.

Attachment 2

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Lewinski_08-15-08.pdf	This is to tell you that we are against any form of killing sea mammals on the grounds that “it is cruel” and unnecessary. Let us hope that most people feel the same way.
Livingston_08-06-08.pdf	This treaty must be renegotiated. The "ceremony" of butchering beautiful creatures already in danger of extinction was tragic 150 years ago. Today it is indefensible. Depending on whale hunts for subsistence is not a 2008 reality ..... it's an excuse that hunters of many innocent creatures use to justify their sick form of entertainment.
Marks_06-25-08a.pdf	Thank you for the opportunity to comment on the proposed Makah whale hunt. I fully support the Tribe's request for Alternative 2 in the Draft EIS. I strongly support native treaty rights and especially the Makah right to harvest whales. I hope that you will proceed with all due haste to approve this request and grant the Tribe their authorization.
Marks_06-25-08b.pdf	Thank you for the opportunity to comment on the proposed Makah whale hunt. I fully support the Tribe's request for Alternative 2 in the Draft EIS. I strongly support native treaty rights and especially the Makah right to harvest whales. I hope that you will proceed with all due haste to approve this request and grant the Tribe their authorization.
Marks_06-25-08c.pdf	Thank you for the opportunity to comment on the proposed Makah whale hunt. I fully support the Tribe's request for Alternative 2 in the Draft EIS. I strongly support native treaty rights and especially the Makah right to harvest whales. I hope that you will proceed with all due haste to approve this request and grant the Tribe their authorization.
Mattoni-West_08-13-08.pdf	Treaty or no treaty-----Cultural heritage or no cultural heritage-----Is there not some creative way to celebrate the survival of the Makahs as a tribe without killing whales? Come on now-----The Makahs have made it to the 21st century, Why can't the Makahs help the whales and other endangered species make it thru the 21st also? Why not make December thru May a celebration of living, not killing?
McDermottLetter_071808.pdf	I was recently contacted by Friends of the Gray Whale about their concerns over the deadline for comment on Draft Environmental Impact Statement for Proposed Authorization of the Makah Whale Hunt (DEIS). I am told that the DEIS is a 900 page document with over 800 references. Although a 30 day extension was granted by NMFS, Friends of the Gray Whale contend that reviewing the DEIS simply takes more time than in past versions, and the organization feels that the shorter extension granted was therefore not sufficient. They request a new public comment deadline of Wednesday, October 8, 2008. I have enclosed a copy of their request for a 90 day extension for your information. Your review of their concerns would be most appreciated. Please direct your reply to my District Office at 1809 7th A venue, Suite 1212, Seattle, W A 98101.
McIver_05-16-08.pdf	I am writing to urge that the efforts to kill whales be revoked. The Makah and other tribes have been exploted and damaged and this may be ongoing, but the skills of the 19th century have no place in the 21st century. As skill on the football field does not equate to future success, whaling has no attendant merit. Use of the boats may be a skill to practice but the elder of the previous hunts indicated that the whale meat remained in the freezer until it was no longer viable. The whales are protected and that should stand before all other consideration. The Indian population is devastated by high blood pressure and diabetes. These health issues provoke a concern that perhaps there are other paths to wellness. The organic farming might be a preparation for life that would sustain and revitalize the culture. The current “right” to kill whales aggravated a disdain for the Makah and could be revised with other pursuits that include more mainstream thinking in 2008. It is my hope that perpetuating the environment and regard for the changes that affect us all will be sustained in place of past practices that were grounded in the past.
Moore_06-25-08.pdf	Whales are not indigenous to the WA west coast. Native peoples diets are furthered by those fish that are: salmon, cod-halibut.Fisheries dependent on the local fish ahould be supported in return for a whale – international treaty. If Makah do not support such a fisheries treaties – other tribes would. I expect most tribal elders of the Makah would support such a treaty.

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Nicoletta_07-02-08.pdf	The Makah should NOT be allowed to hunt gray whales. Whales should not be hunted and killed anytime or anywhere by any people. These are socially complex, intelligent mammals whose numbers worldwide have been diminished severely.
NWIFC_08-15-08.pdf	The Northwest Indian Fisheries Commission appreciates this opportunity to provide comments on the Draft Environmental Impact Statement for Proposed Authorization of the Makah Whale Hunt. As you may be aware the Commission is composed of twenty federally recognized Indian tribes with treaty-reserved rights to fish and hunt in Puget Sound or along the Washington coast. These fishing and hunting rights are key components of the culture, economies, and heritage of the Commission's member tribes, including the Makah Tribe. The proposed action crafted by the Makah Tribe (alternative 2) represents a careful and conservative proposal for the resumption of the Tribe's treaty reserved right to hunt whales. The Makah Tribe's proposal provides greater protection for Eastern North Pacific Gray Whales than would be required under the well-established "conservation necessity" principles for state regulation of Indian treaty rights (see discussion at DEIS 1-10-11) and assures that gray whales in the Pacific Coast Feeding Aggregation will continue to be functioning components of the ecosystem. C.f, DEIS at 1-19 (NMFS may not restrict the Tribe's exercise of its treaty right absent showing that MMPA's conservation purpose is not being met). The Commission notes that there are some who argue that the Makah Tribe's decision in the 1920's to stop whaling in order to conserve the species after overexploitation by non-Indian commercial whalers amounts to "abandonment" of its treaty-reserved right to take whales.C.f, DEIS at 1-33. The Tribe's application for a waiver details the historical and contemporary importance of whaling to the Tribe. See DEIS Appendix A at 8-9. The Tribe's decision to stop whaling in the 1920's does not reflect an abandonment of the tradition any more than a farmer' s decision to not divert water when the stream is dry reflects an abandonment of water right. Moreover, the raids by federal agents over the last 50 years searching for whale meat in the homes of Makah tribal members certainly indicates the federal government's belief that the Tribe had not abandoned its tradition. See DEIS at 1-32. Moreover, throughout the Draft the ongoing importance of whaling to the fabric ofMakah culture, ceremony and subsistence is amply demonstrated. The DEIS correctly notes that the tradition of whaling is not unique to the Makah Tribe and that other Pacific Northwest Indian tribes traditionally harvested marine mammals and have expressed relatively recent interest in doing so. See e.g., DEIS at 4-198. Accord United States v. Washington, 384 F. Supp. 312, 372 (W.D .. Wash. 1974). The connection of other treaty tribes to whaling continues to this day. See DEIS at 1-38 (ceremonial involvement of four canoes from various Washington Indian tribes in the landing of whale harvested by Makah Tribe in 1999). Whether or when any other Washington Indian tribe may seek to assert and exercise a treaty-reserved right to hunt whales is entirely speculative and cannot be determined in this NEPA process. While some may attempt to portray the Makah Tribe's request for a waiver as the "tip of the iceberg," the fact remains that the Makah Tribe is uniquely situated and is moving forward on its own. In addition, the evidence before the agency unequivocally indicates that there is no clear cause and effect relationship between granting a waiver and future requests for waivers. DEIS at 4-198 (no evidence that Alaska walrus waiver prompted requests for additional waivers). Accordingly, there is no current basis to assume that granting the Makah Tribe's request for a waiver will influence other tribes to seek to embark on the same pathway. Again, the Commission appreciates this opportunity to provide comments and encourages NOAA Fisheries to continue its efforts to work cooperatively with the Makah Tribe as it seeks to exercise its treaty rights, while assuring that legitimate conservation needs are met.
Oliver_07-07-08.pdf	Thank you for the opportunity to comment on the proposed Makah whale hunt. I fully support the Tribe's request for Alternative 2 in the Draft EIS. I strongly support native treaty rights and especially the Makah right to harvest whales. I hope that you will proceed with all due haste to approve this request and grant the Tribe their authorization.

COMMENTER	COMMENT
Owens_08-14-08.pdf	Please accept these two graphics in “the record” to accompany our e-mailed comments. We did e-mail these too, but they may have been too tiny to decipher. Hope it helps to have these larger versions, that hopefully help make some of our points clearer: - near shore feeding sites - returning whales - hunt locations at feeding sites - large numbers of campers on outer coast in April and May - actual long range of .50 cal. - actual migratory corridor - specific whales (adopted by PCPW) returning year after year to same areas - familial recruitment – whales #43 (mother) and #107 (calf) ATTACHMENT “A” “Whales, campers, and the .50 cal rifle” This graphic is designed to encourage NMFS/NOAA to acknowledge that there are real safety concerns with near-shore whale hunts. Camper data – ONP Resident whales – Cascadia Research Hunt Data – Observer’s report (NMFS) Migratory corridor – (Green et al. 1995) ATTACHMENT “B” “Site fidelity, resident whales, and familial recruitment” All sighting data and ID’s: Cascadia Research
Pierce_05-27-08.pdf	I must strongly object to allowing ANY tribe or group to kill a whale. I will list my reasons for objecting 1--Whales are Gods creatures. 2--Times and situations change. Yes, in 1855 there were many many whales, but times change. 3--If for religious reasons, other fish could be substituted just as churches have changed to grape juice instead of wine. 4--My biggest objection is that the last one taken in 1999 was left to rot---they didn't even eat it. That sickens me. 5--Strange that after 70 years, the tribe suddenly becomes very religious. It seems there are only a few rabble rousers that are pushing this. 6--All of society has to adjust to the changing ways of our world and the Indian tribes are no different, they are Americans and must abide by our laws. Please consider all of the above. I may not have expressed it well, but my feelings run deep.
Quinault_08-18-08.pdf	The Quinault Indian Nation ("Nation") submits these comments in support of the Draft Environmental Impact Statement ("DEIS") for proposed authorization of the Makah Tribe to resume limited hunting of eastern north Pacific gray whales in the coastal portion of the Tribe's usual and accustomed fishing grounds, off the coast of Washington State, for ceremonial and subsistence purposes. The Makah Tribe specifically reserved the right to hunt whales in its treaty signed with the United States in 1855. The Makah people have hunted whales since time immemorial. As a neighboring Tribe, the Nation fully supports the Makah Tribe in the exercise of its treaty whaling rights. Accordingly, we recommend approval of the preferred alternative analyzed in the DEIS authorizing a waiver of the Marine Mammal Protection Act for the Makah Tribe's hunt of gray whales.

COMMENTER	COMMENT
Reid_07-02-08.pdf	We are against the Makah whale hunts. It is not necessary for their diets. I think that they do it for the sport. I hope that they are not allowed to hunt whales ever again.
Renne_07-03-08.pdf	Please do not let the Makah tribes kill any more whales. The fact that it took hours for the whale to die is enough reason. If they are such good hunters, how could they let that poor whale suffer? I remember that last time they all went hunting, many of the Makah people said they didn't even like the taste of the whale meat. What are they going to do with 5 whales? My vote is NO, NO, NO!!!
Roberts_05-14-08.pdf	thanks so much for including public opinion. I just don't understand how we ever got to the point where the whale killing was sanctioned. If you follow international whaling, the Makah "exception" had terrible ripple effects all through the world. end result: more whales than ever being hunted. How proud am I to live in the state of Washington that sponsored the whole thing. the ocean is polluted with every known chemical and physical relentless barriers and threats of freighters and cruisers. It seems like a miracle that they continue to exist at all. I cannot any treaty that should be honored that includes killing whales. It's like the bible (Deuteronomy) suggesting that sons be stoned for disobedience. things change. mostly with the environment, things get worse and worse for the wild life. PLEASE take the opportunity to protect these beings. DO YOUR PART!
Rorabeck-Siler_08-07-08.pdf	I am writing to express my opinion about the Makah Tribe's request to resume whaling. There is no way of humanely killing a gray whale; therefore we should not even be considering the resumption of whaling, for the Makah Tribe or anyone else. Last September the five rogue Makah hunters demonstrated this well. The gray whale suffered in pain for over 10 hours before succumbing to death. This should be the only criteria considered; therefore Alternate I is the only choice, to not allow hunting, period. NOAA chose a staged photo of the Makah "hunters" in the traditional canoe to put on the front of this draft ElS. This photo is a misrepresentation of what has actually taken place on the water in 1999 and in 2007 I was there personally and witnessed the helicopter spotters, power boats and high-powered rifles and the overall lack of "traditional" and "cultural" ways. The gray whales face depleting food sources, depleting ocean conditions, and an increase in human obstacles in their marine environment. They do not need to also deal with an increase of humans shooting at them in the name of·"culture".
Schanzer_07-02-08.pdf	Thank you for allowing us to speak up on behalf of the Pacific Gray whales. This plea is in reference to curtailing the Makah tribe from slaughtering any more whales. Their past has shown your agency how irresponsible they have been in abiding by the moratoriums set and their use of powered technology and overseas sales to Japan contradicts their usual line of "Nation territory, traditions and customs". How has the temporary restriction on hunting affected their righ1B and culture? Maybe their profits went down but during the temporary ban surely there had been positive outcomes as well. For example: whales had a respite and mated more, ecotourism was increased and therefore those businesses and local economies prospered. Perhaps during this ban the Makah tribe found newer, positive ways to be enterprising. Our opinion serves to support the majesty of whales in our oceans for all cultures to enjoy and not just for a single one to exploit Please make this ban permanent.
Shane_05-21-08.pdf	I have lived and worked among the Makah and Qu:l..leute people for over 30 years. I am very supportive of their treaty rights. I do want them to be able to hunt whales but I want that experience to remain sacred and special so I would like the numbers of whales taken to remain very low. If ever there comes a time when people get complacent and the meat is allowed to be wasted or spoil, the public would rise up against the whole idea. I think the hunts should be carefully monitored as was the first one which was such a great success. Taking a whale or two per year would be perfect. I would not like my name attached to my comments in any publication.
Stroble_05-21-08.pdf	Thank you for sending a disk of the DRAFT Environmental Impact Statement for the Proposed Makah Whale Hunt. I have read it and appreciate the document In reviewing the various alternatives, I will have to go with ALTERNATIVE ONE, which essentially does NOT ALLOW ANY HUNTING OF WHALES BY THE MAKAH TRIBE. Although I can appreciate the position of SOME of the tribal members (not all),

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	there is more than one culture to consider here. Besides that of the Makahs, there is also the culture of a more humane and modem society that is sincerely troubled by the taking of whales for reasons that do not seem to me to be in any way essential. Attempting to revive the whale hunt is NOT going to bring back the "Old times• for native people. The reality is that this Is a different time and place with very different values. I believe the tribe would do themselves a great service to face this reality and find other ways to honor their past, rather than fruitlessly trying to revive it with a whale hunt. Certainly the idea of eating whale meat is NOT going to revive any kind of robust health, when many other factors are at work in the current trends toward obesity and disease. The method of hunting and the injured whales that are not actually taken make the hunt even more distasteful. Besides the cultures of the Makahs and many of the other people who live in the Northwest and have a very different set of values, there is also the culture of the whales themselves. Biologists are pretty much in agreement that indeed whales are intelligent beings who do share a common culture. I cannot find any truly good reason to allow this hunt and would like to as gently as possible communicate to the tribe, that the hunt is over and will not be allowed in this day. Perhaps there are other ways to compensate the tribe that I could support.
Tagland_06-16-08.pdf	This letter represents my objection to the proposal by the Makah Tribe to hunt and kill gray whales or any other whale they may suggest is their right to kill as result of a long cultural tradition and a treaty. The Makah Tribe's desire to kill up to 20 gray whales at a rate of five whales every year for four years is a preposterous request as would be a request to kill even one gray whale. In 1999 this tribe killed a gray whale, their first kill I believe in about 70 years. At that time I wrote letters in opposition to the Tribe's stand on their rights in this arena. I believe they have no rights to kill a whale in today's world. I have not read their 900 page Environmental-Impact Statement. Over the years I have read a few EIS's prepared by developers and found that to support their objectives they often made shallow, even devious statements some outright lies. I cannot imagine that 900 pages are required to justify whaling by an Indian tribe. Such a document will require a thorough analysis to insure that it substantially reflects the Makah Tribe's place in today's world and if it does I do not believe they can justify that a whaling tradition they relied upon many years ago is germane to the Tribe's existence in the United States in this century. More important than statements made in an EIS are the changes mankind has experienced, for example, in at]east the past 200 years. In the distant past the Indians, and particularly in this case the Makah Tribe, lived off the land. They lived in handmade structures using poles cut from trees and animal skins. A medicine-man provided medical care. They fought with nearby tribes to insure their survival. They killed deer, bear and other animals for food. They constructed a large canoe, rowed by Braves, found a whale at sea, killed it with great difficulty using spears made from tree branches, towed the whale to shore by rowing their canoe. The Tribe cut up the whale for food because at that time the nutrition received was essential to the survival oftheir people. At that time the Makah's were real Indians. Today the Makah's are not the Indians of Yore. The world has changed. In the early 1800's when the Makah's needed to kill a whale for their existence the blacks in America were slaves. Today it appears that an African-American may be our next President. Mankind moves on - we don't live in the past. What would be the reaction of the members of the United Nations ifthe Italians restored the Coliseum and reinstated Gladiator "games" for the entertainment of the spectators under the guise of an ancient cultural tradition? When today's Makah's kill a whale their large canoe is towed by a motor boat to the fishing area. They kill the whale with a .50 caliber rifle - more than one shot may be required. Any spears or harpoons are steel and are a secondary weapon in the killing. After killing the whale the large canoe and whale are towed to shore by motor boats. The dead whale is pulled up on the beach by a tractor. This is how they killed and acquired the whale in 1999 and killed their most recent victim. Tell me, where in this scenario is the ancient culture and tradition of a proud people there is none. Today the Makah Tribe are not the Indians of past- they are Americans. My ancestors lived in Norway they were pirates and plundered Europe but I am not a Viking I am an American. I am sure many of the members of the Makah Tribe do not have an Indian name and would be unable to survive off the land in the manner of their ancestors.

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	Keith Johnson, President of the Makah Whaling Commission, certainly has an American name. Members of the Tribe no longer live as the Indians did in the past. They buy food and clothes in stores, any alcoholic beverages come from State Controlled Stores, children are educated in an established school system, sickness is handled in hospitals. I am certain most of these people have a driver's license and a Social Security Number. Their homes are lit by electricity and heated by furnaces. Many Tribes operate casinos today – the financial benefit from this endeavor certainly lifts the Indian people a long way from the lifestyle their ancient traditions would enable them to experience. If the Makah Tribe desires to keep the whaling culture and tradition alive through songs and dances that is an excellent portrayal of their past bravery and skill and I support this action fully, but I do not support a return to whale killing. If a treaty permitting whale killing is still valid the tribe should be asked to accept a termination of the treaty in view of world changes which have essentially voided the applicability of the treaty. If the Makah's do not concur with this approach the terms of the treaty should be abrogated by Presidential Decree. In my opinion the members of the Makah Tribe fighting for the right to kill whales are mavericks, outside the main-stream oftoday's humanity, and if they will not accept where our nation's trends are going they should be confronted directly and dealt with harshly. Harmony between all the peoples of the United States must certainly be our goal. Adherence to achieving our main-stream objectives must be at the forefront of our national will. We as a nation need higher ideals than the Makah's profess. I have been told that some Makah's have said that to ameliorate some of the opposition to their proposal to kill whales whey would only kill migrating whales and would not harm those in residence. This reminds one of the felon out on parole who again stood before a judge charged with assault and robbery of an individual at Pikes Place Market. He plead for clemency because he never violated a resident of Seattle he only attacked tourists. It is my hope that in the resolution of this matter consideration be given to the substance of this letter. I request that a copy of this letter be provided to the Administrative Law Judge charged with considering whether or not the tribe should be granted a waiver from the Marine Mammal Protection Act to allow the hunt. If the Makah's are allowed to hunt whales will such a decision open the door to similar requests from other tribes? It is also my hope that Senator's Murray and Cantwell and Governor Gregoire share my opinions and will express same in this matter. Most certainly their opinion would have considerable weight in this matter.
Temlueull_06-21-08.pdf	According to today's Seattle Times ewspaper the Makah Indian Tribe would like to again hunt gray whales. I am totally against it. It is cruel – unnecessary and a waste. What can they possibly do with all that whale meat/blubber? According to "hearsay" they don't even have enough refrigeration facilities to store it and most goes to waste. It makes one sick!!!
Vittorio_07-03-08.pdf	I appreciate the opportunity to comment on the proposed gray whale hunt by the Makah Tribe. I have reviewed the online sites of the International Whaling Commission, the Marine Mammal Commission, the National Oceanic and Atmospheric Administration, the Bureau of Indian Affairs, The World Wildlife Fund, and carefully reviewed the materials sent to me. My conclusion and comment is two-fold: The first consideration in this decision is the new, and some of the old, threats to whale populations. For the first time in recorded history we stand at an ecological crossroads with global warming, including all of the ramifications of warming seas and the impact increased temperatures will have on our marine life. Whale populations are extremely vulnerable to increasing ocean temperatures and degradation of habitat. Just this week the top NASA scientist and climatologist, Dr. Jim Hansen, declared that global warming is already here and stated the consequences will be felt in many ways including mass extinction, collapse of the ecosystem, and warming, rising seas. Already there is evidence of disruption of whale migratory patterns in search of food. Also, for very important consideration, is the new urgent quest in finding offshore oil and gas in feeding grounds. In addition, scientists have stated that industrial chemicals and run-off pesticides are making our oceans a literal 'chemical cocktail', accumulative in whale blubber and evidenced by cancers in even very young beached whales. In general, for all species of whales, the international hunting of whales (increasing every year) and whales being

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	caught as a "by-catch" product is devastating as well. In particular, and specifically, I have come to learn that the target whale here, the Western North Pacific gray whale's numbers are estimated to be very low. The gray whale has the longest migration of all whales at 12,000 miles per year, always in peril of killer whales who hunt the calf and the mother, in addition to all the above threats which plague all species of marine mammals. In summary, whales are facing extreme challenges for future survival. The second part of my comment and conclusion is the "justification" that the Makah Tribe is offering for the hunting of gray whales in the North Pacific. In their application the Makah have expressed their reasoning for hunting the gray whale primarily would be for "pride, self-esteem, and a reason to abstain from alcohol and drug use." The latter reason given to kill a whale may be considered by people as offensive. This serious taking of a marine mammal and all of the carnage involved with doing that, should not be a temporary distraction from substance abuse. I do understand pride in culture but certainly, in the name of fairness, if America were to change her laws to allow and protect all of the subculture traditions and rituals in this diverse country, we would have to make legal and allow populations of people to resume cock fighting, dog fighting, and animal sacrifice, just to mention a few. It is no longer 1855, the year the Neah Bay Treaty was signed to allow the hunt of the gray whale. Since this time, aside from the real threat of driving these animals to extinction thus declaring a moratorium, we have learned much of the behavior, intelligence, family orientation, and even the nobility these animals demonstrate. I do realize the unemployment problem causing economic hardship in some of the Indian Tribes, which nods to the subtle, but somewhat obvious idea, that the Makah Indian Tribe could turn their economy around; to instead honor the whale that helped them to survive in 1855, and perhaps embark in a business venture of whale watching tours. The Makah are certainly in the right region of the world for the popular and profitable business of ecotourism, with the advantage of their great knowledge of the gray whale and the migratory patterns. I am also aware of the Makah Tribe members who are totally against the resuming of whale hunts and have protested. They do not use or like whale products and have claimed that much of the whale meat is wasted, as in the past they have retrieved whale meat and blubber in fishing nets. As you realize my comment is NOT to allow the gray whale hunt to take place for all the above reasons. I would like to add that I have a great respect for American Indian culture, but I think most would agree that we all come from a subculture, however, needs and times change, we move on, and while still having pride in our heritage, realize what once may have been necessary no longer applies or works to better our lives in this brave new world.
Voight_07-07-08.pdf	Now retired, I have worked as a lineman for some 25 years from Fairbanks to San Diego, Detroit to Portland. During this period I lived likje a hobo in a camper with a dog as a hiking partner. Of all the wonderful wildlife experiences, none approaches the time (in the late 90's) my dog and I had a close (50') encounter with a gray whale near Greenbank on Whidbey Island. Without going into detail here the whale sat offshore in a shallow inlet and made eye contact with us and subsequently charged us playfully as we stood on shore. A man couldn't ask for a more spiritual encounter with another living creature. I will cherish those minutes forever. Although having previously considered the issue of whaling, I felt obligated to uphold the treaty rights of US tribes. Having lived in areas and around those (native and white) who live a subsistence life, I have also accommodated legitimate harvest of wildlife. I have also unfailingly supported the legitimate rights of native people. Nonetheless, the pro-whaling faction of the Makah tribe revulses me. They remind me of a bunch of Alabama rednecks, Idaho NRA members. Men lacking self-confidence needing the prove their masculinity with others' blood. I still understand their anger, bitterness, spite and being a thoughtful, deliberative man am able to overlook their (native) weaknesses, as their culture is shattered. But combined with the sacred life of whales and the unnecessary harvest for subsistence, I advocate rescinding this treaty right. This said, I believe I understand this is not likely or even the issue at hand. Science though does demand that the population be sufficient to certainly withstand any harvest. This brings of Japanese Norwegian Russian whaling. Any whaling by

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	these countries (non-tribal) should trigger serious sanctions by the US people. How disgusting, vicious for such wealthy, supposed civilized people to do such things.
Whichello_08-13-08.pdf	I wish to express my outrage with the proposed NMFS allowance of Makah whale hunting and harassing. It is as reasonable to me as a statement of how many slaves I might have as my ancestral right. As whales, porpoises, and the great apes are recognized as intelligent, communicating animals, and as our American culture deems killing them as wrong, I think it biased to exempt any group from these recognized norms. We disagree with these actions on the part of Iceland and Japan; why would we be so hypocritical as to grant such a "right" to a group in our own country? And it is certain that those who take part in this "right" with modem weapons and disregard for the safety and laws of others, reap a sad harvest of disdain, dislike, and division.
Wiley_05-27-08.pdf	I have read the Draft EIS and other materials included in the May 9, 2008 release from your office and wish to submit the following comments. I am also included a column written by Judith Pine as guest columnist in the May 20, 2008 Seattle P-I. My letter and feelings basically say amen to her position. The Executive Summary of the EIS says: "The Tribe's proposed action stems from the 1855 Treaty of Neah Bay, which expressly secures the Makah Tribe's right to hunt whales." The United States government has abrogated many treaties with the Indians but this, and probably many earlier ones, seem so clear cut that it is difficult to understand why there is any question about honoring it and allowing the Makah's to hunt on their "usual and accustomed fishing grounds." I strongly support their rights and urge NOAA to act in a manner that will fully honor our government's valid treaty with the Makah tribe. The Makah's well reasoned request of February 11, 2008 voluntarily sets limits on their treaty rights which seem very reasonable and generous. I feel that the alternative selected by NOAA should clearly be the one that most nearly accepts and honors this offer.

Attachment 3: 1993 Monitoring Plan

Items in the first column are verbatim from the 1993 monitoring plan, though not all are included in their entirety. The second column describes research undertaken by NMFS and others to address the research activity identified in the first column.

(1) Monitor the status of the gray whale and habitats essential to its survival.	
1.1 Conduct a biennial population survey to include: 1.11 **A survey of the southbound migration for comparison with historical data in the winters of 1993/1994, 1995/1996, and 1997/1998 to assess trends and the level of recovery.**	These surveys occurred (Described in Rugh et al. 1999).). Laake et al. (2009) describe the entire NMML time series and Durban et al. (2010, 2011) detail the most current surveys conducted by SWFSC.
1.12 **Carry out research as needed to determine any potential biases in the estimation of procedures (e.g., offshore distribution, tails of the migration, night-time migration rates).** Research will be conducted to **investigate potential sources of bias in the current survey methodology** and to improve estimation of the correction factors. Currently identified research areas are outlined below.	See below.
Night vs. day rate of passage: **Experiments with a thermal sensor, which allows an observer to detect whale blows at night and day, will be conducted to improve measurement of passage rates of whales during evening and daylight hours.**	This research was conducted (Perryman et al. 1999)
Double-count: The sensitivity of the double-count correction factor to changes in the parameters used in the matching algorithm needs to be studied. The current variance estimate does not include uncertainty in matches and the true variance is likely much larger than the estimated variance. The logistic regression model contains passage rate and distance offshore as covariates that increase the probability of detecting a whale pod (Buckland et al. 1993a). This may indicate that	This research was conducted and is described in Rugh et al. (1999)

the algorithm is more likely to find a match when the distance between whale pods decreases. **Further research is needed on the development of a matching algorithm.**	
Offshore distribution: The aerial survey provides an empirical estimate of the distribution of the offshore distance that whales are travelling. It is possible to use this empirical distribution as a prior distribution to construct an estimator of the probability of missing a whale pod using distance sampling (Buckland et al 1993b). **In the planned aerial surveys, tracklines will be centered closer to Granite Canyon and GPS will be used to obtain more accurate distance measurements than have previously been available.** With this alternative estimation scheme, double-count data will be used to estimate the probability a whale is missed close to shore (< 0.75 nm). Matches between observers are more certain for whales within 0.75 nm because they occur less frequently.	Aerial surveys were conducted and are described in Rugh et al. (1999)
1.2 Estimate population productivity using: 1.21 Data obtained from life history studies, as may be appropriate, such as proportion of mature females that are pregnant taken in subsistence hunts. **A research project has been initiated to reanalyze the past pregnancy rate data** in light of the area and month in which the animals were captured, to determine if the apparent inter-annual decline is real, or an artifact of sampling (see section 4.2). This project is being conducted jointly between SWFS Scientists and Russian scientists closely familiar with the data. These data will be supplemented with information on the length frequency distribution of animals during the northbound migration, using photogrammetric techniques (see section 1.22).	*Joint project with Russian scientists was completed but couldn't locate report.* SWFSC completed photogrammetric studies of whales in the northbound migration. These studies are described in Rugh et al. (1999).

1.22 Data obtained from survey of northbound migration in the spring of 1994 for comparison with cow-calf counts from the early 1980 and the pregnancy data from the Russian subsistence harvest. **The Southwest Fisheries Science Center will conduct a shore-based visual survey of north migrating cows and calves, from 15 March to May 31, 1994. The study essentially will replicate the 1980 and 1981 surveys conducted by Poole (1984a).**	Shore-based northbound calf counts occurred in every year from 1994 through 2012 (Perryman et al., 1999; Perryman and Weller, 2012) and are described in Rugh et al. (1999) and elsewhere.
1.3 Conduct research as needed to determine the dependence of the population on specific areas for feeding and breeding.	See details below.
1.31 **Determine the importance to breeding success of optimum habitat within the calving lagoons along the west coast of Baja California, Mexico.** While it may never be possible to definitively determine the degree of dependence of gray whales on the coastal lagoons of Baja California, recent sightings of newborn calves during the southward fall migration from central California to the U.S.-Mexican border raise question as to necessity of the coastal lagoons as calving and calf-rearing areas for gray whales. It would appear that the lagoons may be preferred habitats for females with calves, but the benefits to calf survival would need to be assessed both inside and outside the lagoon systems. It is assumed that the protected lagoon waters, their lack of predators, and high concentrations of female-calf whales within the lagoons are advantageous to calf survival during the first few months of the calves' lives. One approach to testing this assumption would be to compare calf mortality within lagoon habitats to that outside the lagoon areas along the migration route. For example, one could compare, by radio-tagging the mothers, the survivorship of calves born during migration with those born or newly-born within any of the lagoon systems in Baja California. Looking at calf stranding rates or surveys of calf abundance are too fraught with bias and error to allow valid comparisons.	Dr. Bruce Mate received a grant to radio tag gray whales in the Mexican breeding lagoons during 1996-1999, but received permission from the Mexican government to tag whales in only one lagoon for one year (Mate 1999). Several studies have been conducted in the lagoons since 1999 (Urban et al. 2002; Urban et al. 2007), including a tagging study by Mate (2006).

1.32 Determine the status of benthic amphipod standing stock within the population's summer feeding range in the Bering and Chukchi Seas. **Preliminary information available at the 1990 IWC Comprehensive Assessment of gray whales indicated that the prey resource for gray whales was showing signs of over utilization. This preliminary observation should be followed up with a comprehensive status assessment. This may have been done, or be in progress. The task group should contact benthic ecologists specializing in this topic at the University of Alaska to determine the availability of this information, and if action is required on the part of NMFS.**	Some studies have been done of gray whale prey status in northern feeding areas (e.g., Moore et al. 2003; Grebmeier et al. 2006; Coyle et al. 2007; Pyenson and Lindberg 2011), though there has been no comprehensive assessment of the status of gray whale prey in northern feeding areas.
(2) Continue monitoring the level and frequency of gray whale mortality through small take and commercial fishery exemptions, stranding programs and other activities.	
2.1 Monitor the annual number of strandings by age and sex classes along the west coast and Alaska through the existing stranding networks. Through the regional stranding network coordinator, NMFS' Office of Protected Resources is the recipient of reports from the regional stranding networks throughout the United States. **Once implemented, the gray whale research and monitoring plan will recommend that NMFS regularly solicit and review stranding records for gray whales in those regions in which they occur, and identify any unusual changes in the regional stranding rates.**	Through its stranding network, NMFS has continued to monitor gray whale strandings. These are reported in the stock assessment reports.
2.2 Estimate the number of animals incidentally killed by age and sex classes by fisheries in California, Oregon, Washington, and Alaska. Amendments to the Marine Mammal Protection Act require that incidental takes of marine mammals, including gray whales, be reported to the NMFS by fishermen and other individuals that incidentally "take" them. These records are compiled and reviewed by	This information is reported in the stock assessment reports.

the NMFS' Office of Protected Resources, and any trends in the rate of takes by specific vessels, fisheries, or other sources are assessed and mitigation actions recommended.	
2.3 Monitor the number of animals legally killed and taken under small take exemption authority of the MMPA. As part of this research/monitoring plan, NMFS' Office of Protected Resources will monitor, assess, and report the number, age and sex composition of all gray whales taken under Section 101 (a)(5) of the MMPA.	This information is reported in the stock assessment reports.
(3) Evaluate the results of status determinations for gray whales based on recently developed assessment techniques.	
3.1 Complete the report that presents information on abundance and trends in abundance, based on data that includes estimates from the southbound migration in the winter of 1992/1993. The estimated annual rate of increase of the eastern Pacific gray whale population is 3.3% (CV = 0.4%) over the period 1967/68 -1987/88 (Buckland and Breiwick in press) and the current population estimate is 20,869 (CV = 4.4%), based on the 1987/88 shore count data (Buckland et al. 1993a). The most recent shore count of the southbound migration was made December 1992 –January 1993 and these data will be analyzed to provide an abundance estimate for 1992/93 as well as an updated annual rate of increase.	NMFS has completed a number of reports on gray whale abundance since 1993, including Laake et al. (2009), which included a retrospective analysis of the entire record of southbound counts. Moore et al. (2013) provides updates on counts through 2011.
3.2 Complete the report on status that includes: 3.21 Historical estimates of abundance based on standard back-calculation models. Several researchers (Reilly 1981; Lankester and Beddington 1986; Cooke 1986; Butterworth et al. in press) have demonstrated that gray	It is not possible to reconcile the records of commercial gray whale harvest, the observed growth rate, and the assumption that gray whales were at carrying capacity in 1846, prior to the commencement of commercial hunting (Butterworth et al. 2002). Instead of seeking to estimate a pre-exploitation carrying capacity, Punt and Wade (2012) applied Bayesian analysis to the population

whale population trajectories which pass through a current population estimate and utilize the available historic commercial catch data are inconsistent with the commercial extinction of the stock at the end of the 19th century and with the observed rate of increase of the stock. Cooke (1986) employed a simple back-calculation model using a range of current population sizes and net recruitment rates and demonstrated the problem that others have encountered: all combinations of parameters imply an 1846 population level lower than the current level. Cooke suggested four possible explanations for these results: i) historical catches were underestimated; ii) the recent net recruitment rate or population size has been overestimated; iii) the population was already at a low level prior to 1846; or iv) the recent population increase is not a result of a simple density dependent recovery from previous exploitation. An extensive review of aboriginal whaling for gray whales of the east Pacific stock by Mitchell and Reeves (in press) suggest that the early aboriginal kill may have been on the order of 100% more than documented. This alone, however, does not resolve the above mentioned inconsistency. Butterworth et.al. (1990) determined that a model which incorporates an additional response delay in recovery from exploitation produced unrealistic population oscillations. Consistent results can be obtained if any of the following adjustments are made: 1) the carrying capacity is allowed to increase by a factor of 3 from 1846 to 1988, or 2) the historic commercial catch from 1846 to 1900 is increased by a factor of 1.5 and the annual aboriginal catch prior to the commercial fishery is at least 400. Results appear to be relatively insensitive to values assumed for the biological parameters of the population model (natural mortality rate, age at first parturition, age at recruitment and MSY level) but sensitive to assumptions about data inputs (current population size accuracy and male:female sex ratio assumed for catches).	trajectory to conclude the ENP stock is at the current carrying capacity of its habitat.

3.22 A Bayesian synthesis approach to evaluating the status of the eastern stock of North Pacific gray whales. Raftery et al. (1992) have developed a Bayesian synthesis approach for making inferences from a deterministic population model with many inputs and outputs. Their approach consists of defining a joint prior, or, in their terminology, a pre-model distribution, on the model inputs and outputs for which there is evidence independent of the model. By sampling from the pre-model distribution and using the population dynamics model, a post-model distribution for the parameters is obtained from which inferences can be drawn. They employ the SIR (sampling importance resampling) algorithm to evaluate the posterior (post-model) distribution. Some of the benefits of Bayesian synthesis methodology are 1) reduction in variance of model parameters, 2) joint and marginal probability density functions for all model inputs and outputs are provided, 3) contributions to variance by each factor can be estimated, and 4) new questions of interest can be formulated and answered after the primary analysis is complete. The Bayesian synthesis method is currently set up for bowhead whales and is programmed in the S language. Givens and Punt (pers. comm.) are rewriting the S code in FORTRAN and this should be available in January 1994. Using the available historical catch series and our knowledge of gray whale biological parameters, the Bayesian synthesis program developed for bowhead whales can be modified for use with gray whales.	Punt and Wade (2012) applied a Bayesian analysis to the ENP gray whale abundance estimates to conclude the stock is at the current carrying capacity of its habitat.
(4) Continue monitoring, through participation in the IWC Scientific Committee, the magnitude and composition of the subsistence harvest of gray whales by Russians.	
4.1 Continue participation in IWC Scientific Committee, the SC's subcommittee on Protected Stocks and reviews by the SC on the status of gray whales.	NMFS scientists have continued to participate in the IWC scientific committee gray whale reviews.

4.2 Continue cooperative research with the Russians concerning seasonal and geographic factors that may have biased the apparent downward trend in pregnancy rates of animals taken for subsistence purposes. A research project has been initiated to reanalyze the past pregnancy rate data in light of the area and month in which the animals were captured, to determine if the apparent inter-annual decline is real, or an artifact of sampling. This project is being conducted jointly between SWFS Scientists and Russian scientists closely familiar with the data. The analyses may point to the need for additional research, including collection and analysis of data from future subsistence fishery takes.	*Joint project with Russian scientists was completed but couldn't locate report.*
(5) Monitor the levels of contaminants in gray whales, including organochlorines (e.g., PCBs, chlorinated pesticides) and heavy metals.	
5.1 Collect tissue samples from stranded animals along the west coast and from the Russian subsistence harvest and analyze for contaminant levels. Tissue samples from stranded gray whales will be analyzed for toxic chemical contaminants to assess the distribution of contaminants among potential target tissues, to begin to assess trends in contaminant levels, and in the case of concentrations of chlorinated hydrocarbons in blubber for comparison to concentrations in apparently healthy free ranging whales.	There have been a number of studies of contaminant levels in gray whales (e.g., Krahn et al. 2001; Tilbury et al. 2002; Fossi et al. 2012).
5.2 Refine the method for collecting biopsies from free ranging animals during the northbound and southbound migrations analyze tissues collected for contaminant levels. The continuation of developmental studies is needed to optimize the dart method for collecting biopsy samples from gray whales including the need to sample southbound whales.	Biopsy sampling of gray whales is a methodological staple of most research programs. Existing equipment (Larsen bolts and sampling tips) works very well with gray whales. Contaminant level studies on gray whales have been conducted by a number of investigators (see 5.1)