



Peninsula Citizens for the Protection of Whales

Aug. 10, 2008
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NOAA Fisheries Northwest Region
1201 NE Lloyd Blvd
Suite 1100, Portland, OR 97232

RE: Comments on DEIS – Makah Whaling

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."

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.

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.

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 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!

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. 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 preparatory 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.

Comments on the Draft

- 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.
- 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.
- RE: 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.”
 Comment: 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.
- 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.”
- 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).

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. Consequently, these important violations went unprosecuted. 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.

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 in 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 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 aware of their responsibilities to make secure broadcast prior to initiating whaling operations and to fly the five pennant from whaling vessel 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?”

- 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 permanently risen. A disproportionate number of strikes and struck & lost will undoubtedly affect this small faithful group of 20 or so.
- RE: Strikes (5 year and Annual) 2-11
 Comment: 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 w hales 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”?
- RE: 2.3.3.2.3 Location of Hunt and 2.3.3.2.4 Timing of Hunt
 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.

- RE: Securing and Towing the whale 2-14 ... "The Makah Whaling Commission be able to amend tribal regulations periodically..."
- Comment: 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?
- RE: 2.3.3.2.6 Whale Product Use and Non-Commercial Use and Distribution.
- 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. 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?
- 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 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.

- RE: 3.4.3.1.4 Seasonal Migrations 3-66
 “There are no direct observations that establish the timing of either phase 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.”
- Comment: 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 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.” 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.
- 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.
- 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.

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.

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.

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 factor?

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.

RE:

3.6.3.3 Summary of Economic Effects

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 exercises?” The Tribe should have told the Coast Guard, The National Guard, The FBI, The Clallam County 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?

- RE: 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...”
- Comment: 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 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)
- RE: 3-214 lines 27-32
- Comment: 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?
- RE: 3.10.3.1 Makah Archaeological Resources Connected with Whaling
- Comment: 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 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 Needs Statement 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.”

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 – Olympic National Park Ethnographic Overview and Assessment:

According to information provided for the Indian Claims Commission, the Makah came to Cape Flattery “from 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 (Tatoche)... 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.

RE: 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.”

Comment: 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):

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...”

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?

RE: 3.10.3.5.1 Makah Whaling
 Comment: 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?

RE: HWSI, 2002

Comment: 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 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 Schmitt, 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 Schmitt 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 commentators 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 one 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.

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 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.

- RE: 3.10.3.5.1 Makah whaling, 3-24 “Makah whalers reported enduring intense physical and spiritual training.”
- Comment: 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.
- RE: 3.10.3.5.3 Symbolic Expression of Whaling.
- Comment: This section serves to remind us that most of the world has adopted images of whales in art of every media to symbolize a renewed 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.
- RE: 3.10.3.4 Makah Historic Whaling 3-228 lines 11-13 “Chiefs had two methods of obtaining 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.”
- Comment: 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.
- RE: 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.”

Comment: 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.”

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 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.

RE: 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)

Comment: 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 great need for contaminated whale meat in the diet?

RE: 4.1.1 Alternative 1
 Comment: 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.

RE: 4.1.2 Alternative 2
 Comment: 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?

RE: Allowable by-catch of identified whales (4-6)

Comment: 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. 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.

RE: 4.1.2 Alt2 (4-8)

Comment: 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 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 calves may move off shore where conditions are much more dangerous for the vulnerable calves. NMFS is encouraging an experiment with grim consequences. 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.

RE: 4.3.3.2.1 Pelagic Environment (4-26)

Comment: 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 near 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 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.

RE: 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”

Comment: 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.

RE: 4.4.2.2 (4 – 36) “There is no evidence of familial recruitment in the local survey 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.

RE: PBR of whales in ORSVI Survey Area

Comment: 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 from 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?

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.”

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.

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:

Vessels involved in hunt: (3-275)

- 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)

Vessels involved in whale-watching in Makah U&A:

- One to five vessels out of Neah Bay and Sekiu
- One to five whale watching vessels in Straits
- Small number of kayakers

Behavior of vessels involved in locating and pursuing a kills:

- 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

Behavior of whale watch boats searching for and observing whales:

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

Vessels involved in hunt: attempted approach, harpoon, kill shots.

- 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).

Vessels involved in watching whales in Makah U&A:

- 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.

RE: "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."

Comment: All this uncertainty defies common sense, and available studies by NMFS. Herb Sanborn writes in Gray Whale 5 Year Monitoring Plan 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 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.

RE: 4.4.3 Evaluation of Alternatives

Comment: 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.

- RE: 4.4.3.2.3 Migrating Whales “Migrating whales travel one to two miles offshore on their northward migration...”
- Comment: At 3-67, lines 29-30, the DEIS states: “These sightings farther offshore are consistent with 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.”
- RE: 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.”
- Comment: 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.
- RE: 1.2.2 Treaty of Neah Bay... “Courts liberally construe treaties, resolve ambiguities in the tribe’s favor, and “interpret Indian treaties 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.”
- 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).

- RE: 1-12 “The federal government has a trust responsibility to protect the treaty hunting, fishing, and gathering rights of Indian tribes.”
 1-4.1 “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...”
- Comment: 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?

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.

RE: 4.15 Public Safety – Bystanders

Comment: 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.

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 pursuing, 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.

RE: 4.6 Economics "... potential effects on Clallam County as a whole will not be addressed in this analysis."

Comment: 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. 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 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 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.

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..."

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!

RE: Cumulative Effects 5.1 Context for Analysis

Comments: 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

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.

RE: 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."

Comment: 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?

- RE: "For gray whales in local survey areas, there are no other cumulative effects from those that affect the gray whale stock as a whole."
- Comment: This statement comes without any discussion of the specific habitat threats off Washington's coast that seem to be tied to climate changes.
The following headlines and stories appeared in the Peninsula Daily News:
- "Effects of 'dead zone' unclear. Scientists remain puzzled by low-oxygen levels (off the central Olympic Peninsula coast) "Sept 6, 2006.
- "Coastal ocean suffers from famine" Aug. 14, 2005
- "Research in Pacific reveals its troubles" Acidity rises, oxygen drops. April 7, 2006
These headlines hint at the recurring problems of the "highly productive and nearly pristine" habitat described at 5.3 Marine Habitat and Species.
It seems reasonable to predict that the cumulative impacts of these erratic and poorly understood new problems will have an impact on the prey availability on the coast, a topic unanalyzed by NMFS.
- RE: Cumulative effects on individual whales
- Comment: Along with stress mortality, another cumulative effect on individual whales would be the instilling in these calm and trusting whales a fear and distrust of boats. The problem will go beyond "personality change" and will no doubt result in many faithful whales leaving the Makah U&A and the feeding sites they know so well and pushing 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.
- RE: 5.6 Economics "Given the current economic climate... in Clallam County... no cumulative effects anticipated on the local economy."
- Comment: 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.

RE: 5.7 Environmental Justice

Nowhere in the DEIS have any potentially positive effects of the no-action Alternative on the Tribe been envisioned.

Comment: Envision this: Without whaling sapping the energy, attention and funds of the Makah Tribe, it is possible that the Tribe could come 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?

RE: 5.8 Social Environment

Comments: 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.

RE: 5.11 Aesthetics "... there may be some temporary aesthetic effects to those viewing hunts."

Comments: 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 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.

RE: 5.16 National and International Regulatory Environment
 Comment: 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 these important questions, then NMFS has no business authorizing a Makah hunt and thereby creating a precedent for future requests.

In summary, the following points are reiterated as being some of the main conflicts of interest and deficiencies in the DEIS.

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.

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 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.

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 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?

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.

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.

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.

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 in case 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?

-

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 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

Submitted for: Peninsula Citizens for the Protection of Whales
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Maps and information referenced in comments

Map 1



Map 2

