

ADMINISTRATIVE LAW JUDGE

August 6, 2019

THE HONORABLE GEORGE J. JORDAN

Docket No. 19-NMFS-0001

**REBUTTAL to the DECLARATION of J. SCORDINO**  
**PENINSULA CITIZENS for the PROTECTION of WHALES**

Submitted by Margaret Owens

It should be noted that Jonathan Scordino's Declaration begins with an important omission. The first sentence of his Introduction only partially quotes the only sentence from the Treaty of 1855 that mentions whales, in this way: "The 1855 Treaty of Neah Bay secured to the Makah tribe the **"right of taking fish and of whaling or sealing at usual and accustomed grounds and stations."** " Whether or not the Treaty is relevant in this waiver process, it must be correctly stated. That sentence does not end like that, it continues with, **"... is further secured to said Indians in common with all citizens of the United States** , and of erecting temporary houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands: Provided however that they shall not take shell fish from any beds staked or cultivated by citizens." **PCPW believes that the "in common with" wording is important in many ways, and does have implications for management decisions in regard to killing local gray whales. It seems proper not to leave it out.**

**Scordino pg. 21 "Whale Killing Methods" / safety protocols and training.**

- (1) PCPW response : Whether or not this long section is pertinent to the waiver process, we would respond that **nothing in this long section inspires confidence that the lives and safety of innocent human "bystanders" are an over-arching priority to NMFS or the Makah Tribe.** If it was their top priority, no action alternative other than Alternative 3, off-shore hunt, would be on the table. Participants in the hunt, and those who voluntarily enter the 5 mile

danger zone of the .50 cal weapon, make informed decisions as to whether or not take the various serious risks to life and limb. **It is unconscionable to put the thousands of campers and hikers on the Olympic National Park Wilderness coast strip into the danger zone involuntarily.** There are no public warning protocols described by NMFS or the Tribe. **There is no evidence that NMFS or the Makah Tribe has ever consulted even once with Olympic National Park's Superintendents in the entire 20 years of hunt planning.** The current situation reflects an odd negligence on the part of both parties. **Is there a concern that Olympic National Park leadership, with no higher mandate than public safety, would find a near shore hunt unacceptable ?**

- (2) It may be Mr. Scordino's opinion that plans in place will ensure public safety, but the hunt history of Makah whalers and the .50 cal.-type weapon use is this: **On May 17, 1999, the first two projectiles fired from the motorized boat at the harpooned whale were misses.** Photos show the first bullet hitting the water on the near side of the whale then bouncing over the whale and ricocheting off the water into the air on the other side of the whale , then flying off on an unknown trajectory. The next shot was also a miss. **Where did these two projectiles, able to travel five miles each, end up? No one knows. The shooting took place about ½ mile off shore.**
- (3) During the September 8, 2007 “anger and frustration” hunt, the poor resident whale, ambushed at a well known feeding site inside the Strait, was riddled with a great number of unknown caliber gun shots. The .50 cal.-type weapons were mishandled in the extreme, and one ended up falling overboard. These were not first-time whalers , as this group had the captain and harpooner of the May, 1999 hunt on board, both approved for hunt readiness in 1998. This well known adult female suffered for 10 hours, slowly making her way west until she died and sank in the Strait.
- (4) **Neither the Makah Tribe nor NMFS has the credibility to say that they prioritize the safety of the public.** If so, they would take their own advice : **“..the new DEIS(2015) includes the alternative of an off shore hunt (Alternative 3, Offshore hunt), in which we selected the distance from shore specifically to avoid the potential for someone on shore to be injured by a bullet from the hunt.” (Yates , NMFS Ex. 1-6 pg.410 of 599, NMFS comment to PCPW , DEIS 2008.)**

**Scordino :pg.22, IV Concern of Makah Hunt Causing a Shift in G.W. Distribution**

(5) **PCPW Response:** Of course gray whales follow the best available prey. But no one knows *how* they do it. By sight, by scent, by sound, by communication, by memory ? It is a mystery. A large, complex-brained animal does not survive 30,000,000 years by being at the wrong place at the wrong time to get proper nutrition. There could be factors such as early life imprinting on the various locations that gray whale mothers lead their calves to before weaning. That could be a possibility and another reason, in addition to the fear , harassment ,and stress issues, why all the mothers and calves of the ENP group and subgroup, as well as the WNP mothers and calves should be left completely unmolested in the months of March, April and May in the near shore feeding areas ( the hunt area). Survival of the PCFG for unknown generations , has meant that the transmission of information to each new generation is not, and never has been, left to chance. **What right do NMFS and the Makah Tribe have to interfere with the early life lessons and experiences of these young whales and their mothers? Not enough is known about the ways of these whales. Claims have been made that these whales “are the most studied and understood of all whales”. That may be the case, but it is a meaningless statement in the face of so many unknowns. In 2015 PCPW challenged NMFS to answer the following questions. How many remain unanswered?**

(6) **From PCPW comments to DEIS 2015 :**

- What is the carrying capacity of the PCFG range ? ( Unknown)
- What is the OSP of the PCFG gray whales? (Unknown)
- Are the PCFG within OSP? (Unknown)
- What is the annual immigration rate to the PCFG? (Unknown)
- Is there sub-structuring in the Baja lagoons? (Unknown)
- How long ago did the PCFG population originate? (Unknown)
- Why did the population originate? (Unknown)
- Why does the PCFG persist? (Unknown)
- What is the average annual calf-count in the Makah U&A? (Unknown)
- What is the status of the food supply in the Makah U&A ? (Unknown)

- How do the PCFG whales find their food? (Unknown)
- What effect will ocean acidification have on their prey? (Unknown)
- What effects are/will water temperature rise have on prey? (Unknown)
- Will increased killer whale predation be a concern to PCFG? (Unknown)
- What is the carrying capacity of the NWA coast / Salish Sea for PCFG gray whales? (Unknown)
- How many adult females are in the MU&A group? (Unknown)
- What is the OSP of the MU&A? (Unknown)
- Is there a population trend for the PCFG? (Unknown)
- How many PCFG females are newly pregnant per year? (Unknown)
- What is the annual bycatch mortality rate for PCFG / MU&A? (Unknown)
- How does human-caused underwater noise impact PCFG communication? (Unknown)
- Are elevated water temperatures in Baja driving gray whales from some lagoons? (Unknown)

**Some of these questions may have been answered by now, but the majority must still represent gaps in knowledge.**

**Scordino Declaration , pg. 23**

“In this section I provide more detail on studies of changes in gray whale abundance and distribution in Chukotka, Russia during years of hunting effort, a summary of a memorandum I provided NMFS in 2007 on the behavioral response of whales in the vicinity of the unauthorized 2007 hunt by Makah tribal members, and my observations of how whales react to being pursued for biopsy sampling. **This information provides further support for NMFS's conclusion in the DEIS that the Makah hunt is not expected to affect the distribution of gray whales at all.**” Scordino Decl.)

**PCPW Response:**

- (7) Is it really surprising or mysterious that gray whales in the Chukchi Sea or in the Strait of Juan de Fuca will return to feed in areas of previous hunt activity? An “area of hunt activity” is “an area of hunt activity “ because it *is a feeding area*. Feeding is the highest priority of any life form, danger or not, particularly after a long fasting period. Humans have and do return again and again to risky, life-threatening locations and

behaviors , whether or not there is food involved. But humans nevertheless have superior adaptive skills . Maybe the ENP whales who are preyed upon at their northern feeding grounds cannot shift to deeper water because there is not enough food in deeper waters. That would be the case for the PCFG whales. Deeper waters are not always the answer, and sometimes hide dangers.

(8) Mr. Scordino continues his argument using the horrible abuse of whale #CRC 175 in 2007 , by noting that the **“...lack of behavioral response of other whales in the vicinity of the hunt was further supported by observers from a high bluff ”**. I did not feel that anonymous, anecdotal “hearsay” was appropriate in this debate, but I *also* heard from observers who were on shore that terrible day. They are experienced observers who were part of a group of local residents who responded to the loud gunfire by calling the Coast Guard and monitoring the incident from the shore. **They reported that whales were “jumping around and splashing and seemed upset ” in the area of the shootings. This group of local residents sees these whales feeding regularly at Seal and Sail Rocks and vicinity. They believe that the whale that was dead 10 hours after the harpoon and rifle attack, was a well known whale that they called “Kelpy”. When an ID was finally made, it was found to indeed be a well known whale with a long sighting history in the MU&A. She was also a known mother, likely of at least two calves. What a loss to the local population, and to the scientists interested in understanding this small unique group of whales.** Scordino exploits this criminal animal abuse and gruesome death to advance his own argument, without a word of regret for the suffering of this mother whale .

(9) **It is certainly *not* a given that all the proposed elements of criminal level harassment will *not* drive the local whales from productive food sites .** Whether for an hour, or a day, or a week , or eventually more. Charles Scammon was the infamous whaler who discovered and plundered the gray whale birthing lagoons of Baja, starting in 1855. It was later known as Scammon's Lagoon. In his book, “The Marine Mammals of the Northwestern Coast of North America”, (1874) **he compares the behavior of the gray whales hunted during the northbound migration on the northwest coast, from both near shore by “North-west Indians”, and farther out from shore by Yankee whalers : “The civilized whaler seeks the hunted animal farther seaward, as from year to year it learns**

*to shun the fatal shore.”*

(10) The 2015 DEIS said : “Harassment associated with hunting could cause whales to avoid or abandon nearshore feeding grounds to less productive areas *where the prey does not provide sufficient food for the needs of the mother and calf.*” (pg.5-39, DEIS 2015)

(11) Scordino Declaration pg. 29 “ In almost all cases I have observed, only the whale that was shot with the biopsy dart reacted, even when other whales were in close proximity to the darted whale, they did not react, with the exception of mother-calf pairs.”

(12) PCPW response: Why on earth does Mr. Scordino feel that it is necessary or appropriate or within the guidelines of his permit to inflict this stress on mother-calf pairs? This is further evidence of the cavalier attitude that exists by the Tribe and by NMFS towards these international treasures, and the future generations of the ENP, WNP , and PCFG whales . These whales do not “belong” to the Tribe or to the U.S. Government. They are a multi-national species, born in Mexico and at home in the waters of the U.S., Canada, and Russia. In fact, Canada seems on the verge of declaring the PCFG gray whales endangered.

(13) Mr. Scordino concludes , “...It is my opinion that approaches, and unsuccessful strikes in the Makah hunt will not affect the distributions of gray whales in the vicinity of the hunt, which will continue to be driven by prey availability.”

PCPW response:

14) What will ultimately impact the number of PCFG whales in the “vicinity of the hunt” and elsewhere, will not *only* be the harassment, but will be the *killing* and removing of the whales that faithfully utilize the Biologically Important Area on the north Washington coast. Familiar whales will disappear from the hunt area , as well as from the Strait of Juan de Fuca , Puget Sound, Oregon, and Canada. This ill-conceived hunt will destroy this priceless scientific, economic and aesthetic regional resource : living breathing whales.

A great many whale watching operations in the Salish Sea and Canada, depend on the early arrivals of the “Puget Sounders” to the inland waters, to get a start on whale watching season. Financial benefits flow also to the businesses in the towns that have spring whale watching offered. And for an uncountable number of residents of the Olympic Peninsula and the entire region, the quality of life

next to the waters of the Salish Sea will plummet. There will be only memories of whales near the beaches . **Known and named whales from up and down the Pacific coast , will inevitably come up missing, only to be ID'ed , dead on the beach at Neah Bay.** This loss will impact decades of scientific studies, as well as end the years of enjoyment of specific whales in many regions. **These are the “non-consumptive” uses of gray whales. The aesthetic values spoken of in the MMPA. There is no “check” on the loss of the local whales. (See Exhibit #4-#5 Whale watching tours in March-April- May to see “Puget Sounders”)**

(15) **Wise words from NMFS' 2015 DEIS :**

**“...so it may take a long time to detect if the proposed action is affecting gray whales as expected under current harvest models. In addition, *killing even a few animals per year (especially over an extended period of time) from the relatively small PCFG could have long-lasting impacts for a group of whales whose population dynamics are not well understood.*” (pg.5-3 Cumulative Effects, DEIS 2015.)**

**This near-shore hunt must never be approved.**

(16) **Scordino Declaration , Migratory Behavior, pg. 49**

Mr. Scordino agrees with the DEIS that “Based on the available literature, the DEIS concluded that it is reasonable to estimate that migrants in the first phase of the northward migration ( the newly impregnated females, followed by males and non-pregnant females and then immature whales ) ,would be in the project area from March to early May,and **migrants in the second phase (mother and calf pairs) would be in the project area from roughly early May through June.**

(17)**PCPW Response:**

**Concern here is with the phase two information. Based on 20 years of observations , photos, sketches, sighting diagrams, and newspaper documentation, mothers and calves arrive on the coast much earlier than early May. Mothers and calves begin showing up in La Push during late March and early April. Timing does change a bit over time, and year to year, but cow-calf pairs must be assumed to be in *the hunt area during March, April and May.* A draft version of NMFS' EA, prepared for the years 2003 through 2007, has this statement and attribution: “Females with calves are observed passing through central California to Oregon from late March through June( Herzing and Mate 1984, Perryman et al. 1999b) and are seen entering the Bering Sea from May through June. (Braham 1984)” PCFG whales, with and without calves, also arrive in the hunt area in March and April. WNP gray whale mothers and calves**

would also hug the shore. These mothers and calves need to be treated with utmost respect and precaution. That is not possible with a near shore hunt in March, April, and May. ( See Exhibits #7, #8, #9, #10)

(18)Scordino Declaration, pg. 52 Movement behavior during feeding season and fidelity to PCFG feeding grounds.

Excerpts from pg.52, Scordino Declaration:

- “From...individuals with high inter-annual fidelity to a small area within the PCFG range”, [to whales only seen once.]

- 48% seen in more than one year “...showing some level of site fidelity.”

-“Some gray whales are consistently observed in the Makah U&A from year to year.”

PCPW response:

(19)Although Mr. Scordino attempts to minimize the importance of the Makah U&A whales in this section, the **above statements extracted from his confusing “statistical analysis” prove that he is not able to completely obscure the truth.** His analysis in this section does not use actual numbers, or actual locations, only percentages and a vague reference to “ a small area within the PCFG range”. **Does he agree with NMFS' finding in the 2015 DEIS that there are an average of 33 gray whales annually utilizing the Makah U&A with some level of fidelity? Those of us who have been watching these whales and seeking out others' sightings in the Strait for 30+ years find that to be a plausible average number, and a number well worth defending.**On pages 42-43 , Mr. Scordino states that Makah U&A whales are “not that faithful”. As evidence, he offers: “ The Makah U&A is only 39 linear km. of shoreline from the southern boundary to Cape Flattery...Calambokidis et al (ex. M-0053) found PCFG do not show site fidelity to areas less than 60 km.

(20) PCPW Response:

- Calambokidis et al designated the coastal portion of the Makah U&A , contiguous with the stretch that turns east into the the Strait and reaching all the way east to Clallam Bay, as a Biologically Important Area for PCFG gray whales. (“ Biologically Important Areas for selected Cetaceans Within U.S. Waters- West Coast Region “, 2015). That creates a much longer stretch of



connected feeding area , which is utilized quite heavily by PCFG whales at all times of the year.

- Additionally, when Mr. Scordino characterizes his charts and graph (pgs.56-57) as illustrating “...the annual variations in the use of the Juan de Fuca Strait portion of the Makah U&A,” **he does so with a huge omission.**

(21)The Makah declared in the 2001 EA , that the Makah U&A extended east into the Strait as far as Tongue Point, many miles east of Clallam Bay. In fact , in 2001 NMFS approved a plan for hunting all the way into the Strait to that location, about 10 miles west of Port Angeles , a heavily utilized Clallam County beach and campground ( Salt Creek County Park), as well as a feeding area for gray whales. This eastward stretch adds on many more miles of gray whale use .

(22) If we then add on the miles east of the Makah U&A, to Port Angeles and further, we add many more coastal miles of feeding sites with whales frequently seen in all months of the year. **This long stretch of the Strait likely more than doubles the 60km referenced by Scordino. In fact , the Washington Department of Fish and Wildlife (WDFW) maps a good sized gray whale feeding area east of Port Angeles on their State Sensitive Species Habitat Map.** This mapped gray whale feeding area, just outside the eel grass beds near shore at Green Point, is part of a true biological hot spot, with many sensitive and endangered species sharing this location with the gray whales. These bottom species are also mapped at Green Point by WDFW: geoduck, hard shell clam, and pinto abalone. We can only assume that the gray whale presence here (also a Washington State Sensitive listed species) enhances the productivity of the area for these other species. ( see **Exhibits #1 map of Strait, Neah Bay to Port Angeles, Exhibit #2, WDEW map of gray whale feeding area at Green Point**)

(23) There is a house on the bluff edge above Green Point that has a great aerial view of this special location, just east of Morse Creek. Successive homeowners at this spectacular location have kept a log of marine mammal sightings since 1982. When Cooke Aquaculture planned a huge fish farm pen-array in this very spot in 2017, PCPW was informed of the sighting log kept at this home, and allowed access to reproduce it. This “citizen science “ was shared by us with

NMFS and other agencies involved with decision making on the Atlantic salmon fish farm issue, to alert them to the problem of locating a fish farm in a gray whale feeding area. As it turned out, Cooke Aquaculture took themselves down when their failing fish pens collapsed and released thousands of Atlantic salmon. But we were left with a much deeper appreciation for Green Point, the gray whales that have been documented there every year, and in every month, since 1982, and the men and women who have kept the log all those years until present. In this extraordinary log, orcas are noted some years, 100's of dolphins once, a minke whale once, but always the gray whales. Usually in groups of two or three. Sometimes a single whale for many days in a row. Sometimes a calf is noted. Some of the longest tenures are in Octobers, Novembers, and Decembers, but sightings span the entire year, including January and February.

- **(24) These are the PCFG whales so faithful to specific areas in the Salish Sea, as well as being at home in the wider region and out to the coast.** Of course they are not robotically predictable. It is always lucky to be looking in the right direction at the right time to see a blow. But dedicated “watchers” improve their odds by knowing some of the whales' favorite places. People know their “back yards”, and truly love the presence of the neighborhood whales. Just by going about their quiet business of living, whales provide aesthetic, economic and environmental benefits to Washington State that are priceless and irreplaceable. They are shared community assets accessible to all. They improve our quality of life simply by exhaling near us. Just as we dread the dwindling of the resident orca pods and mourn every death, we dread the prospect of a “harvest-able quota” of the PCFG gray whales. They are not interchangeable units, they are unique individuals. **Mr. Scordino does not survey the whales in the farther reaches of the Salish Sea. But they are here, they are PCFG whales, and they are all in jeopardy on the coast.**
- **(25) These PCFG whales who utilize the feeding areas in the Strait of Juan de Fuca and the greater Salish Sea, are the PCFG whales who are least likely to show up on Mr. Scordino's spotty surveys. He has stated that his surveys end at Clallam Bay. This**

does throw into question any of his comments about PCFG whales “not seen” in certain years, or PCFG whales “not that faithful” to the local area, or PCFG whales who have seemingly “emigrated” out of the area, etc. Neither he nor NMFS ever knows which whales are deeper in the Strait, or feeding in the Salish Sea waters of south Vancouver island at any particular time.

- (26) Scordino Declaration , pg.63:
- “The loss of whales in the area due to hunting may allow prey to flourish and lead to more whales recruiting into the group thus compensating for losses due to whaling.”
- PCPW Response:
- (27) I don't think any reasonable observer would take this statement seriously as a “bright side” to killing feeding whales in their Biologically Important Areas. The BIA designation means that these are reliable and vitally important areas for the PCFG . Not areas that would benefit from “culling” those very whales who depend on them. There is no indication that the “prey” need human intervention to combat the feeding habits of the PCGF. And there is no way that “more whales recruiting into the group” can ever “compensate” for the losses of PCFG females and their offspring, who are faithfully tied by many generations of use to these BIAs. This statement is simply over the top, and belies the lack of a true science-based justification to do the unthinkable: harass, attack and kill local whales as they feed. A weak and dangerous “theory”. The cultural memories, and knowledge of particular times and places of food , dies with the PCFG whales. That won't be “compensated” for by random “outside “ whales.
- (28) Scordino Declaration, pg. 64:
- “ Each management plan proposed by the Tribe and NMFS since the late 1990s has included measures to minimize impacts of the hunt on PCFG whales.”
- PCPW Response:

- (29) - In NMFS's EA, 2001, a hunt plan with no time or area restrictions was announced. This brought the potential for a hunt **all the way into the Strait of Juan de Fuca to Tongue Point, any time of the year. This plan would have allowed the killing of five gray whales a year, or seven struck (presumed to die). It was understood that this would target PCFG whales, as the most favorable weather in the Strait is in the summer. NMFS proclaimed that this would have no effect on the gray whale population, “ However, if the Pacific coast feeding aggregation is treated as a separate management unit, then without some type of temporal or further quota restriction, this alternative might exceed the annual average PBR range of 2.08 to 6.78 for the Pacific coast feeding aggregation. “**
- Of course, there was no intent to even propose more protective restrictions to protect the local whales of the Makah U&A. This was truly a “maximized” impact plan , put forward by NMFS and the Tribe, allowing a potential 40 PCFG whales to be killed every five years , with the the 20-30 Makah U&A whales the doomed “fish in a barrel”. “Minimized impacts”? A guaranteed obliteration of these whales.
- The 9<sup>th</sup> Circuit Court took a very stern view of this plan:
- (30) “ There is no disagreement in this case concerning the EA's conclusion that the impact of the Makah Tribe's hunt on the overall California gray whale population will not be significant. What is in hot dispute is the possible impact on the whale population in the local area where the Tribe wants to hunt...Our reasoning in this regard is as follows: The government agrees that a relatively small group of whales comes into the area of the tribe's hunt each summer, and that about 60% of them are returning whales( although not necessarily returning annually). Even if the eastern Pacific gray whales overall or the smaller PCFG group of whales are not significantly impacted by the Makah Tribe's whaling, the summer whale population in the local Washington area may be significantly affected. Such local effects are a basis for a finding that there will be significant impact from the Tribe's hunts...The crucial question, therefore,

is whether the hunting, striking, and taking of whales from this smaller group could significantly affect the environment in the local area.” ( *Anderson v Evans* )

- (31) NMFS's 2008 court-ordered DEIS sadly did not show much more consideration for the fate of local whales. In this version, based on a Makah waiver request, 35 whales could be killed every 5 years, with the number of PCFG whales killed annually based on a formula that could rise quickly with the addition of whales to the PCFG catalog. Starting at 2 per year, or 20 every 10 years, this was not close to being sustainable . If this plan had gone into effect we would certainly have noticed the loss of those 20 whales. There would have been many known individuals gone, “backyard” feeding sites unoccupied, and worst, missing mothers, fewer calves. “Minimized Impacts?”

(32) NMFS's DEIS 2015: There were high hopes that with the new genetics studies regarding the resident whales, and the new findings of some WNP grays migrations east , that NMFS would be pressed to take unprecedented precautions. But the Tribe's new quota demand was for 24 gray whales killed every 6 years , with 42 allowed to be struck. The Tribe described a self-allocated “Annual Allowable Bycatch” (AAB) of three PCFG whales per year, with no strikes counting against that quota. Described in the 2015 DEIS, pgs. 4-71 , Alternative 2, (based on the Tribe's request) , had the potential to kill 36 Makah U&A whales every 6 years. The local whales, potentially “co-managed to extinction” in 6 years by NMFS and the Tribe. Again, where are the “minimized impacts”?

(33) The plan we have in front of us now is summarized on a chart in Yates, NMFS Exhibit 1-10, pg. 22 of 76. A table titled “ Likely and maximum mortality of PCFG whales that might occur under proposed regulations, as compared to the adjusted PBR limit under current conditions “ lays out the grim possibilities. Precaution dictates a close look at the 10 year totals, and an understanding that the maximum PCFG mortality predicted, could actually become reality at any unknown point. The “likely” 10 year kill of PCFG whales will be 16. Over half of the estimated

population of Makah U&A whales. With a full half of that, 8, allowed to be females killed. At maximum, NMFS gives the number 25 for PCFG allowed to be killed in 10 years. Either way, 16 in ten years, or 25 in ten years, this will spell doom for the local whales, as allowable PCFG removals are based on removals from the total population of the PCFG, not on the much smaller number of local (Makah U&A) whales.

(34) NMFS has again disregarded the 9<sup>th</sup> Circuit Court's directives. The judges said this about the local (Makah U&A whales) :

- “The whales' fidelity to specific locations could subject them to differential harvests and depletions if there are unregulated local takes.” ( the judges added emphasis to “local takes”)

(35) Well, there still are unregulated “local takes.” There is no longer even a “ Makah U&A whales ”category mentioned by NMFS, much less special “take regulations”. Where are the “**minimized risks**”? And jumping ahead to pg. 74, Mr. Scordino makes an exceptional claim:

- “ Third, at higher levels of human caused mortality (e.g. 10 animals per year) it is possible that the population dynamic described above, ( ... if the removal of whales results in improved foraging for other whales... ) would off-set removals and result in minimal or no net impacts on the abundance of PCFG whales.”
- PCPW Response:
- (36) This is nonsensical. Why is Mr. Scordino floating the number “**10 animals per year**” ? And he is talking about PCFG whales. Why 10 ? **What does he anticipate? Larger quota demand by the Makah? More tribes requesting quotas? Many more ship strikes and gear entanglements ? Why tout a take of “10 animals per year” as sustainable ? Sustainable ,presumably , in the context of Mr. Scordino's theory that if you kill enough PCFG whales to “improve foraging” for other, “new” PCFG whales , then there**

will be a constant rotation of migrating whales into the feeding/killing areas? The actual PCFG whales are not unlimited in numbers.

- (37) I feel that we are witnessing the birth of a new definition of PCFG gray whales. Not the “old fashioned” genetically distinct PCFG whales, brought and taught by their mothers in unbroken chains of transmitted information perhaps since the end of the last ice age. No, clear them out, and create “improved foraging” for “other whales “. The “new PCFG”. No big genetic history to consider, just random feeders at the Biologically Important Areas of the former PCFG. No strict quotas or precautions need apply, as these are more truly just a few unknowns out of the 22,000 or so. Why not “10 animals per year”? Does NMFS agree with their co-managers on this theory?

(38) Mr. Scordino frequently touts the opinions and methodologies and judgments of IWC committees that he participates in. It would be nice to take for granted that only the *purest science-based decisions* are made at the IWC. But **the IWC is an international organization that is not free from political influence. Political power plays are rampant. The United States is a major influencer on any world stage, including this one. What the U.S. wants will be supported without too much question by smaller “like-minded” nations. And one thing that the U.S. Delegation to the IWC has wanted, since 1996, is an aboriginal subsistence quota for the Makah Tribe that includes a take from the PCFG. But let us remember the words of the Appeals Court on this very topic:**

***(39) “And if we accepted the defendants' view, then we would read the MMPA to disregard its conservation principles whenever in the future the IWC made unknown decisions for unknown reasons about the killing of unknown numbers of whales. We do not believe that Congress subordinated its goal of conservation in United States waters to the decisions of unknown future foreign delegates to an international commission.” (9<sup>th</sup> Circuit Court , Anderson v Evans)***

**(40) The fact that the IWC approved of all the terrible plans proposed by NMFS and the Makah Tribe over the last 20 years, removes all our faith in**

their objectivity or their awareness of the Makah U&A whales referenced so frequently by the 9<sup>th</sup> Circuit Court. The IWC is certainly not beholden to the judgments of U.S. Courts. But neither are U.S. Courts beholden to the opinions of the IWC.

- The local whales are still, and will always be, the inconvenient whales. The only way to preserve them is to take the hunt to the migratory corridor, because these “minimized impacts” offered up by NMFS and Makah Tribe will bring about, in a short time, the extirpation of the local whale families.
- (41) Scordino, pg.72, “NMFS and USFWS Interpretation of Population Stock”  
“Compensation could occur if the removal of(PCFG) whales results in improved foraging opportunities for *other gray whales.*”

**PCPW Response:**

(42) Mr Scordino has repeated this a few different times, so we will again respond. We have seen this rationale for killing the local whales before, at PCPW Response (24). **What Scordino suggests, is basically a culling of the genetically distinct feeding group, allowing their numbers to be cut back over the first ten years or so, while assuming that “other whales” will “compensate” for their loss in the feeding / hunt area. Continually replaceable feeding whales as targets for the hunts is what is hoped for. And an elimination over time of the “inconvenient “ local group of genetically distinct gray whales and the quota headaches they have caused. Does NMFS , or the MMC endorse this strategy? Is this an example of “best available science”?**

(43) For all their contact with these whales, Mr. Scordino and the Tribe place no extra value on these local whales, surely the descendants of the whales known to the Makah's own ancestors. **Mr. Scordino offers us “his opinion” over and over, but he is not an independent scientist, and his opinion is shaped to conform to and bolster up the Tribe's whaling agenda.** If the local whales have made friendly overtures to Mr. Scordino over the years he



has spent near them, we will never hear about it. He has made of himself a hardened enabler of their demise.

(44) **“Western Feeding Group Whales “ pg. 64**

PCPW does not believe that any of this new effort to split the WNP grays into different stock groups is relevant to this hearing, as we will not have a decision in this forum, no matter the opinions. **We do see this as a foreshadowing of an effort to minimize, over time, the importance of any WNP gray whales in the hunt zone. As with the PCFG, minimize their “specialness” . Divide off the “truly endangered” ( who by their definition never come here) from the “not so important” who do come through the hunt area, and who are extremely inconvenience for hunt purposes. Having to stop the even-year hunts for many years after killing a WNP gray whale, just can't be accepted by the Tribe in the long run.**

(45) **Scordino, “MMPA Definition of Stock” , pg. 71**

“The MMPA defines a “population stock “or “stock” as “a group of marine mammals of the same species or smaller taxa in a common spacial arrangement , that interbreed when mature”. **The requirement that the members of the group “interbreed when mature” to be considered a stock is an important component of the definition”. ( Scordino)**

**PCPW Response:**

(46) This is quite a “catch-22” for the PCFG . Many species observe a common-sense law of nature : small populations must not in-breed too much. We see the mother raccoon chase off her male offspring at an early age, while keeping the young females with her. She strictly enforces the banishment. No in-breeding on her watch.

**With the PCFG, breeding habits are not quite clear.** Some PCFG whales are known to migrate south together in groups in December and January, prime breeding times. If gray whales are so “promiscuous”, why wouldn't they mate during migration? Unless they don't. In that case they would be obeying the “higher

calling” of nature, and shouldn't be “de-valued” because of that. **But if they do inter-breed some of the time , then they are fitting the criteria to some unknown extent. Coastal researchers have often reported mating “play” and “practice” among PCFG whales during the summer and fall. If some number of males and females migrate south together, why wouldn't they mate? Satellite tagging data showed that (6) PCFG whales tagged September through December off Oregon, all went to the same Baja lagoon.(Mate, 2010) That puts PCFG females with PCFG males through an entire breeding season.**

**(47) Mating has to happen in December- January, to have births occur in Baja 13 months later. It makes sense that breeding involves a combination of ENP and PCFG male partners, because a small population that exclusively in-breeds, will end up with DNA enfeeblement, and won't stand the test of time. We wouldn't wish this on the small PCFG group.**

**(48)** Not much different than a small human population, living for unknown generations in a “common spacial arrangement”, enabled to survive by cultural transmission of the knowledge of the places, times and methods of food acquisition from generation to generation. As there are almost universal taboos in human societies to minimize incestuous reproduction , so there has, throughout history, been plenty of “external recruitment”: “outside” women ( for the most part), captured or arranged for, to keep small neighboring populations genetically healthy. That doesn't change the value or importance of the transmitted culture that allows survival in a specific, sometimes harsh, environment and maintains a cohesive group. That group would be known as distinctive and unique by the internal transmission of their life-ways, or culture, from generation to generation, not by analyzing the role of “external recruitment”, or the DNA of each group member.

**(49)** In highly intelligent species , like humans and like whales , cultural membership is extremely important for small vulnerable populations. We know what it means for humans. **For a small group of whales like the PCFG, it means the calves learn a**

feeding strategy from the mothers that is specific to our local waters. This cultural memory must be maintained , or gray whales will lose their learned ability to thrive in local waters. The local whales of the Makah U&A are specialized for the Salish Sea and the outer coast. “Outside “ whales will not thrive here, and it would take a very long time for “outside” whales to colonize the Salish Sea.

(50) Ironically, what we have here is a situation within a “common spacial relationship”, where a small group of humans wants to re-enact the feeding methods of their ancestors even though *they no longer need them to survive*, by killing a small group of whales *who still must utilize the feeding methods of their ancestors to survive*.

#### **PCFW Conclusion**

(51) Wading ,for 20 years, through the math and science churned out by NMFS and the Makah Tribe, has been a challenge for the lay people who comprise the “Peninsula Citizens”. Our opinions and beliefs are derived from decades and lifetimes of first-hand observations , LOTS of reading, trying to keep up with “the science”, asking lots of questions, and common sense. **We have come to have extra faith in the findings of scientists not utterly beholden to NMFS or the Makah Tribe. We have observed the seeming desperation to get this hunt justified, manifesting in the increasingly complex mathematical machinations. The “mixing formulas” describing fractions of PCFG whales, are a prime example of just how crazy this has become. And why? Because the Tribe will not accept NMFS' off-shore hunt alternative. That one fact creates every single problem involving the PCFG whales, Makah U&A whales, ENP mothers and calves, PCFG mothers and calves, WNP mothers and calves, harassment in the Biologically Important Areas , potential harms to the Salish Sea Eco-system, the dangerous potential to drive vulnerable and sensitive whales into deeper less-productive waters , the potential loss of the aesthetic joy provided to one and all by the local whales, and the financial harm that will eventually be done to Salish Sea whale watching businesses and tourism in general.**

(32) And as I have previously mentioned, **an off-shore hunt would get the .50 cal-type rifle off the beaches of Olympic National Park. A weapon with a 5-mile range has no place up against the coast. As NMFS has acknowledged, there is no “safety protocol “ for . 50 cal gun use that completely mitigates the dangers inherent in shooting a high powered weapon from a pitching rolling boat at a wounded whale on a foggy coast next to a highly utilized stretch of beach. Thus, NMFS created and analyzed an off-shore hunt. That commitment to public safety has not been heard of since.**

(33) Mr. Scordino has done his best to give his employers what they need: “scientific” justification for the hunt that they want. But “best available science” does not describe a situation where small vulnerable sub-groups , and their ecosystems , must be sacrificed for the murky “benefits” to a very small, well-fed, group of people. It is appalling to observers that a group of people with no need for the food is seeking permission to kill and eat animals who are starving . Not a good legacy for anyone involved.