

UNITED STATES OF AMERICA  
DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

*In re:*

**Proposed Waiver and Regulations  
Governing the Taking of  
Eastern North Pacific Gray Whales  
by the Makah Indian Tribe**

Administrative Law Judge  
Hon. George J. Jordan  
Docket No. 19-NMFS-0001

**DECLARATION OF DJ SCHUBERT  
ON BEHALF OF THE ANIMAL WELFARE INSTITUTE IN SUPPORT OF ITS  
EXPEDITED MOTION TO EXTEND WAIVER PROCEEDING SCHEDULE**

I, Donald John “DJ” Schubert, hereby declare as follows:

1. I am a wildlife biologist and have been employed by the Animal Welfare Institute (AWI) since 2005. I received my bachelor’s degree in wildlife management from Arizona State University in 1983 and, since then, in addition to serving in the U.S. Peace Corps, I have been employed by the U.S. Fish and Wildlife Service, People for the Ethical Treatment of Animals, The Fund for Animals, as a self-employed consultant, and for The Humane Society of the United States.

2. I have been involved in proceedings related to the request of the Makah Tribe to resume whaling since 1996-97. In the late 1990’s and early 2000’s, I prepared for The Fund for Animals substantive written comments on at least two different Environmental Assessments prepared by the National Marine Fisheries Service (NMFS) on whaling by the Makah Tribe, participated in rulemaking processes, including one by the U.S. Coast Guard, on this issue, and assisted in the preparation of the pleadings submitted by plaintiffs to both the Western District of Washington

and Ninth Circuit that addressed legal issues pertaining to the Makah's proposed hunt: *Metcalf v. Daley*, 214 F.3d 1135 (9<sup>th</sup> Cir. 2000) and *Anderson v. Evans*, 371 F.3d 475 (9<sup>th</sup> Cir. 2002). In 2008 and 2015, for the Animal Welfare Institute, I submitted substantive comments on two different Draft Environmental Impact Statements (DEIS) prepared by NMFS on Makah whaling, attended and provided oral testimony on the 2015 DEIS at a public meeting organized by NMFS, and have met with and/or had discussions with whale protection advocates from around the world about this issue, the previous court rulings pertaining to this matter, and the legal process in the U.S. that governs Makah whaling including the National Environmental Policy Act and Marine Mammal Protection Act.

3. In addition, I have attended every meeting of the International Whaling Commission (IWC) since 2006 where I have interacted with members of the Makah Tribe, U.S. government officials, and other delegates about this and other cetacean protection and management issues. Since 2006, the U.S. has sought IWC approval of its quota request for gray whales in 2007, 2012, and 2018. In 2007 and 2018, on behalf of AWI, I opposed the U.S. request to the IWC on the grounds that the Makah Tribe did not qualify for an aboriginal subsistence whaling quota and because the U.S. government was not, due to the court's decision in *Anderson v. Evans*, able to allocate any quota to the Makah Tribe pending its compliance with U.S. laws. In 2012, I was the non-governmental organization representative on the U.S. delegation to the IWC and, pursuant to delegation rules, was not authorized to advocate against a position of the government.

4. I received electronic notification from NMFS of its preliminary decision to issue a waiver of the MMPA to the Makah Tribe, the announcement of the administrative law hearing, and the proposed regulations governing the take of gray whales by the Makah Tribe on April 5, 2019. I subsequently have engaged in extensive efforts to collect new materials, including relevant

scientific studies, published since July 31, 2015 (the deadline for public comments on the DEIS) to determine the grounds for AWI's participation in this process, have participated in multiple calls and exchanged dozens of emails with a number of organizations and colleagues in the United States and in other countries to discuss this matter, and have discussed this matter internally with my colleagues at the Animal Welfare Institute. I have downloaded a number of new reports and scientific studies relevant to the issue, I have asked a colleague to conduct a literature review on the subject particularly to identify any other relevant studies published since 2015, and have been in contact (by telephone or email) with multiple experts. I have also downloaded all of the information made available by NMFS including the full declarations (including exhibits) by four NMFS employees which, in total, contain approximately 4,900 pages of information, including new information, material that I do not believe was previously released to the public, and a number of reports and studies. This new information, which is directly relevant to the issues that AWI would like to include in its direct testimony, is voluminous. While I and others at AWI have been working diligently on this matter since the publication of the notice, continuing to review the new material, we are not in a position to offer fully-informed testimony by the May 20 deadline.

5. I also participated in a call with Mr. Michael Milstein of NMFS on April 19 in which we largely discussed the process-related issues pertaining to the administrative law hearing and the regulations applicable to the hearing. During that call, I expressed concern to Mr. Milstein about what I considered to be the insufficient amount of time to prepare for the deadline (May 20, 2019) for submitting direct, written, testimony. I explained that the short time available would not permit the Animal Welfare Institute or other interested stakeholders an adequate opportunity to fully prepare for and participate in the administrative law hearing, and shared with him a

number of reasons why I thought NMFS should work with Administrative Law Judge Jordan to delay the hearing and reset the associated deadlines. I noted that NMFS had nearly 3 years and 9 months to publish its hearing announcement and proposed regulations since the closure of the comment period on the 2015 DEIS on July 31, 2015, and that the current schedule placed an exceptional burden on AWI which would prevent it from being able to participate fully and effectively.

6. On May 6, 2019, I submitted a letter (attached as exhibit 1) to Mr. Barry Thom, Regional Administrator at the West Coast Regional office of NMFS requesting that NMFS work with Judge Jordan to delay the administrative law hearing and associated deadlines by at least 90 days. As explained in the letter, which was supported by the California Gray Whale Coalition, Cetacean Society International, Green Vegans – The New Human Ecology, the International Marine Mammal Project of Earth Island Institute, Peninsula Citizens for the Protection of Whales, Whale and Dolphin Conservation, and the Whaleman Foundation, an extension was requested until no earlier than November 12, 2019 for the beginning of the hearing while the deadline for submission of direct, written, testimony should be rescheduled to no earlier than August 20, 2019.

7. The letter raises a number of issues that warrant the requested delay. These include: (a) the enormous amount of information, some of which is new or not known to be previously available to the public as well as a number of reports and studies, released by NMFS on April 5, 2019 in the declaration of its four employees and the need for more time to properly review and analyze that information in order to prepare written testimony to submit to Judge Jordan; (b) AWI's submission of a pending request submitted (via FOIAonline.gov) pursuant to the Freedom of Information Act for records that it needs to be able to fully prepare for and

participate in the administrative law hearing (attached as exhibit 2); (c) the conflict between the deadline for submission of written testimony (May 20) and the annual meeting of the IWC's Scientific Committee (May 10-22 in Nairobi, Kenya); (d) why delaying the hearing and resetting associated deadlines would benefit, not harm, all stakeholders interested in this issue regardless of their perspective; and (e) the lack of a logical explanation from NMFS as to why it appears to be acting in haste to conduct the administrative law hearing despite taking over 1,340 days to announce the hearing and publish the proposed regulations after the closure of the comment period on the 2015 DEIS. Given the May 20 deadline for submission of written testimony, AWI requested a response from NMFS to its request to delay the hearing date and reset associated deadlines by close of business on Thursday, May 9, 2019.

8. NMFS responded to this letter on May 9 as requested (attached as exhibit 3). In its response, it indicated that "any requests to delay the hearing" should be submitted directly to Judge Jordan. It also explained that the hearing schedule provided all parties with 45 days to prepare initial direct testimony and 120 days to prepare for the hearing "which is twice the amount of time required by agency regulation. 50 C.F.R. § 228.4(b)(2)." Finally, NMFS claims that "issues proposed to be addressed at the hearing were evaluated in our Draft Environmental Impact Statement (DEIS) on this matter." However, not only is there extensive new information since the DEIS was issued, but the Makah whaling alternative identified in the proposed regulations is new and was not disclosed or analyzed in the DEIS.

9. It is highly prejudicial to AWI's interests to be required to review the nearly 4,900 pages contained in the four declarations and to properly analyze that data for incorporation into written testimony by the May 20 deadline. Furthermore, in addition to the declaration materials, there are new, relevant studies published in the scientific literature that stakeholders must have time to

review in order to provide accurate, substantive, and informed testimony to the benefit of Judge Jordan.

10. Scheduling the May 20 deadline for written testimony to fall during the dates of the IWC Scientific Committee meeting also seriously compromises the ability of stakeholders to work with and identify potential expert witnesses to participate in the hearing as many of the world's leading cetacean experts attend the IWC meeting and simply do not have time during the meeting to collaborate with stakeholders in preparation of written testimony or to prepare written, expert testimony of their own by the May 20 deadline. Moreover, while the full set of scientific papers to be discussed at the Scientific Committee meeting has not yet been released, there are at present at least five papers submitted on gray whales that could be relevant to testimony prepared by stakeholders including AWI. Pursuant to IWC Scientific Committee Handbook - Working Methods of the IWC's Scientific Committee (IWC/67/FA/20), these papers, which may be preliminary or exploratory, are not supposed to be cited outside the context of an IWC meeting until "the author [is notified] at least six weeks before it is cited to ensure that it has not been superseded or found to contain errors." If AWI elects to cite or refer to any of these papers in its written testimony, it will not be able to comply with this policy unless the May 20 deadline is extended.

11. The interests of AWI, which has stated its intention to participate as a party at the administrative law hearing currently scheduled for August 12, will be harmed if the hearing and associated deadlines are not extended. Without an extension, AWI will not be able to properly review all of the new information, including newly published and relevant scientific studies, it will not be able to receive and review the records requested under FOIA to use in preparing its written testimony, and its ability to work with experts to ensure the accuracy and quality of its

own written testimony and to recruit potential experts to submit their own testimony by May 20 in order to participate as expert witnesses at the August 12 hearing will not be possible given conflict with the IWC Scientific Committee meeting.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Executed this 10th day of May, 2019.

A handwritten signature in cursive script, appearing to read "D.J. Schubert".

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DJ Schubert

**EXHIBIT 1**  
**TO DECLARATION OF DJ SCHUBERT**





# Animal Welfare Institute

900 Pennsylvania Avenue, SE, Washington, DC 20003 • [www.awionline.org](http://www.awionline.org)  
telephone: (202) 337-2332 • facsimile: (202) 446-2131

May 6, 2019

Via <https://foiaonline.gov>

## **RE: Freedom of Information Act Request**

To Whom It May Concern:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA”), from the Animal Welfare Institute (“AWI”), a non-profit, public interest, organization whose mission is to promote the welfare of animals by alleviating the suffering inflicted on animals by people. AWI is actively engaged in a number of animal protection issues, including domestic and international wildlife protection, international wildlife trade, cetacean protection, and improving the overall welfare of animals.

### **Records Requested:**

Consistent with its mission, and pursuant to FOIA, AWI respectfully requests immediate production of the following records from the National Oceanic and Atmospheric Administration/National Marine Fisheries Service (“NMFS”). For the purposes of this request, a “record” includes, but is not limited to, correspondence, memoranda, reports, studies, documents, electronic mail, notes, statements, press releases, white papers, social media posts (e.g., Facebook, Twitter, Instagram) and, as applicable, photographs and videotape footage. This request does not include any records made available to the public at:

<https://www.uscg.mil/Resources/Administrative-Law-Judges/Decisions/ALJ-Decisions-2016/NOAA-Formal-Rulemaking-Makah-Tribe/>

or at:

<https://www.fisheries.noaa.gov/action/formal-rulemaking-proposed-mmpa-waiver-and-hunt-regulations-governing-gray-whale-hunts-makah>.

1. All records pertaining to any discussions between representatives of the NMFS (including any consultants) and representatives of the Makah Tribe regarding any matters related to the development and review of the proposed waiver of the MMPA that NMFS has preliminarily determined it will issue to the Makah Tribe (Proposed Waiver) and the development and publication of the proposed regulations governing the hunting of eastern North Pacific (ENP) gray whales by the Makah Tribe in northwest Washington (Proposed Regulations), including records reflecting discussions between NMFS and the Makah Tribe over the new alternative for whaling described in the Proposed Regulations. This request is limited to responsive records prepared, obtained, or that otherwise were in the possession of NMFS from January 1, 2015 to the present.

2. All records pertaining to any discussions between representatives of NMFS (including any employees, representatives, agents, contractors or consultants) and any representative of the State of Washington, state or federal politicians, scientists, other tribal representatives (not including a representative of the Makah Tribe), federal agency personnel (e.g., National Park Service, U.S. Fish and Wildlife Service, Olympic Coast National Marine Sanctuary) regarding any matters related to the development and review of the Proposed Waiver and the development and publication of the Proposed Regulations, including records reflecting discussions between NMFS and any of these other entities regarding the new alternative for whaling described in the Proposed Regulations. This request includes any records reflecting any internal and/or external discussions, including with any Department of Commerce or NMFS lawyers or solicitors regarding whether the new alternative for whaling in the Proposed Regulations required supplemental analysis under the National Environmental Policy Act. This request is limited to responsive records prepared, obtained, or that otherwise were in the possession of NMFS from January 1, 2015 to the present.
3. All records pertaining to internal discussions between and among NMFS employees, contractors, representatives, consultants and/or agents involved in the development of the Proposed Regulations. This request is limited to responsive records prepared, obtained, or that otherwise were in the possession of NMFS from January 1, 2015 to the present.
4. All records reflecting the preliminary determination made by NMFS to issue the Proposed Waiver. This request includes: any records relied on in making this determination; any records documenting discussions and deliberations amongst NMFS employees, representatives, agents, consultants, and/or contractors about the preliminary determination; and any records documenting when (i.e., the date) the preliminary determination was made. This request is limited to responsive records prepared, obtained, or that otherwise were in the possession of NMFS from January 1, 2015 to the present.
5. All records pertaining to discussions between NMFS and representatives of the Marine Mammal Commission related to the development of the proposed rule for regulations governing the taking of marine mammals by the Makah Tribe. This request is limited to responsive records dated from August 1, 2015 to the present but does not include the MMC correspondence to NMFS dated July 11, 2017 or March 13, 2018.
6. All records pertaining to NMFS's deliberations, discussions, meetings, workshops, or other events where NMFS employees (including its scientists), representatives, agents, contracts and/or consultants and any non-NMFS personnel evaluated whether the Pacific Coast Feeding Group (PCFG) of gray whales warrants designation as a management stock under the MMPA. This request is limited to responsive records prepared, obtained, or that otherwise were in the possession of NMFS from January 1, 2005 to the present.
7. All records relied on by NMFS related to the 2015 Draft Environmental Impact Statement on the Makah Tribe Request to Hunt Gray Whales (Draft EIS). This would include all records relied on in preparing the Draft EIS and all records prepared or received since the Draft EIS was published, including all substantive public comments and NMFS's responses to those public comments. This

request is limited to responsive records prepared, obtained, or that otherwise were in the possession of NMFS from February 14, 2005 to the present but does not include substantive comments on the Draft EIS submitted by AWI or any other records that NMFS has already made available as attachments to the declarations submitted by NMFS personnel to support the Proposed Waiver and Proposed Regulations.

8. All records pertaining to the efforts undertaken by NMFS to separate any persons identified as decision-makers for this matter from other NMFS employees, representatives, or contractors involved in the Proposed Waiver and/or the Proposed Regulations. This includes any internal memorandum detailing communications between the decision-makers and other staff and any communications between staff involved in this issue and the decision-makers. This request is limited to responsive records prepared, obtained, or that otherwise were in the possession of NMFS from January 1, 2015 to the present.

9. All records pertaining to any communications between any official, representative, employee, or contractor of NMFS involved in this matter and anyone affiliated with the U.S. Department of Homeland Security, the U.S. Coast Guard, or Administrative Law Judge George Jordan (or any of his staff or aides) related to the decision to select Judge Jordan as the presiding officer for this hearing, to schedule the administrative law hearing for August 12, 2019, the prehearing conference for June 17, 2019, the May 20, 2019 deadline for the submission of written testimony, and the May 6, 2019 date for requesting party designation for the administrative law hearing. This request includes any records reflecting why these dates were selected and what factors, internal or external to NMFS, were taken into consideration in selecting these dates. It also includes any records documenting efforts made by NMFS to ensure that Judge Jordan has no conflict of interest, financial or otherwise, relevant to this proceeding as required by 50 C.F.R. § 228.6(a) to serve as presiding officer in such proceeding.

10. All records reflecting efforts made by NMFS, its employees, representatives, agents, or contractors to consider the precedential impact of the Proposed Waiver on other Native American organizations or tribes, to other whale species and stocks, and to NMFS's management of other marine resources, including those that may be subject to use pursuant to any treaty between the U.S. government and any Native American tribe. This includes any records reflecting NMFS's consideration of the precedential impact of the Proposed Waiver in response to the ruling made in *Makah Indian Tribe v. Quileute Indian Tribe*, 873 F.3d 1157 (9th Cir. 2017), cert. denied 139 S. Ct. 106 (2018). This request is limited to responsive records prepared, obtained, or that otherwise were in the possession of NMFS from January 1, 2015 to the present.

11. All records pertaining to the decision made by NMFS to use the geographic boundaries of the northern California Current ecosystem as basis for its MMPA waiver analysis (see 84 Fed. Reg. 13604, 13613 ["For purposes of the MMPA analysis, we took a precautionary approach of examining the impact of the proposed waiver and regulations on the smaller northern California Current ecosystem. This area also corresponds to the seasonal range of the PCFG."]) instead of the Oregon-Southern Vancouver Island (OR-SVI) or Makah U&A sections of the range of the PCFG gray whales. This request includes any records documenting the basis for this decision, any discussions or deliberations as to which geographic range to use for the basis of the MMPA waiver analysis, and any

records reflecting any analysis conducted by NMFS using the OR-SVI, Makah U&A, or any other area that is geographically smaller than the northern California Current ecosystem.

12. A copy of any request or application for an MMPA waiver, incidental take permit under the Endangered Species Act, or any other request or application to permit the take of Western North Pacific gray whales submitted by the Makah Tribe, its counsel, any Makah tribal member, or any other entity representing the Makah Tribe.

13. A copy of all data collected by and/or in the possession of NMFS, its employees, representatives, agents, consultants and/or contractors pertaining to:

- A. The southbound and northbound migration of gray whales along the west coast of the United States;
- B. Reports of dead gray whales found throughout the entire migratory range of the species and the range of the PCFG gray whales;
- C. The condition of any dead gray whales subject to inspection and/or necropsy by NMFS employees, representatives, agents, or contractors;
- D. The detection, presence, rate of migration, and any evidence of feeding within the Makah U&A or OR-SVI of Western North Pacific gray whales;
- E. The estimated population size, population trend, emigration, immigration, and geographic range of the PCFG gray whales including, but not limited to, PCFG gray whales within OR-SVI and Makah U&A;
- F. Breeding activities of PCFG gray whales within Makah U&A, OR-SVI, or larger spring/summer/fall geographic range.

This request is for all responsive records from January 1, 1995 to the present.

14. All records pertaining to the methodology to be used by NMFS, its employees, representatives, agents, and/or contractors to determine the proportion of PCFG gray whales within the Makah U&A (i.e., that portion of the Makah U&A in which whaling is permitted to be allowed) for the purpose of identifying and counting PCFG whales toward any limits or quotas as contained in the Proposed Regulations.

AWI requests that all responsive records be made available electronically or included on a thumb drive, DVD, or CD and mailed to Mr. DJ Schubert, Wildlife Biologist, Animal Welfare Institute, 202 Cranberry Court, Egg Harbor Township, NJ 08234.

Should NMFS believe that any requested records are, partially or wholly, exempted from release, AWI asks that those exempted records (or redacted portions of records) be specifically identified in NMFS's response to this request. In addition, AWI asks that NMFS provide factual information about each withheld record (or redacted portion of any record) including the date and general description of the record, the specific exemption (or exemptions) being relied on to withhold the information, and a detailed explanation as to how each exemption is applicable to the withheld record (or portion of any

record). The provision of this information will aid in determining if an appeal will be filed should any records be withheld.

### **Transparency and Open Government:**

Upon taking office in January 2009, former President Obama made clear his desire to have a more transparent and open government through two memoranda published in the Federal Register on January 21, 2009. In his memorandum entitled “Transparency and Open Government,” 74 Fed. Reg. 4,685 (Jan. 26, 2009), President Obama stated that his “administration is committed to creating an unprecedented level of openness in Government.” *Id.* at 4,685. In addition, he stated that “transparency promotes accountability and provides information for citizens about what their Government is doing,” and pledged to “take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use.” *Id.* In his second memorandum, entitled “Freedom of Information Act,” 74 Fed. Reg. 4,683 (Jan. 26, 2009), President Obama provided the following guidance to the heads of executive departments and agencies:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, “sunlight is said to be the best of disinfectants.” In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public. *Id.*

This presumption in favor of “openness” was further emphasized in a March 19, 2009, memorandum on FOIA issued by the Office of the Attorney General (“OAG”). As explained in the OAG Memorandum, the presumption of openness has two important implications. The first is that “an agency should not withhold information simply because it may do so legally.” Second, if “an agency determines that it cannot make full disclosure of a requested record, it must consider whether it can make partial disclosure.”

While President Obama is no longer in office, the current administration has not issued any FOIA guidance to executive agencies to date suggesting that the direction provided by the Obama administration including the guidance provided in the March 2009 OAG Memorandum remains instructive to the current interpretation and implementation of FOIA. Notably, despite no overarching FOIA directives to federal agencies, including NMFS, President Trump has proclaimed his

administration to be “the most transparent in history.”<sup>1</sup> AWI expects NMFS to respect and honor the president’s clear intent to make his administration the most transparent in history when it processes this FOIA request.

### **Request for Fee Waiver:**

As a nonprofit organization dedicated to reducing animal suffering caused by humans, and for other reasons articulated below, AWI hereby requests that you waive all fees in connection with this request because this request clearly satisfies the criteria for a waiver of all search and reproduction fees as set forth at 43 C.F.R. § 2.45.

In 1986, Congress revised the fee waiver criteria because it was disturbed by the restrictive interpretation the U.S. Department of Justice had given to the fee waiver provisions in its 1983 guidelines. The fee waiver amendments of 1986 were designed specifically to provide non-profit organizations such as AWI access to government records without the payment of fees. Indeed, as one Congressman explained, the purpose of the amendments was “to make it easier for more requesters, *especially noncommercial requesters*, to qualify for fee waivers.” 132 Cong. Rec. 22 (Oct. 6, 1987) (statement of Rep. Glen English) (emphasis added). Thus, he explained, “the new fee waiver standard should be liberally construed in order to encourage full and complete disclosure of information in the possession of the government that does not require withholding for a public or private interest.” *Id.*

To carry out the objective of liberalizing fee waivers, Congress adopted a multi-tiered fee waiver system. AWI satisfies the two prong test set forth under 5 U.S.C. § 552(a)(4)(A)(iii), as implemented by the Department of Interior’s fee waiver regulations at 43 C.F.R. § 2.45. *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003). This means records responsive to a request will be furnished completely without charge, or at a reduced charge, if the requester demonstrates that:

- 1) Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii).
- 2) Disclosure of the information is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii).

**Disclosure of this information is in the public interest because it will significantly contribute to public understanding of the operations or activities of government agencies, as defined by 43 C.F.R. Part 2, App. D(b).**

NMFS must consider four factors to determine whether a request is in the public interest: (1) whether the subject of the requested records concerns “the operations or activities of the Federal government,” (2) whether the disclosure is “likely to contribute” to an understanding of government operations or activities, (3) whether the disclosure “will contribute to public understanding” of a reasonably-broad audience of persons interested in the subject, and (4) whether the disclosure is likely to contribute

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<sup>1</sup> See: <https://www.foxnews.com/politics/trump-declares-white-house-most-transparent-in-history-after-reports-of-mcgnahn-mueller-talks>

“significantly” to public understanding of government operations or activities. 43 C.F.R. § 2.48(a)(1) – (4). As shown below, AWI meets each of these factors.

**A. The subject of the request concerns “the operations and activities of the government.”**

The subject matter of this request relates to decisions made by NMFS to preliminarily announce its intent to issue a waiver of the Marine Mammal Protection Act (“MMPA”) to the Makah Indian Tribe to permit it to hunt gray whales (Proposed Waiver) and to publish proposed regulations governing the hunting of gray whales by the tribe (Proposed Regulations). The requested records are intended to understand the basis under which NMFS made these decisions and took these actions given the significant controversy surrounding whaling by the Makah Tribe. These records therefore concern clear and identifiable activities of the government. *Judicial Watch*, 326 F.3d at 1313 (“[R]easonable specificity’ is ‘all that FOIA requires’ with regard to this factor.”) (internal quotations omitted).

**B. The disclosure is “likely to contribute” to AWI’s understanding of government operations or activities.**

In *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d at 1286, the 9th Circuit made clear that “[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations.” In this instance, the requested information will allow AWI to understand the evidence relied on by NMFS to preliminarily decide to issue the Proposed Waiver and to support the Proposed Regulations including scientific data, internal discussions, and external correspondence. The information requested will contribute to AWI’s understanding of how NMFS made its decisions and the substantive basis for those decisions. *See Inst. for Wildlife Prot. v. U.S. Fish & Wildlife Serv.*, 290 F.Supp.2d 1226, 1230 (D. Or. 2003) (finding that the FOIA request was informative of government operations because “there is substantial public interest in agency activities relating to endangered species.”).

**C. Disclosure of the requested records will contribute to a reasonably broad audience of interested persons’ understanding the basis of decision made by NMFS to potentially allow the Makah Tribe to hunt gray whales.**

The requested records will contribute to public understanding of NMFS’ role in facilitating the potential hunting of gray whales by the Makah despite the prohibition against such killing in the MMPA. Given the controversy associated with the Makah’s desire to hunt gray whales, understanding the basis for the underlying decisions made by NMFS will be of immense interest to the public. AWI will use the information it obtains from the disclosed records to improve its ability to participate substantively in the ongoing decision-making process, to educate the public about the basis for the decisions made by NMFS, and to share the responsive records, at no charge, with other organizations involved in this decision-making process.

**D. Disclosure is likely to contribute significantly to the public’s understanding of government operations or activities.**

AWI undeniably has the ability to contribute significantly to the public's understanding of NMFS's role in enabling the Makah Tribe to possibly hunt gray whales in the future. AWI is a nonprofit animal protection organization headquartered in Washington, D.C. It has over 25 employees and consultants, including several who work on cetacean protection issues including aboriginal subsistence whaling. U.S. government policies, activities, and data pertaining to its study and management of gray whales and the decisions it has made to issue the Proposed Waiver and Proposed Regulations are of significant concern to AWI.

AWI is not requesting these documents merely for their intrinsic informational value. AWI plans to use the information it obtains to educate the public about how and why NMFS has made the decision to issue the Proposed Waiver and Proposed Regulations. The public is always well served when it knows how government activities have been conducted. *See Judicial Watch*, 326 F.3d at 1314 (“the American people have as much interest in knowing that key [agency] decisions are free from the taint of conflict of interest as they have in discovering that they are not”).

**Obtaining the information is of no commercial interest to AWI.**

Access to government documents, disclosure forms, and similar materials through FOIA requests is essential to AWI's role of educating the general public. AWI, a non-profit organization, has no commercial interest and will realize no commercial benefit from the release of the requested information.

**AWI has a recognized ability to disseminate this information broadly.**

AWI is well suited and equipped to distribute information obtained from the government, including information received in response to FOIA requests, to concerned citizens, advocates, and others throughout the country. For example, AWI routinely distributes information, press releases, reports, and copies of original documents to members of the media to facilitate the preparation of articles on issues that are of interest to the public that pertain to the operations and/or activities of the U.S. government, including NMFS. AWI also routinely distributes, at no charge, its own information, as well as information obtained from other sources, including responsive records obtained via FOIA requests, pertaining to the activities and operations of the U.S. government, including information related to cetacean management, conservation, and hunting, to anyone requesting such information. This includes the public, media, students, other non-governmental organizations, and scientists.

Furthermore, AWI also distributes information to the public and others via its webpage ([www.awionline.org](http://www.awionline.org)). Reports, comment letters, action alerts, press releases, and other materials relevant to operations and activities of the U.S. government, including the operations of NMFS related to the conservation, management, hunting, and threats to cetaceans have been, and will continue to be, added to AWI's webpage to ensure that interested citizens have ready and easy access to the information.



In summary, AWI is well positioned and entirely capable of contributing significantly to the public understanding of the policies, operations, and activities of the U.S. government, including the specific activities and operations of NMFS with regard to its role in potentially authorizing the Makah Tribe to hunt gray whales.

### **Alternative Fee Waiver:**

Aside from AWI's qualifications for a fee waiver due to the significance of the requested materials, AWI alternatively qualifies for a fee waiver under the fee exemption provided for "representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.38 & 2.39. The definition of "representative of the news media" has a well-accepted interpretation, which comes from the U.S. Court of Appeals for the District of Columbia Circuit:

"A representative of the news media is, in essence, a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience." *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

In reaching this conclusion, the Court relied on strong statements by legislators in support of the amendments who argued that the terms be "broadly interpreted if the Act is to work as expected," and extend to "any person or organization which regularly disseminates information to the public," *Id.* at 1386 (quoting 132 Cong. Rec. 14,298 (statement of Sen. Patrick Leahy)), even if it is a public interest group that "might also want the information for other purposes." 132 Cong. Rec. at 27,190.

Under this definition and the judicial interpretation in *Nat'l Sec. Archive*, AWI unquestionably is a "representative of the news media." AWI has extensive and well-exercised means to keep the public informed on the operations and activities of the U.S. government. AWI does not merely obtain information and then contact members of the press to relate that information. Rather, AWI independently analyzes the information, drafts its own reports, comments, and articles on the issues, and disseminates the information broadly through its own publications to members and other interested persons. Thus, AWI has shown a "firm intention . . . to publish" this important information and to make it easily accessible. *Nat'l Sec. Archive*, 880 F. 2d at 1386; *see also Judicial Watch, Inc. v. U.S. Dep't of Justice*, 122 F. Supp. 2d 13, 21 (D.D.C. 2000).

Because of AWI's longstanding interest in policies and activities relating to cetacean conservation, management, and, specifically, aboriginal subsistence whaling, including through its work at the International Whaling Commission, AWI has developed a substantial level of expertise on these issues. Accordingly, AWI commands public attention when it disseminates such information. Given its independent analysis and extensive public dissemination of information pertaining to policies and activities relating to NMFS, cetaceans, whaling, including hunting of whales by indigenous people, AWI clearly meets the criteria for a "representative of the news media."

## **Conclusion:**

In summary, AWI believes that this request satisfies the criteria for fee waiver or reduction for the following reasons:

1) AWI is a nonprofit, public interest organization with Federal Identification Number is 13-5655952. The primary purpose for requesting these records is to obtain information relevant to AWI's work on cetacean protection, management, and, specifically, its interest in the role of NMFA in facilitating whaling by the Makah Tribe. AWI seeks these records to understand the evidence and other considerations that were used by NMFS to publish the Proposed Waiver and Proposed Regulations. AWI does not intend to, and will not, profit commercially from the sale of this information.

2) The disclosure of the requested records would primarily benefit the public. AWI has demonstrated its ability to disseminate to the public the information it acquires on cetaceans and their management, conservation, and threats including whaling. This is achieved by an internationally distributed newsletter (the *AWI Quarterly*), membership letters, briefings, comment letters, and other reports prepared on specific topics and distributed at meetings, by mail, electronically, and via AWI's website, and press releases distributed to extensive and reliable media contacts, as well as through the use of press release distribution services.

In the event that NMFS does not agree to this fee waiver request, AWI requests that it contact AWI before incurring any search, copying, or production fees in excess of \$50.00, as required by 43 C.F.R. § 2.47 to provide it with an opportunity to modify its request to reduce the fee or to appeal such a decision. AWI notes that, if its request for a fee waiver is denied, and it is not treated as a representative of the news media, it is entitled to two hours of free search time and no charge for the first 100 pages of records. *See id.* §§ 2.16(b)(3), 2.17(a)(4).

## **Records Delivery:**

AWI requests that NMFS, in responding to this request, comply with all relevant deadlines and other obligations set forth in FOIA. These obligations include "inform[ing] [AWI] of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions," no later than 20 days after receipt of this request pursuant to 5 U.S.C. § 552(a)(6)(A)(i). *Citizens for Resp. & Ethics in Washington v. FEC*, 711 F.3d 180, 186 (D.C. Cir. 2013).

AWI prefers to receive responsive records in electronic format, where possible. We kindly request an index of provided files. AWI is also willing to accept the requested records on a thumb drive, CD, or DVD should that expedite and simplify fulfillment of this request. Please produce the requested records by e-mailing or mailing them to the address provided below.

If necessary, AWI asks that any responsive records be produced on a rolling basis or as the records become available. This is to ensure that the search for—or deliberation concerning—certain records does not delay the production of others that NMFS has already retrieved and elected to produce.

Upon receipt of the responsive records, AWI will make them available to other cetacean and animal protection and conservation organizations at no cost to such organizations.

Thank you in advance for considering and processing this request. If you find that this request is unclear in any way, please do not hesitate to call me and I will try to clarify the request or otherwise expedite and simplify your efforts to comply with FOIA. You can reach me at (609) 601-2875 or, via email, at [dj@awionline.org](mailto:dj@awionline.org).

Sincerely,

A handwritten signature in black ink, appearing to read "D. Schubert". The signature is written in a cursive style with a large initial "D" and a long horizontal stroke at the end.

DJ Schubert  
Wildlife Biologist  
202 Cranberry Court  
Egg Harbor Township, NJ 08234

**EXHIBIT 2**  
**TO DECLARATION OF DJ SCHUBERT**



# Animal Welfare Institute

900 Pennsylvania Avenue, SE, Washington, DC 20003  
awionline.org phone: (202) 337-2332 fax: (202) 446-2131

May 6, 2019

SUBMITTED VIA ELECTRONIC MAIL (Barry.Thom@noaa.gov)

Mr. Barry Thom  
Regional Administrator  
National Marine Fisheries Service  
West Coast Region  
1201 NE Lloyd Boulevard, Suite 1100  
Portland, OR 97232

Dear Mr. Thom:

On behalf of the undersigned organizations, representing millions of members and supporters worldwide, we respectfully request that the National Marine Fisheries Service (NMFS) ask Hon. George J. Jordan, U.S. Administrative Law Judge (Judge Jordan) to reschedule the August 12, 2019 hearing on the proposed Marine Mammal Protection Act waiver and proposed regulations governing the hunting of Eastern North Pacific gray whales by the Makah Indian Tribe until no earlier than November 12, 2019. NMFS has recently indicated that any changes to the schedule would be at the discretion of Judge Jordan. However, as the agency that appointed Judge Jordan (pursuant to 5 U.S.C. § 3105) to preside over this formal rulemaking proceeding, NMFS has a greater role and degree of influence in the procedural aspects of the hearing than would a regular party to an ALJ proceeding. This conclusion is supported by NMFS' representation, in response to our informal inquiries regarding the timing of the hearing, that it had a role in selecting the hearing date. Thus, NMFS' agreement to extend the hearing would, at the very least, be an important consideration for Judge Jordan.

In addition, if the hearing date is rescheduled as requested, we ask that the date of the prehearing conference and deadlines for informing NMFS if a person desires to be a party at the hearing and for submitting written testimony also be extended by 90 days. The current deadlines for seeking party status and submitting written testimony are May 6 and May 20, 2019, respectively, so, if this request is granted, these deadlines would be reset to August 6 and August 20, 2019, respectively while the date for the prehearing conference would be rescheduled from June 17, 2019 to September 17, 2019.

While we believe that NMFS has the unilateral authority to extend the relevant deadlines, given the short timelines involved and depending on NMFS' response to this request, we may file a motion with Judge Jordan pursuant to 50 CFR § 228.6(b)(3) requesting that he reschedule the hearing date until no earlier than November 12, 2019. To the extent that NMFS continues to take the position that any extension is at the sole discretion of Judge Jordan, we respectfully request that NMFS agree to stipulate to such an extension. In this regard, the undersigned requests that NMFS work with Judge Jordan to

ensure that all interested stakeholders have a fair and equitable opportunity to participate in this important decision-making process.

This request is warranted for the following reasons:

1. NMFS published a notice announcing a hearing on the proposed waiver and regulations governing the taking of marine mammals by the Makah Tribe and an associated notice announcing a proposed rule for regulations governing the taking of marine mammals by the Makah Tribe on April 5, 2019,<sup>1</sup> or 1,343 days since the deadline for public comments on the Draft Environmental Impact Statement on July 31, 2015. Despite taking over 44 months to make a preliminary determination on issuing an MMPA waiver to the Makah Tribe and publishing proposed rules to govern the tribe's hunting of marine mammals, NMFS is now acting with a sense of urgency in its desire to complete the next step in the decision-making process, which is to seek a recommendation from Judge Jordan on its preliminary determination. This process may include an administrative law hearing, which has been scheduled for August 12.<sup>2</sup>

NMFS has failed to provide any explanation for its sudden sense of urgency in this decision-making process. There is no statute, regulation, or policy that requires the hearing to be held on August 12 or for the other deadlines (i.e., May 6 and May 20) to be set only a few short weeks after the notice was published. The only applicable regulation is 50 CFR § 228.4(b)(2), which only requires that the date of the hearing "not be less than 60 days after publication of notice of the hearing."

Considering the significant time that it has taken NMFS to issue the notice on April 5 and based on the following additional information, the requested 90 day delay in the hearing and associated deadlines is warranted.

2. The Animal Welfare Institute, a co-signatory to this letter, submitted (via <https://foiaonline.gov>) an extensive request for records under the Freedom of Information Act (FOIA) related to this issue on May 6, 2019. As noted in the request, AWI intends to share any responsive records received with all of the organizations identified below both to avoid the submission of multiple FOIA requests to NMFS and to ensure that these organizations have access to the records so that they can review, analyze, and potentially include relevant information in any submission that they may provide for consideration at the administrative law hearing. The requested rescheduling of the hearing date and the associated deadlines is needed to provide NMFS with sufficient time to properly and fully respond to the FOIA request.

3. The record made available by NMFS upon publication of its hearing notice and proposed rules is extensive and, given the current hearing date and related deadlines, cannot be adequately reviewed. Additionally, when NMFS published the notices on April 5, it also published four declarations from four different NMFS employees. The declarations and all associated exhibits total almost 4,900 pages. Much,

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<sup>1</sup> See 84 Fed. Reg. 13639 and 84 Fed. Reg. 13604.

<sup>2</sup> As noted in 50 CFR 228.13(a), the presiding officer can determine that a hearing is not necessary.

if not all, of this information is new, as it had not been previously disclosed to the public. These circumstances, in turn, compromise the ability of interested stakeholders, including the undersigned organizations, to engage in substantive and informed participation in the administrative hearing – and further implicate potential procedural due process concerns by compromising the ability of interested stakeholders to fully and meaningfully participate in this formal administrative law process.

Furthermore, if any of the interested organizations, including those identified below, intend to identify witnesses to testify on their behalf at the August 12 hearing, they must identify the witness (or witnesses), provide the witness (or witnesses) with access to the new information, ask the witness (or witnesses) to review the new information and prepare substantive and informed written testimony also by May 20 under the current deadlines. This time frame does not provide sufficient opportunity to review the information and prepare substantive, accurate, and informed testimony and, therefore, a rescheduling of the hearing date by a minimum of 90 days and resetting of the associated deadlines accordingly is warranted.

4. The International Whaling Commission's Scientific Committee's annual meeting is scheduled for May 10-22 in Nairobi, Kenya. Most of the world's leading cetacean experts typically attend this two-week long meeting. Many prepare papers on cetacean management, scientific study of cetaceans, threats to cetaceans and their habitat, cetacean species stock structure, and a wide variety of other cetacean-related subjects for submission and consideration by their peers. One of the Scientific Committee's working groups focuses on bowhead, right, and gray whales, and this working group may consider papers at its upcoming meeting that are directly relevant to the proposed rule on the regulations governing taking of gray whales by the Makah Tribe. The final report of the Scientific Committee's meeting should be published in mid-June.

While it is unknown if the persons responsible for scheduling the August 12 hearing date and the associated deadlines, including the May 20 deadline for submitting direct testimony, were aware of this meeting prior to announcing the current schedule, this schedule could not have been more ill-timed. Not only are employees of some of the undersigned organizations (who are critical to the preparation of direct testimony for those organizations) attending the Scientific Committee meeting, but they will not be able to sufficiently limit their preparations for that meeting to effectively engage in this current decision-making process. Furthermore, other experts who could be identified as witnesses for the purpose of the administrative hearing are also attending the Scientific Committee meeting and, similarly, will be unable to review and analyze information relevant to the hearing and to prepare substantive testimony by the May 20 deadline.

Furthermore, AWI has recently been made aware that there will be papers submitted to the meeting directly relevant to gray whales and to the administrative hearing. Those papers may be posted to the Scientific Committee's website within the next few days but may not be available to cite or even submit as an exhibit to written testimony filed with Judge Jordan until the Scientific Committee's meeting report is published (likely in mid-late June). Even then, the relevant papers may not be available to cite or submit as exhibits without written permission from the authors. The requested delay in the hearing

date would permit such evidence to be reviewed and potentially submitted to Judge Jordan to ensure that he has the best available scientific information available prior to rendering his decision.

It is simply unfair to the undersigned organizations (and likely other individuals and organizations interested in this issue) to expect them to fully and adequately prepare direct testimony and/or to identify expert witnesses to prepare testimony by the May 20 deadline when they may need to rely on their own organizational experts or other experts who are preparing to attend the Scientific Committee meeting. Rescheduling the August 12 hearing until no earlier than November 12 and then resetting the other deadlines accordingly is, therefore, critical to ensuring that all organizations and individuals have a fair and equal opportunity to adequately prepare to participate in the hearing.

5. NMFS has not provided, nor are the undersigned organizations aware of, any compelling reason why this request for rescheduling the August 12 hearing date to no earlier than November 12 and resetting the May 6 and May 20 deadlines accordingly should not be granted. Not only do the foregoing arguments provide compelling justification in support of the request but simple fairness and equity should also compel NMFS to concur with this request. There is no agency, party (or potential party), or other interested stakeholder that would be harmed by granting this request. Indeed, rescheduling the hearing date and resetting the other deadlines as requested would benefit all stakeholders interested in this issue and who may choose to seek an opportunity to participate in the hearing, regardless of whether they support or oppose whaling by the Makah Tribe. Extending the hearing date and associated deadlines would do so by providing additional time for stakeholder review and analysis of relevant information and to prepare substantive direct testimony and/or to identify and solicit direct testimony from potential expert witnesses.

Even members of the Makah Tribe, including those who may qualify to participate in whaling activities, and their supporters will not be harmed by rescheduling the hearing until no earlier than November 12 and resetting the associated deadlines. Considering that: (1) NMFS took 1,343 days to make a preliminary determination to issue the requested MMPA waiver to the Makah Tribe and to announce the August 12 date for the administrative hearing; (2) the courts have blocked the Makah Tribe from resuming whaling since 2000; and (3) since the late 1920s, the Makah Tribe has only legally killed a single gray whale, delaying the hearing date and associated deadlines by at least 90 days will not unduly inconvenience the Makah Tribe. Admittedly the Makah Tribe has demonstrated great patience in allowing the legal and administrative processes related to its request to be completed; processes that will continue long after the administrative hearing component is finished.

For the reasons articulated above, the undersigned organizations request that NMFS ask Judge Jordan to reschedule the administrative hearing on its preliminary decision to issue an MMPA waiver to the Makah tribe and on the proposed rules governing the take of marine mammals by the tribe by, at a minimum, 90 days. If this delay is granted, the other deadlines, particularly the May 20 deadline for the submission of written testimony, should also be adjusted accordingly.



Thank you in advance for considering this request and for providing a written response as soon as practicable to Mr. DJ Schubert of the Animal Welfare Institute at [dj@awionline.org](mailto:dj@awionline.org). In view of the short time frame under the current schedule set by NMFS, we request the courtesy of a response by close of business on Thursday, May 9, 2019. Should you have any questions about this request, please contact Mr. Schubert by telephone, at (609) 601-2875.

Sincerely,



DJ Schubert  
Wildlife Biologist  
Animal Welfare Institute

On behalf of:

California Gray Whale Coalition  
Cetacean Society International  
Green Vegans – The New Human Ecology  
International Marine Mammal Project of Earth Island Institute  
Peninsula Citizens for the Protection of Whales  
Whale and Dolphin Conservation  
Whaleman Foundation

cc: Mr. Steve Stone, National Marine Fisheries Service, West Coast Regional Office

**EXHIBIT 3**  
**TO DECLARATION OF DJ SCHUBERT**



**UNITED STATES DEPARTMENT OF COMMERCE**

National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
West Coast Region  
1201 NE Lloyd Boulevard, Suite 1100  
PORTLAND, OREGON 97232

May 9, 2019

*Via email & U.S. mail*

DJ Schubert  
Animal Welfare Institute  
900 Pennsylvania Ave., SE  
Washington, DC 20003

Brett Sommermeyer  
Sea Shepherd Legal  
2226 Eastlake Ave. East #108  
Seattle, WA 98102

Re: In re Proposed Waiver and Regulations Governing the Taking of Eastern North Pacific Gray Whales by the Makah Indian Tribe; Docket No. 19-NMFS-0001

Dear Mr. Schubert and Mr. Sommermeyer:

This is in response to your letters dated May 6, 2019, requesting a delay of the August 12, 2019, hearing and related deadlines for the above referenced matter.

Pursuant to National Marine Fisheries Service (NMFS) regulations at 50 CFR part 228 and as specified in the April 5, 2019, *Federal Register* notice announcing an agency hearing on this matter (84 FR 13604), NMFS has appointed the Honorable George J. Jordan, Administrative Law Judge, to act as the presiding officer for this matter. *See* 50 C.F.R. § 228.6. Accordingly, any requests to delay the hearing schedule should be directed to Judge Jordan.

Your letters identified, among other issues, the need for additional time to review the NMFS West Coast Region's direct testimony and potential conflicts with scheduled meetings of the International Whaling Commission. While I appreciate your concerns, the hearing schedule as set forth in the April 5, 2019, notice allows all parties 45 days to prepare initial direct testimony and 120 days to prepare for the hearing, which is twice the amount of time required by agency regulation. 50 C.F.R. § 228.4(b)(2). Also, all parties have until July 2, 2019, (unless Judge Jordan sets a different date in the final hearing agenda) to submit testimony to rebut the initial written testimony of NMFS' witnesses, which is around six weeks after the close of the



International Whaling Commission meeting referenced in your letters. *See* 50 C.F.R. § 228.14(a). Finally, the issues proposed to be addressed at the hearing were evaluated in our Draft Environmental Impact Statement (DEIS) on this matter, which was published in 2015, as your letters note. Your organizations provided comments soon after the release of that DEIS, and there has been ample time since then to review issues addressed by that DEIS.

While I anticipate that NMFS would oppose changes to the published schedule, I suggest that you contact Judge Jordan regarding your request at [aljseattle@uscg.mil](mailto:aljseattle@uscg.mil) (note the Hearing Docket Number assigned to this matter: 19–NMFS–0001).

Sincerely,

A handwritten signature in blue ink, appearing to read "Barry A. Thom". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Barry A. Thom  
Regional Administrator

Enclosure: Service List

## Service List

Animal Welfare Institute  
DJ Schubert  
900 Pennsylvania Avenue, SE  
Washington, DC 20003  
Phone: (202) 337-2332  
Fax: (202) 446-2131  
Email: [dj@awionline.org](mailto:dj@awionline.org)

Inanna McCarty  
P.O. Box 792  
Neah Bay, WA 98357

Makah Indian Tribe  
Brian C. Gruber  
Ziontz Chestnut Attorneys at Law  
2101 4th Avenue, Suite 1230  
Seattle, WA 98121-2331  
Phone: (206) 448-1230  
Fax: (206) 448-0962  
Email: [bgruber@ziontzchestnut.com](mailto:bgruber@ziontzchestnut.com)

Marine Mammal Commission  
Michael L. Gosliner  
4349 East-West Highway, Room 700  
Bethesda, MD 20814-4498  
Phone: (301) 504-0087  
Fax: (301) 504-0099  
Email: [MGosliner@mmc.gov](mailto:MGosliner@mmc.gov)

Peninsula Citizens for the Protection of  
Whales  
Margaret Owens  
612 Schmitt Road  
Port Angeles, WA 98363  
Phone: (360) 928-3048  
Email: [pcpwhales@gmail.com](mailto:pcpwhales@gmail.com)

Sea Shepherd Legal  
Catherine Pruett  
2226 Eastlake Ave, East #108  
Seattle, WA 98102  
Phone: (206) 504-1600  
Email: [catherine@seashepherdlegal.org](mailto:catherine@seashepherdlegal.org)

Sea Shepherd Conservation Society  
Catherine Pruett  
P.O. Box 8628  
Alexandria, VA 22306  
Phone: (212) 220-2302  
Email: [catherine@seashepherdlegal.org](mailto:catherine@seashepherdlegal.org)