

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
RINs: 0648-BI58; 0648-XG584

**DECLARATION OF DJ SCHUBERT
ON BEHALF OF THE ANIMAL WELFARE INSTITUTE IN SUPPORT OF ITS
MOTION TO RESCHEDULE HEARING DATE**

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

1. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was originally promulgated in 1973 in Washington, DC. CITES is the only international treaty that regulates the trade in live wildlife and wildlife parts and products in order to ensure that international trade in specimens of wild animals and plants does not threaten their survival. There are currently 183 countries who are signatories to CITES.

2. The treaty establishes three appendices (i.e., Appendices I, II, and III) that are used to provide increasing levels of protection and regulation of international trade in species that qualify for listing based on their population status, exploitation for international trade, and other factors. Although the treaty requires that its parties meet at a Conference of the Parties (CoP) at least once every two years, in the past twelve years, CoP’s have occurred approximately every 2 and a half years. In addition to CoP’s, CITES also has subsidiary committees (e.g., Standing, Animals, and Plants) that meet on a regular basis in between or at CoP’s in order to address scientific issues related to the trade in wildlife and wildlife products (Animals and Plants Committees) and to discuss issues relevant to the interpretation and implementation of the

convention (Standing Committee). In addition to its intersessional meetings, the CITES Standing Committee also meets prior to and on the last day of each CoP. With only a few exceptions, all CITES meetings are open to observer organizations, including international governmental organizations and non-governmental organizations.

3. At each CoP, parties and observers discuss species listing (or delisting) proposals and working documents. The listing (or delisting) of species is accomplished at each CoP making these meetings critically important when seeking to increase protections for species that may be harmed by international trade and to ensure that such trade, if permitted, is regulated, by including them on Appendix I or II of CITES. Working documents generally address the interpretation of the convention as it applies to specific species or wildlife trade issues (e.g., the disposition of confiscated CITES listed species, trade in captive bred CITES listed species) and often include draft resolution or decision texts that are used to guide party implementation of the treaty. The CoP is the supreme decision-making body of the convention in that decisions made at the CoP are key to protecting wildlife in international trade, in ensuring the proper implementation of the convention, and to providing direction to the work of the CITES committees. In turn, the CITES committees seek approval from the CoP for actions it has deemed to be necessary to protect species from unsustainable, unregulated, or illegal international trade and to maintain the integrity of the treaty.

4. AWI attended the plenipotentiary meeting in 1973 and has been represented at every CoP since the first in 1976. Since CoP 14 in 2007, I have been the lead for AWI on CITES related issues and have attended each subsequent CoP including the most recent, CoP 17, in Johannesburg, South Africa in September/October 2016. I also regularly attend meetings of the CITES Standing and Animals Committees.

5. As a result of my 12 years of experience working on CITES issues, I am very knowledgeable about CITES procedures and processes, I have developed strong working relationships with many CITES parties, and I am frequently sought out by colleagues, including those from other organizations, to address CITES related questions. During past CoPs, I have actively engaged with delegates and providing scientific evidence and background information to support our position on both species proposals and working documents, participated in working groups that may be established during a CoP to find solutions on controversial issues, collaborated with colleagues from around the world in formal and informal gatherings/meetings to develop strategies on particular species proposals or working documents, and have participated as a master of ceremonies or a speaker at several side events (events scheduled during a CoP to provide delegates with additional information about particular wildlife trade issues including those under discussion at the CoP). I have engaged in the same or similar activities at the Standing Committee meeting that occurs before each CoP and at Standing and Animal Committee meetings that occur in between CoPs.

6. AWI is also a founding member of the Species Survival Network (SSN) which was established in 1992 and AWI's President currently serves on the SSN Board of Directors. SSN is a coalition of over 100 non-governmental organizations from around the world that is committed to the promotion, enhancement and strict enforcement of CITES. Prior to each CoP, SSN hosts a one-day meeting of its members attending that CoP to discuss many of the species proposals and working documents, identify persons/organizations working on particular issues, develop in-person lobbying strategies, and provide persons who have not previously attended a CoP with an understanding of meeting procedures and rules governing observer participation in the meeting deliberations. AWI actively participates in those meetings and, in the past, I have

been asked to participate in an SSN hosted press conference to discuss specific issues on the agenda and to answer questions from the international media representatives who attend the CoP.

7. At every CoP since 1994, AWI has presented the Clark R. Bavin Wildlife Law Enforcement Award during a reception hosted by Species Survival Network (SSN). This award is named after the late Chief of the U.S. Fish and Wildlife Service who, among his many accomplishments, pioneered the use of covert investigations and sting operations to expose illegal wildlife trade. The award is issued to wildlife rangers, law enforcement officers, police departments, customs agencies, forensic scientists, governmental officials, prosecuting attorney, private citizens, representatives of non-governmental organizations, or others who have engaged in superlative efforts to combat wildlife crime. A number of past award recipients have been honored posthumously because they made the ultimate sacrifice to protect wildlife in their countries. Since the CoP in 2007, I have been coordinating this award program and have participated in the award ceremony alongside the President of SSN and the Secretary-General of CITES. Since the CoP in 2010, I have made a presentation at each ceremony acknowledging the critical importance of all entities involved in combatting wildlife crime to protect global biodiversity.

8. On December 14, 2017, the CITES Secretariat notified all parties and observers that CoP18 would be held in Colombo, Sri Lanka from May 23 to June 3. On February 25, 2019, the Secretariat notified parties and observers that the 71st and 72nd meetings of the CITES Standing Committee would meet on May 22 and June 3, respectively. Documents to be discussed at the CoP began to be posted and made available for parties and observers on January 2019 with the last documents posted in April 2019. For the 71st meeting of the Standing Committee (SC71), documents were initially posted in April or May 2019. In total, 57 species listing (or

delisting) proposals covering over 200 species and over 100 working documents were posted for the CoP while another 29 documents were posted for SC71. In my experience, it takes at least 1-2 months to properly prepare for a CITES CoP and associated meetings.

9. On Easter Sunday, April 21, 2019, a series of terrorist attacks in Colombo and other cities in Sri Lanka resulted in the death of over 250 people. On April 26, 2019, due to the terrorist attacks and ongoing insecurity in Sri Lanka, the CITES Secretariat announced that CoP18 was postponed. At that time, the Secretariat indicated that it would work with members of the CITES Standing Committee and the Government of Sri Lanka to make new arrangements for the meeting. In addition, to ensure the safety and well-being of the conference and all meeting participants, the Secretariat indicated that it was liaising closely with the United Nations Department of Safety and Security

10. On May 17, 2019, the Secretariat posted an update on its deliberations regarding the rescheduling of CoP 18 indicating that a decision would be announced by early June. On June 12, 2019, the Secretariat published a notification announcing the new dates for the CoP (August 17 through August 28) and Standing Committee meetings (August 16 for SC71 and August 28 for SC72) and informing all parties and observers that the meeting would be held in Geneva, Switzerland. These dates create a clear conflict with the current date for the administrative law hearing for consideration of the proposed waiver and proposed rules relevant to whaling by the Makah Tribe particularly considering pre-CoP meetings (e.g., SC 71 on August 16, SSN coalition meeting on August 15, and travel time from the United States to Switzerland.

11. Since the belated announcement of the new dates for the CoP, I am aware of several veteran CITES experts from parties and non-governmental, conservation organizations

who are unable to attend the meeting due to previous work commitments that cannot be changed. This increases the need for others who have CITES experience, like me, to attend the entirety of the CoP and associated meetings to help lobby delegates, participate in meetings, and work to ensure that the outcome of the meeting increases protections for species in need and achieves important conservation objectives.

12. At this particular CoP and SC 71 meetings, there are several agenda items scheduled for discussion during the first few days of the meeting that are of great importance to me and to AWI. These agenda items include trade in sei whale products, Asian and African rhinoceroses, and a proposal for a captive breeding registration for Earth Ocean Farms in Mexico to authorize the commercial trade in captive bred totoaba products scheduled to be discussed at SC 71 on August 16. During the first three days of the CoP there are a number of issues of critical importance to AWI including CITES and rural communities, demand reduction strategies, national laws implementing the convention, wildlife cybercrime, disposal of confiscated specimens, annual illegal trade reports, non-detriment findings, along with species-specific issues pertaining to African lions, African carnivores, leopard hunting quotas, the Banggai cardinalfish, the totoaba, black rhinoceros, great apes, pangolins, and saiga antelope. These are significant conservation and wildlife trade issues that I have worked on for years both within and outside of CITES. Given my expertise, it is important that I participate in the SC 71 and CoP 18, in its entirety, to collaborate with like-minded party delegates and fellow conservationists to secure CITES protections for species in need and to advocate for strengthening the convention including by opposing efforts to undermine its standards.

13. In addition, I am scheduled to speak at a side event on the illegal totoaba trade and its role in causing the extinction of the vaquita porpoise. That event has not been scheduled

yet by the CITES Secretariat but it is my understanding that it will occur on August 17 or 18 as the totoaba agenda item is scheduled to be discussed by the parties on August 19. Furthermore, the ceremony to present the Clark R. Bavin Wildlife Law Enforcement Awards is also likely to occur on August 17, 18, or 19 and it is important that I attend that ceremony to provide remarks to the assembled guests and to honor the award recipients.

14. As noted above, I and AWI have a long-standing history and interest in CITES and my experience and expertise with the convention is of great value when lobbying party delegate and collaborating with like-minded parties and observer organizations to achieve conservation and wildlife trade objectives. AWI and I also have a long-standing history, significant interest, and expertise in the suite of issues related to the proposed waiver, proposed rules, and the administrative law hearing. As explained in my declaration submitted to the court on May 10, 2019 in support of AWI's expedited motion to extend the waiver proceeding schedule, I have worked on this particular issue since the mid-1990s, submitted extensive comments during multiple decision-making processes throughout the history of this issue, collected and am familiar with much of the relevant literature, and assisted in the preparation of the two previous lawsuits challenging the government over the adequacy of previous Environmental Assessment prepared to assess the environmental impacts associated with the government's proposal to permit whaling by the Makah Tribe. In addition, I have attended every meeting of the International Whaling Commission (IWC) since 2006 including those meetings (2007, 2012, and 2018) where aboriginal subsistence whaling (ASW) quotas, including the gray whale quota requested by the U.S. government, were up for renewal. With the exception of 2006, I have also attended all meetings of the IWC's ASW subcommittee as well as associated

meetings where ASW issues were discussed. AWI has been involved in this issue since at least 1999.

15. Given my and AWI's history on this issue and my expertise, I have a strong desire to attend the entirety of the administrative law hearing on this matter both to ensure that my direct and rebuttal testimony is added to the hearing record and also to address questions that I may be asked by any Parties to the case. Furthermore, my participation will be critical in providing assistance to AWI's counsel and to ensure that all of AWI's interests, if relevant to the issues to be discussed at the hearing, are addressed. As I cannot be in two places (Geneva, Switzerland and Seattle, Washington) at the same time and since CoP 18 has already been rescheduled for reasons outside of my control (and cannot be rescheduled again), I am hopeful that the Parties in this proceeding and Judge Jordan can find an alternate schedule for the hearing that will allow me/AWI and all Parties to fully participate in this important event.

16. I am aware of the amount of time that the Makah Tribe has waited for NMFS to conclude this decision-making process. While AWI is not responsible for this lengthy delay, it does not believe that a minimal postponement in the hearing date to accommodate those parties, including myself, who have a conflict with the August 12 start date for the hearing and would be significantly harmed and prejudiced if made to attend the hearing on that date, would cause any substantial harm to the Makah Tribe or any party. AWI, therefore, requests that the start of the hearing be extended until Monday, September 16 to ensure that it (and other parties who also may be harmed by starting the hearing on August 12) are able to properly prepare for and fully participate in the hearing. Based on current information, AWI has no intention to seek any further delays in the hearing date or any of the other deadlines associated with the administrative law hearing process.

17. I would be available to participate in the hearing on September 16 or any other date in September or, if necessary, in October 2019. With the exception of CoP 18 which ends on August 28, I have no existing conflicts during the months of September or October that would prevent my participation in the hearing. Also, I understand that Dr. Naomi Rose, another identified expert from AWI, also has no conflicts in September or October 2019 that would prevent her from attending the hearing.

18. While not ideal for AWI due to logistical and cost concerns, should the court elect to bifurcate the hearing, I would be available to attend the hearing from August 12 to late afternoon on August 14 and then I could return to Seattle for the remainder of the hearing at any date identified by the court in September or October 2019. If this option were selected, I would miss the SSN coalition meeting scheduled for August 15 in Geneva, Switzerland but I would arrive in Geneva in time to participate in SC 71 and CoP 18.

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 24th day of June, 2019.

/s/ Donald J. (DJ) Schubert

Donald J. "DJ" Schubert
(The original signature is on file with the signer.)