

**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

**AWI'S MOTION IN LIMINE TO EXCLUDE REBUTTAL TESTIMONY AND
EVIDENCE**

The Animal Welfare Institute (“AWI”), an animal protection organization with a longstanding interest in the proposed whale hunt at issue in this proceeding, is considered a party in the above-captioned matter. On August 9, 2019, AWI submitted a Motion to Exclude Testimony and Evidence. In that motion, AWI respectfully requested that the ALJ exclude those portions of the testimony and evidence submitted by Drs. Jonathan Scordino, John W. Bickham, and John R. Brandon on behalf of the Makah Indian Tribe. Specifically, AWI noted that the testimony related to whether the Western North Pacific (“WNP”) gray whale stock as currently recognized by the National Marine Fisheries Service (“NMFS”) is properly designated as a single stock that is listed as endangered under the Endangered Species Act (“ESA”) has no bearing on any of the statutory factors (or underlying facts) relevant to whether NMFS may properly issue a waiver of the Marine Mammal Protection Act’s (“MMPA”) moratorium to the Makah Tribe for the take of individuals from the Eastern North Pacific (“ENP”) gray whale stock. Accordingly, such evidence should therefore be excluded as irrelevant to the instant proceeding, consistent with applicable laws, regulations, and the Federal Rules of Evidence.

AWI hereby renews that motion with respect to any rebuttal testimony, or portions of rebuttal testimony, submitted by any party, that disputes NMFS’s current accepted stock

structure for the WNP and ENP gray whales for the same reasons previously stated in its August 9, 2019 Motion. In brief, those portions of the rebuttal testimony related to the status of the WNP gray whale stock in actuality challenges the listing of the WNP stock under the ESA. Such evidence does not have any bearing on whether NMFS has demonstrated by the best available science that all of the statutory criteria for a waiver to issue under the MMPA have been met. Accordingly, as with direct testimony regarding those same issues, such rebuttal testimony should likewise be excluded. *See* 5 U.S.C. § 556(d).

Presented on this 16th day of August, 2019, by:

/s/ Elizabeth L. Lewis

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