

9/19/14 DRAFT
Muckleshoot Indian Tribe and Port of Seattle
Vessel Coordination Program Elements
2014 and 2015 Treaty Fishing

1. Labor and equipment required for fishing access and vessel berthing coordination. The Tribe and the Port agree to continue to work together to ensure treaty fishing access and appropriate vessel coordination associated with access to port berthing facilities. The Port agrees to provide the Muckleshoot Tribe with funds for each fishing season necessary for on-site coordination program staff during chinook, coho, pink, chum, and steelhead fishing activities in the Duwamish Waterway, East Waterway, West Waterway, and Elliott Bay. On-site coordinators and monitoring staff will work with the Port to exchange information and assist with coordination of fishing activity and vessel movement in the Duwamish Waterway, East Waterway, West Waterway, and Elliott Bay associated with cargo/cruise vessel access in to and out of port berthing facilities. The funds provided by the Port will also apply to operational cost of workboats and associated gear (including acquisition, repair, and maintenance) necessary for the coordination program. The period of this vessel coordination program agreement extends from beginning of the coho fishing season on September 7, 2014 through December 31, 2015 unless extended by mutual agreement.
2. Vessel Coordination Program Administration Funding. The Port of Seattle agrees to provide funds towards administration of the Tribe's vessel coordination program described in this agreement for the year 2014 at \$316,250.00. The Port agrees to transmit this amount to the Muckleshoot Indian Tribe as detailed in Element 8 of this Agreement within 15 days of the execution of this Agreement. Furthermore, the Port agrees to fund the administration of the program for one subsequent year (2015) at an amount that will be adjusted for inflation. The adjustment to the previous year's coordination program budget will be equal to the percentage change in the Consumer Price Index, using the national urban index (CPI-U), for the previous calendar year, as published by the U.S. Department of Labor. Funding for year 2015 will be due on or before January 15, 2015 as detailed in Element 8 of this agreement. In the event that the Tribe does not spend the entire administration funding for 2014 or 2015, the Tribe agrees to use the remaining funds for fisheries mitigation purposes.
3. Moorage Accommodation. The Port agrees to provide temporary moorage for two Muckleshoot Indian Tribe coordination program monitoring vessels at Harbor Island Marina, Terminal 102, during the chinook, coho, pink, chum, and steelhead fisheries in Elliott Bay and the Duwamish Waterway.
4. Net moves as a result of operations associated with Port facilities. The Muckleshoot Indian Tribe and the Port agree to continue to exchange accurate and specific fishing net deployment and vessel berthing information with the objective of avoiding and minimizing potential net and vessel conflicts associated with Port facilities. Agreement on resources listed above is intended to build on recent improvements in fishing and vessel coordination. However, based on past experience, it is appropriate to anticipate instances when conflicts between Treaty fishing access and cargo and cruise vessel access in to and out of port berthing facilities may occur. The Port agrees that compensation of \$350 will be provided for moving a set or drift-net to accommodate the arrival or departure of a cargo or cruise vessel at a berth associated with a Port facility. Each net move case requires verification of the incident, including a request for the move from an appropriate vessel operator or port facility

representative. The Tribe will be responsible for documenting, approving, and making payments to affected fishers for valid net move claims under this agreement. This provision applies to the chinook, coho, pink, chum, and steelhead fisheries.

5. Damaged Treaty fishing gear and lost fishing time due to gear damage as a result of operations associated with Port facilities. The Port agrees to provide a funding source to replace damaged fishing gear and compensation for lost fishing time associated with cargo vessel access to berths at port facilities. As with net move claims described in Element 4, the Tribe will also be responsible for documenting, approving, and making payments to compensate fishers for lost fishing time and the cost of actual replacement of all commercial fishing gear and shellfish gear, damaged as a result of cargo or cruise vessel operations associated with the arrival or departure of a vessel at a Port berthing facility. Fishing gear means any equipment used for harvesting and includes vessels for such harvesting (examples include, but are not limited to, nets, legal buoy lights, buoys, anchors, and anchor line). The Port agrees that compensation applies to replacement of set and drift net gear and payment to fishers for two (2) lost days of fishing time, based on the value of the average of the three highest catches recorded for the open fishing area during the period of concern, the day that the gear damage occurred and the following day. For incidents involving shellfish gear damage, 2 days of lost fishing time shall be calculated based on data for lost catch and actual market rate of that catch. As with net move incidents, compensation for damaged fishing gear and lost fishing time requires appropriate documentation, for review and approval by the Tribe.
6. Net Stockpile. To avoid loss of fishing time, the Tribe will maintain a stockpile of pre-hung set and drift-nets before the beginning of each fishing season and use the stockpiled nets to replace nets lost or damaged due to cargo vessel operations associated with Port facilities specific to this agreement. The Port will transfer to the Tribe its current remaining inventory of new pre-hung nets left over from previous coordination agreements to assist with the initial pre-season net-inventory stockpile. The Tribe will begin each annual fishing season with the following gear stockpile: 20 pre-hung nets, subject to the Tribe's specifications. In the event the available stockpile cannot replace damaged gear, or if the gear lost or damaged is shellfish gear, the Port agrees that the fisher should be compensated for the replacement value of the gear from the account established to address claims (Element 7). As with net move incidents, compensation for damaged fishing gear and lost fishing time requires verification of the location of the incident which is claimed to have caused the gear damage, using applicable marine cargo site location plots and cargo/ cruise vessel schedules provided by the Port.
7. Funding for Net Move Claims, Gear Damage/Lost Fishing Time Claims, and Net Stockpile commitments. The Port agrees to provide funding to the Tribe for the purpose of 1) compensating affected fishers for net moves and gear damage/lost fishing time covered by this agreement, and 2) compensating the Tribe for the gear stockpile commitment identified in Element 6 of this agreement. The Port shall provide funds for this provision to the Tribe so that there is an initial balance of \$100,000 at the beginning of each annual fishing season. The Port agrees to replenish funds as needed to fully cover all valid claims. The Tribe will notify the Port when the fund balance reaches \$20,000 or less, so that the Port can provide sufficient funds to replenish the fund to its original account balance. Any unspent funds remaining after all documented withdrawals have been made for an annual fishing season shall carry-over for the next fishing season for this same purpose. At the conclusion of the

annual fishing season, the Tribe will notify the Port of any additional funds needed to replenish the initial account balance prior to the beginning of the next annual fishing season. Any balance-of-funds established for claims processing which remains after addressing any incidents through December 31, 2015 will be returned to the Port of Seattle unless the term of this agreement has been extended by mutual agreement.

8. Funding. The Port agrees to provide funds to the Tribe as follows: (1) Vessel Coordination Program Administration Funding--\$316,250.00 to fund the 2014 Vessel Coordination Program will be due to the Tribe within 15 days following execution of this agreement. Funding for the vessel program coordination administration for year 2015 shall be calculated to include a CPI adjustment, as detailed in Element 2 of this agreement, shall be due by January 15, 2015. (2) Funding for Net Move Claims, Gear Damage/Lost Fishing Time Claims, and Net Stockpile commitments--\$100,000.00 to establish the initial account balance is due within 15 days following execution of this agreement. Replenishment of these funds, as detailed in Element 7 of this agreement, shall be due within 15 days of receipt of an invoice from the Tribe. The Muckleshoot Indian Tribe will be responsible for administration of the funds. The funding payment will be made to the Muckleshoot Indian Tribe: Comptroller, Muckleshoot Indian Tribe, 39015 172nd Avenue Southeast, Auburn, Washington 98092.
9. Summary Reporting of Incidents to the Port. The Tribe agrees to provide a monthly summary report of claims made during the fishing season that includes the number and type (i.e., net move or gear damage) of claims associated with each Port marine terminal. Following all net move, gear loss, and lost fishing time transactions for each fishing season, the Tribe will provide the port with a summary accounting record of incidents, including net moves, compensation for damaged gear, and lost fishing time.
10. Permit Authorization. The Muckleshoot Indian Tribe agrees to transmit a letter of non-opposition for two port-sponsored projects: (1) Pier 34 moorage repair and maintenance project and (2) Terminal 91, Pier 91, Underwater Grading east berth /dredging project. A summary of the scope of these two projects is attached to this agreement. For the Pier 34 moorage repair and maintenance project, the Tribe will transmit a letter of non-opposition to the Port within five business days of execution of this agreement. For the Terminal 91, Pier 91, underwater grading east berth/dredging project, the Tribe agrees not to oppose the issuance of the Corps permit when the public notice becomes available.
11. Previous Commitments to pay for utilities at the Muckleshoot Indian Tribe South River Street Facility. As part of this agreement both parties agree that the Port of Seattle has fully complied with commitments in former agreements to pay for the cost of utilities serving the Muckleshoot Indian Tribe South River Street facility. It is agreed and understood that the Port is no longer responsible for cost of utilities serving the Muckleshoot Indian Tribe South River Street facility. Both parties will work together to ensure that these utility bills are transferred to the Tribe's name for future billing.

A late charge of 1.5% per month on the unpaid balance will be added to any sums not paid when due under the terms of this Agreement.

The fishing gear and vessel coordination program described in this Agreement will take place during each fishing season in order to ensure common use of waterway areas. Similar to our work together during recent fishing seasons, the Muckleshoot Indian Tribe Fisheries Commission and the Port anticipate meeting during the 2014 and 2015 fishing season, as necessary, to ensure that our collective efforts are effective in working together to ensure treaty fishing access and cargo/cruise vessel coordination associated with access to port berthing facilities is managed to minimize conflicts.

This Agreement relates solely to the two projects identified in Element 10, as described in the attachment to this agreement. This Agreement does not preclude the Muckleshoot Indian Tribe from pursuing any violations of local, state, or federal authorizations applicable to the referenced projects. The Muckleshoot Indian Tribe is not precluded from commenting on or challenging any modification of the referenced project with the potential to alter the scope of potential adverse effects on the Tribe. The Muckleshoot Indian Tribe and the Port further agree that nothing in this agreement is intended to or should be construed to define the nature and scope of treaty fishing rights.

Muckleshoot Indian Tribe (date)

Port of Seattle (date)