

**PORT OF SEATTLE**  
**MEMORANDUM**

**COMMISSION AGENDA**  
**ACTION ITEM**

<b>Item No.</b>	<u>4h</u>
<b>Date of Meeting</b>	<u>December 8, 2015</u>

**DATE:** November 30, 2015

**TO:** Ted Fick, Chief Executive Officer

**FROM:** Stephanie Jones Stebbins, Director, Maritime Environmental and Planning  
Paul Meyer, Manager, Maritime Environmental Compliance and Permitting

**SUBJECT:** Notification to Commission for Continuation of Interagency Agreements for Permitting Support between Port of Seattle (POS) and

- 1) The U.S. Army Corps of Engineers (USACE)
- 2) National Oceanic and Atmospheric Administration (NOAA) through Port of Tacoma (POT).

**ACTION REQUESTED:**

Request Commission authorization for the Chief Executive Officer to retain existing liaison agreements for five additional years to expedite the evaluation of permits under the jurisdiction of the U.S. Army Corps of Engineers (USACE) and from National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service. No new funding is requested. Funding for the agency staff resources on specific projects will come from capital and expense projects approved by the Commission. Some programmatic planning funds will be provided from the Maritime Environmental operating expense budget.

**SYNOPSIS:**

The Port of Seattle (POS) currently has a Memorandum of Agreement dated July 6, 2006 with the USACE for the acceptance and expenditure of funds contributed by the POS to expedite the evaluation of permits under the jurisdiction of the USACE as allowed by Section 214 of the Federal Water Resources Development Act (WRDA 2000). The agreement can continue without interruption unless federal authorization for the program sunsets or the Port informs the USACE of a decision to not continue participation in the program. The 2014 Water Resources Reform and Development Act of 2014 amendment to WRDA 2000 made the Section 214 part of the permanent federal code.

The POS also has an existing interlocal agreement with Port of Tacoma (POT) to share costs for a NOAA, National Marine Fisheries Service staff biologist on assignment from NOAA to the POT. The assigned individual will assist with fish and wildlife habitat evaluations required as part of Endangered Species Act (ESA) consultation required for federal authorization of port development, operation, and maintenance projects and actions.

The Maritime Environmental Department has requested authorization for the continuation of these agreements every five years since 2001. Staff last request for authorization to continue these agreements occurred in December, 2010. Per Commission instructions, staff

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is notifying Commission of its intent to continue these agreements for another five (5) year term until December 31, 2020, as the services provided enhance Port competitiveness and efficiency. No new funding is requested. Funds for assistance would come from the annual operating budget or future individual project authorizations. Some funds for programmatic funding will be provided from the Maritime Environmental operating expense budget.

Permitting coordination work performed with the USACE will be on behalf of the POS either for POS projects or for federal permitting work managed by POS as homeport on behalf of the Northwest Seaport Alliance (NWSA). Costs for projects needing federal approvals that are under NWSA management will come from capital and expense project design approved by the joint Commission.

### **AGREEMENTS SCOPE OF WORK:**

Personnel assigned to POS projects for the USACE:

- Schedule and coordinate ESA consultations; Environmental Protection Agency (EPA) sediment management review; and Washington State Department of Ecology (DOE) water quality certifications; Sec 107 tribal consultation and historic properties pursuant to applicable federal laws;
- Conduct reviews for proposed Port projects requiring federal authorization, funding or approval;
- Mitigate biological and water quality issues with state, federal, tribal and private representatives;
- Interpret federal regulatory and technical information, laws and guidelines;
- Determine solutions and make recommendations to problems concerning water quality and biological resources, and participate in the preparation and development and authorization of work or structures within waters of the United States.

The NOAA, National Marine Fisheries Service staff biologist on assignment from NOAA to the POT:

- Conducts ESA natural resource effect consultations pursuant to applicable federal laws;
- Reviews proposed port projects requiring federal authorization, funding or approval;
- Provides analysis of the effects of proposed Port activities on listed species occurring in marine and estuarine environments;
- Writes biological opinions, evaluations, concurrence letters, and other technical analyses as part of formal or informal project effect consultations;
- Assists in coordination of project mitigation issues with local, state, federal, and treaty tribe representatives;
- Interprets regulatory and technical information, laws and guidelines;
- Recommends project-specific solutions relating to fish and wildlife habitat and species of concern;
- Assists with preparation of programmatic biological evaluations relating to particular categories of port operations and maintenance actions.

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Permit review of port-related projects are more efficient because of the regulatory and technical expertise of the USACE program managers and NOAA biologists who serve as liaisons. Early and meaningful collaboration on federal agency requirements, resource issues and land use planning reduces adverse impacts, avoids costly and time consuming design changes, and defines appropriate mitigation requirements. The time required to obtain permits from the agencies is reduced. In addition, the ports receive guidance for advance planning and alerts to new issues affecting federal agency review of port operations and permitting. The personnel assigned to the liaison functions are all genuinely interested in environmental protection and understand the need to make timely and informed decisions. Our competitiveness is enhanced because we can set review priorities and access agency resources to achieve timely permit decision-making.

### **FINANCIAL IMPLICATIONS:**

#### Source of Funds

No new funding is requested. Funding for liaison staff resources will come from capital project design, permitting and construction cost budgets approved by the Commission for which approvals from USACE are necessary. It is expected that some of liaison costs will be provided from Maritime Environmental expense operating budget that is approved annually by the Commission. Liaison costs for projects needing federal approvals that are under NWSA management will be from capital and expense project design funds approved by the joint Commission.

#### Costs

Costs for permit liaison support with USACE vary year by year depending on number and complexity of permitting actions submitted to the agencies. Since the first agreement in 2001, the Port paid \$250,000 to the USACE between 2001 through 2010. Over the last five year period (2011 through 2015) the Port has paid \$107,500 or an average of approximately \$21,000/year. Costs will likely increase to approximately \$35,000/year as several complex permits actions are pending in the coming years.

Costs for permit liaison support with POT for designated individual from NOAA vary year by year depending on number and complexity of permitting actions submitted to the agencies. Over the last five year period (2011 through 2015) the Port has paid \$100,747 or an average of approximately \$20,000/year. Costs will likely increase to approximately \$30,000/year as several complex permits actions are pending in the coming years.

### **ALTERNATIVES CONSIDERED**

Do not retain existing Liaison agreements: Permitting time will increase, knowledge of pending changes in regulations will decrease and the likelihood of unanticipated new and costly mitigation and monitoring will increase. This alternative is not recommended.

Retain existing liaison agreements: The existing agreements have worked well and reduce time to obtain permits. Extending these agreements will continue these benefits. **This is the recommended alternative**

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### **ATTACHMENTS TO THIS BRIEFING:**

- Attachment A is the agreement currently in effect between the POS and USACE that will continue as is.
- Attachment B is the agreement currently in effect between the POS and POT for permit liaison support with POT for designated individual from NOAA.

### **PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:**

The Port of Seattle Commission since 2001 has authorized the CEO to enter into agreements with federal agencies to fund or provide additional staff resources at federal resource and regulatory agencies charged with the enforcement of federal law regarding but not limited to the Clean Water Act and ESA.

- 6/21/01 - The commission authorized the CEO to execute agreements to fund or provide additional staff resources at the permit agencies (USACE, NOAA) with the costs to be shared with the POT up to \$300,000.
- 12/09/03 - The original authorization was increased to \$600,000 and extended for two years on 12/9/03.
- 2/22/05 - The commission authorized the CEO to execute agreements and amendments for the POT, NOAA, and the U. S. Fish and Wildlife Service (USFWS) to fund staff resources at permit agencies to handle ESA. The commission also increased the total expenditure for agency support for an additional \$375,000 for a total of \$975,000.
- 1/10/2006 – The commission authorized the CEO to amend the original agreement between the POS and the USACE to fund staff resources at that agency expedite permit managed by agency.
- 12/10/2010 – The commission authorized the CEO to continue interagency agreements with USACE to fund staff resources at that agency and enter an agreement with City of Seattle Department of Planning and Development.
- 12/10/2010 – The commission authorized the CEO to enter into an interlocal agreement with POT to share costs for a NOAA, National Marine Fisheries Service staff biologist on assignment from NOAA to the POT to assist with fish and wildlife habitat evaluations required as part of ESA consultation.