



**COMMISSION
AGENDA MEMORANDUM**

ACTION ITEM

Item No.

6b

DATE: July 2, 2020

Date of Meeting

July 28, 2020

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TO: Stephen P. Metruck, Executive Director
FROM: Sandra Kilroy, Director Maritime Environment & Sustainability
Jon Sloan, Sr. Manager, Maritime Environment & Sustainability
Laura Wolfe, Environmental Program Manager, Maritime Env. & Sustainability

SUBJECT: Interlocal Agreement with Washington Public Ports Association to hire permitting liaison for Endangered Species Act reviews

Amount of this request: \$0
Total estimated project cost: \$300,000

ACTION REQUESTED

Request Commission authorization for the Executive Director to execute a five-year Interlocal Agreement (ILA) with the Washington Public Ports Association, Port of Anacortes, Port of Bellingham, Port of Everett, Port of Kalama, Port of Longview, Port of Olympia, Port of Port Angeles, Port of Tacoma, and Port of Vancouver USA (each a "Port" and collectively, "the Ports") in a form substantially similar to what is attached, with only minor changes approved by counsel for the Port of Seattle. The ILA will require a five-year commitment of up to a total of \$300,000, funded annually through the Port's capital program. No funding is being requested at this time.

EXECUTIVE SUMMARY

The ILA will cooperatively establish and fund a liaison position with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS). The liaison will prioritize work on permit applications submitted by ten (10) port districts, including the Port of Seattle, promoting focused document review and project coordination. This will enhance the Ports' ability to comply with the Endangered Species Act (ESA) and other authorities or environmental regulations regarding listed species in a timely manner. The ESA liaison will be an employee of the Washington Public Ports Association (WPPA) but will be co-located with NMFS and USFWS staff at their office in Lacey, Washington. Each port will contribute funding to support the position. The Port of Seattle's portion of the required funding over five years is expected to be approximately \$300,000, which will be funded annually through the Maritime Environment and Sustainability expense budget.

Meeting Date: July 28, 2020

JUSTIFICATION

The liaison position has existed in the past and the Port of Seattle has historically contributed an annual budget amount to receive permitting services. This position has demonstrated clear benefits to expediting port projects through the federal ESA review process. Due to significant staffing and resource constraints at NMFS and USFWS, timelines for ESA reviews can exceed two years in some cases, creating costly delays to important port projects. Because the liaison is dedicated to reviewing port projects and has specific understanding of port infrastructure and operations, the time required for ESA reviews can often be shortened by 90%. In the past, the position was housed at the Port of Tacoma and supported several Western Washington ports. For administrative reasons (and after almost 15 years) the Port of Tacoma declined to continue this service. After lengthy discussions, WPPA has agreed to act as the employer for this critical position which will be funded through a cost-share between ten Puget Sound and Columbia River ports. Based on past usage, staff expects that the Port will have approximately five projects a year that require consultation with the services.

Diversity in Contracting

The WPPA will hire the liaison position and will promote diversity in hiring. The interview panel will include WPPA's Sr. Director of Environmental Affairs, Gerry O'Keefe, as well as staff from NMFS, USFWS, and several ports. The panel will prioritize an inclusive hiring process.

DETAILS

The Ports participating in the ILA (Attachment A) each engage in industrial development projects requiring consultations with NMFS and USFWS (collectively "Services"). The Services have agreed to host within their offices a liaison in the position of a staff biologist that will assist the Ports to comply with the Endangered Species Act and other authorities or environmental regulations regarding listed species. The staff biologist will prioritize work on permit applications submitted by the Ports, which will result in focused document review and project coordination on applicable port projects.

The Ports and the WPPA recognize that each Port and the WPPA will reap important beneficial efficiencies and enhanced compliance with federal environmental requirements from work performed by a liaison. The proposed ILA will establish the liaison position and provide a mechanism for the Ports to enter into a collaborative and cooperative arrangement to provide for and fund the position.

On behalf of the Ports, the WPPA has agreed to: (1) employ and pay the compensation of the liaison as the WPPA's employee, including salary, benefits, leave, and other appropriate overhead costs according to WPPA employment policies; and (2) pay any other fees charged by the Services related to the liaison. The Ports will pay to the WPPA the full amount of the annual costs.

Meeting Date: July 28, 2020

Schedule

Each Port collaborated to develop the ILA with WPPA with mutually acceptable language and will request approval from their elected commissions by July 28, 2020. If approved by each Port, the ILA will become effective immediately and the liaison position will be advertised, with a goal to conduct interviews and make a hiring decision before the end of September 2020.

Cost Breakdown

The Port of Seattle's share of the liaison cost is fixed at approximately 22% of the total cost, which is anticipated to be up to \$60,000 annually and not-to-exceed \$300,000 over five years. A percentage of the total cost will be allocated to each Port business unit based on their anticipated capital program spending for that year. No funding authorization is being requested from the Commission at this time.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Do not enter into the ILA. Rely on existing NMFS and USFWS staff to complete ESA reviews for Port of Seattle projects.

Cost Implications: Avoid spending up to \$300,000 over five years.

Pros:

- (1) Avoid capital spending of up to \$300,000 over next five years
- (2) Lower administrative burden

Cons:

- (1) Creates significant schedule uncertainty for up to five (estimated) Port projects over next five years
- (2) Schedule delays create risks and often result in significant cost overruns

This is not the recommended alternative.

Alternative 2 – Hire an ESA liaison that would be dedicated only to Port of Seattle projects.

Cost Implications: Spending of up to \$1,000,000 over five-year period.

Pros:

- (1) The liaison would be available to immediately address Port of Seattle concerns.
- (2) The liaison could potentially be tasked to support other Port of Seattle environmental functions.

Cons:

- (1) Substantial down-time for the liaison on account of not enough work from Port of Seattle projects alone.
- (2) Significantly higher cost.

This is not the recommended alternative.

Meeting Date: July 28, 2020

Alternative 3 – Enter into five-year ILA w/ WPPA and other Puget Sound and Columbia River Ports to hire a liaison.

Cost Implications: Spending of up to \$300,000 over five years.

Pros:

- (1) Lower cost over five years due to cost-sharing with other ports.
- (2) Leverages relationship with WPPA and other Ports to pursue the most efficient solution to resource constraints at NMFS and USFWS.

Cons:

- (1) Sharing in costs also means sharing in access to the liaison; may not be as readily available if working on projects for multiple Ports.

This is the recommended alternative.

Annual Budget Status and Source of Funds

The Port of Seattle's fixed cost-share associated with the liaison position is fixed at approximately 22% of the total cost, anticipated to be up to \$60,000 annually and not-to-exceed \$300,000 over five years. A percentage of the total cost will be allocated to each Port business unit based on their anticipated capital program spending for that year. No funding authorization is being requested from the Commission at this time.

ATTACHMENTS TO THIS REQUEST

- (1) Draft Interlocal Agreement
- (2) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

The Port of Seattle Commission since 2001 has authorized the CEO to enter into agreements to support federal agencies by funding or providing 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 Endangered Species Act.

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.

02/22/05: 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.

Meeting Date: July 28, 2020

- 12/10/10: 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.
- 12/8/2015: The commission authorized the CEO 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.