

INTERLOCAL AGREEMENT

Federal Permit Review - Liaison/Staff Biologist

THIS INTERLOCAL AGREEMENT (“This Agreement”) is between the WASHINGTON PUBLIC PORTS ASSOCIATION, the PORT OF ANACORTES, PORT OF BELLINGHAM, PORT OF EVERETT, PORT OF KALAMA, PORT OF LONGVIEW, PORT OF OLYMPIA, PORT OF PORT ANGELES, PORT OF SEATTLE, PORT OF TACOMA, and PORT OF VANCOUVER USA (sometimes referred to herein individually as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, the port districts named above (each a “Port” and collectively, “the Ports”) are Washington public port districts created, existing and exercising authority pursuant to Title 53 RCW; and

WHEREAS, the Washington Public Ports Association (“WPPA”) is a coordinating agency created and existing pursuant to RCW 53.06.030 et seq; and

WHEREAS, the Ports each engage in industrial development projects requiring permit review by, or consultations with, the National Marine Fisheries Service and/or the United States Fish and Wildlife Service (respectively, “NMFS” and “USFWS” and collectively “the Services”), each an agency of the United States of America; and

WHEREAS, the Services are authorized by Federal law, and have agreed in a Memorandum of Agreement between the Ports and each Service (the “MOAs”, attached as Appendices A & B hereto), to host within their offices a WPPA employee (“Liaison”) in the position of a staff biologist (“Liaison/Staff Biologist”) to assist the Ports to comply with the Endangered Species Act and other authorities or environmental regulations regarding listed species. The Liaison/Staff Biologist will prioritize permit applications submitted by the Ports identified in this Agreement and process consultations for said permit applications, which will result in focused document review and project coordination on applicable Port projects; and

WHEREAS, 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 the Liaison/Staff Biologist’s work on the Ports’ permit applications and therefore desire to enter into a collaboration and cooperative arrangement to provide for and fund the Liaison/Staff Biologist; and

WHEREAS, on behalf of the Ports, the WPPA has agreed to: (1) employ and pay the compensation of said Liaison/Staff Biologist as a 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 directly related to the Liaison (collectively, "the Liaison Costs") as further defined below; and

WHEREAS, the Ports have agreed to pay, in advance, to the WPPA the full amount of the annual Liaison Costs, each on the prorated basis set forth herein; and

WHEREAS, the Ports and the WPPA are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW;

NOW, THEREFORE, the Ports and the WPPA, for and in consideration of the mutual covenants herein contained, hereby agree as follows:

I. AGREEMENT

A. Parties.

The following are the Parties to this Agreement:

1. Washington Public Ports Association, a coordinating agency created and existing pursuant to RCW 53.06.030 *et seq*;
2. The following Washington Port districts, established and existing pursuant to Title 53 RCW:
 - a. Port of Anacortes,
 - b. Port of Bellingham,
 - c. Port of Everett,
 - d. Port of Kalama,
 - e. Port of Longview,
 - f. Port of Olympia,
 - g. Port of Port Angeles,
 - h. Port of Seattle,
 - i. Port of Tacoma, and
 - j. Port of Vancouver USA

Collectively, the "Ports."

B. Purpose and Utilization.

1. The purpose of this Agreement is to cooperatively establish and fund the Liaison position with the Services as a staff biologist. The Liaison/Staff

Biologist will prioritize permit applications submitted by the Ports, and process consultations for said permit applications to promote focused document review and project coordination on applicable Port projects. It is expected that this will enhance the Ports' ability to comply with the Endangered Species Act and other authorities or environmental regulations regarding listed species in a timely manner.

2. The Ports shall utilize the Liaison for their respective permit applications as described in sub-section C (2) below.

C. Ports' Obligations.

Each Port is hereby obligated under this Agreement as follows:

1. Contribute funds to fully defray the Liaison costs incurred by WPPA pursuant hereto in a timely manner; *provided* that the Ports shall not be responsible to cover WPPA costs resulting from employee/employer disputes.
2. Confer with each other and the WPPA as needed to arrange the priority, if any, for the work on the Ports' permit applications. If, after such consultation, agreement cannot be reached as to the prioritization of the Ports' applications, WPPA shall determine the priority based on the material deadlines applicable to the Port's work and the complexity of the work. WPPA's determination shall be final. Ports may interact with the Liaison to address routine issues that may arise during application review but shall in no manner supervise the Liaison's work.
3. Cooperate--together and with WPPA--to determine, no later than August 31, 2020, and annually thereafter, the subsequent year's budget for the Liaison Costs, including the payment of any Liaison Cost incurred by WPPA in excess of the then current year's budget, and each Port's individual portion thereof (that Port's "Allocated Share").
4. Commencing in the fall of 2020, and annually thereafter, include in its preliminary annual budget for the ensuing year, subject to commission approval, adequate funds to pay its Allocated Share.
5. No later than sixty (60) days after the Effective Date, provide its Allocated Share as set forth in Appendix C hereto, and within 30 days after receipt of an invoice in subsequent years.

6. Take all reasonably required actions to work with the other Ports and WPPA in a collaborative manner to carry out, monitor, and adapt this Agreement in the best interest of all Parties.
7. Act promptly and reasonably to address any request from other port districts to join this Agreement.
8. Cooperate with the WPPA to evaluate the performance of the Liaison.

D. WPPA's Obligations.

WPPA is hereby obligated under this Agreement as follows:

1. Administer this Agreement in the best interest of all Parties according to its terms and conditions and undertake explicit and implied duties in furtherance hereof and in a manner consistent with the MOAs with the Services.
2. For each calendar year during the existence of this Agreement, establish, after consultation with the Ports, an "Annual Budget" by no later than August 31, 2021 , and issue invoices specifying each Port's Allocated Share annually thereafter by December 1st; *provided*, that for the balance of 2020, such Annual Budget shall be set forth in Appendix C.
3. Pay all reasonable and necessary expenses related hereto and account fully to the Ports for such expenses annually during July of each year starting in 2021.
4. Hire and employ, as a WPPA employee to carry out the duties described in the MOAs, the Liaison and provide compensation and benefits consistent with WPPA HR policies.
5. Provide supervision and evaluation of the Liaison consistent with the MOAs and the HR policies of WPPA, and to reasonably carry out the purposes of this Agreement.
6. Hold harmless the Ports for claims made by the Liaison to the extent of employer liability under Federal or state law.
7. After consultation with all of the Parties to this Agreement, enter into interlocal agreements with non-party port districts to utilize the Liaison; *provided*, that no such interlocal agreement shall delay or interfere with any permit work being performed for a Port. under this Agreement. WPPA shall charge and collect from the non-party port district the full, actual

cost of the work performed and hold the collected funds as a credit against the calculation of the ensuing year's Allocated Shares under this Agreement.

E. Withdrawal.

A Port may withdraw from this Agreement as follows:

1. Provide notice to the WPPA of its intent to withdraw from this Agreement no later than September 30th of any year. The WPPA shall promptly forward the withdrawal notice to the other Ports. The withdrawal shall be effective on December 31st following receipt of a timely submitted withdrawal notice. Any permit work by the Liaison prioritized for the withdrawing Port under this Agreement shall lose its priority status on the effective date of the withdrawal.
2. Any Port providing notice of withdrawal after September 30, shall nonetheless be responsible for its Allocated Share for the following year.
3. The withdrawing Port shall not be entitled to any reimbursement or repayment of its paid Allocated Share for the year in which the withdrawal takes place.

F. Determination of Allocated Shares.

1. The determination of each Port's Allocated Share for any year shall be based on the Annual Budget established by WPPA in consultation with the Ports. For any partial year, the Annual Budget and the Port's Allocated Shares shall be prorated based on period during which the liaison is employed. For the balance of 2020, the Allocated Shares shall be as set forth in Appendix C.
2. The Port of Seattle and the Port of Tacoma shall, in combination, pay a fixed Allocation Share equal to forty-three and 75/100 percent (43.75%) of the Annual Budget for the liaison position.
3. The other Ports' Allocated Share shall be determined based on the Annual Budget, less the Seattle-Tacoma Portion. The other Ports' portion shall be based on the proportion that each of the other Ports' Revenues (as defined below) bear to the total Revenues of all the other Ports.

4. The cost share for the Port of Kalama, Port of Longview, and Port of Vancouver, shall be based on an average of the share determined for each under the foregoing subsection (3).
5. For purposes of determining the other Ports' Allocated Shares, the term "Revenue" shall mean the sum of each of the other Port's gross operating revenues from all sources, *ad valorem* tax receipts, and interest income for the "Base Year," which means the calendar year immediately preceding the year during which WPPA determines the budget for the ensuing year (as set forth in the following examples: 2021 Allocated Shares—determined in 2020--based on 2019 Revenues and 2022 Allocated Shares—determined in 2021--based on 2020 Revenues). The calculation of each of the other Ports' Allocated Share is illustrated in the following calculation:

$$\text{Sum of all the other Ports' Revenues (Sum)} \times \frac{\text{Each other Port's Revenues}}{\text{(Sum)}} = \text{Allocated Share (Sum)}$$

6. Each of the other Ports shall report its Base Year Revenues to WPPA by June 30th of the following year.

G. Effective Date, Term, and Termination.

1. The "Effective Date" of this Agreement shall be the last day upon which all the Ports have executed this Agreement.
2. The "Term" of this Agreement shall begin on the Effective Date and end on December 31, 2025, unless extended by written agreement of the Parties. To provide reasonable notice to the Liaison, the Parties shall attempt, but not be required, to reach an agreement extending--or not extending--this Agreement by June 30, 2025.
3. This Agreement shall terminate at the end of the Term, or may, prior to the end of the Term, terminate at the end of the calendar year by full agreement of the all Parties following a determination that no Port desires, or WPPA does not desire, to continue this Agreement.
4. Upon termination, all Parties' obligations hereunder shall end, and any funds held as an Allocated Share credit shall be distributed to the respective Ports entitled thereto.

III. MISCELLANEOUS PROVISIONS.

1. Any notice, demand, or communication required or permitted under this Agreement shall be deemed to have been duly given if delivered by courier, USPS, or email addressed to the party to whom directed at the relevant Party's address specified below its signature below.
2. Pursuant to RCW 39.34.030 (3) and (4)(a & b), the Ports and the WPPA acknowledge and agree that:
 - a) This Agreement shall not be construed to create any entity.
 - b) The Executive Director of WPPA, or their designee, shall be the Administrator hereof.
 - c) No property--real, personal or intangible--shall be acquired by the Parties collectively or individually pursuant hereto.
3. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington.
4. This Agreement may not be amended except by the unanimous written agreement of all the Parties.
5. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.
6. The headings in this Agreement are inserted for convenience only and shall not affect the interpretations of this Agreement.
7. The failure of any Party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.
8. If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

9. This Agreement is not assignable absent written approval by all Parties, which approval shall be granted, withheld, or conditioned in the discretion of each party. Each of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the Parties hereto and, to the extent permitted by this Agreement, their respective legal representatives, successors, and assigns.
10. This Agreement is not for the benefit of any individual or entity other than the Parties and shall not be enforceable thereby under any circumstances whatsoever.
11. This Agreement may be executed by the Parties hereto in counterparts and, once so signed by all parties and posted to each Parties' web site in accordance with RCW 39.34, Parties, shall have full force and effect. Such signatures will be effective when delivered by fax or email and shall be followed by original signatures.

EXECUTED BY THE UNDERSIGNED PARTIES effective as of the date last below written and posted pursuant to Chapter 39.34 RCW:

PORT OF ANACORTES
 100 Commercial Avenue
 Anacortes, WA 98221
 Email: _____

PORT OF LONGVIEW
 10 Port Way
 Longview, WA 98632
 Email: _____

 By: Daniel C. Worra
 Its: Executive Director
 Date: _____

 By: Dan Stahl
 Its: Interim CEO
 Date: _____

PORT OF BELLINGHAM
 1801 Roeder Avenue
 Bellingham, WA 98225
 Email: _____

PORT OF OLYMPIA
 606 Columbia Street NW, Suite 300
 Olympia, WA 98501
 Email: _____

 By: Rob Fix
 Its: Executive Director
 Date: _____

 By: Sam Gibboney
 Its: Executive Director
 Date: _____

PORT OF EVERETT
1205 Craftsman Way, #200
Everett, WA 98201
Email: _____

By: Lisa Lefebber
Its: CEO/Executive Director
Date: _____

PORT OF KALAMA
110 West Marine Drive
Kalama, WA 98625
Email: _____

By: Mark Wilson
Its: Executive Director
Date: _____

PORT OF TACOMA
PO Box 1837
Tacoma, WA 98401
Email: _____

By: Eric Johnson
Its: Executive Director
Date: _____

WASHINGTON PUBLIC PORTS ASSOCIATION
1501 Capitol Was South, Suite 304
Olympia, WA 98501
Email: _____

By: James Thompson
Its: Executive Director
Date: _____

PORT OF PORT ANGELES
338 W. First Street
Port Angeles, WA 98362
Email: _____

By: Karen Goschen
Its: Executive Director
Date: _____

PORT OF SEATTLE
PO Box 1209
Seattle, WA 98111
Email: _____

By: Stephen P. Metruck
Its: Executive Director
Date: _____

PORT OF VANCOUVER USA
3103 NW Lower River Road
Vancouver, WA 98660
Email: _____

By: Julianna Marler
Its: CEO
Date: _____

Appendix A

MEMORANDUM OF AGREEMENT BETWEEN THE

DEPARTMENT OF INTERIOR, U.S. FISH AND WILDLIFE SERVICE,

AND

THE WASHINGTON PUBLIC PORTS ASSOCIATION

Agreement Number: WFWO-2002

I. PARTIES

This document constitutes an agreement between the U.S. Fish and Wildlife Service (USFWS), Department of the Interior, and the Washington Public Ports Association (WPPA) on behalf of its member public port districts, established by the Washington-8tate Legislature in 53.06.030 RCW.

II. AUTHORITIES

The USFWS has the authority to participate in technical assistance for the WPPA under the following statutes:

- (1) The Endangered Species Act (ESA) of 1973.; as amended (16 U.S.C. Section 1531 *et seq.*);
- (2) The Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703...712), as amended;
- (3) The Fish and Wildlife Coordination Act (16 U.S.C. section 661) and,
- (4) Other authorities, including the National Environmental Policy Act, the Coastal Zone Management Act, the Bald and Golden Eagle Protection Act, and various executive and secretarial orders.

III. PURPOSE

Pursuant to this agreement, the WPPA, .and the USFWS will work together in support of one staff position provided to facilitate certain duties related to consultation under the ESA for public port district projects requiring permits or authorization by the U.S. Army Corps of Engineers or receiving funding from a federal agency.

The mission of the USFWS is to work with others to conserve, protect and enhance fish, wildlife, plants and their habitats for the continuing benefit of the American people. The State of

Washington has charged the public port districts with the responsibility to design, construct and maintain port infrastructure in Washington, including a wide range of projects. Port projects frequently affect listed species and their habitats and therefore require early coordination and

consultation with the USFWS. Because of the heavy workload related to consultation under the ESA, it is practical and beneficial for the WPPA to provide resources to the USFWS on behalf of the ports to perform certain duties related to consultation on projects implemented by its member port districts. In this case, the resources provided to the agencies will be in the form of one qualified staff biologist who will be assigned to study and evaluate port district projects for compliance with the ESA and other pertinent laws administered by the USFWS. This is necessary and essential to further the mission of the WPPA's member public port districts and the federal agencies in that it will increase coordination, streamline consultation, and provide early project-level planning assistance to increase compatibility of port projects with the conservation of listed species and their habitats. No preferential treatment by the USFWS is given or should be inferred under this agreement; public port district projects will receive the same scrutiny as other projects requiring ESA permits or review.

IV. MUTUAL INTEREST OF THE PARTIES

This assistance is of mutual interest to the parties because the USFWS has the responsibility to protect and perpetuate fish and wildlife under their jurisdiction, and the WPPA's member-public port districts have the responsibility to design, construct, and maintain port infrastructure in Washington, including a wide range of projects. Public port district projects frequently affect fish and wildlife habitat and therefore require coordination and consultation with the National Marine Fisheries Service (NMFS) and the USFWS. Having a staff biologist assigned to study and evaluate public port district projects for compliance with the ESA and other pertinent laws administered by the federal agencies reduces time spent in coordination and increases the biologist's understanding of individual projects. In addition, having the staff biologist responsible for all public port district consultations involving WPPA's member ports increases their familiarity with those agencies' personnel and processes, landscape and aquatic habitat conditions across the State of Washington, and opportunities for conservation and aquatic and terrestrial habitat restoration, as well as ensuring consistency and timeliness of reviews.

V. RESPONSIBILITIES OF THE PARTIES

The West Coast Region of the National Marine Fisheries Service (NMFS)¹ and the Washington Fish and Wildlife Office (WFWO) of the USFWS (collectively referred to as the Services), are co-located in the same office in Lacey, Washington. The USFWS will coordinate to perform the following activities and provide the following resources in support of the technical assistance for WPPA's member public port districts:

- (1) Provide office space, common office supplies, and use of office equipment (including assistance in obtaining server access cards) for the staff biologist in the Lacey office.

Administrative support will be provided, as is currently available to staff biologists

¹ The NMFS has a separate MOA which covers the same purpose, interests and responsibilities for this position, but under different authorities, statutes and with independent agency signatures

and other liaisons working in the Lacey office. The USFWS will provide input to WPPA on the staff biologists' performance, and may provide additional guidance as needed in consultation with the WPPA supervisor.

- (2) Provide guidance to, and coordinate with, the staff biologist to assist WPPA's member public port districts to comply with the BSA and other authorities or environmental regulations regarding listed species. Coordinate workload and scheduling priorities with both Services. The staff biologist will work primarily on projects developed by WPPA's member public port districts, which will result in focused document review and project coordination on applicable port projects.

The WPPA agrees to perform the following activities and provide the following resources in support of the technical assistance for the USFWS:

- (1) Provide one qualified staff biologist to consult with and assist WPPA's member public port districts in complying with the requirements of the ESA and other authorities. The staff biologist will provide timely and well-supported ESA consultation initiation packages that are based on best available scientific and commercial data, and that include all the information about the proposed action and its effects on BSA-protected resources that is necessary for the federal agencies to complete the requested consultation.
- (2) Provide appropriate travel, per diem, training, guidance and supervision, and associated equipment needed by the biologists to conduct reviews of public port district projects and to perform needed analysis for the USFWS and NMFS (field visits to project sites, meetings, and WPPA-funded training opportunities).
- (3) The WPPA will pay salary, benefits, and associated cost of living increases for the WPPA liaison staff biologist.

VI. NMFS APPORTIONMENT OF COSTS

The annual costs (for one professional staff) of this activity are indicated below:

The NMFS MOU outlines the following cost estimates for space and oversight of the WPPA liaison.

Space/General Support	\$ 20,130.00*
General Guidance/Oversight by NMFS Senior Staff	<u>\$ 3,550.00</u>
Total:	\$ 23,680.00

* Because the person will be assigned to an office in the NMFS section of the building and lease costs are split between the Services depending on where staff are located, the USFWS does not anticipate any space or lease costs for this position.

The USFWS cost estimate for general guidance was determined based on the amount of time the supervisor or manager typically spends providing review and guidance and is expected to be similar to the NMFS cost estimate of \$3,550.00 annually. The annual review/oversight costs also includes computer support (access to USFWS servers) and may vary slightly :from year to year depending on workload.

VII. CONTACTS

The contacts for each party to this agreement are:

Curtis Tanner, Division Manager Consultation
and Conservation Planning
U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office 510
Desmond Drive SE
Lacey, Washington 98503
Phone: (360) 753-4326
Email: Curtis.Tanner@fws.gov

Gerald O'Keefe
Senior Director of Environmental Affairs
Washington Public Ports Association 1501
Capitol Way South
Olympia, Washington 98502
Phone: (360) 943-0760, mobile: (360) 918-2468
Email: gokeefe@washingtonports.org

The parties agree that if there is a change regarding the information in this section, the party making the change will notify the other party in writing of such change.

VIII. PERIOD OF AGREEMENT AND MODIFICATION/TERMINATION

This agreement will become effective when signed by the parties and will terminate in five years. The agreement may be amended or extended at any time by mutual consent of the parties. The parties will review this agreement every year to determine whether it should be revised, continued as is, extended, or canceled.

Any party may terminate this agreement by providing 60 days written notice to the other party. In the event this agreement is terminated, each party shall be solely responsible for the payment of any expenses it has incurred. This agreement is subject to the availability of funds.

IX. OTHER PROVISIONS

Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area of disagreement shall

be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within 30 days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution. Under the Inspector General Act of 1978, as amended, 5 USC App. 3, a review of this agreement may be conducted at any time. The Inspector General of the Department of Interior, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the parties in this agreement, whether written, printed, recorded, produced, or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law.

Nothing herein is intended to conflict with current Department of the Interior directives. If the terms of this agreement are inconsistent with existing directives of either of the agencies entering into this agreement, then those portions of this agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by the inconsistency shall remain in effect. At the first opportunity for review of the agreement, all necessary changes will be accomplished by either an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties.

X. CONTACTS

The contacts for each party to this agreement are:

Curtis Tanner, Division Manager Consultation
and Conservation Planning
U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office 510
Desmond Drive SE
Lacey, Washington 98503
Phone: (360) 753-4326
Email: Curtis.Tanner@fws.gov

Gerald O'Keefe
Senior Director of Environmental Affairs
Washington Public Ports Association 1501
Capitol Way South
Olympia, Washington 98502
Phone: (360) 943-0760, mobile: (360) 918-2468 |
Email: gokeefe@washingtonports.org

The parties agree that if there is a change regarding the information in this section, the party making the change will notify the other party in writing of such change.

XI. PERIOD OF AGREEMENT AND MODIFICATION/TERMINATION

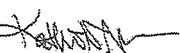
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Any party may terminate this agreement by providing 60 days written notice to the other party. In the event this agreement is terminated, each party shall be solely responsible for the payment of any expenses it has incurred. This agreement is subject to the availability of funds.

XII. OTHER PROVISIONS

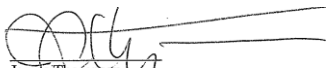
Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within 30 days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution. Under the Inspector General Act of 1978, as amended, 5 USC App. 3, a review of this agreement may be conducted at any time. The Inspector General of the Department of Interior, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the parties in this agreement, whether written, printed, recorded, produced, or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law.

Nothing herein is intended to conflict with current Department of the Interior directives. If the terms of this agreement are inconsistent with existing directives of either of the agencies entering into this agreement, then those portions of this agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by the inconsistency shall remain in effect. At the first opportunity for review of the agreement, all necessary changes will be accomplished by either an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties.

ACTING  Digitally signed by KATHERINE
NORMAN
Date: 2020.03.24 14:18:12 -07'00'

Rollie White, Assistant Regional Director Ecological
Services
U.S. Fish and Wildlife Service, Interior Regions 9 and 12

3/24/2020


James Thompson
Executive Director
Washington Public Ports Association
3/31/2020
Date

Appendix B

MEMORANDUM OF AGREEMENT BETWEEN

THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,
NATIONAL MARINE FISHERIES SERVICE
U.S. DEPARTMENT OF COMMERCE

AND

THE WASHINGTON PUBLIC PORTS ASSOCIATION

WCR-2006

I. PARTIES

This document constitutes an agreement between the National Marine Fisheries Service (NMFS), U.S. Department of Commerce, and the Washington Public Ports Association (WPPA) on behalf of its member public port districts, established by the Washington State Legislature in 53.06.030 RCW.

II. AUTHORITIES

NMFS had authority to participate in technical assistance for WPPA under:

- (1) 16 U.S.C. Section 661, the Fish and Wildlife Coordination Act;
- (2) 16 U.S.C. Section 1531 et seq., the Endangered Species Act (ESA);
- (3) 16 U.S.C. Section 1801 the Magnuson Stevens Fishery Conservation Act (MSA); and,
- (4) Other authorities, including the Marine Mammal Protection Act, the National Environmental Policy Act, the Coastal Zone Management Act, and various executive and secretarial orders.

III. PURPOSE

Pursuant to this agreement, WPPA and NMFS work together in support of one staff position provided to facilitate certain duties related to consultation on public port district projects.

NMFS, under its jurisdiction, has the responsibility to protect and recover species and their habitats listed as threatened or endangered pursuant the ESA and MSA. The State of Washington has charged public port districts with the responsibility to design, construct, and maintain port

infrastructure in Washington, including a wide range of projects. Port projects frequently affect ESA- and MSA- listed species habitat and therefore require early coordination and consultation with NMFS. Because of the heavy workload related to consultation under the ESA and MSA, it is practical and beneficial for WPPA to provide resources to NMFS to perform certain duties related to consultation on projects implemented by its member port districts. In this case, the resources provided to the agencies will be in the form of one staff biologist who will be assigned to study and evaluate port district projects for compliance with the ESA and MSA and other pertinent laws administered by NMFS. This is necessary and essential to further the mission of WPPA's member public port districts and the federal agencies in that it will increase coordination, streamline consultation, and provide early project-level planning assistance to increase compatibility of port projects with anadromous fish conservation. No preferential treatment by NMFS is given or should be inferred under this agreement; public port district projects will receive the same scrutiny as other projects requiring ESA and MSA permits.

IV. MUTUAL INTEREST OF THE PARTIES

This assistance is of mutual interest to the parties because NMFS has the responsibility to protect and recover species and their habitats listed as threatened or endangered pursuant ESA and under their jurisdiction, and WPPA's member public port districts have the responsibility to design, construct, and maintain port infrastructure in Washington, including a wide range of projects. Public port district projects frequently affect freshwater and marine habitats that support NMFS and USFWS trust resources and therefore require frequent coordination and consultation with NMFS. Having a staff biologist assigned to the study and evaluation of public port district projects for compliance with the ESA and other pertinent laws administered by the federal agencies reduces time spent in coordination and increases the biologist's understanding of individual projects. In addition, having the staff biologist responsible for all public port district consultations involving WPPA's member ports increases their familiarity with those agencies' personnel and processes, landscape and aquatic habitat conditions across the State of Washington, and opportunities for conservation and aquatic habitat restoration, as well as ensuring consistency and timeliness of reviews.

V. RESPONSIBILITIES OF THE PARTIES

NMFS West Coast Region agrees to perform the following activities and provide the following resources in support of the technical assistance for WPPA's member public port districts:

- (1) Provide office space, common office supplies, and use of office equipment (including assistance in obtaining a Common Access Card [CAC]) for the staff biologists in their Lacey office. Administrative support will be provided as is currently available to the Lacey Branches. NMFS will provide input to WPPA on the staff biologists' performance, and may provide additional guidance as needed in consultation with the WPPA supervisor.
- (2) Provide guidance to, and coordinate with, the staff biologist to assist WPPA's member public port districts to comply with the ESA, MSA, and other authorities. Coordinate workload and scheduling priorities with the United States Fish and Wildlife Service (USFWS), Department of the Interior. The staff biologist will work primarily on projects developed by WPPA's member public port districts, which will result in expedited

document review and project coordination on applicable port projects.

WPPA agrees to perform the following activities and provide the following resources in support of the technical assistance for the NMFS:

- (1) Provide one qualified staff biologist to consult with and assist WPPA's member public port districts in complying with the requirements of the ESA, the MSA, and other authorities. The staff biologist will provide timely and well-supported ESA and MSA consultation initiation packages that are based on best available scientific and commercial data, and that include all the information about the proposed action and its effects on ESA-protected resources that is necessary for the federal agencies to complete the requested consultation.
- (2) Provide appropriate travel, per diem, training, guidance and supervision, and associated equipment needed by the biologists to conduct reviews of public port district projects and to perform needed analysis for NMFS (**NMFS workshops**, field visits to project sites, meetings, and WPPA-funded training opportunities).
- (3) WPPA will pay salary, benefits, and associated cost of living increases for the WPPA staff biologist.

VI. NMFS APPORTIONMENT OF COSTS

The annual costs (for one professional staff) of this activity are indicated below:

NMFS:

Space/General Support\$	\$24,700.00
General Guidance/Oversight by NMFS Senior Staff\$	<u>\$15,800.00</u>
Total:	\$40,500.00
Five Year Total:	\$202,500.00

The NMFS General Guidance/Oversight cost was determined based on the amount of time (10%) the Senior Staff typically spends providing oversight and guidance to the staff biologists. NMFS and USFWS may share these costs as appropriate.

VII. CONTACTS

The contacts for each party to this agreement are:

Jennifer Quan
Central Puget Sound Branch Chief
National Marine Fisheries Service
510 Desmond Drive SE
Lacey, WA 95801
Phone: 360-753-6054
Jennifer.Quan@noaa.gov

Scott Hecht
Washington Coast – Lower Columbia Branch Chief
National Marine Fisheries Service
510 Desmond Drive SE, Suite 103
Lacey, WA 98503-1263
Phone: 360-534-93067
<mailto:Scott.Hecht@noaa.gov>

Gerald O’Keefe
Senior Director of Environmental Affairs
Washington Public Ports Association
1501 Capitol Way South
Olympia, WA 98502
Phone: 360-943-0760
gokeefe@washingtonports.org

The parties agree that if there is a change regarding the information in this section, the party making the change will notify the other party in writing of such change.

VIII. PERIOD OF AGREEMENT AND MODIFICATION/TERMINATION

This agreement will become effective when signed by the parties and will terminate in five years. The agreement may be amended or extended at any time by mutual consent of the parties. The parties will review this agreement every year to determine whether it should be revised, continued as is, extended, or canceled.


Any party may terminate this agreement by providing 60 days written notice to the other party. In the event this agreement is terminated, each party shall be solely responsible for the payment of any expenses it has incurred. This agreement is subject to the availability of funds.

IX. OTHER PROVISIONS

Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within 30 days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution. Under the Inspector General Act of 1978, as amended, 5 USC App. 3, a review of this agreement may be conducted at any time. The Inspector General of the Department of Commerce, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the parties to this agreement, whether written, printed, recorded, produced, or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law.

Nothing herein is intended to conflict with current Department of Commerce directives. If the terms of this agreement are inconsistent with existing directives of either of the agencies entering into this

agreement, then those portions of this agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, all necessary changes will be accomplished by either an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties.

 Digitally signed by
RUMSEY, SCOTT.M.1365888341
Date: 2020.05.11 12:16:40 -07'00'

for Barry A. Thom
Regional Administrator
National Marine Fisheries Service

05/10/2020

Date

James Thompson
Executive Director
Washington Public Ports Association

Digitally signed by James Thompson

Date: 2020.05.14

05/14/20

Date

Appendix C

ALLOCATED SHARE

ANNUAL BUDGET

The estimated annual cost of the Liaison/Staff Biologist is \$182,000. However, the exact cost will not be known until a hiring decision is made. For the 2020 budget period, WPPA will allocate the cost of the position using the formula provided in the agreement, prorated for the number of weeks remaining in the calendar year.

Future budgets and cost allocations will be determined using the methodology in the agreement.