

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.	8F
Date of Meeting	April 6, 2021

DATE: March 18, 2021

TO: Managing Members

FROM: Mike McLaughlin, Port of Seattle Director of Cruise Operations and Maritime Marketing
Lindsay Wolpa, NWSA Senior Manager, Strategic Projects

SUBJECT: First Amendment for Maritime Access and Impact Mitigation Agreements with the Muckleshoot Indian Tribe and the Suquamish Tribe

A. ACTIONS REQUESTED

1. Move to direct The Northwest Seaport Alliance (NWSA) Governance Work Group to evaluate and make a recommendation to the Managing Members on whether costs related to tribal matters should be borne by a homeport, the NWSA, or as a shared matter. If the Managing Members determine that tribal agreement payments should be borne by the homeport, the Managing Members will also address reimbursement to the NWSA by the homeport.
2. Request Managing Members of NWSA and the Port of Seattle Commission authorization to execute the First Amendments to the Maritime Access and Impact Mitigation Agreements with the Muckleshoot Indian Tribe and the Suquamish Tribe in substantially the same form as presented.

B. SYNOPSIS

As briefed at the February Managing Members meeting, these agreements seek to strengthen the government-to-government relationships with two federally recognized tribes in the North Harbor. The core purpose includes:

1. Acknowledging federally recognized treaty fishing rights and resources in Elliott Bay, the East and West waterways, and in the Duwamish Waterway and
2. Ensuring vessel access to marine cargo facilities, cruise terminals, and commercial marinas by maritime sectors engaged in port-related business.

The original agreements provided a five-year term, starting January 1, 2016. These first amendments seek to extend that term to December 31, 2025. The Muckleshoot Fish Commission approved the agreement at their March 15, 2021 meeting and we

anticipated the agreement moved through the Suquamish Tribal Council at their March 22, 2021 meeting. The Muckleshoot Tribal Council is expected to take up the agreement after it is reviewed by the Managing Members at the April 6 meeting.

C. BACKGROUND

Current Agreements: Purpose and Intent

The Agreements establish orderly Treaty-protected fishing access and cargo vessel access to marine terminal facilities. Without these Agreements, prior experience was that fishing activity and cargo vessel access were in regular and constant conflict during seasonal fishing harvest periods.

The goals of these agreements include:

- Establishing a broader framework that confirms a mutual understanding, respect and commitment to our government-to-government relationship.
- Acknowledging operational impacts to Treaty-protected resources and reaffirm the NWSA/port mission that requires operational reliability and productivity.
- Continuing the more recently established principle that expenditure of any mitigation funds is more effectively prioritized and managed by each Tribe.
- Streamlining project permit reviews with process-clarity and review-timeframes that respect treaty rights and support port strategic competitiveness.
- Achieving a fair, sustainable level of mitigation compensation and creating additional value with the certainty of a longer-term agreement.

Since the 2016 Access Agreement was implemented, project-specific and operational relations with the Suquamish Tribe and Muckleshoot Indian Tribe have been productive and efficient. This framework has appropriately shifted responsibility to each tribe to manage their fishers accordingly and in turn resulted in no vessel movement delays in connection to fishing net moves. Further, NWSA-POS have appreciated both tribes have providing timely, helpful responses for permit authorizations for critical North Harbor infrastructure projects, including complex project schedule issues.

Basis of Tribal Rights

Each Tribe has federally recognized treaty rights and resources, including usual and accustomed fishing areas in Elliott Bay, the East and West Waterways, and the Duwamish Waterway. These fishing rights and resources have been recognized as essential and integral elements of federal treaties with native sovereign nations and

must be sustained. These fishing and resource areas overlap NWSA/port marine terminal facilities. The Port has historically reimbursed Tribe members when cargo vessel operations either damage tribal fishing equipment (nets) or otherwise infringe on fishing activities.

Renewal of Agreements

As discussed at last month's meeting, after five years of operating under this newer approach maintaining usual and accustomed treaty fishing access around North Harbor, staff is recommending that we continue in this manner. The Maritime Access and Impact Mitigation Agreement framework provides an equitable, long-term commitment with the Muckleshoot Indian Tribe and Suquamish Tribe, recognizing and providing for fishing access adjacent to and consistent with the needs of continuously operating marine cargo, passenger, and marina sites throughout Elliott Bay, the East and West waterways, and the Duwamish Waterway.

Further, the five-year Agreements avoid significant, costly operational disruptions for tenants at Port and NWSA facilities at a cost comparable to what the Port and NWSA would otherwise incur. The Agreements also limit costs incurred for Port and NWSA staff time administering vessel coordination and damages claims programs. Tenants and shippers face less resistance from tribal fishers and the Port and NWSA maintain efficient operations in the harbor, bolstering competitiveness vis-à-vis other ports. Costs associated with these agreements was contemplated as an indirect expense associated with the Port of Seattle licensed properties during the NWSA valuation.

These agreements focus on operations. The Tribes and the Port and NWSA typically enter into separate agreements for individual projects. Over the last five years, permits for individual projects have been reviewed and authorized on their own merits, though the agreements have helped facilitate efficient communication and expedited negotiations for projects.

Staff seeks one primary proposed change in the next five-year Agreement – continuation of the "Pilot Program" first created under the Terminal 5 Agreements with each Tribe. As net moves do not include compensation for lost fishing time, this new element of the Agreements would compensate tribal members who, due to the arrival of a vessel, are displaced from a productive net set location at a NWSA or Port facility in Elliot Bay, the East and West Waterway and the Duwamish River.

The pilot grew out of discussions with the Muckleshoot Indian Tribe for the Terminal 5 Modernization Program and the anticipated future presence of ultra-large container ships. Cargo vessels in past years have been 900 to 960 feet long and 130 to 135 feet in beam. More recently, larger vessels are calling the marine cargo facilities, sized at approximately 1125-1200 feet long and up to 150-160 feet beam. Larger

vessels are increasingly common at Elliott Bay cargo facilities, with beams approaching 200 feet. The East and West Waterways are 750 feet wide and 5000-6000 feet in length. Frequently, in past years and continuing to the present, the narrow dimension of the waterways, length and number of Treaty fishing nets, the increasing size of cargo vessels, and frequency of vessel operations have combined to impede fishing and vessel access. This is of acute importance when multiple large vessels are moored or moving among nets in a confined waterway such as the East Waterway.

Historically, project mitigation measures have eventually consolidated into the Maritime Access and Impact Mitigation Agreements and the current tribal request for inclusion of the pilot program is consistent in this regard and responds to evolving operating conditions. The pilot program was funded by the Terminal 5 Modernization Program in the amount of \$75,000 per year for three years, with a total of \$225,000 for each tribe; the amount was established based on estimated ship calls and displacements. Based on lower displacement claims by the Muckleshoot Indian Tribe during the pilot program, staff believe that the remaining pilot funds will cover any displacement impacts for the next 5-year agreement.

Other proposed changes from the first amendment are cosmetic, striking aspects of the agreements that no longer apply and slightly shifting the organization of the agreements.

D. FINANCIAL IMPLICATIONS

Source of Funds

The cost of these agreements is sourced through NWSA business operating funds.

E. ATTACHMENTS TO THIS REQUEST

- Computer slide presentation.
- Draft first amendment of Muckleshoot Indian Tribe, Port of Seattle, and Northwest Seaport Alliance Maritime Access and Impact Mitigation Agreement
- Draft first amendment of Suquamish Tribe, Port of Seattle, and Northwest Seaport Alliance Maritime Access and Impact Mitigation Agreement

F. PREVIOUS ACTIONS OR BRIEFINGS

February 2, 2021 Briefing on Northwest Seaport Alliance (NWSA) and Port of Seattle (POS) Maritime Access and Impact Mitigation Agreements with the Muckleshoot Indian Tribe and the Suquamish Tribe

July 12, 2016 Authorization on behalf of the NWSA and the Port of Seattle on maritime access and impact mitigation with the Muckleshoot Indian Tribe and the Suquamish Tribe

June 7, 2016 Briefing on tribal agreements with the Muckleshoot Indian Tribe and the Suquamish Tribe



Item No.: 8F
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First Amendments for Maritime Access and Impact Mitigation Agreements with the Muckleshoot Indian Tribe and the Suquamish Tribe

Presenters:
Mike McLaughlin, Director of Cruise Operations. and Maritime Marketing, POS
Lindsay Wolpa, Senior Manager, Strategic Projects

Actions Requested

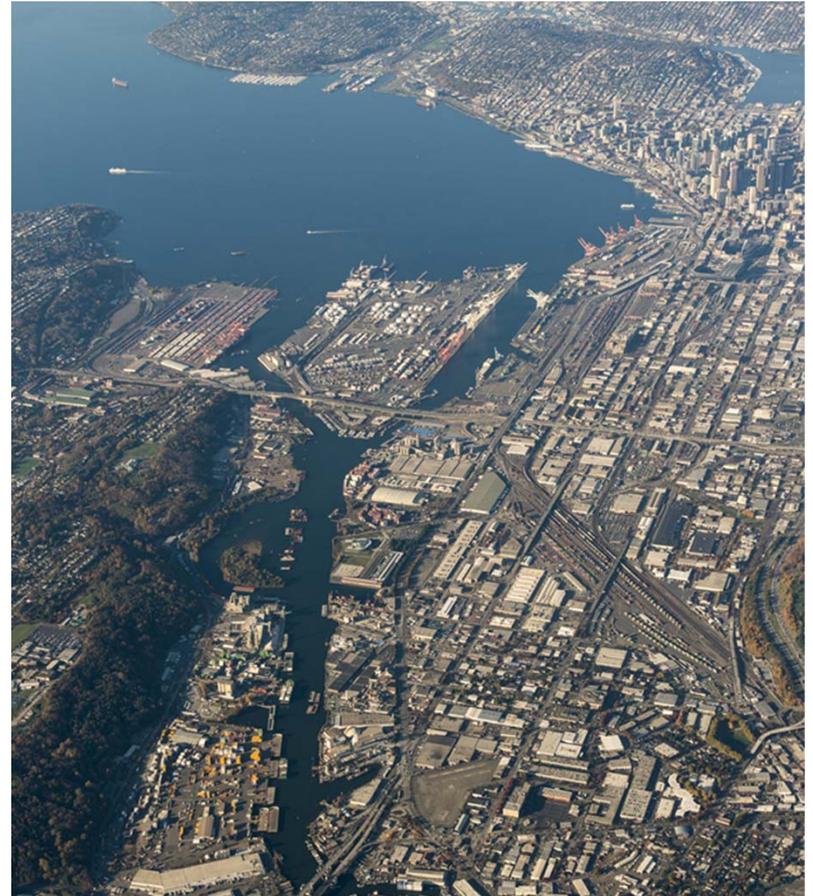
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Background

- **Purpose and Intent**

Extending the Agreements maintain orderly Treaty-protected fishing access and cargo vessel access to marine terminal facilities in the North Harbor.

Without these Agreements, prior experience was that fishing activity and cargo vessel access were in regular and constant conflict during seasonal fishing harvest periods.



Background



- **Successful Record**

Since the 2016 Access Agreement was implemented, project-specific and operational relations with the Suquamish Tribe and Muckleshoot Indian Tribe have been productive and efficient.

This framework has appropriately shifted responsibility to each tribe to manage their fishers accordingly and in turn resulted in no vessel movement delays in connection to fishing net moves.

First Amendment

- Staff seeks one primary proposed change in the next five-year Agreement – continuation of the “Pilot Program” first created under the Terminal 5 Agreements with each Tribe.
- Other proposed changes from the first amendment are cosmetic, striking aspects of the agreements that no longer apply and slightly shifting the organization of the agreements.



Financial Implications

- **Source of Funds:** NWSA operating budget
- **Financial Impact:** \$528,409 to each tribe in 2021 dollars during each year these Amended Agreements are in effect, including annual adjustments representing Consumer Price Index escalation



Actions Requested

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