

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.

9G

**Date of
Meeting**

August 2, 2022

DATE: July 12, 2022

TO: Managing Members

FROM: John Wolfe, CEO

Sponsor: Jason Jordan, Director, Environmental and Planning Services

Project Manager: Tony Warfield, Environmental Senior Project Manager

SUBJECT: MOA/ILAs for two (2) National Marine Fisheries Service (NMFS) Liaison Positions

A. ACTIONS REQUESTED

- 1) Request Managing Members of The Northwest Seaport Alliance (NWSA) authorization for the Chief Executive Officer or their delegate to enter into a Memorandum of Agreement (MOA) with the National Marine Fisheries Service (NMFS) for up to two liaison positions.
- 2) **DUAL ACTION VOTE:** Request Port of Seattle Commission authorization for the Executive Director or their delegate to enter into an ILA with NWSA and the Port of Tacoma for a NMFS liaison position.
- 3) **DUAL ACTION VOTE:** Request Port of Tacoma Commission authorization for the Executive Director or their delegate to enter into an ILA with NWSA and the Port of Seattle for a NMFS liaison position.
- 4) Request NWSA Managing Member authorization for the CEO or their delegate to enter into an ILA with Port of Seattle and the Port of Tacoma for a NMFS liaison position.
- 5) Request Managing Members of NWSA authorization for the Chief Executive Officer or their delegate to enter into an Interlocal Agreement (ILA) with the Washington State Public Ports Association (WPPA) and certain member ports for the hiring, management and full reimbursement of a NMFS Liaison Position.

B. SYNOPSIS

The Port of Tacoma supported a liaison position with the NMFS for nearly twenty years. With the retirement of that person in Fall of 2018, the ports of Seattle and Tacoma joined other public ports in Washington to hire a new liaison managed by WPPA in 2021. That liaison resigned after just 6 months.

Management at the NWSA and home ports proposed to bring that position back in-house to work only on homeport and NWSA projects. Senior management was approached by other WPPA members requesting that one of the ports of Seattle, Tacoma or NWSA manage a second Liaison Position at certain WPPA member port expense (excluding the two homeports).

C. BACKGROUND

In 2001 the Port of Tacoma (POT), with financial support from the Port of Seattle (POS), hired a staff member to serve as a NMFS liaison for the organizations. That staff helped expedite permitting under the Clean Water Act by conducting formal and informal consultations under Section 7 of the Endanger Species Act. Completing Section 7 consultation is required for the US Army Corps of Engineers (or any federal agency) to issue permits needed by applicants to conduct work that may impact endangered species—in this case certain Puget Sound salmonids and Southern Resident Killer Whales. This staff person integrated consultation requirements for both the NMFS and US Fish and Wildlife Service (USFWS).

This investment proved to be highly beneficial for the ports as informal consultations were often conducted in a manner of weeks and formal consultations taking several months. For other organizations informal consultations were taking many months and formal consultations often over a year.

After the retirement of POT's long-term NMFS liaison, neither the port of Tacoma nor Seattle wanted to continue holding the position and approached the WPPA to manage the position in partnership with eight other member ports. That partnership with other ports worked well in that the consortium hired a talented and productive liaison that pushed through critical consultations for Terminal 5 in Seattle and the Blair maintenance dredge for Tacoma. Unfortunately, the liaison did not find the position a good fit and resigned after about six months. It became clear WPPA was not well positioned to provide the technical and managerial support required to make the position successful.

The original ten ports in this consortium requested a workload analysis, conducted by Tacoma's former liaison, and found there is about a four-year backlog of projects with just those ten ports. Approximately 50% of that backlog is comprised of POS, POT and NWSA projects. Given that analysis, POS, POT and NWSA proposed to bring the position back and hire a liaison for only the projects pertaining to the three

organizations. The other eight ports approached NWSA management about managing a second position, funded entirely by the other eight ports to address their backlog.

NWSA management offered to seek authorization to manage the second liaison so long as 1) the position was fully funded upfront by the other ports with a 20% administration fee, 2) the NWSA is not responsible for prioritizing the workload of the second liaison and 3) if the second liaison has excess capacity, either homeport or NWSA could purchase some of their time if the first liaison is either overly backed-logged or the position is vacant.

Compounding the need for liaisons with NMFS was their policy change of 2018 that changed how they consider a project's baseline. That policy change¹ had made obtaining permits for both new and maintenance work an even more difficult and lengthy process. Further, in July of 2022 when NMFS issued a programmatic Biologic Opinion for nearshore work in Puget Sound, they relied on a mitigation calculator that their own website states is not necessarily appropriate for port use. They also limited the total volume of work Puget Sound-wide that can make use of that Biologic Opinion to such a small scale it will likely not work for Puget Sound ports when combined with all other landowners. Consequently, both homeports will likely engage in formal consultations of their own for programmatic maintenance and repair permits and of course much of their new work. NMFS has stated they will not consider alternative calculators or formal consultations until the approximately two-year backlog of consultations is completed. This is not acceptable for the NWSA or the two homeports. By providing a liaison to work exclusively on homeport and NWSA projects we will implement a solution that will address our needs as was done for nearly two decades. Further, by administratively supporting the other ports' effort to provide a second liaison the NWSA will increase the overall capacity for Puget Sound ports to obtain permits and potentially provide insurance against overwhelming and/or losing our own liaison.

D. FINANCIAL IMPLICATIONS

Source of Funds

The cost of the NMFS Liaison Position for the NWSA, POT and POS will be paid by operating income by each of the three entities. The cost of the 2nd NMFS Liaison

¹ NMFS states their shift in direction is a reinterpretation of existing policy. However, to those who own and maintain in-water infrastructure it is a major policy change in how maintenance and repair work is permitted for existing structures.

Position will be funded by the other entities and will provide an estimated \$30,000 to cover a portion of the existing (non-incremental) NWSA management cost.

Financial Impact

The cost of the NWSA/POS/POT NMFS Liaison position is estimated to be \$150,000, with the POT and POS each taking 30% or \$45,000 each and the NWSA taking the remaining 40% or \$60,000. The two liaisons will be included in the NWSA headcount.

The cost of the second Liaison Position for the other ports is estimated to cost \$150,000 to them plus the NWSA will charge an extra 20% (\$30,000) to provide management for this position, for a total cost of \$180,000. The cost of the NMFS liaison for the other ports will be covered by those other ports. The \$30,000 will reduce existing NWSA costs which will be split between the two homeports through increased Distributable Income and Distributable Cash.

E. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

- **No Action Alternative:** The homeports and NWSA could choose to not hire liaisons and have our projects reviewed in the order received.
Pros: This would save the cost of one staff position, approximately \$150,000 per year.
Cons: Project review would continue to be unacceptably slow.
- **Hire only homeport/NWSA liaison:** The NWSA could choose to only work with the homeports and hire one liaison dedicated to homeport and NWSA projects.
Pros: Administratively simpler. One less staff position to manage. Decrease management time spent working with other ports.
Cons: Does not support other ports in providing necessary resources to NMFS to improve ESA Consultation services. Increases risk of NWSA liaison becoming overwhelmed or having no service during a vacancy.
- **Recommended Action:** Approve each MOA/ILA to hire one Liaison for the homeports and NWSA and one liaison with 120% reimbursement for certain other Washington ports.

F. ENVIRONMENTAL IMPACTS / REVIEW

Permitting: This effort will provide substantial benefit to the permitting process for both homeports and the NWSA.

Remediation: NA

Stormwater: NA

Air Quality: NA

G. ATTACHMENTS TO THIS REQUEST

- Slide presentation.
- MOA between the NWSA and NMFS/USFWS.
- ILA between the NWSA/POS/POT
- ILA between NWSA and WPPA and certain member ports

H. PREVIOUS ACTIONS OR BRIEFINGS

None specifically on NMFS liaisons.