

ACTION ITEM MEMO

Port of Tacoma Commission



Item No: 6D
Meeting Date: December 17, 2024

DATE: December 9, 2024
TO: Port of Tacoma Commission
FROM: Eric Johnson, Executive Director
Sponsor: Jason Jordan, Sr. Director, Environmental & Planning
Project Manager: Tony Warfield, Sr. Manager, Environmental & Planning
SUBJECT: Authorization for Port of Tacoma and NWSA Use of Port of Tacoma Advance Mitigation Credits

A. ACTION REQUESTED

Staff request Commission authorization for Port of Tacoma and NWSA use of Port of Tacoma Advance mitigation credit from the Place of Circling Waters Advance Mitigation Site to cover mitigation liabilities for the Totem Ocean Trailer Express (TOTE), Pierce County Terminal (PCT), and Middle Blair (Knuckle) maintenance dredges for a total of 0.06 Wetland Acre Credit and 1.86 Fish credits.

Strategic Plan Initiative: OS-2 Maintain Assets.

B. BACKGROUND

In 2012, during construction of the Place of Circling Waters (POCW) Mitigation Site, the Port sought Advance mitigation credit for creating restoration beyond what was required. The design alteration was due to the discovery and removal of contamination during construction. Faced with the choice of backfilling the resulting hole with gravel from the bluff, or turning that area into an estuarine marsh, the Port chose to create more habitat than was initially planned and seek Advance mitigation credit for the expanded area. This decision carried some risk, as regulatory agencies were still developing their Advance mitigation crediting and mitigation banking processes.

The US Army Corps of Engineers has Authorized use of Advanced mitigation credits from the POCW twice, as summarized below.

Current Place of Circling Waters Advance Mitigation Ledger

Action	AC Used	AC Remaining	DSAY Used	DSAY Remaining
Original Balance 2012	--	3.52	--	114.23
Arkema Mound Clean Up	0.09	3.43	1.49	112.74
North Lead Tracks	0.02	3.42	0.49	112.26

AC: Wetland Acre Credit DSAY: Discounted Service Acre Year (Fish credit)

In order to issue permits to conduct in-water work in Puget Sound, the US Army Corps of Engineers must conduct Endangered Species Act (ESA) Section 7 consultation with the National Marine Fisheries Service (NMFS) and the US Fish and Wildlife Service (USFWS; collectively, the Services). If the Services determine a project potentially impacts ESA-listed species or their critical habitat, they can impose mitigation to offset those impacts as part of the consultation. Without mitigation, the Services can deny the permit by calling jeopardy, and the project may not proceed. Historically, repair and maintenance work on legally constructed structures did not require mitigation. However, in 2018, NMFS instituted a substantial policy change requiring mitigation for certain repair and maintenance activities, including maintenance dredging. This policy change is evident in the Salish Sea Nearshore Programmatic consultation, which expedites ESA permit timelines significantly, but mandates mitigation for maintenance dredging.

In 2024, as part of the TOTE, PCT, and Middle Blair (Knuckle) maintenance dredge permitting efforts, Port staff identified mitigation liability and developed the most expedient offsetting strategy to secure in-water work permits and meet project timelines. In order to proceed, these three maintenance dredge projects require the mitigation summarized in the Table below per coordination with the Services.

Proposed Place of Circling Waters Advance Mitigation Use and Ledger

Action	AC Used	AC Remaining	DSAY Used	DSAY Remaining
Original Balance 2012	--	3.52	--	114.23
Arkema Mound Clean Up	0.09	3.43	1.49	112.74
North Lead Tracks	0.02	3.42	0.49	112.26
<i>TOTE Maintenance Dredge</i>	<i>0.01</i>	<i>3.41</i>	<i>0.47</i>	<i>111.79</i>
<i>PCT Maintenance Dredge</i>	<i>0.03</i>	<i>3.38</i>	<i>0.90</i>	<i>110.89</i>
<i>Middle Blair Maintenance Dredge</i>	<i>0.02</i>	3.36	<i>0.49</i>	110.40

AC: Wetland Acre Credit

DSAY: Discounted Service Acre Year (Fish credit)

Italicized text indicates current liability proposed as part of this request

Staff believe the Port should prioritize use of Advance mitigation credits from POCW when mitigating Port projects, because those credits are only available for Port use and cannot be sold. However, the POCW is not the Port’s only appropriate¹ credit source. The Upper Clear Creek (UCC) Mitigation bank has 8.91 wetland acre credits and 193.77 DSAYs currently released, with another 3.65-acre credit and 79.39 DSAYs to be released over the next 3 years. UCC Mitigation Bank credits can be used by the Port or sold on the open market. Therefore, it is advantageous to use Advanced mitigation credits from POCW for Port projects in order to preserve UCC Bank credits for open market purchase and maximize potential profits from their sale.

As mentioned above, POCW was established as regulatory agencies, including the Services, were establishing their Advance mitigation policies. Additionally, there is a great deal of interest within both NMFS and USFWS in developing a more progressive and robust Advance mitigation network

¹ The Lower Wapato Creek Advance Mitigation Site does not have the appropriate credits for this action as there not ESA listed fish in Wapato Creek yet. And credits from this site are slated for the Thorne Road Off-Dock development and invasive snail eradication efforts at Port Parcel 117.

in the Puget Sound region. Due to these factors, staff at NMFS and USFWS are verifying the documentation and calculations used to develop the POCW and confirming the best process to formally document the available credits with their respective internal counsel. Port staff will continue to coordinate with the Services and work alongside them to complete this verification process. In the extremely unlikely event Services staff and counsel cannot come to an agreement on how to validate POCW credits, the Services are reassured by the fact that the Port can easily cover its mitigation liability with the UCC Mitigation Bank, where credits have been accounted for and verified for ESA applicability.

Between the two applicable mitigation sites, the Port currently has a total portfolio balance of 12.33 acre-credits with 3.65 to be released and 306.03 DSAYs with another 79.39 to be released. Thus, this action will use well less than 1% of the Port's total current holdings.

The Port Master Policy addresses the use of Advance and banked credits as follows:

VII. POLICIES GOVERNING THE USE AND SALE OF MITIGATION CREDITS

Use of Advance Mitigation Site Credits

(1) Use for Port Projects. Use of Advance Mitigation Site credits for Port Projects is subject to Commission approval. Commission approval for the use of Advance Mitigation Site credits may be provided in conjunction with a Project Authorization or through a separate Commission action.

(2) Use for Alliance Projects. The Port may offer the Alliance the opportunity to use Advance Mitigation Site credits on the terms and conditions provided for in Article 3.2(f)(iii) of the Second Amended Alliance Charter for "Future Mitigation Sites". Use of Advance Mitigation Site credits by the Alliance is subject to Commission approval.

The Article 3.2(f)(iii) of the Second Amended Alliance Charter reads:

(iii) Future Mitigation Sites: As each homeport creates advanced bank/habitat mitigation sites, each will develop a market rate price per square foot, or per credit associated with the total cost-of-ownership, which will include land value, design, permitting, construction, monitoring, adaptive management and long-term maintenance costs. Each Homeport may offer the PDA the option to purchase advanced bank habitat mitigation credits at a market rate or as otherwise agreed to, from such Homeport as needed to mitigate PDA development as these credits are available.

If the Commission authorizes use of the credits with this action, NWSA staff intend to take an Interlocal Agreement to the Managing Members January 2025 for reimbursement of the Port's credits.

C. SCOPE OF WORK

The scope of work includes assigning currently available Place of Circling Waters advance mitigation credits to the three noted maintenance dredge projects. Actual credit use will be based on post dredge survey and may be lower than noted above.

D. TIMEFRAME/PROJECT SCHEDULE

Credit will be assigned to the dredge jobs as they occur.

E. FINANCIAL SUMMARY

Cost

No current funds will be spent on the use of these credits. The credits are derived from expenditures from 2008-2012 timeframe. Using the Puget Sound Partnership/Department of Natural Resources/NMFS fee in lieu program as a proxy, each DSAY is worth \$141,000.

Project	DSAY	Market Value	Responsibility*	Total Project Cost
TOTE Maintenance Dredge	0.47	\$66,270	NWSA	\$636,270
PCT Maintenance Dredge	0.90	\$126,900	NWSA	\$1,611,900
Middle Blair Maintenance Dredge	0.49	\$69,090	Port	\$4,069,090

* According to the Charter the NWSA is financially responsible for dredging in berth areas and the Homeports are financially responsible for navigation channels.

Total Cost

While no current funds will be expended, the total market value of the credits is \$262,260. Under the NWSA Charter, use of Homeport mitigation credit is a reimbursable expense.

Financial Impacts

The Port will receive payment from the NWSA through an Interlocal Agreement of \$193,170 for the credits associated with the NWSA TOTE and PCT maintenance dredge projects. The NWSA will recognize a \$193,170 expense for the use of the credits. Therefore, the Port of Tacoma will net 50% of the value [\$96,585] due to the 50%/50% cost split of NWSA expenses.

F. ECONOMIC INVESTMENT / JOB CREATION

Use of these credits allows maintenance dredging of NWSA and Port facilities that supports our current book of business and allow for future expansion.

G. ENVIRONMENTAL IMPACTS / REVIEW

All environmental review of these actions is complete.

H. ALTERNATIVE ANALYSIS

No Action:

- Do not conduct maintenance dredging.
- Pros: Save on construction costs and save mitigation credit.
- Cons: Port operations continue to degrade

Mitigate with Bank Credits:

- Pros: Perfect clarity as to applicability to credits required under ESA.
- Cons: Use of an asset that could be sold on the open market.

Purchase Credits on Open Market:

Pros: Would save current credit balance

Cons: Would expend current funds when Port is well position to cover its current and 10-Year mitigation liabilities.

Recommended Action: Use Advance credits to cover mitigation liability for all three dredge jobs.

I. **NEXT STEPS**

- Determine with NWSA actual reimbursement rate and complete ILA. Present ILA at January 2025 Managing Members meeting for approval
- Based on as-built survey, determine final mitigation liability with NMFS
- Update Advance mitigation ledger as necessary