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MEMORANDUM OF AGREEMENT

between the

UNITED STATES NAVY

UNITED STATES COAST GUARD

UNITED STATES ARMY CORPS OF ENGINEERS

and the

**UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL MARINE FISHERIES SERVICE**

for the

CONSERVATION OF THE NORTHERN RIGHT WHALE

I. PURPOSE AND SCOPE

This Memorandum of Agreement (MOA) is made and entered into by and between the U.S. Navy, hereinafter referred to as Navy; the U.S. Coast Guard, hereinafter referred to as CG; the U.S. Army Corps of Engineers, hereinafter referred to as ACOE; and the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, hereinafter referred to as NMFS. Collectively, the parties to this MOA will be referred to as the cooperators.

The purpose of this MOA is to establish a general framework for cooperation and participation among the cooperators in the conservation of the highly endangered northern right whale, *Eubalaena glacialis*, in its calving grounds along the Georgia and Florida coasts of the United States. This MOA in no way restricts the cooperators from undertaking similar agreements with other entities.

The cooperators agree to work together to achieve a common goal of preventing ship collisions with right whales within the southeastern U.S. calving grounds to help in the conservation of the species.

II. REFERENCES AND AUTHORITIES

The northern right whale, *Eubalaena glacialis*, is listed as endangered pursuant to the Endangered Species Act (16 U.S.C. 1531, *et seq.*). The southeastern U.S. calving ground for the

northern right whale, *Eubalaena glacialis*, has been designated as part of the species' critical habitat (50 CFR Section 226.203).

The cooperators enter into this agreement pursuant to the Endangered Species Act (16 U.S.C. 1536(a)(1)), which requires that all Federal agencies use their authorities to further interagency cooperation by carrying out programs for the conservation of endangered species and threatened species pursuant to 16 U.S.C. 1533.

In addition, Federal agencies, including the cooperators, are to ensure that any action authorized, funded, or carried out by such agencies is not likely to jeopardize the continued existence of any endangered species or threatened species (16 U.S.C. 1536(a)(2)).

NMFS also has the authority to protect marine mammals under the Marine Mammal Protection Act (16 U.S.C. 1361, *et seq.*).

The Economy Act (31 U.S.C. 1535), provides that funds may be transferred to NMFS by the other cooperators in this agreement if it is determined that this is in the best interest of the United States Government. The Economy Act, along with any other applicable agency regulations, policies and directives, shall govern interagency support agreements entered into pursuant to this MOA and under the authority of that Act.

III. RESPONSIBILITIES

The NMFS is responsible for the management and protection of marine mammals and endangered marine species. The cooperators may be required to conduct activities within the southeastern U.S. calving grounds of the northern right whale. Due to its endangered status, any human-related mortality of the northern right whale is of concern to the cooperators. The cooperators desire to ensure, inasmuch as is practicable, that right whale/vessel interactions in the southeastern critical habitat area are averted. This has been accomplished through implementation of the right whale Early Warning System (EWS).

To help reduce the possibility of ship strikes, a system of surveys was initiated in the waters off the Southeast U.S. in fall 1993, and the Southeast Implementation Team developed a system to alert area ship traffic to the presence of right whales. The central feature of the system has been an aerial survey program; designed to obtain accurate, current information on right whale locations and disseminate that information to mariners. This system attempts daily aerial surveillance (weather, funding, etc., permitting) of the southeastern right whale critical habitat area during the calving season. When right whales are sighted, the locations are reported to local port authorities, any nearby vessels (including ACOE dredges), and to the CG for transmission over NAVTEX and the Mandatory Ship Reporting System (broadcast systems which transmits notices to mariners over receiving devices present on most large vessels). This system has been effective in averting collisions between vessels and right whales.

Accordingly:

1. The cooperators agree to participate in the EWS, unless and until such time as the cooperators agree such participation is no longer necessary.
2. Specific work projects or activities that involve the transfer of funds, services, or property among the cooperators to this MOA will require the execution of separate agreements or contracts, or addenda to this agreement, contingent upon the availability of funds as appropriated by Congress, and subject to review and approval by the cooperators on a case-by-case basis.
3. Projects or activities conducted under this MOA must comply with all applicable statutes and regulations, including those statutes and regulations applicable to procurement activities and the Economy Act.
4. As soon as practicable upon completion of a work project or activity, NMFS agrees to provide an accounting of each project's expenditures for projects or activities conducted under addenda referenced in paragraph two (2) consistent with applicable statutes, regulations, and policies.
5. For projects or activities conducted under addenda referenced in paragraph two (2) above, NMFS agrees, to provide a summary of projected expenses covering a three (3) year planning cycle to the extent practicable.
6. As soon as practicable after the appropriate annual appropriations bill is signed by the President; the CG, Navy, and ACOE agree to forward Military Interdepartment Procurement Requests (MIPRs) to NMFS providing funds for projects or activities conducted under addenda referenced in paragraph two (2).
7. Nothing in this MOA obligates the cooperators to expend appropriations or to enter into any contract or other obligation.

IV. PRINCIPAL CONTACTS

The following persons will be the principal contacts for their respective agencies at the time of execution of this MOA. These contacts may be changed at the agencies' discretion upon notice to the other cooperating agencies.

Katie Moore
Living Marine Resources/Marine Protected Species Planner
Atlantic Area Office of Law Enforcement
431 Crawford St.
Portsmouth, VA 23704
Voice: (757)398-6504
Fax: (757)398-6279
Email: Katie.S.Moore@uscg.mil

Dennis Barnett
Planning Directorate, CESAD PD-R
South Atlantic Division
U.S. Army Corps of Engineers
77 Forsythe Street, S.W.
Atlanta, GA 30335-6801
Voice: (404)562-5225
Fax: (404)562-5233
Email: Dennis.W.Barnett@sad01.usace.army.mil

Barbara Howe
Commander, Navy Region Southeast
Box 102, Code N46E
NAS Jacksonville, FL 32212-0102
(include Bldg 919, Langley Street for FedEx shipments)
Voice: (904)542-5352
Fax: (904)542-2414
Email: Barbara.Howe@navy.mil

Barb Zoodsma
Protected Resources Division
NOAA Fisheries, Southeast Regional Office
263 13th Avenue South
St. Petersburg, FL 33701
Voice: (904)321-2806
Fax: (904)321-1579
Email: Barb.Zoodsma@noaa.gov

V. OTHER PROVISIONS

Severability

Nothing herein is intended to conflict with current NOAA, Navy, CG, or ACOE directives. If any provision of this MOA, or any addenda thereto, is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation. At the first opportunity for review of the agreement, all necessary changes will be accomplished by either an amendment or by entering into a new agreement, whichever is deemed most expedient to the interest of both parties.

Dispute Resolution

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(s) 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.

Amendment, Modification and Termination

This MOA may be modified or amended upon written request of any party hereto and the subsequent written concurrence of all the parties. Cooperator participation in this MOA may be terminated with a 60-day written notice to the other cooperators. Unless terminated under the terms of this paragraph, this MOA will expire September 30, 2011. This agreement may then be renewed for future years upon written consent of all participating agencies.

VI. SIGNATURE OF EACH PARTY

IN WITNESS WHEREOF, this MOA is effective upon signature of all parties hereto.



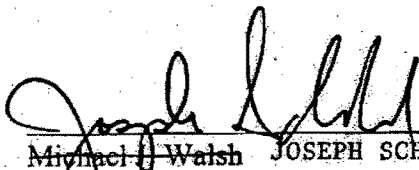
M. S. Boensel
Rear Admiral, U.S. Navy
Commander, Navy Region Southeast

Date 11/6/06



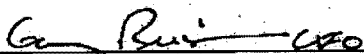
VADM Vivien S. Crea D.B. PETERMAN
Commander, Atlantic Area
U.S. Coast Guard

Date 1 Dec 2006



Michael J. Walsh JOSEPH SCHROEDEL
Brigadier General, US Army
Commander, South Atlantic Division
U.S. Army Corps of Engineers

Date 22 Nov 2006



William T. Hogarth, Ph.D.
Assistant Administrator for Fisheries
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
U.S. Department of Commerce

Date 10/5/06

ADDENDUM 1

FUNDING OF THE RIGHT WHALE Early Warning System (EWS) IN FY07

The above-listed parties desire to ensure, inasmuch as is practicable, that right whale/vessel interactions in the southeastern critical habitat are averted in FY07. In furtherance of this objective, the Navy, United States Coast Guard (CG), and the United States Army Corps of Engineers (ACOE) have each agreed to contribute, subject to availability of funds, \$158,786, for a total of \$476,358, to be awarded as a contract(s) for implementation of the EWS. The funds will be transferred to the National Marine Fisheries Service (NMFS) through separate agreements and not under this Addendum to the Memorandum of Agreement. Funds dedicated by the Navy, CG and ACOE for the right whale EWS will be transferred by NMFS to the contractor(s), once the required services have been rendered. NMFS has dedicated personnel for the administration of this contract, provided funding to the states of Georgia and Florida for recovery plan implementation activities in support of this agreement, and has dedicated funding for surveys north and south of the EWS survey area to determine the extent of right whales' range in southeastern U.S. waters.

This agreement is entered into under section 7(a)(1) of the Endangered Species Act (16 U.S.C. § 1536(a)(1)) and under the Economy Act (31 U.S.C. § 1535). The cooperators warrant that 1) amounts are available; 2) use of an interagency acquisition is in the best interest of the government; and 3) the services to be provided by NMFS cannot be obtained as conveniently or economically by contracting directly with a private source. NMFS has expertise to enter into a contract for implementation of the EWS that is not available within the other cooperating agencies. This requires contracting action by the servicing agency and the servicing agency has capabilities or expertise to enter into a contract for such supplies or services that are not available within the requesting agency.

NMFS warrants that it has adequate statutory authority for the contractual action and will comply fully with the compliance requirements of Part 6 and 17 of the Federal Acquisition regulations as well as all other legal requirements applicable to the contract.

SIGNATURE OF EACH PARTY

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the last written date below.



M. S. Boensel
Rear Admiral, U.S. Navy
Commander, Navy Region Southeast

Date

11/6/06



VADM Vivien S. Crea D.B. PETERMAN
Commander, Atlantic Area
U.S. Coast Guard

Date 1 Dec 2006



~~Michael J. Walz~~ JOSEPH SCHROEDEL
Brigadier General, US Army
Commander, South Atlantic Division
U.S. Army Corps of Engineers

Date 22 Nov 2006

 CEO

William T. Hogarth, Ph.D.
Assistant Administrator for Fisheries
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
U.S. Department of Commerce

Date 10/5/06

ADDENDUM 2

FUNDING OF THE RIGHT WHALE Early Warning System (EWS) IN FY08

The above-listed parties desire to ensure, inasmuch as is practicable, that right whale/vessel interactions in the southeastern critical habitat are averted in FY08. In furtherance of this objective, the Navy, United States Coast Guard (CG), and the United States Army Corps of Engineers (ACOE) have each agreed to contribute, subject to availability of funds, \$165,737, for a total of \$497,212 to be awarded as a contract(s) for implementation of the EWS. The funds will be transferred to the National Marine Fisheries Service (NMFS) through separate agreements and not under this Addendum to the Memorandum of Agreement. Funds dedicated by the Navy, CG and ACOE for the right whale EWS will be transferred by NMFS to the contractor(s), once the required services have been rendered. NMFS has dedicated personnel for the administration of this contract, provided funding to the states of Georgia and Florida for recovery plan implementation activities in support of this agreement, and has dedicated funding for surveys north and south of the EWS survey area to determine the extent of right whales' range in southeastern U.S. waters.

This agreement is entered into under section 7(a)(1) of the Endangered Species Act (16 U.S.C. § 1536(a)(1)) and under the Economy Act (31 U.S.C. § 1535). The cooperators warrant that 1) amounts are available; 2) use of an interagency acquisition is in the best interest of the government; and 3) the services to be provided by NMFS cannot be obtained as conveniently or economically by contracting directly with a private source. NMFS has expertise to enter into a contract for implementation of the EWS that is not available within the other cooperating agencies. This requires contracting action by the servicing agency and the servicing agency has capabilities or expertise to enter into a contract for such supplies or services that are not available within the requesting agency.

NMFS warrants that it has adequate statutory authority for the contractual action and will comply fully with the compliance requirements of Part 6 and 17 of the Federal Acquisition regulations as well as all other legal requirements applicable to the contract.

SIGNATURE OF EACH PARTY

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the last written date below.



M. C. Vitale
Rear Admiral, U.S. Navy
Commander, Navy Region Southeast

Date 3/17/08



D. Brian Peterman
Vice Admiral, US Coast Guard
Commander, Atlantic Area

Date 3/12/07



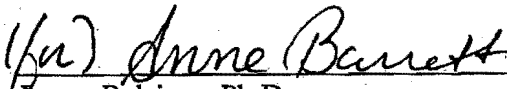
Wanda T. Cortesini
Contracting Officer, US Coast Guard
Maintenance and Logistics Command Atlantic

Date 3/6/08



Joseph Schroedel
Brigadier General, US Army
Commanding, South Atlantic Division
U.S. Army Corps of Engineers

Date 3/18/08



James Balsiger, Ph.D.
Acting Assistant Administrator for Fisheries
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
U.S. Department of Commerce

Date 8-3-08

ADDENDUM 3

FUNDING OF THE RIGHT WHALE Early Warning System (EWS) IN FY09

The above-listed parties desire to ensure, inasmuch as is practicable, that right whale/vessel interactions in the southeastern critical habitat are averted in FY09. In furtherance of this objective, the Navy, United States Coast Guard (CG), and the United States Army Corps of Engineers (ACOE) have each agreed to contribute, subject to availability of funds, \$171,583, for a total of \$514,747 to be awarded as a contract(s) for implementation of the EWS. The funds will be transferred to the National Marine Fisheries Service (NMFS) through separate agreements and not under this Addendum to the Memorandum of Agreement. Funds dedicated by the Navy, CG and ACOE for the right whale EWS will be transferred by NMFS to the contractor(s), once the required services have been rendered. NMFS has dedicated personnel for the administration of this contract, provided funding to the states of Georgia and Florida for recovery plan implementation activities in support of this agreement, and has dedicated funding for surveys north and south of the EWS survey area to determine the extent of right whales' range in southeastern U.S. waters.

This agreement is entered into under section 7(a)(1) of the Endangered Species Act (16 U.S.C. § 1536(a)(1)) and under the Economy Act (31 U.S.C. § 1535). The cooperators warrant that 1) amounts are available; 2) use of an interagency acquisition is in the best interest of the government; and 3) the services to be provided by NMFS cannot be obtained as conveniently or economically by contracting directly with a private source. NMFS has expertise to enter into a contract for implementation of the EWS that is not available within the other cooperating agencies. This requires contracting action by the servicing agency and the servicing agency has capabilities or expertise to enter into a contract for such supplies or services that are not available within the requesting agency.

NMFS warrants that it has adequate statutory authority for the contractual action and will comply fully with the compliance requirements of Part 6 and 17 of the Federal Acquisition regulations as well as all other legal requirements applicable to the contract.

Disputes shall be resolved pursuant to applicable provisions of the Business Rules for Intragovernmental Transactions delineated in the Treasury Financial Manual, Vol.1, Bulletin 2007-03, Section VII (resolving Intragovernmental Disputes and Major Differences).

SIGNATURE OF EACH PARTY

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the last written date below.

M. C. Vitale

M. C. Vitale
Rear Admiral, U.S. Navy
Commander, Navy Region Southeast

Date 12/17/08

R. J. Papp, Jr.

R. J. Papp, Jr.
Vice Admiral, US Coast Guard
Commander, Atlantic Area

Date 17 Feb 2009

Wanda T. Cortesini

Wanda T. Cortesini
Contracting Officer, US Coast Guard
Maintenance and Logistics Command Atlantic

Date 1/28/09

Joseph Schroedel

Joseph Schroedel
Brigadier General, US Army
Commander, South Atlantic Division
U.S. Army Corps of Engineers

Date 3/09/09

for Anne Barnett

James Balsiger, Ph.D.
Acting Assistant Administrator for Fisheries
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
U.S. Department of Commerce

Date 12-5-2008

Memorandum of Agreement
Between the
UNITED STATES COAST GUARD
And the
United States Department of Commerce
National Marine Fisheries Service
Northeast Fisheries Science Center
For the
Conservation of the North Atlantic Right Whale
Agreement No. NEC 2008-0021

I. PURPOSE AND SCOPE

This Memorandum of Agreement (MOA) is made and entered into by and between the U.S. Coast Guard, hereinafter referred to as USCG and the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, NOAA Fisheries, Northeast Fisheries Science Center, hereinafter referred to as NEFSC. Collectively, the parties to this MOA will be referred to as the cooperators.

The purpose of this MOA is to establish a general framework for cooperation and participation among the cooperators in the conservation of the highly endangered North Atlantic right whale, *Eubalaena glacialis*, in its feeding grounds of the Northeastern coast of the United States.

The cooperators propose to work together to achieve a common goal of preventing ship collisions with right whales within the northeastern U.S., assessing the status of the stock, and gaining other information to help better protect and recover the species.

II. REFERENCES AND AUTHORITIES

The cooperators enter into this agreement pursuant to the Endangered Species Act, 16 U.S.C. §1531, et seq., as amended, which requires that all Federal agencies use their authorities to further interagency cooperation by carrying out programs for the conservation of endangered species and threatened species.

USCG is permitted to enter into mutual support agreements with other agencies (14 U.S.C. §141). Per COMDTINST 16450.4, the U.S. Coast Guard is directed by the Commandant to enter into mutually beneficial agreements with NOAA to help protect the Northern Atlantic right whale population.

Federal agencies are to ensure that any action authorized, funded, or carried out by such agencies will not jeopardize the continued existence of any endangered species or threatened species (16 U.S.C. §1536 (a)(2)).

Pursuant to the criteria set forth in the Endangered Species Act (16 U.S.C. §1533, et seq.), the North Atlantic right whale, also known as *Eubalaena glacialis*, is listed as an endangered species. (50 CFR Part 17.11).

A major portion of the northeastern U.S. feeding grounds for the North Atlantic right whale have been designated as part of the species' critical habitat (50 CFR Part 226.203).

The Fish and Wildlife Coordination Act, 16 U.S.C. § 661 et seq., provides authorization for the cooperation of agencies to conduct surveys and investigations for the purposes of conserving and protecting all species of wildlife and their habitat and in controlling losses of same, and authorizes the acceptance of funds for these purposes.

III. SUBSTANCE

The NOAA Fisheries and NEFSC are responsible for the management and protection of marine mammals and endangered marine species. The cooperators may be required to conduct activities within the Northeastern U.S. feeding grounds of the North Atlantic right whale. Due to its highly endangered status, any human-related mortality of this species is of grave concern. The cooperators desire to ensure, inasmuch as is practicable, that right whale/vessel interactions in the Northeastern critical habitat are averted. In the past, this has been accomplished through implementation of what has become known as the right whale Ship Advisory System (SAS). This system conducts frequent (weather, funding, etc., permitting) aerial and passive acoustic surveillance of the Gulf of Maine, including right whale critical habitat areas. When right whales are located, the locations are reported to

local port authorities, any nearby vessels, and to the USCG for transmission over NAVTEX (a broadcast system which transmits notices to mariners over receiving devices present on most large vessels). This system has been helpful in averting collisions between vessels and right whales. It is the primary purpose of this Agreement to continue the aerial and passive acoustic surveys in an effort to help preserve the species.

Responsibilities of the Cooperators:

1. The cooperators will participate in the SAS, unless and until such time as the cooperators agree such participation is no longer necessary. The parties agree that continuation of the SAS is one possible vehicle to avoid vessel/right whale collisions in the areas previously outlined.
2. Pursuant to this objective, and subject to the availability of funds for this purpose, the USCG:
 - a. Will disseminate information on the sightings of right whales and the location of conservation areas (e.g., Dynamic Area Management zones) through NAVTEX and other outlets the two parties agree upon.
 - b. Will provide to NOAA (and the SAS) information on right whales sighted during normal USCG operations;
 - c. Agrees to provide funding to the NEFSC in support of SAS in the amount of \$80,000 in FY 2009 and, on an optional basis, may provide additional payments each fiscal year thereafter through FY 2012. Once a funds increase request is received, it will be reviewed and will be adopted as an amendment to this MOA if approved by both parties.
3. Pursuant to this objective, and subject to the availability of funds for this purpose, the NOAA:
 - a. Will disseminate information on the sightings of right whales and the location of conservation areas (e.g., Dynamic Area Management zones) through NOAA Weather radio, NOAA websites and other outlets the two parties agree upon;
 - b. Will administer contracts, hire necessary personnel, charter aircraft, oversee aerial and passive acoustic survey operations, process and disseminate on a year round basis right whale sighting reports, and approve deliverables. All final reports or published papers will acknowledge sponsorship by both NOAA/NEFSC and the U.S. Coast Guard.

Terms and Conditions:

1. This MOA in no way restricts the cooperators from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
2. Nothing in this MOA shall obligate the cooperators to expend appropriations or to enter into any contract or other obligations.
3. This MOA may be modified or amended upon written request of any party hereto and the subsequent written concurrence of both parties. Cooperator participation in this MOA may be terminated with a 60-day written notice of either party. Unless terminated under the terms of this paragraph, this MOA will become effective when signed by both Parties and remain in full force and in effect until September 30, 2013. This agreement may then be renewed for future years upon written consent of the Parties.

IV. REIMBURSEMENT PROCEDURES

Payment for FY09 is estimated to be \$80,000 which USCG will transfer to NEFSC. Prior to the beginning of each of the subsequent fiscal years covered by the agreement, NEFSC will submit an amendment to USCG, which the USCG may accept and return to NEFSC that provides for their payment for the upcoming fiscal year. Payments, if approved by USCG, are expected to remain at approximately \$80,000 per year. This agreement, and any amendments, is subject to the availability of funds.

V. ACCOUNTING DATA

USCG

Fiscal Data for FY 2009

ALC: 70-06-000

Treasury Symb: 70906010

BETC: DISB

DUNS: 806754677

EIN: 546010204

NEFSC

Fiscal Data for FY 2009

ALC: 13-14-0001

Treasury Symb: 13x1450

BETC: COLL

DUNS: 156140209

EIN: 061834875

VI. PRINCIPAL CONTACTS

The following persons will be the principal contacts for their respective agencies at the time of execution of this MOA. These contacts may be changed at the agencies' discretion upon notice to the other agency.

Katie Moore
DHS/USCG/Arme
431 Crawford St
Portsmouth, VA 23704
757-398-6504

Richard Merrick, Ph.D.
NMFS/NEFSC
166 Water Street
Woods Hole, MA 02543
508-495-2316

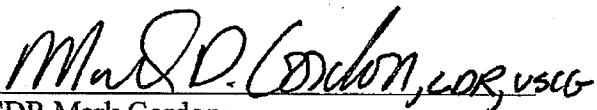
VII. OTHER PROVISIONS

Nothing herein is intended to conflict with current NEFSC or USCG directives. If the terms of this agreement are inconsistent with existing directives of either of the parties 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 or by entering into a new agreement, whichever is deemed most expedient to the interest of both parties.

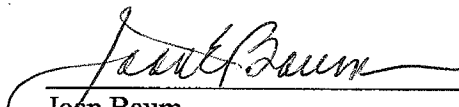
Disputes shall be resolved pursuant to applicable provisions of the Business Rules for Intragovernmental Transactions delineated in the Treasury Financial Manual, Vol. 1, Bulletin 2007-3, Section VII (Resolving Intragovernmental Disputes and Major Differences).

VIII. SIGNATURE OF EACH PARTY

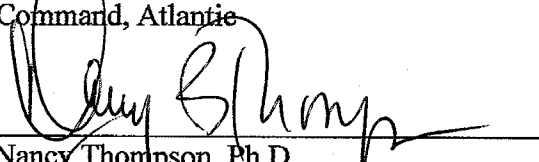
IN WITNESS WHEREOF, the parties hereto have executed this MOA as of the last written date below.


CDR Mark Gordon
U.S. Coast Guard Atlantic Area (Arm)

Date: 02 JUN 2009


Joan Baum
Contracting Officer
U.S. Coast Guard Maintenance and Logistics
Command, Atlantic

Date: 2 June 2009


Nancy Thompson, Ph.D.
Science and Research Director
NMFS, NEFSC

Date: 6/16/09

Control number: AKC-077

INTERDEPARTMENTAL PURCHASE REQUEST					1. PAGE 1				
2. FSC		3. CONTROL SYMBOL NO.		4. DATE PREPARED 29-APR-09		5. IPR NUMBER N0001409IP20106		6. AMEND NO. BASIC	
7. TO: US DEPT OF COMMERCE NOAA NMFS ALASKA FISHERIES SCIENCE CENTER 7600 SAND PIONT WAY N E BLDG 4 SEATTLE, WA 98112-2013					8. FROM: Office of Naval Research ATTN: CODE 822 One Liberty Center 875 North Randolph Street, Suite 1425 Arlington, VA 22203-1995				
9. ITEMS [] ARE [X] ARE NOT INCLUDED IN THE INTERSERVICE SUPPLY SUPPORT PROGRAM AND REQUIRED INTERSERVICE SCREENING [] HAS [X] HAS NOT BEEN ACCOMPLISHED.									
ITEM NO. a.	DESCRIPTION (Federal stock number, nomenclature, specification and/or drawing No., etc.) b.				QTY c.	UNIT d.	ESTIMATED UNIT PRICE e.	ESTIMATED TOTAL PRICE f.	
	<p>See Page 4 for Statement of Work.</p> <p>This Interdepartmental Purchase Order is issued as an Economy Act Order in accordance with Federal Acquisition Regulation 17.5.</p> <p>In accordance with NAVCOMPT Manual 03415.1 acceptance must be forwarded within 5 days after receipt of order and received prior to first billing. Accept this document by signing the acceptance copy and returning it to: Office of Naval Research, ONR 822, One Liberty Center, 875 N. Randolph Street, Arlington, VA 22203-1995. Fax acceptances are allowed. Fax number is (703) 696-4298, or DSN 426-4298. Electronic acceptances can be forwarded to 82FDA@onr.navy.mil. It must include: document and amendment number, ACRN, amount, accepting official's name and title, and date signed. Also provide a financial POC, phone number and e-mail address on acceptance copies.</p> <p>The Principal Investigator is JOANNE WEJAK, (206) 5264014, joanne.wejak@noaa.gov</p> <p>The following only applies to non GSA awards: IPR's are an Economy Act Order and can only be accepted on a reimbursable basis.</p> <p>The ONR Financial POC is Willma Y. Cardon, (703) 696-2091, CARDONW@ONR.NAVY.MIL.</p> <p>Funds expire for obligation purposes on 2009/09/30 00:00:00.</p> <p>Work completion date is 2009/09/30 00:00:00.</p> <p>See Page 2 for other notes.</p> <p>ONR'S DUNS NUMBER IS: 008963233</p> <p>DISTRIBUTION: 1 - ADDRESSEE</p> <p>PROGRAM ELEMENT: 0602747N RESEARCH PROJECT: 04703 CR NUMBER: 09PR07543-00 NAVRIS NUMBER: 1054540 FGLI: 2009-0479</p>							\$6,500.00	
10. SEE ATTACHED PAGES FOR DELIVERY SCHEDULES, PRESERVATION AND PACKAGING INSTRUCTIONS, SHIPPING INSTRUCTIONS AND INSTRUCTIONS FOR DISTRIBUTION OF CONTRACTS AND RELATED DOCUMENTS								11. GRAND TOTAL \$6,500.00	
12. TRANSPORTATION ALLOTMENT (Used if FOB Contractor's Plant)					13. MAIL INVOICES TO (Payment will be made by) PAY OFFICE DODAA				
14. FUNDS FOR PROCUREMENT ARE PROPERLY CHARGEABLE TO THE ALLOTMENTS SET FORTH BELOW, THE AVAILABLE BALANCES OF WHICH ARE SUFFICIENT TO COVER THE ESTIMATED TOTAL PRICE.									
ACRN	APPROPRIATION	LIMIT/ SUBHEAD	SUPPLEMENTAL ACCOUNTING CLASSIFICATION			ACCTG STA DODAAD	AMOUNT		
AA	1791319	W2DG	000 RA329 0 068342 2D 000000 047030001NJ0			068342	\$6,500.00		
15. AUTHORIZING OFFICER (Type name and title) Barbara C. Martin By Direction of Linda Meadows, Comptroller, ONR				16. SIGNATURE <i>Barbara Martin</i>			17. DATE 29-APR-09		
18. THIS ORDER IS ACCEPTED AND THE ORDER OR SERVICES WILL BE PROVIDED IN ACCORDANCE HERewith.				19. ACCEPTING OFFICIAL (NAME, TITLE, AND SIGNATURE) <i>Douglas DeMester</i> Science Director			20. DATE 4/30/09		

ONR FORM 448

(ADAPTED FROM DD FORM 448 MILITARY INTERDEPARTMENTAL PURCHASE REQUEST)

(Continued from Page 1)

Advisory and Assistance Services (AAS - Formerly CAAS) obligation limits for this document are:

\$0.00 dollars for Studies, Analysis and Evaluations;

\$0.00 dollars for Management Professional Support Services;

\$0.00 dollars for Engineering and Technical Services. No changes to these limits will be made without prior approval from the ONR Comptroller Directorate: (Willma Y. Cardon, (703) 696-2091).

Animal Testing Limitations: Use of the funds is contingent on your compliance with animal use regulations (DoDD 3216.1; SECNAVINST 3900.38C and all other applicable regulatory compliance).

National Institute of Health Recombinant DNA Limitations: Use of these funds is contingent on your compliance with National Institute of Health (NIH) guidelines or Recombinant (rDNA). www4.od.nih.gov/oba/rac/guidelines/guidelines.html

Use of these funds is contingent on your compliance with human use regulations (DoDD 3216.2; 32 CFR 219; 10 US Code 980; SECNAVINST 3900.39D and all other applicable regulatory compliance).

Conference Support: These funds must be executed in full compliance with the following: GAO decision B-300826 dated 3 Mar 05; SECNAV memo to CNO and CMC dated 8 Jan 02; and OSD memo dated 29 Nov 01.

All financial related questions should be directed to Willma Y. Cardon, (703) 696-2091, CARDONW@ONR.NAVY.MIL.

The grand total cited constitutes a 31 USC 1517 limitation for all funds provided in this funding document.

Billing information: Do not submit 1080s to this Command. Reimbursable billings shall be submitted thru Internet Payment and Collection (IPAC). Our payment office DFAS-Columbus has a Bilateral Trading Partnership Agreement (BTPA) with your Agency. DFAS-Columbus Agency Location Code (ALC) is 00008522.

The following applies only to GSA awards: The funds being made available for the purpose of the acquisition activities performed by GSA, including statutory or regulatory requirements applicable to the funding being provided by ONR have been disclosed to GSA; and all internal reviews/approval required by ONR prior to placing the order with GSA have been completed.

This only applies to GSA awards which are IT related: This Interdepartmental Purchase Request issued under section 5112 of the Information Technology Management Reform Act (ITMRA) of 1996 (Clinger-Cohen Act of 1996-P.L. 104-106).

The following applies to the Department of Energy (DOE) awards: This agreement is entered into pursuant to the authority of the Economy Act of 193, as amended (31 U.S.C. 1535), and adheres to Federal Acquisition Regulation (FAR) 6.002. To the best of our knowledge, the work requested will not place the DOE and its contractor in direct competition with the domestic private sector.

IPRs issued for severable services: These funds are available for services for a period not to exceed one year from the date of acceptance for this order. All unobligated funds shall be returned to the ordering activity no later than one year after the acceptance of the order or upon completion of the order, whichever ever is earlier.

IPRs issued for goods: I certify that the goods acquired under this agreement are legitimate, specific requirements representing a bona fide need of the fiscal year in which this order is placed.

Per Office of the Secretary of Defense direction dated 31 Jan 2007, Advanced Payments are not authorized under this funding document.

(Continued from Page 1)

14. ACCOUNTING DATA TO BE CITED ON RESULTING CONTRACTS					
ACRN	APPROPRIATION	LIMIT/ SUBHEAD	SUPPLEMENTAL ACCOUNTING CLASSIFICATION	ACCTG STA DODAAD	AMOUNT
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Statement of Work (SOW)

Funding is provided to Drs. Alex Zerbini, Rod Hobbs, Brad Hanson and Dawn Noren and others, all full time NOAA employees, to travel to support ONR Marine Mammal Program research topics.

The estimated value of the requirement is \$6,500. The Period of Performance (POP) for the requirement is from the date of the award to 30 September 2009. This Order will be fully funded using FY 2009 funds and will not be incrementally funded.

Drs. Alex Zerbini, Rod Hobbs, and Brad Hanson are uniquely qualified to support the ONR Marine Mammals and Biological Oceanography Program as they have years of experience in the field working with and tagging marine mammals. Dr. Zerbini, Hobbs, and Hanson's services can only be acquired through the NMFS National Marine Mammal Laboratory. No other world experts in this field offer these PIs capabilities and experience. Dr. Dawn Noren is an expert in the area of marine mammal energetics and energetics is a key factor in support of the ONR Marine Mammals and Biological Oceanography Program. Dr. Noren's services can only be acquired through the NMFS National Marine Mammal Laboratory. No other world experts in this field offer this PIs capabilities and experience with killer whale energetics.

ONR Technical POC: Weise, Doctor Michael J. (Mike) (703) 696-4533.

NOAA:

Treasury Account Symbol (TAS): 13x1450

Business Partner Network (BNP)IDUNS#: 156140209

Business Event Type Code: COLL

Office of Naval Research:

Treasury Account Symbol (TAS): 1791319

Business Partner Network (BNP)IDUNS#: 008963233

Business Event Type Code: DISB

**U.S. DEPARTMENT OF COMMERCE
PROCUREMENT REQUEST**

 Requisitioner fills in only
unshaded blocks

1. INVOICE ADDRESS

 National Marine Fisheries Service
Office of Protected Resources
1315 East West Highway, SSMC 3, Room 13846
Silver Spring, MD 20910

A. REQUISITION NUMBER:

NFFKP90800002

B. READY REQUISITION DATE:

2. RECEIVING OFFICE NO.		3. REFERENCE CONTRACT NUMBER		4. ORDER DATE	5. SOURCE	6. PURCHASE DELIVERY ORDER NUMBER		7. SUB.	C. SF-281
						NA05AANFG0375			
D. CHECK ONE		8. TO: (Seller)				9. SHIP TO: (Use Bldg/Room No.-see Reverse for Format)			
PURCHASE ORDER		David Taylor Model Basin Carderock Division				National Marine Fisheries Service			
DELIVERY ORDER		Naval Surface Warfare Center				Office of Protected Resources			
IMPREST FUND		Resistance and Powering Department, Code 5200				1315 East West Highway, SSMC 3, Room 13846			
		9500 MacArthur Boulevard, Bethesda, MD 20817-5700				Silver Spring, MD 20910			
CONTRACT		10. 1099 TAX		11. EMPLOYER IDENTIFICATION NUMBER (EIN)		E. REQUISITIONER CONTACT PERSON:		TELEPHONE NO.	
OTHER						Greg Silber		301-713-2322 ext. 152	
12. LINE ITEM	13. ACT. CODE	14. DESCRIPTION (Double Space Between Items)		15. BUDGET OBJECT	16. ACC. LINE	17. QUANTITY	18. UNIT ISSUE	19. UNIT PRICE (If Known)	20. ESTIMATED AMOUNT
01	01	Amendment 3.							0.00
		Interagency Transfer for a series of hydrodynamic studies on model ship hulls at various speed in relation to whale/ship collisions.		2535	01	1	JOB	75,000.00	75,000.00
									0.00
									0.00
									0.00
21. F.O.B. POINT				22. DISCOUNT TERMS		23. PROMPT PAYMENT		Sub-Total (This Page)	24. 75,000.00
F. REQUEST DELIVERY BY:		25. DELIVERY DATE:		25. SHIP VIA		27. ESTIMATED FREIGHT		TOTAL	26. 75,000.00
I certify that funds are available and that the above items are necessary for use in the public service.				28. ACC. LINE	30. BUREAU CODE	31. ACCOUNTING CLASSIFICATION		32. DISTRIBUTION	33. AMOUNT
G. TITLE OF REQUEST AUTHORIZING OFFICIAL		TELEPHONE		01	14	F8LEM23-P00-30-15-0002-00000000		100%	75,000.00
Director, OPR		301-713-2322							
SIGNATURE		DATE							
TITLE OF REQUESTER		TELEPHONE							
Administrative Officer, OPR		301-713-2319							
SIGNATURE		DATE							
		6/8/08							

H. CLEARANCES AND REMARKS

 Payment through IPAC: NOAA/NMFS ALC: 13-14-0001 Naval Surface Warfare Center ALC:
 DUNS: 784769085 DUNS: 116192345
 Business Event Transaction Code: NMFS DISB USN COLL
 CSTARS: 1408F8LEM23P0083022012001301500020000000025350000 Appropriation Symbol: 1308/091450

JUN 18 2008



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

MEMORANDUM FOR: The Record

FROM:


James H. Lecky

Director, Office of Protected Resources

SUBJECT:

Amendment Three to the Interagency Agreement with the David Taylor Model Basin Carderock Division

This amendment to the agreement allows for the National Marine Fisheries Service (NMFS) to transfer funding to the David Taylor Model Basin Carderock Division, Naval Surface Warfare Center in order to conduct a series of hydrodynamic studies on model ship hulls at various speeds in relation to whale/ship collisions.

Under this Agreement it was determined that the tasks identified cannot be performed more economically by NMFS; the services would not be considered to be in competition with private enterprise because of David Taylor Model Basin Carderock Division's unique expertise and activities; the end result of this agreement will serve the public interest and is consistent with NMFS programs; undertaking this project would not result in the diversion of resources to the detriment of NMFS's basic programs; the results of the service will not result in controversy that will have an adverse effect on the Department's reputation for impartiality and objectivity; and no exclusive proprietary interest would accrue to the other party.

The transfer of funds for this Agreement was reviewed and found to be proper under the authorities noted in the agreement, specifically the Marine Mammal Protection Act, 16 U.S.C. 1361 et seq. and the Endangered Species Act, 16 U.S.C. 1531 et seq.

We have determined that the receiving agency can perform the service economically. We have also determined that the services covered by this Agreement are not in competition with private enterprise and will serve the public interest.

Partner Agency: United States Navy, David Taylor Model Basin Carderock Division, Naval Surface Warfare Center, Department of the Navy

Amount of Reimbursement: \$75,000.00

Technical Contact Person: Greg Silber

Responsible Office: NMFS, Office of Protected Resources

Subject/Key Word: Hydrodynamic studies relative to right whale ship strikes

New/Existing Agreement: Existing

NMFS Authority: Marine Mammal Protection Act, 16 U.S.C. 1421 et seq. Endangered Species Act, 16 U.S.C. 1531 et seq. and Economy Act of 1932 as amended, 31 U.S.C. 1535



Partner Agency Authority: Marine Mammal Protection Act, 16 U.S.C. 1421 et seq,
Endangered Species Act, 16 U.S.C. 1531 et seq and Economy Act of 1932 as amended, 31
U.S.C. 1535

Number of FTE(s) Required: 0.1 (existing)

Organization: F/PR2

Administrative Contact: Brian P. Hayden

Attachment

cc: F/MB2

Proposed Shipstrike Model Experiment

Purpose: To investigate the dynamics of a ship-whale encounter in which the whale is submerged at the initial time of encounter. Of particular interest are the forces and accelerations experienced by the whale model during the encounter with the ship, and the likelihood of the whale model being struck by the ship model's propeller.

Test Facility: Circulating Water Channel at Carderock Division, Naval Surface Warfare Center. [1]

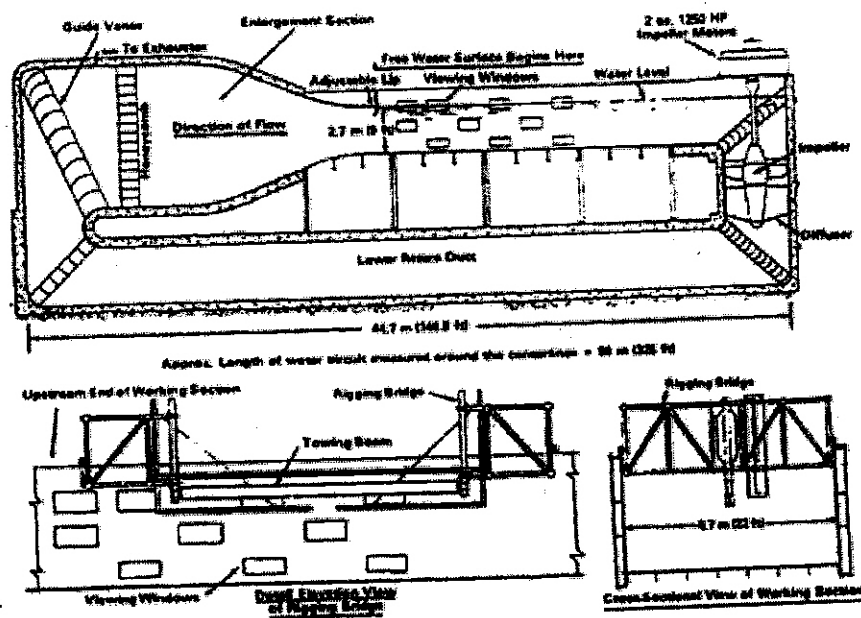


Figure 1 – Schematic of Circulating Water Channel

The CWC is the inverse of a conventional towing tank – the ship model is held stationary and water is accelerated past it in a manner analogous to a wind tunnel. For this test it significantly simplifies the process of working with submerged components due to shallower water and a fixed position to work from.

Methodology: A model North Atlantic Right Whale as constructed for previous testing [2] will be rebalasted to near neutral buoyancy and suspended in the water column attached to a submersible two component dynamometer by a thin line and load cell. The whale model will be internally instrumented with a SnapShock Triaxial Accelerometer. The ship model will be fitted with a stock propeller operating at the self propulsion point and the shaftline will be instrumented for thrust, torque and rpm.

The whale model will be released into the flow from a specified depth, and allowed to move freely downstream towards the ship model. The model's motion will ultimately be restrained by the tether at such a distance downstream that the body of the model will be permitted to strike the propeller if it is drawn in. Accelerations will be measured

throughout the whale model's passage under the ship by the onboard accelerometer, and at the maximum distance downstream, the submerged dynamometer will measure the position of the whale.

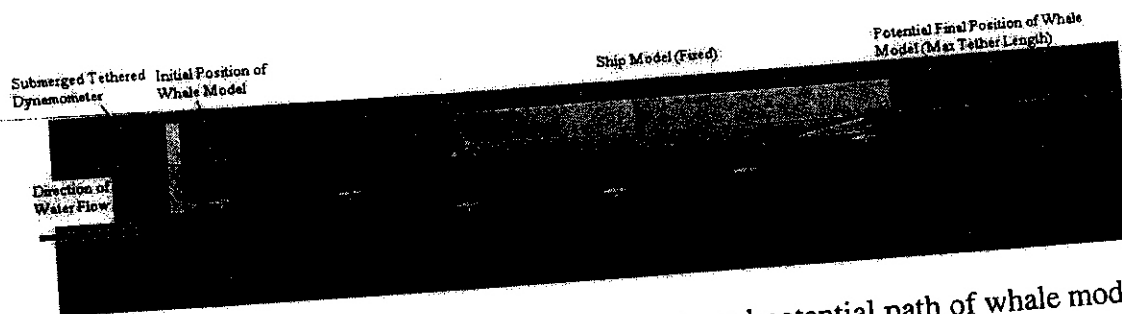


Figure 2 – Sketch of experimental arrangements and potential path of whale model

Additionally, two angles of underwater video will be taken through the channel viewing windows.

Experimental Matrix: Two whale submergence depths and two lateral positions, each tested at 5 speeds, plus additional repeats at conditions showing interesting behavior.

Deliverables: NSWCCD Code 50 Technical Report, still photos, and digital video.

Time to Perform: One week testing to occur in late Fiscal Year 2008. 'Quick Look' data (qualitative behavior and peak accelerations) deliverable within two weeks of conclusion of test, technical report within 6 months

Cost Estimate: \$75k

Point of Contact: Jonathan Slutsky; jonathan.slutsky@navy.mil, 301-227-7010

References:

Stahl, R. "Ship Model Size Selection Facilities and Notes on Experimental Technique" Technical Report CRDKNSWV/HD-1448-01

Slutsky, J. "Model Scale Simulation of a Ship-Whale Encounter" Technical Report NSWCCD-50-TR-2007/053

JUN 18 2008



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

TO: Naval Surface Warfare Center
Carderock Division
9500 Mac Arthur Boulevard
Bethesda, Maryland 20817-5700

TITLE: Amendment Three to Agreement PR-0141 between the Naval Surface Warfare Center, Carderock Division, Department of the Navy and the National Marine Fisheries Service, Office of Protected Resources to continue a series of hydrodynamic studies on model ship hulls in relation to whale/ship collisions.

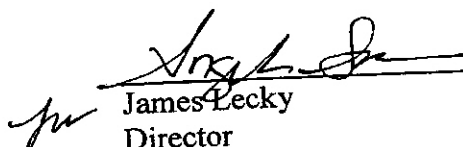
DESCRIPTION: Using the previously tested ship and whale geometry, suspend the whale in the water column using a two component tethered dynamometer. Test at separation distances approximating those of the Knowlton et al. potential flow paper. Measure accelerations experienced by the whale model and collect two angles of underwater video.

COST: \$75,000.00

ACCOUNTING: 1408F8LEM23P0083022012001301500020000000025230000
These funds expire on September 30, 2009.

DURATION: Date of signature to September 30, 2009.

INSTITUTIONAL APPROVALS:


James Lecky
Director
Office of Protected Resources
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
Department of Commerce

Thomas FU
Head
Resistance and Propulsion Division
Naval Surface Warfare Center
Carderock Division
Department of the Navy



Model Test Cost Estimate
May 22, 2008

Follow on North Atlantic Right Whale Testing (NOAA/NMFS)
Submerged Whale Model in Circulating Water Channel

Test Description: Using the previously tested ship and whale geometry, suspend the whale in the water column using a two component tethered dynamometer. Test at separation distances approximating those of the Knowlton et al. potential flow paper. Measure accelerations experienced by the whale model and collect two angles of underwater video.

Estimated Costs:

Item Number	Item	Estimated Cost (\$K)
		2.0
1	Repair of Model Bow	7.5
2	Model Fitting - Drive Line & Appendages	6.5
3	Model Fitting - Motor & Onboard Instrumentation and Electronics Support	2.5
4	Fabrication of Replacement Whale Components	15.0
5	Experiment Design	9.0
6	Circulating Water Channel One Week Test Time	10.0
7	ND-4 Test Time	
	One Engineer + Intern Support	2.5
8	Rigging/De-Rigging	10.0
9	Data Analysis	10.0
10	Report Writing	75k
	Total	

POC: Jonathan Slutsky
jonathan.slutsky@navy.mil
301-227-7010

Fwd: Estimate for CWC Testing]

Subject: [Fwd: Estimate for CWC Testing]
From: Greg Silber <Greg.Silber@noaa.gov>
Date: Tue, 03 Jun 2008 10:39:11 -0400
To: Brian P Hayden <Brian.P.Hayden@noaa.gov>
CC: Shannon Bettridge <Shannon.Bettridge@noaa.gov>

Brian,

Here is the cost estimate for continued hydrodynamic experimentation at the David Taylor Carderock facility. We'd like to provide this amount. I believe we can amend/modify the existing Economy Act MOA, but let us know what you think is the best course.

We'd like to try to get the money to them soon so they can begin the work.

a proposal of work to be done coming in the next e-mail msg.

thanks, Greg

----- Original Message -----

Subject: Estimate for CWC Testing
Date: Wed, 28 May 2008 10:40:53 -0400
From: Slutsky, Jonathan G CTR NSWCCD W Bethesda, 5800
<jonathan.slutsky@navy.mil>
To: Greg.Silber@noaa.gov
CC: Shannon.Bettridge@noaa.gov

Greg & Shannon,

Attached please find an estimate for follow-on submerged whale model testing in the Circulating Water Channel as described in the last memo. (Sorry for the delay in getting this to you.) It looks as though there's a long test scheduled in the facility for most of the summer, so we'd test in September or early October unless what I'm seeing on the schedule is a placeholder, which isn't at all impossible.

Best,

Jonathan Slutsky
Code 5200, Resistance and Powering
David Taylor Model Basin/ NSWCCD
Phone: (301) 227-7010
Fax: (301) 227-4607
<<NOAA CWC Cost Estimate.doc>>

NOAA CWC Cost Estimate.doc	Content-Type: application/msword Content-Encoding: base64
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10 June 2008

Cotton, Jim, et al.,

This is a continuation of vessel/whale interaction work we did at the Naval Surface Warfare Center, Carderock (David Taylor labs). The goal is to expand on the previous work by studying a hull's hydrodynamic pull of an object in the water column and directly below the ship. The interest in doing so was prompted by (a) comments on the first Carderock study, based on computer simulations, that a hull may have a strong drawing effect below the hull, and (b) some information (perhaps classified) that the Navy has indicating an object within a certain zone below a ship can be pulled toward it and its props.

We think this study may provide an important data set for accounting for ship strikes resulting from a whale's proximity below a ship, having executed a late avoidance dive or emerging from a dive, and ones showing prop (but, not blunt trauma) injury.

We intend to put \$75K in right whale money toward the work and, depending on scheduling of the tank itself, the trials will likely be conducted this summer or fall.

Let me or Shannon know if you have questions.

Greg

JUN 18 2008



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

TO: Naval Surface Warfare Center
Carderock Division
9500 Mac Arthur Boulevard
Bethesda, Maryland 20817-5700

TITLE: Amendment Three to Agreement PR-0141 between the Naval Surface Warfare Center, Carderock Division, Department of the Navy and the National Marine Fisheries Service, Office of Protected Resources to continue a series of hydrodynamic studies on model ship hulls in relation to whale/ship collisions.

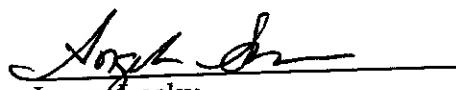
DESCRIPTION: Using the previously tested ship and whale geometry, suspend the whale in the water column using a two component tethered dynamometer. Test at separation distances approximating those of the Knowlton et al. potential flow paper. Measure accelerations experienced by the whale model and collect two angles of underwater video.


COST: \$75,000.00

ACCOUNTING: 1408F8LEM23P0083022012001301500020000000025230000
These funds expire on September 30, 2009.

DURATION: Date of signature to September 30, 2009.

INSTITUTIONAL APPROVALS:


James Lecky
Director
Office of Protected Resources
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
Department of Commerce


Thomas FU
Head
Resistance and Propulsion Division
Naval Surface Warfare Center
Carderock Division
Department of the Navy



Printed on Recycled Paper



Model Test Cost Estimate
May 22, 2008

Follow on North Atlantic Right Whale Testing (NOAA/NMFS)
Submerged Whale Model in Circulating Water Channel

Test Description: Using the previously tested ship and whale geometry, suspend the whale in the water column using a two component tethered dynamometer. Test at separation distances approximating those of the Knowlton et al. potential flow paper. Measure accelerations experienced by the whale model and collect two angles of underwater video.

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Item Number	Item	Estimated Cost (\$K)
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3	Model Fitting - Motor & Onboard Instrumentation and Electronics Support	2.5
4	Fabrication of Replacement Whale Components	15.0
5	Experiment Design	9.0
6	Circulating Water Channel One Week Test Time	10.0
7	ND-4 Test Time	
	One Engineer + Intern Support	2.5
8	Rigging/De-Rigging	10.0
9	Data Analysis	10.0
10	Report Writing	75k
	Total	

POC: Jonathan Slutsky
jonathan.slutsky@navy.mil
301-227-7010

U.S. DEPARTMENT OF COMMERCE
PROCUREMENT REQUESTRequisitioner fills in only
unshaded blocks

1. INVOICE ADDRESS

National Marine Fisheries Service
Office of Protected Resources
1315 East West Highway, SSMC 3, Room 13846
Silver Spring, MD 20910

A. REQUISITION NUMBER:

NFFKPR90800006

B. READY REQUISITION DATE:

2 RECEIVING OFFICE NO.	3 REFERENCE CONTRACT NUMBER	4 ORDER DATE	5 SOURCE	6 PURCHASE DELIVERY ORDER NUMBER	7 SUB.	C. SF-281
				NA03AANFG0384		

D. CHECK ONE <input type="checkbox"/> PURCHASE ORDER <input type="checkbox"/> DELIVERY ORDER <input type="checkbox"/> IMPREST FUND	8. TO: (Seller) USCG FINANCE CENTER 1430A Kristina Way Chesapeake, VA 23326-1000 ATTN: Katie Moore (757) 398-6504	9. SHIP TO: (Use Bldg/Room No.-see Reverse for Format) National Marine Fisheries Service Office of Protected Resources 1315 East West Highway, SSMC 3, Room 13846 Silver Spring, MD 20910
CONTRACT OTHER	10. 1999 TAX	11. EMPLOYER IDENTIFICATION NUMBER (EIN)
		E. REQUISITIONER CONTACT PERSON: Greg Silber TELEPHONE NO. 301-713-2322 ext. 152

12 LINE ITEM	13 ACT. CODE	14 DESCRIPTION (Double Space Between Items)	15 BUDGET OBJECT	16 ACC. LINE	17 QUANTITY	18 UNIT ISSUE	19 UNIT PRICE (If Known)	20 ESTIMATED AMOUNT
01	01	Amendment Six of the Agreement						0.00
		Interagency Transfer to continue support for the Mandatory Ship Reporting System (MSR) for the protection of Northern Right Whales as described in the attached Memorandum of Understanding.	2535	01	1	Job	60,357.38	60,357.38
								0.00
								0.00
								0.00

21. F.O.B. POINT	22. DISCOUNT TERMS	23. PROMPT PAYMENT	Sub-Total (This Page)	24. 60,357.38
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F. REQUEST DELIVERY BY:	25. DELIVERY DATE:	26. SHIP VIA	27. ESTIMATED FREIGHT	TOTAL	28. 60,357.38
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I certify that funds are available and that the above items are necessary for use in the public service.		29 ACC. LINE	30 BUREAU CODE	31. ACCOUNTING CLASSIFICATION	32 DISTRIBUTION	33 AMOUNT
G. TITLE OF REQUEST AUTHORIZING OFFICIAL Director, OPR	TELEPHONE 301-713-2322	01	14	F8LPM2A-P00-30-15-0002-00000000	100%	60,357.38
SIGNATURE <i>David L. Hing</i>	DATE 8/13/08					
TITLE OF REQUESTER Administrative Officer, OPR	TELEPHONE 301-713-2319					
SIGNATURE <i>R. R. Kay</i>	DATE 8/13/08					

H. CLEARANCES AND REMARKS

CStars: 1408F8LPM2AP0000830220120013015000200000000025350000
 NOAA Treasury Appropriation Symbol 1308/091450 BETC: DISB DUNS: 156140209
 USCG Treasury Appropriation Symbol 7070610 BETC: COLL DUNS: 806754677
 Payment through IPAC: NOAA/NMFS ALC: 13-14-0001 USCG ALC: 69-02-5102

ADDENDUM SIX
TO
MEMORANDUM OF AGREEMENT
BETWEEN
UNITED STATES COAST GUARD
AND
NATIONAL MARINE FISHERIES SERVICE
CONCERNING COOPERATIVE EFFORTS TO IMPLEMENT A MANDATORY SHIP
REPORTING SYSTEM FOR THE PROTECTION OF THE NORTHERN RIGHT
WHALE

1. PARTIES AND PURPOSE

This Addendum to an existing agreement establishes an agreement between the National Marine Fisheries Service (NMFS), U.S. Department of Commerce (DOC) and the U.S. Coast Guard (USCG) through which NMFS will pay USCG its share of the operation of the Mandatory Ship Reporting System (MSR). The purpose of this work effort is to operate and maintain a ship reporting system off the East Coast of United States to reduce the threat of ship strikes to northern right whales. While the underlying agreement established the relationship between and responsibilities of the parties, it did not provide for transfer of funds. This addendum obligates NMFS to pay USCG up to \$99,500 for each year of operation.

2. AUTHORITY

The authorities for DOC and USCG to enter into this agreement are:

The Economy Act, 31 U.S.C. § 1535, which provides that an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if: (1) amounts are available; (2) the ordering agency decides the order is in the best interest of the United States Government; (3) the agency to fill the order is able to provide or get by contract the ordered goods or services; and (4) the agency decides ordered goods or services cannot be provided by contract as conveniently or economically by a commercial enterprise (payments must be made on the basis of the actual cost of goods or services provided); and

The Joint Projects Act, 15 U.S.C. § 1525, which provides that the Secretary of Commerce is

authorized, upon the request of any person, firm, organization, or others, public or private, to make special studies on matters within the authority of the Department of Commerce; to prepare from its records special compilations, lists, bulletins, or reports; to perform the functions authorized by section 1152 of this title; and to furnish transcripts or copies of its studies, compilations, and other records; upon the payment of the actual or estimated cost of such special work. In the case of nonprofit organizations, research organizations, or public organizations or agencies, the Secretary may engage in joint projects, or perform services, on matters of mutual interest, the cost of which shall be apportioned equitably, as determined by the Secretary, who may, however, waive payment of any portion of such costs by others, when authorized to do so under regulations approved by the Office of Management and Budget.

14 U.S.C. § 93(a)(20), which states that for the purpose of executing the duties and functions of the Coast Guard the Commandant may enter into cooperative agreements with other Government Agencies and the National Academy of Science.

All other authorities are defined in Section II. A-D of the underlying MOA.

3. ECONOMY ACT FINDINGS

As set forth in the attached "Determinations and Findings Pursuant to 48 CFR 17.503," dated April 21, 2000 Lawrence B. Frazier, Contracting Officer, NOAA Acquisition and Grants Management Division warranted that sufficient funding amounts are available, that this agreement is in the best interest of the United States Government, and that the services requested cannot be provided by contract as conveniently or economically by a commercial enterprise.

Department of Commerce warrants that the acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services;

USCG warrants that it is able to provide or acquire by contract the requested services. USCG warrants that it has adequate statutory authority for the contractual action and will comply fully with the competition requirements of part 6 of the Federal Acquisition Regulations as well as all other legal or regulatory requirements applicable to the contract.

4. TERMS AND CONDITIONS

Terms and conditions of this agreement are set forth in the underlying agreement.

5. TRANSFER OF FUNDS

NMFS will transfer an amount not to exceed \$99,500 to USCG for FY08 and each subsequent year of operation. Transfers are expected to be made each year, subject to availability of funds, when invoiced by USCG, through fiscal year 2009. The actual amounts transferred in each year will depend on communication costs incurred during normal operation of the system. Transfers will be made following written request from the USCG. Both parties understand that all forms required by law to transfer funds will be used.

The appropriation out of which NMFS will pay for these services in FY 2008 is:

F8LPM2AP00-3-15-0002-00000000. The Appropriation Symbol is 138/91450. These funds expire on September 30, 2009.

This amount will be deobligated to the extent that the servicing agency has not incurred obligations before the end of the period of availability of that appropriation.

The account to which funds shall be transferred in FY2009 is U.S. Coast Guard Account 2/3/901/132/77/0/AA1A.

Agency contacts will relay accounting information to each other for FY09 services upon the commencement of FY09.

6. COORDINATION

The agency contacts for coordination of the activities under this MOA are:

NMFS; Dr. Gregory Silber; phone: (301) 713-2322; fax: (301) 713-0376; E-mail: greg.silber@noaa.gov

USCG; Ms. Katie Moore; phone: (757) 398-6504; fax: (757) 391-8107-6279; E-mail: Katie.S.Moore@uscg.mil

7. DURATION OF AGREEMENT, AMENDMENTS AND MODIFICATIONS

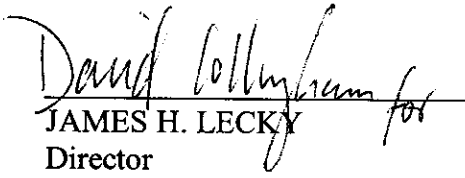
This agreement shall be effective as of the date it is signed by all parties and shall remain in effect until terminated, but not later than September 30, 2009. Either party may withdraw by giving the other party written notice of such withdrawal, in which even the Agreement shall be terminated on the day immediately following the thirtieth day of such notice. This agreement can be amended at any time by the mutual written consent of both parties. All amendments shall be attached to the Agreement.

8. RESOLUTION OF DISAGREEMENTS

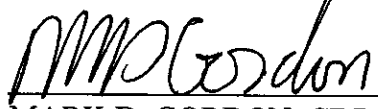
Nothing herein is intended to conflict with current Department of Commerce or the United States Coast Guard directives. If the terms of this agreement are inconsistent with existing directives of either of the agencies entering into this agreement, then those portions of this agreement which are determined 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 either by an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the

interest of both parties.

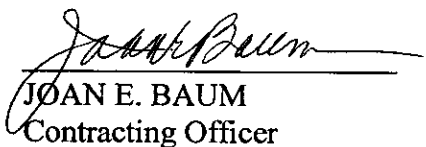
Should disagreement arise on the interpretation of the provisions of this agreement, the dispute shall be resolved pursuant to the Business Rules for Intragovernmental Transactions delineated in the Treasury Financial Manual, Vol.1, Bulletin 2007-03, Section VII (Resolving Intragovernmental Disputes and Major Differences).


JAMES H. LECKY
Director
Office of Protected Resources
National Marine Fisheries Service

Date: Aug 13, 2008


MARK D. GORDON, CDR
Acting Branch Chief
Atlantic Area Response Division- Incident Management
U. S. Coast Guard

Date: 21 JUL 08


JOAN E. BAUM
Contracting Officer
Maintenance and Logistics Command, Atlantic
U. S. Coast Guard

Date: 7/17/08



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

AUG 13 2008

MEMORANDUM FOR: The Record

FROM: James H. Lecky *David Gottinger for*
Director, Office of Protected Resources

SUBJECT: Amendment Seven of the Interagency Agreement with the
United States Coast Guard

The agreement under which this amendment is issued, was approved by the Assistant General Counsel for Administration (NOAA # 72365) on June 23, 1999 and cleared on July 9, 1999. The subsequent Economy Act amendment was approved by the Assistant General Counsel for Administration (NOAA # 72769) on September 8, 1999 and cleared on September 13, 1999.

Under this Agreement it was determined that the tasks identified cannot be performed more economically by the National Marine Fisheries Service (NMFS); the services would not be considered to be in competition with private enterprise because of the United States Coast Guard's unique expertise and activities; the end result of this agreement will serve the public interest and is consistent with NMFS programs; undertaking this project would not result in the diversion of resources to the detriment of NMFS's basic programs; the results of the service will not result in controversy that will have an adverse effect on the Department's reputation for impartiality and objectivity; and no exclusive proprietary interest would accrue to the other party.

The transfer of funds for Amendment Seven of the Agreement was reviewed and found to be proper under the authorities noted in the original agreement, specifically the Marine Mammal Protection Act, 16 U.S.C. 1361 et seq. and the Endangered Species Act, 16 U.S.C. 1531 et seq.

We have determined that the requesting agency can perform the service economically. We have also determined that the services covered by this Agreement are not in competition with private enterprise and will serve the public interest. The undertakings are consistent with the scope of work described in the 1999 agreement.

Partner Agency: United States Coast Guard

Amount of Reimbursement: \$60,357.38

Technical Contact Person: Gregory Silber

Responsible Office: NMFS, Office of Protected Resources

Subject/Key Word: Mandatory Ship Reporting System for the Protection of the Northern Right Whale.

New/Existing Agreement: Existing (PO# NA03AANFG0384)



NMFS Authority: Marine Mammal Protection Act, 16 U.S.C. 1421 et seq and Economy Act of 1932 as amended, 31 U.S.C. 1535

Partner Agency Authority: 14 U.S.C. and Economy Act of 1932 as amended, 31 U.S.C. 1535

Number of FTE(s) Required: 0.1 (existing)

Organization: F/PR2

Administrative Contact: Brian P. Hayden

Control Number: PR016

Attachment

cc: F/MB2

FAX TRANSMITTAL

From:

PATRICIA LAWSON
OFFICE OF PROTECTED RESOURCES – F/PR
NOAA FISHERIES
U.S. DEPARTMENT OF COMMERCE
1315 EAST-WEST HIGHWAY
SILVER SPRING, MD 20910

Phone: 301.713.2322 x129
FAX: 301.427.2522
e-mail: Patricia.Lawson@noaa.gov

To: Carolyn Weedon

FAX #301-413-6998

No. of Pages:2

Re: USCG

Hi Carolyn,

Brian Hayden asked that I fax this to you . Would you please obligate the funds.

Thank you,

Patricia



**INTERAGENCY AGREEMENT
THROUGH WHICH
NATIONAL MARINE FISHERIES SERVICE, NORTHWEST REGION
U.S. DEPARTMENT OF COMMERCE
Is Receiving
Aquatic Fisheries Support Services for Section 7
Consultations on Corps of Engineers Activities
From
Army Corps of Engineers Regulatory Branch
Portland District**

I. PARTIES AND PURPOSE

This Interagency Agreement establishes an agreement between the Department of Commerce (DOC), acting by and through its National Marine Fisheries Service (NMFS), Northwest Region with the U.S. Army Corps of Engineers (ACOE), Portland District Regulatory Branch for aquatic fisheries biology support for section 7 consultations on COE activities.

II. BACKGROUND AND OBJECTIVES

ACOE has the regulatory responsibility for issuing permits for certain activities in waters of the United States. These activities require Endangered Species Act (ESA) consultation with NMFS. Consultation involves familiarity with ACOE processes and programs to avoid jeopardy and promote the recovery of ESA-listed salmon and steelhead. NMFS has the responsibility to protect and perpetuate anadromous fish. ACOE has the professional disciplines that can assist NMFS in fulfilling their regulatory responsibilities under ESA, including, but not limited to, consultations concerning ACOE permitted activities within or managed by the Portland District. Because of the heavy workload related to consultation under Section 7 of ESA, it is practical for the ACOE to provide personnel to NMFS to perform certain duties related to ACOE consultations and to include aquatic fisheries biological support.

III. AUTHORITY

The authority for DOC and ACOE to enter into this agreement is:

- (1) Endangered Species Act, 16 U.S.C. 1531-1543.
- (2) The Economy Act of 1932, as amended, 31 USC & 1535, permits Federal Government Agencies to purchase goods and services from other Federal Agencies or other organizational units within the same agency. An Economy Act purchase is permitted only if: 1) funding for the purchase is actually available, 2) the purchase is in the best interests of the government, 3) the ordered goods or services cannot be provide by contract from a commercial enterprise as conveniently or cheaply by the Government, and 4) the agency or unit to fill the order is able to provide or obtain by contract, the ordered goods or services.

IV. ECONOMY ACT FINDINGS

As set forth in the attached "Determination and Findings" pursuant to 48 C.F.R. 17.503, NMFS warrants that sufficient funding amounts are available, that this agreement is in the best interest of the United States Government, and that the services requested cannot be provided by contract by a commercial enterprise.

NMFS warrants that ACOE has capabilities or expertise to enter into a contract for such supplies and services. ACOE warrants that it is able to provide or get by contract the requested supplies and services.

V. TERMS AND CONDITIONS

Deliverables resulting from this agreement will be ESA section 7 consultation documents.

NMFS SHALL:

- A. Provide office space, telecommunications, computer equipment and support, government vehicles, office supplies and access to office equipment, program staff support and similar office support, as needed for performance of work in support of NMFS.
- B. Directly reimburse ACOE technical support staff for NMFS-required travel and training expenses using invitational travel orders. NMFS will only pay per diem to and from the Portland, Oregon NMFS field office for pre-approved local travel within the region.
- C. Require support of approximately 16 hours per week from August 26, 2008 to December 20, 2008.
- D. Employee Evaluations: Upon the request by ACOE, using the performance plan issued to the detailed employee, NMFS will provide in writing a descriptive evaluation of the detailed employee's performance and submit it to ACOE no later than March 31, 2009 and September 30, 2009, in the event that the detail is extended beyond March 31.

ACOE SHALL:

- A. Provide a qualified staff person from August 26, 2008 to December 20, 2008 at approximately 16 hours every week who is capable of analyzing effects of different ACOE permitted activities on salmon and steelhead. These analyses are for use in biological opinions.
- B. Perform the work in accordance with this Agreement.
- C. The salary of any ACOE employee conducting work under this agreement will be paid by ACOE.

**IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND BETWEEN
NMFS AND ACOE THAT:**

- A. ACOE and NMFS will meet as needed to assess accomplishments and expectations pursuant to this agreement and amend it as may be appropriate.
- B. Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed. Neither ACOE nor NMFS is obligated to fund any changes not properly approved in advance. This agreement is subject to the availability of funds.
- C. Either party may terminate the instrument in whole, or in part, at any time before the date of expiration with 30 days advanced written notice. Neither party shall incur any new obligations for the terminated portion of the instrument after the effective date and shall cancel as many obligations as possible. Full credit shall be allowed for each party's expenses and all non-cancelable obligations properly incurred up to the effective date of termination.
- D. Nothing herein shall be considered as obligating either agency to expend monies or involve the United States in any contract or other obligations for the future payment of money. This MOU does not inherently obligate any funding. All funding will be obligated in invitational travel orders issued by NMFS and approved by ACOE.
- E. Liability for NMFS is subject to availability of fiscal year funding.
- F. This instrument is executed upon signature by both parties and is effective through December 20, 2008 at which time it will expire, unless extended by mutual agreement of both parties.
- G. Time and Attendance: The detailed employee's time and attendance will be maintained by ACOE.

V. CONTACTS

ACOE

Lawrence Evans
U.S. Army Corps of Engineers
Portland District Regulatory Branch
333 S.W. First Avenue
Portland, Oregon, 97204
Phone: 503-808-4370

Program Contacts

NMFS

Kim Kratz
National Marine Fisheries Service
Habitat Conservation Division
1201 NE Lloyd Blvd, Suite 1100
Portland, OR 97232
Phone: 503-231-2155

Administrative Contacts

Deborah Fenno
U.S. Army Corps of Engineers
Portland District Regulatory Branch
333 S.W. First Avenue
Portland, Oregon 97204
Phone: 503-808-4374

Nicolle Hill
National Marine Fisheries Service
Northwest Region
7600 Sand Point Way, NE
Seattle, WA 98115
Phone: 206-526-4358

VIII. RESOLUTIONS

Nothing herein is intended to conflict with current DOC or ACOE 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 either by an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties.

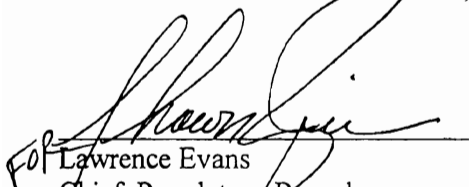
Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days, the dispute shall be resolved pursuant to the Business Rules for Intergovernmental Transactions delineated in the Treasury Financial Manual, Vol. 1, Bulletin 2007-03, Section VII (Resolving Intergovernmental Disputes and Major Differences).

IN WITNESS WHEREOF, the parties have executed this Interagency Agreement as of date of the following authorizing signatures.



D. Robert Lohn
Regional Administrator
National Marine Fisheries Service, Northwest Region

8/27/2008
Date



Lawrence Evans
Chief, Regulatory Branch
Portland District, Corps of Engineers

8/26/08
Date

INTERAGENCY AGREEMENT
Between the
National Oceanic and Atmospheric Administration
National Marine Fisheries Service, Northwest Region
and the
United States Coast Guard
Office of Administrative Law Judge
for
Trial Type Hearing Services to Conduct Formal Rulemaking

I. PARTIES AND PURPOSE

This Interagency Agreement establishes an agreement between the National Oceanic and Atmospheric Administration (NOAA), acting by and through its National Marine Fisheries Service (NMFS) Northwest Region, to transfer funds to the United States Coast Guard, Administrative Law Judge (USCG ALJ) Office. This Agreement provides for reimbursement of expenses incurred in utilizing the services of the USCG ALJ Office and its administrative support for a trial type hearing to conduct a formal rulemaking.

II. BACKGROUND AND OBJECTIVES

NMFS received a request from the Makah Tribe in February 2005 to allow its members to hunt gray whales in their usual and accustomed fishing grounds off the Washington coast. Whaling is a Makah tradition secured by the 1855 Treaty of Neah Bay. The Marine Mammal Protection Act (MMPA) prohibits the take of marine mammals (including gray whales). Before the Tribe can hunt whales, NMFS must waive the take moratorium and issue regulations. Under the MMPA, such a waiver and regulations must be adopted through formal rule-making. NMFS' regulations require this formal rule-making to proceed through an ALJ. NMFS has reviewed the Tribe's request and intends to invoke formal rule-making procedures for the proposed waiver and regulations.

The Department of Commerce does not maintain a pool of Administrative Law Judges to preside over formal rulemakings under the APA U.S.C. §§ 556 & 557. The objective of this Agreement therefore, is to specify the use of services by USGC ALJ to perform hearing services and case management functions with respect to an on the record formal rulemaking addressing NMFS' waiver of the MMPA prohibition on take and regulations to govern that take pursuant to Sections 101 (3)(A) and 103 of the Marine Mammal Protection Act (MMPA). USCG ALJ's shall perform all adjudicatory functions which are required by an Administrative Law Judge under Chapter 5 of Title 5 with respect to any marine resource conservation law or regulation administered by the Secretary of Commerce acting through NOAA.

III. AUTHORITIES

The authorities for NMFS and USCG to enter into this agreement are:

- (1) 50 C.F.R. § 228 et seq.
- (2) MMPA of 1972 (16 U.S.C. § 1371 et seq.)
- (3) 15 U.S.C. 1541
- (4) 5 U.S.C. § 3105
- (5) Economy Act, 31 U.S.C. §§ 1535-1536

As set forth in the attached "Determination and Findings" found on CD-571, pursuant to 48 C.F.R. § 17.503, NMFS warrants that sufficient funding amounts are available, that this agreement is in the best interest of the United States Government, and that the services requested cannot be provided by contract by a commercial enterprise.

NMFS warrants that USCG ALJ has capabilities or expertise to enter into a contract for such services. USCG warrants that it is able to provide or get by contract the requested services.

III. TERMS AND CONDITIONS

NMFS will reimburse USCG ALJ up to \$5,000 for the actual costs incurred for the following services:

- (1) Personnel Costs – Actual costs of a Chief ALJ, ALJ, attorney, law clerk, and administrative support staff, including docket services and approved contractors, if applicable, will be billed on an hourly basis per USCG Standard Rate Table as evidenced by time sheets;
- (2) Travel Costs – Actual expenses directly relating to the NMFS case as evidenced by travel claims paid;
- (3) Court Reporting and Transcript Costs – As evidenced by invoice and that exceed the policies of providing free-of-charge hearing transcripts to involved parties. NMFS is willing to pay direct costs for expedited transcripts;
- (4) Administrative Expenses – Actual costs of mail, overnight delivery, and office supplies used in connection with NMFS' case.

The present estimated cost will be provided by a DHS Interagency Agreement (DHS 0710-1A) form and the Department of Commerce Interagency and Special Agreements (CD-572) form and will be reviewed and revised as necessary depending on case projection and costs. NMFS understands that the case may exceed initial estimated costs and is agreeable to modifying agreement, contingent upon sufficient funds to cover estimated expenses beyond the initial estimate of \$5,000.

- (1) The terms of this agreement is from the date of signature by both parties through September 30, 2010. The hearing is estimated to begin late summer/fall 2009. NMFS agrees to:
 - a. Forward hearing requests, preliminary pleading and all necessary or associated documents per 50 C.F.R. § 228.4;

- b. Provide adequate copies of any pertinent laws and regulations needed upon request for ALJ to conduct hearing;
- c. Issue final decision by the Assistant Administrator for NMFS once ALJ has made recommended decision in accordance with 50 C.F.R. § 228.20.

(2) USCG ALJ Office agrees to:

- a. Control and conduct the assigned case in accordance with NMFS procedural regulations found at 50 C.F.R. § 228 et seq.;
- b. Make arrangement for the use of a courtroom in Seattle, WA. Hold the hearing in Seattle, WA.;
- c. Receive request for hearing, witness and exhibit lists; associated transmittal memoranda, and other case referral information and documents forwarded by NMFS;
- d. Enter case information in database control system and maintain accurate case files and continuously track case status;
- e. Issue a notice of case assignment identifying the assigned ALJ, orders or notices for pre-hearing conferences and other procedural matters as provided by NMFS regulations;
- f. Immediately forward the case file to the assigned ALJ for adjudication;
- g. Distribute and service decisions and all other documents issued by the ALJ as required by NMFS regulations. Copies of pre-trial and other preliminary decisions issued pursuant to 50 C.F.R. § 228.50 will be sent to NOAA's Office of General Counsel Northwest (GCNW). Copies of the recommended decision (50 C.F.R. § 228.50) will be sent to NOAA's Assistant Administrator, NOAA's Office of General Counsel for Fisheries (GCF) and GCNW;
- h. Close and certify the case record and forward the case file to GCNW or GCF as directed in the event of a petition for review. In the event that no petition for review is filed, then close the record at the conclusion of the applicable time period and forward the case file to GCNW or GCF as directed;
- i. Maintain a closed docket for this case and refer requests by third parties for records or information pertaining to NOAA's Freedom of Information Act Office for processing.

IV. TRANSFER OF FUNDS

Transfer of funds to the USCG ALJ will be through the Intra-governmental Payment and Collection (IPAC) system. The billing will contain the budget and accounting data or information that will facilitate all aspects of the billing process between federal agencies. Billing will be made on a quarterly basis. Amounts will be deobligated to the extent that USGC ALJ has not incurred obligations before the end of the period of availability of that appropriation.

NOAA DUNS No.: 784769085
 NMFS Agency Location Code: 13-14-0001
 NOAA Treasury Symbol: 1309101450
 NOAA EIN: 52-0821608

Business Event Type Code (BETC): DISB
 Business Partner Network (BPN): 784769085
 OMB Max Code: 006-48

USGC ALJ Agency Location Code: 70060000
 USGC ALJ EIN: 546010204
 USCG ALJ Treasury Symbol: 0700160
 USCG ALJ DUNS No.: 806754677
 USCG ALJ Business Event Type Code (BETC): COLL
 USCG ALJ Business Partner Network (BPN): 806754677
 USCG ALJ OMB Max Code: N/A

V. ADMINISTRATIVE PROVISIONS

- (1) This agreement expires on September 30, 2010. However, either party may terminate this agreement in whole or in part for any reason by providing 60 days written notice to the other party. If NMFS cancels the order, USGC ALJ is authorized to collect costs incurred prior to cancellation of the order plus any termination costs. This agreement is subject to the availability of funds.
- (2) Nothing herein is intended to conflict with current NMFS and USCG ALJ directives, statutes, or law. If the terms of this agreement are inconsistent with existing directives, statutes, or law, then those portions of the 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.
- (3) The parties may amend this agreement. Any amendments must be in writing and signed by both parties.
- (4) Should disagreement arrive as to the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the Regional or National level, the dispute shall be resolved pursuant to the Business Rules for Intragovernmental Transactions delineated in the Treasury Financial Manual, Vol.1, Bulletin 2007-03, Section VII (Resolving Intragovernmental Disputes and Major Differences).
- (5) Modifications within the scope of the agreement shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed. Neither NMFS nor USCG ALJ is obligated to fund any changes not properly approved in advance.
- (6) Each agency shall, during the existence of this agreement and thereafter, release and indemnify each other from and against all liability, cost, expense and valid claims for accident, injury or loss sustained by its employees, contract personnel, or third person arising out of work performed under this agreement, to the extent allowed by the Federal Tort Claims Act, 28 U.S.C. Section 2671 *et seq*, or such other legal authority as may be pertinent. The agencies will cooperate with each other as necessary to protect the interest of the Government.
- (7) Unless otherwise specified, all correspondence and any notices required by this agreement shall be directed to the below contacts

VI. CONTACTS

Program Contacts:

NMFS

Donna Darm, Assistant Regional Administrator
Protected Resources Division
7600 Sand Point Way NE, Bldg #1
Seattle, WA 98115
(206) 526-4489
Donna.Darm@noaa.gov

USCG ALJ

George J. Jordan
Director of Judicial Administration
Chief Administrative Law Judge Office
2100 2nd St., SW, Room 6302
Washington, DC 20593
PH: (202) 372-4440
george.j.jordan@uscg.mil

Administrative Contacts:

Nicolle Hill, Grants & Acquisitions Branch Chief
Office of Management and Information
7600 Sand Point Way NE, Bldg #1
Seattle, WA 98115
(206) 526-4358
Nicolle.Hill@noaa.gov

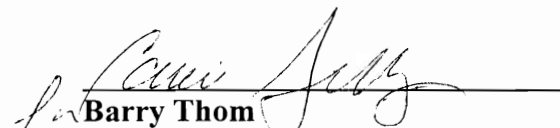
Robin R. Lewis
Legal Administrative Specialist
Chief Administrative Law Judge Office
2100 2nd St., SW, Room 6302
Washington, DC 20593
PH: (202) 372-4445
robin.r.lewis@uscg.mil

Legal Contacts:


Kirsten Erickson, Attorney
General Counsel Northwest (GCNW)
7600 Sand Point Way NE, Bldg #1
Seattle, WA 98115
(206) 526-4600
Kirsten.L.Erickson@noaa.gov

John C. Johns, Attorney
ALJ Docketing Center
40 S. Gay Street, Room 412
Baltimore, MD 21202
(410) 962-0927
john.c.johns@uscg.mil

IN WITNESS WHEREOF, the parties have executed this Interagency Agreement as of date of the following authorizing signatures.


Barry Thom
Acting Regional Administrator
National Marine Fisheries Service, Northwest Region

Date 6/29/09


George J. Jordan
Director of Judicial Administration
U.S. Coast Guard
Office of Administrative Law Judges

Date 7/10/09



MILITARY INTERDEPARTMENTAL PURCHASE REQUEST

1. Page 2 of 2

2. FSC	3. CONTROL SYMBOL NO.	4. DATE PREPARED 07-JAN-2009	5. MIPR NUMBER W66QKZ90073769	6. AMEND NO. 000	
7. TO: NATIONAL MARINE FISHERIES SERV NORTHWEST FISHERIES CENTER 2725 MONTLAKE BLVD EAST SEATTLE, WA 98112 NMFS / NWK 7600 Sand Point Way NE Seattle, WA 98115		8. FROM: PPMD-ENVIRONMENTAL RESOURCE BR CENWP-PM-E USACE PORTLAND DISTRICT PO BOX 2946 333 SW FIRST AVE PORTLAND, OR 97208-2946			
9. ITEMS <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT INCLUDED IN THE INTERSERVICE SUPPLY SUPPORT PROGRAM AND REQUIRED INTERSERVICE SCREENING <input type="checkbox"/> HAS <input type="checkbox"/> HAS NOT BEEN ACCOMPLISHED					
ITEM NO. a	DESCRIPTION (Federal stock number, nomenclature, specification and/or drawing No., etc.) b	QTY c	UNIT d	ESTIMATED UNIT PRICE e	ESTIMATED TOTAL PRICE f
10. SEE ATTACHED PAGES FOR DELIVERY SCHEDULES, PRESERVATION AND PACKAGING INSTRUCTIONS, SHIPPING INSTRUCTIONS AND INSTRUCTIONS FOR DISTRIBUTION OF CONTRACTS AND RELATED DOCUMENTS.					11. GRAND TOTAL: \$33,000.00
REMARKS: REQUEST ACCEPTANCE ON DD FORM 448-2 AS SOON AS PRACTICABLE, BUT NO LATER THAN 30 DAYS AFTER RECEIPT. ALL OTHER PROVISIONS REMAIN UNCHANGED. TO THE BEST OF OUR KNOWLEDGE, THE WORK REQUESTED WILL NOT PLACE DOE AND ITS CONTRACTOR IN DIRECT COMPETITION WITH THE DOMESTIC PRIVATE SECTOR. DO NOT EXCEED THE GRAND TOTAL AMOUNT AUTHORIZED. ANY UNUSED FUNDS WILL BE WITHDRAWN 60 DAYS AFTER THE EXPIRATION DATE WITHOUT APPROVAL OR AMENDMENT TO THIS ORDER. THIS IS PARTIAL FUNDING. THIS IS AN ECONOMY ACT ORDER PURSUANT TO AR 37-1 DOD 7220.9M FY09 GOVT ORDER TO NOAA NATIONAL MARINE FISHERIES SERVICES TO BE USED FOR TRAVEL TO ERDC IN SUPPORT OF THE COE PROJECTS					
Please have the accepting official sign below and return to the FINANCIAL POC address. EXPIRATION DATE: 30-SEP-2009					
RA TECHNICAL POC: MICHAEL J LANGESLAY		CENWP-PM-E 541-374-8801			
RA FINANCIAL POC: GENEVA WILBER		CENWP-PM-E 503-808-4754			
RA TECHNICAL POC ADDRESS: PPMD-ENVIRONMENTAL RESOURCE BR					
USACE PORTLAND DISTRICT					
PO BOX 2946					
333 SW FIRST AVE					
PORTLAND, OR 97208-2946					
PA TECHNICAL POC: RITCHIE GRAVES (503) 213-6891					
PA FINANCIAL POC: BEVERLY DONNOR, (503) 230-5402		1 Nicole Hill (206) 526-4358			
DIRECT FUND CITE					
ACCEPTED <input checked="" type="checkbox"/> REIMBURSABLE <input type="checkbox"/>		for <i>Ray L. Th...</i>		DATE: 1/14/2009	TITLE: Regional Administrator
NOAA NMFS No. # NWR-0903					
12. TRANSPORTATION ALLOTMENT (Used if FOB Contractor's plant)		13. MAIL INVOICES TO (Payment will be made by) USACE FINANCE CENTER USAED PORTLAND 5722 INTEGRITY DRIVE MILLINGTON, TN 38054-5005			
14. FUNDS FOR PROCUREMENT ARE PROPERLY CHARGEABLE TO THE ALLOTMENTS SET FORTH ON THE LINE ITEM NOS ABOVE. THE AVAILABLE BALANCES OF WHICH ARE SUFFICIENT TO COVER THE ESTIMATED TOTAL PRICE.		MARISSA SMITH ACCOUNTANT ELECTRONICALLY SIGNED BY 12-JAN-2009			
15. AUTHORIZING OFFICER (Type name and title) GEORGE J MEDINA CHEMIST		16. SIGNATURE GEORGE J MEDINA ELECTRONICALLY SIGNED BY		17. DATE 09-JAN-2009	

MILITARY INTERDEPARTMENTAL PURCHASE REQUEST

1. Page 1 of 2

2. FSC	3. CONTROL SYMBOL NO.	4. DATE PREPARED 07-JAN-2009	5. MIPR NUMBER W66QKZ90073769	6. AMEND NO. 000
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7. TO: NATIONAL MARINE FISHERIES SERVICE NWK NORTHWEST FISHERIES CENTER 2725 MONTLAKE BLVD EAST SEATTLE, WA 98112	8. FROM: PPMD-ENVIRONMENTAL RESOURCE BR CENWP-PM-E USACE PORTLAND DISTRICT PO BOX 2946 333 SW FIRST AVE PORTLAND, OR 97208-2946
--	--

9. ITEMS <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT INCLUDED IN THE INTERSERVICE SUPPLY SUPPORT PROGRAM AND REQUIRED INTERSERVICE SCREENING <input type="checkbox"/> HAS <input type="checkbox"/> HAS NOT BEEN ACCOMPLISHED
--

ITEM NO. a	DESCRIPTION (Federal stock number, nomenclature, specification and/or drawing No., etc.) b	QTY c	UNIT d	ESTIMATED UNIT PRICE e	ESTIMATED TOTAL PRICE f
1	FY09 GOVT ORDER TO NOAA NATIONAL MARINE FISHERIES SERVICES TO BE USED FOR TRAVEL TO ERDC IN SUPPORT OF THE COE PROJECTS --- Project No.: 122744 ACCTING CLASS: 96 X 3122.0000 G2 X 08 2432 075491 2530 467K5L 771 96352 00008736 WORK CAT CODE: 22M0C WORK CAT ELEM CODE: JN000 INITIAL ACCTING CLASS: 96 X 3122.0000 08 075491 LINE ITEM CURRENT UNOBLIG BAL AMT: \$10,000.00		LS		\$10,000.00
2	FY09 TD GOVT ORDER TO NOAA NATIONAL MARINE FISHERIES SERVICES TO BE USED FOR TRAVEL TO ERDC IN SUPPORT OF THE COE PROJECTS --- Project No.: 122110 ACCTING CLASS: 96 X 3122.0000 G2 X 08 2432 075491 2530 3LGD96 771 96352 00008736 WORK CAT CODE: 30DVF WORK CAT ELEM CODE: WJ000 INITIAL ACCTING CLASS: 96 X 3122.0000 08 075491 LINE ITEM CURRENT UNOBLIG BAL AMT: \$5,000.00		LS		\$5,000.00
3	FY09 NWW GOVT ORDER TO NOAA NATIONAL MARINE FISHERIES SERVICES TO BE USED FOR TRAVEL TO ERDC IN SUPPORT OF THE COE PROJECTS --- Project No.: 139437 ACCTING CLASS: 96 X 3122.0000 G2 X 08 2432 099993 2530 F85LFC 999 96352 00008736 WORK CAT CODE: 01A10 WORK CAT ELEM CODE: RCC00 INITIAL CUSTOMER CODE: CORE INITIAL ACCTING CLASS: 96 X 3122.0000 08 099993 LINE ITEM CURRENT UNOBLIG BAL AMT: \$10,000.00		LS		\$10,000.00
4	FY09 NWW GOVT ORDER TO NOAA NATIONAL MARINE FISHERIES SERVICES TO BE USED FOR TRAVEL TO ERDC IN SUPPORT OF THE COE PROJECTS --- Project No.: 139436 ACCTING CLASS: 96 X 3122.0000 G2 X 08 2432 099993 2530 JFB99C 999 96352 00008736 WORK CAT CODE: 01A10 WORK CAT ELEM CODE: RCA00 INITIAL CUSTOMER CODE: CORE INITIAL ACCTING CLASS: 96 X 3122.0000 08 099993 LINE ITEM CURRENT UNOBLIG BAL AMT: \$8,000.00		LS		\$8,000.00

ECONOMY ACT DETERMINATION AND FINDINGS
Required by AFARS 17.503, AFARS Form 53.9008

1. Review has been made of the requirement for assistance from the National Oceanic and Atmospheric Administration (NOAA) for monitoring of the Paul S. Sarbanes Ecosystem Restoration Project at Poplar Island. The Baltimore District U.S. Army Corps of Engineers proposes to procure these services from NOAA through an Interagency Agreement under authority of the Economy Act. This review has included an examination of the project manager's Request for Procurement of Services from Another Federal Agency, Procurement and Office of Counsel Review, and the Documentation of NOAA Interest and Support. Also reviewed is the Interagency Agreement between USACE and NOAA. Supporting documentation for the Economy Act request includes a Statement of Work, and the Military Interdepartmental Purchase Request (MIPR). My review resulted in the following findings:

- a. The proposed acquisition is authorized under the authority of the Economy Act.
- b. The Army is legally authorized to acquire the services.
- c. Adequate funds are available. Funds are to be reimbursed to NOAA for the services incurred by NOAA that are attributable to the statement of work (SOW).
- d. The action does not conflict with any other agency's authority or responsibility. Specifically, Federal Acquisition Regulation, (FAR) Part 8 and Department of Defense FAR Supplement (DFARS) Part 208, or other parts as applicable reveals that the responsibility for acquiring this service has not been assigned to an agency other than the one proposed.
- e. The services cannot be provided as conveniently or as economically by contractors under an Army contract. NOAA has previously performed monitoring at the project and has been a stakeholder since the beginning of design. In addition to having expertise in the required type of monitoring it has developed a decadal project database. NOAA has previously provided equipment and personnel at its own expense and will provide, at no cost to the Baltimore District, senior personnel to supervise the technical work that is being procured under this Economy Act procurement, will participate in advisory groups, and will provide advice.
- f. The servicing agency has unique expertise or ability not available within DOD.
- g. NOAA is a Federal agency which has numerous branches that conduct scientifically based research and monitoring for the coastal estuaries and oceans of the United States. NOAA has technical expertise performing fisheries utilization of wetland monitoring. The National Ocean Service (NOS) oversees the administration of numerous laboratories including the Center for Coastal Fisheries and Habitat Research (CCFHR). This laboratory has, over the past century pioneered new techniques and methodologies to evaluate and monitor estuarine and coastal ocean habitats for important fisheries and support species, as well as the condition of the

habitats. A central focus of NOAA's mission is the restoration of estuarine and coastal ocean habitats and the monitoring and evaluation of these restored habitats for ecological functions relative to natural habitats. The servicing agency performs the type of work required, will accept the agreement, and can satisfy the requirement.

h. The services are clearly within the scope of activities of NOAA and that service is normally part of the agency's mission. However, NOAA does not specifically budget for dedicated resources to monitor and prepare reports for the Poplar Island project.


i. The cost to the Army for the requirement, including the administrative fees charged by NOAA appears to be reasonable. The fees proposed to be paid to the servicing agency do not exceed the servicing agency's estimated costs of providing the services under which the agreement is filled. NOAA possesses in-house, the expertise to provide the required monitoring. NOAA has readily available in-house manpower to conduct Poplar Island monitoring. There is no known agency, office, or facility within the DOD specifically geared toward this type of monitoring. The manpower and expertise within Baltimore District does not allow for efficient and effective monitoring of this kind.

j. NOAA has expertise in fisheries use of wetlands monitoring and is actively engaged in providing this service. The services involve no contracting for personnel by NOAA in order to fulfill the agreement.

k. All approvals and authorizations required by Army and/or DOD policies for acquiring the services have been obtained (e.g., FIRMR AR 5-14, and ARs in the 25 series).

1. The requirement is a bona-fide need of the Army.

2. Given the above findings, I hereby determine that it is in the best interest of the Government to enter into an agreement with NOAA to obtain services supporting the Army's management of the Paul S. Sarbanes Ecosystem Restoration Project at Poplar Island under the Economy Act.


TODD T. SEMONITE
Brigadier General, U.S. Army
Division Engineer

24 Jun 08

(date)

**Individual Support Agreement To Accompany
Memorandum of Understanding Between**

**The United States Army Corps of Engineers
And
The National Oceanic and Atmospheric Administration**

**Faunal Component Surveys of the Paul S. Sarbanes Ecosystem Restoration
Project at Poplar Island**

This Individual Support Agreement (ISA) for the year 2008 is provided pursuant to the requirements of the Memorandum of Understanding between the United States Army Corps of Engineers (USACE) and the National Oceanic and Atmospheric Administration (NOAA) for the Faunal Component Surveys of the Paul S. Sarbanes Ecosystem Restoration Project at Poplar Island, Agreement No. HC-2007-163, (MOU).

For the purposes of this ISA all activities undertaken by NOAA during 2008 will be done pursuant to the specific commitments established in the cosigned MOU and the Economy Act, 31 USC 1535.

This includes the requirements established under the funding and responsibilities provisions of the MOU, as well as the detailed scope of work and associated schedule that accompanies the MOU.

As necessary, the USACE shall make the applicable Determinations and Findings (D&F) pursuant to 48 CFR 17.503, and shall transmit such D&F(s) with the appropriate Military Interdepartmental Purchase Request (MIPR).

CONTACTS:

NOAA, National Marine Fisheries Service

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United States Army Corps of Engineers

Mark Mendelsohn (Technical POC)

Biologist

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Baltimore, MD 21203

Phone: 410-962-9499

E-mail: mark.mendelsohn@nab02.usace.army.mil

FUNDING

(a) USACE will provide funding resources for all cost associated with NOAA's provision of assistance. Individual taskings will be provided by reimbursable order with billings in such form to accord with applicable requirements, and in such manner as the Parties may agree. If the actual cost to NOAA is forecast to exceed the amount of funds available, NOAA shall promptly notify USACE of the amount of additional funds necessary to pay for the assistance. USACE shall either provide the additional funds to NOAA or require that the scope of services be limited to that which can be financed by the available funds, or USACE (in accordance with the term and conditions contained herein) may direct termination of the Project. Upon furnishing the services contemplated under an ISA, NOAA shall conduct a final accounting within 120 days of completion to determine the actual cost of the assistance provided. NOAA shall return any funds advanced by USACE in excess of the actual costs within 90 days of the final accounting.

(b) Allocation of funds will be provided to the National Marine Fisheries Service (NMFS) on a reimbursable basis for the Scope of Services described in the applicable ISA statement. NMFS will be reimbursed for authorized work as requests are submitted. Any funding provided under this MOU will remain available until such time as activities described in the applicable ISA have been completed.

(c) Placement of orders under this agreement and performance thereof is contingent on the availability of appropriated funds. Should either party encounter budgetary problems in the course of its respective internal procedures which may affect the activities to be carried out under this agreement, that party will notify and consult with the other party or parties in a timely manner.

ACCOUNTING DATA:

Requesting Agency/Contributing Agency: US Army Corps of Engineers, Baltimore District

Agency Locator Code: 00-00-8736

Treasury Accounting Symbol: 96X3123

Business Provider Network Number: DOD963203

Business Event Type Code: DISB

Servicing Agency: NOAA, National Marine Fisheries Service, Office of Habitat Conservation

Agency Locator Code: 13-14-0001

Treasury Accounting Symbol: 133/41450

Business Provider Network Number: 784769085

Business Event Type Code: COLL

REPORTING

NOAA shall use its best efforts to provide USACE with the agreed-upon scientific and technical services necessary to achieve project objectives, as practicable, within budget and on schedule. The actual services provided by NOAA shall be described in the ISAs that the Parties shall present to each other from time to time. NOAA duties shall include, but are not necessarily limited to, the collection of data on habitat use by fauna and wetland condition from restoration and nearby reference sites; and the integration of such collected data in order to facilitate, as practicable, comparisons with available baseline data for the Project. NOAA shall provide the USACE an annual project report. A draft annual report for each year of work will be submitted to the USACE within 120 days of the completion of the tasks listed in a SOS statement. A final version of the annual report will be submitted within 30 days upon receipt of revision comments from the USACE.

EFFECTIVE DATE

The effective date for this ISA is for the year 2008.

SCOPE OF SERVICES

This Scope of Services (SOS) for the year 2008, submitted by the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service, to the United States Army Corps of Engineers (USACE) Baltimore District, entails the post-wetland cell construction nekton monitoring of wetland Cells 3D and 4DX, of the Paul S. Sarbanes Ecosystem Restoration Project at Poplar Island (PIERP), and the reference marsh habitats outside of the influence of the PIERP. The information gained through this work will be integrated with existing comparable pre- and post-wetland cell construction data to discern functional changes in nekton use for the associated habitats attributable to the PIERP.

Pre-construction baseline sampling was performed during fall (September 13 - 28, 1995), spring (April 17 - 30, 1996) and summer (July 8 - 23, 1996) to determine and compare nekton (fish, shrimp and crab) utilization of the Poplar Island remnant and near-by reference wetlands. In addition, this baseline information on nekton use was collected to provide a foundation for the comparison of pre-versus post- island reconstruction function of wetland areas associated with island reconstruction. However, the short one year duration of the baseline collection (three years of data are typically considered the minimum required for comparisons because of interannual variation of nekton communities), may hinder the ability to determine the effects of the proposed wetland creation for the Poplar Island Archipelago in terms of net benefit with respect to fisheries use of these created wetlands.

To partially compensate for the abbreviated baseline collection period, collections were conducted during 2001, 2002 and 2003 to examine fisheries use over a multi-year period at the reference baseline study sites to gauge inherent nekton interannual variation for these sites. The initial monitoring of the planned post-dike construction effort has been completed, and was performed using the same methodologies, and scheduled collection periods as during the pre-construction baseline monitoring.

During 2004, the first of the PIERP restored wetland cells were surveyed along with the baseline reference wetland sites for fisheries use. This work was initiated with the monitoring of cell 4DX in 2004 and continued through 2007, with the additional monitoring of cell 3D, which was initiated in 2006. During this PIERP wetland cell monitoring, methodologies used and the collection periods sampled were consistent with those during the pre-construction baseline monitoring.

We propose to continue monitoring the reference wetland sites during 2008 with the original spring, summer and fall collection period schedule. This will be performed along with concurrent sampling of the restored wetland cells, 3D and 4DX during 2008 using the same methodologies, and scheduled collection periods to compare potential changes in fisheries usage and nekton use of the restored wetlands produced by the PIERP to the current nekton use functions at the reference sites, and to the baseline conditions for the PIERP from the 1995-96 pre-construction surveys.

Methods

Fyke Net Collections:

Pre-construction baseline monitoring of remnant Poplar Island wetlands and reference wetlands to define usage by fish and decapods was accomplished via fyke net collections during spring, summer and fall time periods. This same schedule and methodology will be used for the proposed sampling of the six replicate reference wetland sites during the post wetland cell construction monitoring phases. In addition, three independent sites within each wetland cell targeted for monitoring will be sampled for three consecutive years after an initial one year growth phase for vegetation. These collections will enable the comparison of nekton use functions of the restored wetlands of the PIERP to the current nekton use functions at the reference wetland sites, and to the baseline conditions for the remnant wetlands from the 1995-96 pre-construction surveys. Additionally, these collections will allow further delineation of inherent interannual nekton use variation within these reference wetlands (the immediate region) to allow better interpretation of nekton usage patterns for created wetlands and possible implications of such patterns. All reference sites used for the nekton collections correspond to areas for vegetation parameter measurements by the US Fish and Wildlife Service. During sampling, each existing reference site will be located using Global Positioning System (GPS) and marked using PVC poles in preparation for post wetland cell construction monitoring. Sites within the wetland cells will be selected based on observed similarities to reference sites (creek order, topographical slope, vegetation occurrence, etc.), and isolation from one another. The position of selected restored wetland sites will be recorded using GPS and marked using PVC poles.

During Fyke net collections, fyke net attachment pole pairs, which will be located at equivalent elevations, will be set along the lower marsh fringe approximately 1.5 m landward of the perceived low tide line on the day prior to collection. This will insure that the water will evacuate from the marsh and allow efficient nekton collection. All fyke net attachment pole pairs will be set 5 m apart so as to sample 5 linear meters of marsh. Fyke nets used during this effort will measure 1.0 m square, have 3.0 m wings and be made of black 3.2 mm mesh net. During the day of nekton collection, fyke nets will be set during morning high flood tides. Nekton will then be collected from each net during the subsequent low tide.

Environmental parameters to be measured for each fyke net include salinity and water temperature,

water depth at the mouth of each fyke net, and distance into the wetland the water had reached. Nekton collected within the fyke nets will be frozen until laboratory processing. For each net the number of individuals and wet-weight biomass for each species will be recorded. All of the individuals for a species will be measured or, if numerically abundant, a randomly selected subsample of at least 100 individuals or 10 % of the total (whichever was higher) will be measured (standard length for fishes, total length for shrimps and carapace width for crabs).

Breder Trap Sampling:

Because it is important to determine the population status of the dominant marsh oriented nekton species, especially those with limited dispersal ability such as *Fundulus heteroclitus* and *Cyprinodon variegatus*, Breder trap collections will be performed during the peak recruitment period for these species. Because Breder traps specifically target larval and juvenile demersal nekton, the determination of sink or source habitat function for habitats sampled will be able to be assessed.

Breder trap collections will be conducted during summer monitoring. Breder traps used will be constructed out of clear Plexiglass, measuring 45 cm in length, 20 cm in height and 30 cm across, with dual front and back collection ends, consisting of V-shaped collection funnels tapering to 8 mm collection slots. Traps will be positioned at the three marsh sites delineated for fyke net collections within each wetland cell target for monitoring, and at three reference marsh fyke net sites. During low flood tides, replicate Breder traps will be anchored to the sediment in the low marsh, ~ 3 meters from the marsh edge at each site. Breder trap openings will be oriented towards the marsh fringe into the perceived flood tide current direction, so that fish moving into the marsh during the flood tide will be collected. Breder traps will be allowed to fish until the trap top is covered by water and then retrieved. During collections, site water temperature and salinity will be measured along with the time that each Breder trap fished and the water height at trap retrieval.

The contents for each Breder trap will be emptied onto a 0.5 mm mesh sieve and all fauna collected will be preserved in 95 % ethanol. Later fishes, shrimps and crabs will be identified to species, enumerated and measured for each Breder trap (SL and total length for fishes, total length for shrimps and carapace width for crabs).

Gill Net Sampling:

During this monitoring phase, gill net sampling will be performed during spring, summer and fall within three independent salt marsh creeks of wetland cells targeted for monitoring, and at three reference salt marsh creeks to examine habitat usage by high order predators. The gill nets used for this monitoring aspect will be like those used for baseline and the subsequent monitoring of the shallow water habitats adjacent to Poplar Island and reference areas. These gill nets will consist of three 10 m long x 1.8 m high sections, each of a different stretch mesh size (3.8, 6.4, and 8.9 cm), and each separated from one another by 3 m open spaces. Gill nets will be anchored at dusk along the length of the salt marsh creeks, parallel to the prevailing tidal current, and retrieved at dawn the following day, allowing ~12 - 14 hours of fishing time. During gill net set, the location of the net end nearest shore will be noted using GPS. Upon retrieval each net panel and its catch will be placed in a separate container for determination of catch based on mesh size and location. All fish will be identified to species and measured during the day of collection. At each site one gill net

replicate will be fished (n=3 for both individual cell and reference site marsh creeks). At all sites during each collection date, salinity and water temperature observations will be obtained. Additionally, three water depth and water clarity (using a Secchi disk) measurements will be obtained (each end and the middle).

BUDGET

	(2008)
	Funding Required
Salaries (12 mo. technical)	\$38,985
Benefits	\$ 8,889
Overhead	\$18,207
Overtime	\$ 9,389
Equipment	\$ 1,180
Supplies	\$ 1,350
Travel (60 days)	\$12,000
Total FY08	\$90,000

TOTAL ESTIMATED REQUESTED FROM USACE FOR 2008
BY NOAA FOR FISHERIES WORK..... \$90,000

Accepted and Approved for the
Department of Commerce
National Oceanic & Atmospheric
Administration
National Marine Fisheries Service


Patricia A. Montanio

Director
Office of Habitat Conservation
1315 East-West Highway
Silver Spring, MD 20910

Date: 3-14-2008

Accepted and Approved for the
Department of Defense
U. S. Army Corps of Engineers



Todd T. Semonite
Brigadier General, U. S. Army
North Atlantic Division Engineer
302 General Lee Avenue
Fort Hamilton Military Community
Brooklyn, NY 11252-6700

Date: 24 Jun 2008

Attachment

ESTIMATED NOAA BUDGETS FOR CY 2008-2012

Wetland Use By Fisheries:	(2008)
	Funding Required
Salaries (12 mo. technical)	\$38,985
Benefits	\$ 8,889
Overhead	\$18,207
Overtime	\$ 9,389
Equipment	\$ 1,180
Supplies	\$ 1,350
Travel (60 days)	\$12,000
Total FY08	\$90,000

Estimate is dependant on the total wetland cells to be monitored.

Wetland Use By Fisheries:	(2009)
	Funding Required
Salaries (12 mo. technical)	\$40,935
Benefits	\$ 9,334
Overhead	\$19,117
Overtime	\$10,255
Equipment	\$ 1,239
Supplies	\$ 1,418
Travel (104 days)	\$12,600
Total	\$94,898

Estimate is dependant on the total wetland cells to be monitored.

Fisheries Use of Exterior Proximal Waters, and Wetland Use By Fisheries: (2010)

	Funding Required
Salaries (18 mo. technical)	\$64,471
Benefits	\$14,700
Overhead	\$30,108
Overtime	\$17,608
Equipment	\$ 3,500
Supplies	\$ 2,966
Travel (104 days)	\$26,353
Total	\$159,706

Estimate is dependant on the total wetland cells to be monitored.

Wetland Use By Fisheries:

	(2011)
	Funding Required
Salaries (12 mo. technical)	\$45,131
Benefits	\$10,290
Overhead	\$21,077
Overtime	\$11,794
Equipment	\$ 1,366
Supplies	\$ 1,564
Travel (104 days)	\$13,892
Total	\$105,114

Estimate is dependant on the total wetland cells to be monitored.

Wetland Use By Fisheries:

	(2012)
	Funding Required
Salaries (12 mo. technical)	\$47,388
Benefits	\$10,804
Overhead	\$22,130
Overtime	\$12,384
Equipment	\$ 1,434
Supplies	\$ 1,642
Travel (104 days)	\$14,587
Total	\$110,369

Estimate is dependant on the total wetland cells to be monitored.

TOTAL ESTIMATED REQUEST, 2008-2012 BY NOAA FROM THE ARMY CORPS OF ENGINEERS = \$560,087

ECONOMY ACT AGREEMENT

MEMORANDUM OF UNDERSTANDING

**PURSUANT TO
THE ECONOMY ACT**

**THROUGH WHICH
UNITED STATES ARMY CORPS OF ENGINEERS
IS PURCHASING**

**FAUNAL COMPONENT SURVEYS OF THE PAUL S. SARBANES
ECOSYSTEM RESTORATION PROJECT AT POPLAR ISLAND**

FROM

**NATIONAL MARINE FISHERIES SERVICE
U.S. DEPARTMENT OF COMMERCE**

Agreement No. HC-2007-163

**Economy Act Agreement between the U.S. Army Corps of Engineers
and the National Oceanic and Atmospheric Administration**

I. SCOPE

This Memorandum of Understanding (MOU or "Agreement") is an agreement between the U.S. Army Corps of Engineers (USACE) and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA) to establish a framework for NOAA's provision of monitoring work pertaining to the 1,100 acre Paul S. Sarbanes Ecosystem Restoration Project at Poplar Island (PIERP or "Project"), located near the eastern shore in central Chesapeake Bay. NOAA has been providing these services to the USACE Baltimore District since 1995; this MOU provides a framework for the continuation of that effort.

II. AUTHORITIES

The agencies enter into this Agreement pursuant to the Economy in Government Act, 31 U.S.C. § 1535 and the Fish and Wildlife Coordination Act, as clarified by Reorganization Plan No. 4 of 1970, 16 U.S.C. § 661 to 666c, 10 U.S.C. § 3036(d).

III. DESCRIPTION

Generally, the focus of the monitoring work and data collection will be on wetlands used by fisheries and fisheries use of exterior proximal waters. NOAA will compile the data and provide USACE Baltimore District [BPN Number = DOD963203, Agency Locator Code = 00-00-8736, BETC = "DISB"] with an analysis and interpretation of the results. The work will be supervised by the NMFS Office of Habitat Conservation [BPN Number = 784769085, Agency Locator Code = 13-14-001, BETC = "COLL"] and conducted by staff at the Center for Coastal Fisheries and Habitat Research in Beaufort, North Carolina.

Nekton surveys were conducted prior (1995-1996), and immediately after (2001), perimeter dike completion of the PIERP, during spring, summer and fall periods. These surveys were conducted at permanent survey sites, located adjacent to the PIERP, to examine wetlands use by fisheries, fisheries use of proximal waters, and the functional effects the PIERP might have on these habitats. In addition to these survey sites, which might be influenced by the PIERP, reference areas (areas outside of any potential influence of the PIERP, approximately 1.3 to 1.5 miles from the PIERP) of each habitat type were similarly sampled. This was accomplished not only to compare reference habitat function to that of adjacent habitats associated with the PIERP, but also to gauge potential differences in habitat function for that area as a whole between current conditions compared to those that occurred prior to the restoration of Poplar Island. At corresponding sites, a suite of sampling gear types were used during these surveys, included trawls, throw traps, gill nets, crab pots and fyke nets, to monitor the nekton community structure of the habitat areas.

Using the same methodologies, collection sites and collection schedules used during the initial pre-dike construction survey, the work contemplated by this MOU will: 1) examine fisheries use of reference emergent marsh to gauge nekton interannual variation for these sites in preparation for PIERP created emergent marsh collections, 2) examine the effects of PRIP dike construction

on fisheries use of nearby shallow water habitats influenced by construction of the PIERP, and reference shallow water habitats outside of the PIERP influence, 3) develop a report of fisheries usage patterns for pre- and post-PIERP surveys between reference and PIERP associated habitats, and between pre- and post-PIERP construction function of areas influenced by the PIERP.

IV. RESPONSIBILITIES

(a) This MOU does not affect any ongoing or established arrangements, agreements, Memoranda of Understanding or Memoranda of Agreement between USACE and NOAA. This MOU does not require USACE to use the assistance of NOAA, nor does it require NOAA to accept assignments from the USACE Individual Support Agreements (ISA) that outline specific activities for each year. Except as may be set forth in an ISA, nothing in this MOU shall be construed to require either party to use the other party or to require either party to provide any goods or services to the other party.

(b) Individual Support Agreements: The Parties will develop mutually agreed upon written ISAs that contain:

- a Scope of Services (SOS) statement;
- the amount of funds required and available to accomplish the SOS;
- the method and timing of payment(s);
- USACE fund citation and the date upon which the cited funds expire for obligation purposes;
- the names of individual project managers;
- the types and frequencies of reports, including revenue and expense reporting;
- other information needed to describe clearly the obligations of the parties.

(c) Goods or services shall be provided under this MOU only after an appropriate ISA has been signed by a representative of each party. After signature, an ISA shall constitute a valid Economy in Government Act order. In the event of a conflict outside of the terms of an SOS, the terms of this MOU shall control. The duration for any SOS statement shall be 15 months.

(d) Responsibility of USACE: USACE shall have the responsibility for requesting and developing the initial Project concepts, as well as coordinating with NOAA on the actual specifications of monitoring duties. Subject to the purpose, term and conditions of this agreement, as may be described in the applicable ISAs, the USACE agrees to fund NOAA's Project activities for the period encompassing 2008-2012 in accordance with the terms and conditions set forth herein. USACE shall draft and execute, as appropriate, all authorizations, purchase requests, funds transfer instructions, payment instruments, etc. to cover the cost of any such work. As necessary, the USACE shall make the applicable Determinations and Findings (D&F) pursuant to 48 CFR 17.503, and shall transmit such D&F(s) to NOAA's Administrative POC at the address noted below. USACE shall warrant that (i) sufficient funding amounts are available, (ii) the MOU is in the best interest of the United States Government, and (iii) the services requested cannot be provided as conveniently, efficiently or cheaply by a commercial

enterprise.

(e) Responsibility of NOAA: In accordance with the purpose, terms, and conditions of this MOU and each applicable ISA, NOAA will provide USACE the monitoring and analytical services as described, and in accordance with the specific responsibilities as set forth in each applicable SOS or such subsequent written modifications of any SOS that the Parties may present to each other from time to time. Any government-furnished equipment, records, rights to data, software, and intellectual property shall remain the property of NOAA.

(f) NOAA shall use its best efforts to provide USACE with the agreed-upon scientific and technical services necessary to achieve project objectives, as practicable, within budget and on schedule. The actual services provided by NOAA shall be described in the ISAs that the Parties shall present to each other from time to time. NOAA duties shall include, but are not necessarily limited to, the collection of data on habitat use by fauna and wetland condition from restoration and nearby reference sites; and the integration of such collected data in order to facilitate, as practicable, comparisons with available baseline data for the Project. NOAA shall provide the USACE an annual project report. A draft annual report for each year of work will be submitted to the USACE within 120 days of the completion of the tasks listed in a SOS statement. A final version of the annual report will be submitted within 30 days upon receipt of revision comments from the USACE.

(g) The provision of NOAA services will be supervised by the NMFS Office of Habitat Conservation and conducted by staff at the Center for Coastal Fisheries and Habitat Research in Beaufort, North Carolina; however, subject to the purpose and terms and conditions as stated herein, NOAA reserves the right to use staff from other NOAA offices or divisions, as necessary or appropriate.

V. FUNDING

(a) USACE will provide funding resources for all cost associated with NOAA's provision of assistance. Individual taskings will be provided by reimbursable order with billings in such form to accord with applicable requirements, and in such manner as the Parties may agree. If the actual cost to NOAA is forecast to exceed the amount of funds available, NOAA shall promptly notify USACE of the amount of additional funds necessary to pay for the assistance. USACE shall either provide the additional funds to NOAA or require that the scope of services be limited to that which can be financed by the available funds, or USACE (in accordance with the term and conditions contained herein) may direct termination of the Project. Upon furnishing the services contemplated under an ISA, NOAA shall conduct a final accounting within 120 days of completion to determine the actual cost of the assistance provided. NOAA shall return any funds advanced by USACE in excess of the actual costs within 90 days of the final accounting.

(b) Allocation of funds will be provided to the National Marine Fisheries Service (NMFS) on a reimbursable basis for the Scope of Services described in the applicable ISA statement. NMFS will be reimbursed for authorized work as requests are submitted. Any funding provided under

this MOU will remain available until such time as activities described in the applicable ISA have been completed.

(c) Placement of orders under this agreement and performance thereof is contingent on the availability of appropriated funds. Should either party encounter budgetary problems in the course of its respective internal procedures which may affect the activities to be carried out under this agreement, that party will notify and consult with the other party or parties in a timely manner.

VI. CONTACTS

The contacts of each party to this agreement are:

NOAA, National Marine Fisheries Service

David Meyer (Technical POC)
Research Fishery Biologist
NOAA Center for Coastal Fisheries
and Habitat Research
101 Pivers Island Road
Beaufort, NC 28516
Phone: 252-728-8743
Email: Dave.Meyer@NOAA.gov

Brenda Fisher (Financial POC)
Funds Management Specialist
SSMC3, F/HC3
1315 East-West Highway
Silver Spring, MD 20910
Phone: 301-713-0174, x-170
E-mail: brenda.fisher@noaa.gov

Jeff Shenot (Administrative POC)
SSMC3, F/HC3
1315 East-West Highway
Silver Spring, MD 20910
Phone: 301-713-0174, x-189
E-mail: jeff.shenot@noaa.gov

United States Army Corps of Engineers

Mark Mendelsohn (Technical POC)
Biologist
10 South Howard Street
Baltimore, MD 21203
Phone: 410-962-9499
E-mail: mark.mendelsohn@usace.army.mil

VII. REPORTING

(a) NOAA shall establish and maintain records and receipts of expenditure of all funds provided by USACE. Records shall be maintained in sufficient detail to permit identification of the nature of expenditures made by NOAA and shall be made available for inspection by officials of USACE upon request.

(b) NOAA shall provide USACE with project progress, financial, and related status reports, including providing financial records on all funds received, obligated, and expended. A draft annual report for each year of work will be submitted to the USACE within 120 days of annual field work completion. A final version of the annual report will be submitted within 30 days upon receipt of revision comments from the USACE.

VIII. QUESTIONS, CLAIMS AND DISPUTES

(a) Nothing herein is intended to conflict with current NOAA or USACE 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 either by an amendment to this Agreement or by entering into a new Agreement, whichever is deemed expedient to the interest of both parties. The provisions of this MOU that require performance after the expiration or termination of this MOU shall remain in force notwithstanding the expiration or termination of this MOU.

(b) Any questions as to the scope of the work to be performed should be addressed to the USACE's Technical Points of Contact as specified in this agreement. Questions on the work progress or product will be directed to NOAA's Technical Points of Contact. Parties agree to make every attempt to settle any disputes regarding the scope of services at the operational level. If any dispute can not be resolved at the operational level, the area(s) of disagreement and a detailed description of the reasons for the dispute shall be stated in writing by each party and presented to the appropriate District Engineer for USACE and the Director of the NMFS Office of Habitat Conservation (HC Director) for consideration.

(c) The District Engineer and the HC Director shall determine whether the dispute results from either (i) a difference in accounting treatment (*e.g.* of advances, nonexpenditure transfers) or (ii) a contractual matter (*e.g.* payment, collection, interagency agreement) involving more than \$100,000. In the event that the dispute meets either of these two criteria, the District Engineer and the HC Director shall request the active participation of their respective Chief Financial Officers. If resolution is not reached within 60 days, the Parties' Chief Financial Officers shall request a final decision be rendered by the CFOs Council's Intragovernmental Dispute Resolution Committee established for this purpose. The Parties agree to abide by the terms of such decision.

(d) Should disagreement arise on the interpretation of the provisions in this agreement, the dispute shall be resolved pursuant to the Business Rules for Intragovernmental Transactions delineated in the Treasury Financial Manual, Vol. 1, Bulletin 2007-03, Section VII (Resolving Intragovernmental Disputes and Major Differences).

IX. EFFECTIVE DATE, AMENDMENT AND TERMINATION

This MOU is effective upon the date of the last signature by the parties and will terminate September 30, 2012. The Parties will review this Agreement at least annually to determine whether the tasks described in the MOU or ISAs should be amended, extended or canceled. This Agreement may be modified or amended only by written agreement. Either USACE or NOAA may terminate this MOU by providing sixty calendar days written notice. In the event of termination, the USACE and NOAA shall consult with each other concerning all claims for termination costs; however, the USACE shall continue to be responsible for all costs incurred by NOAA under this MOU and for the costs of closing out or transferring any ongoing contract.

Accepted and Approved for the
Department of Commerce
National Oceanic & Atmospheric
Administration
National Marine Fisheries Service



Patricia A. Montanio
Director
Office of Habitat Conservation
1315 East-West Highway
Silver Spring, MD 20910

Date: 3-14-2008

Accepted and Approved for the
Department of Defense
United States Army Corps of Engineers



Todd T. Semonite
Brigadier General, U. S. Army
North Atlantic Division Engineer
302 General Lee Avenue
Fort Hamilton Military Community
Brooklyn, NY 11252-6700

Date: 24 Jan 08

Attachment

ESTIMATED NOAA BUDGETS FOR CY 2008-2012

Wetland Use By Fisheries:	(2008)
	Funding Required
Salaries (12 mo. technical)	\$38,985
Benefits	\$ 8,889
Overhead	\$18,207
Overtime	\$ 9,389
Equipment	\$ 1,180
Supplies	\$ 1,350
Travel (60 days)	\$12,000
Total FY08	\$90,000

Estimate is dependant on the total wetland cells to be monitored.

Wetland Use By Fisheries:	(2009)
	Funding Required
Salaries (12 mo. technical)	\$40,935
Benefits	\$ 9,334
Overhead	\$19,117
Overtime	\$10,255
Equipment	\$ 1,239
Supplies	\$ 1,418
Travel (104 days)	\$12,600
Total	\$94,898

Estimate is dependant on the total wetland cells to be monitored.

Fisheries Use of Exterior Proximal Waters, and Wetland Use By Fisheries: (2010)	Funding Required
Salaries (18 mo. technical)	\$64,471
Benefits	\$14,700
Overhead	\$30,108
Overtime	\$17,608
Equipment	\$ 3,500
Supplies	\$ 2,966
Travel (104 days)	\$26,353
Total	\$159,706

Estimate is dependant on the total wetland cells to be monitored.

Wetland Use By Fisheries:	(2011)
	Funding Required
Salaries (12 mo. technical)	\$45,131
Benefits	\$10,290
Overhead	\$21,077
Overtime	\$11,794
Equipment	\$ 1,366
Supplies	\$ 1,564
Travel (104 days)	\$13,892
Total	<u>\$105,114</u>

Estimate is dependant on the total wetland cells to be monitored.

Wetland Use By Fisheries:	(2012)
	Funding Required
Salaries (12 mo. technical)	\$47,388
Benefits	\$10,804
Overhead	\$22,130
Overtime	\$12,384
Equipment	\$ 1,434
Supplies	\$ 1,642
Travel (104 days)	\$14,587
Total	<u>\$110,369</u>

Estimate is dependant on the total wetland cells to be monitored.

TOTAL ESTIMATED REQUEST, 2008-2012 BY NOAA FROM THE ARMY CORPS OF ENGINEERS = \$560,087

MILITARY INTERDEPARTMENTAL PURCHASE REQUEST

1. PAGE 1 OF 1 PAGES

2. FSC	3. CONTROL SYMBOL NO.	4. DATE PREPARED 19-MAR-2008	5. MIPR NUMBER W81W3G80796351	6. AMEND NO. 000
7. TO NOAA, NMFS: SSMC #14853 1315 EAST-WEST HIGHWAY ATTN: CHRIS DOLEY SILVER SPRING, MD 20910-3233		8. FROM: PLNG DIV-CIVIL PROJ DEV BRANCH CENAB-PLP PO BOX 1715 BALTIMORE, MD 21203-1715		

9. ITEMS ☐ ARE ☐ ARE NOT INCLUDED IN THE INTERSERVICE SUPPLY SUPPORT PROGRAM AND REQUIRED INTERSERVICE SCREENING ☐ HAS ☐ HAS NOT BEEN ACCOMPLISHED

ITEM NO. a	DESCRIPTION (Federal stock number, nomenclature, specification and/or drawing No., etc.) b	QTY c	UNIT d	ESTIMATED UNIT PRICE e	ESTIMATED TOTAL PRICE f
1	POPLAR ISLAND FISH MONITORING NOAA --- Project No.: 108919 ACCTING CLASS: 96 X 3122.0000 E1 X 08 2420 031001 2530 C9472J 771 96181 00008736 WORK CAT CODE: 30DWF WORK CAT ELEM CODE: 99999 INITIAL ACCTING CLASS: 96 X 3122.0000 08 031001		LS		\$90,000.00

10. SEE ATTACHED PAGES FOR DELIVERY SCHEDULES, PRESERVATION AND PACKAGING INSTRUCTIONS, SHIPPING INSTRUCTIONS AND INSTRUCTIONS FOR DISTRIBUTION OF CONTRACTS AND RELATED DOCUMENTS.

11. GRAND TOTAL:
\$90,000.00

REMARKS:

Amount of this order may not be exceeded without prior approval of this office.

RETURN ONE SIGNED COPY OF ACCEPTANCE MARKED FINANCE & ACCOUNTING OFFICE.

Billing may be accomplished by SF 1080 or by TFO/TBO/cross- disbursement procedures. All billings must reflect the customer order number and be marked Partial or Final.

CENAB-PL POC: MARK MENDELSON

CENAB-PL FIN POC: EFFIE HONDRELIS 410-962-3411

Please have the accepting official sign below and return to the FINANCIAL POC address.

EXPIRATION DATE: 30-SEP-2008

RA TECHNICAL POC: MARK I MENDELSON CENAB-PLP 410-962-9499
RA FINANCIAL POC: EFFIE HONDRELIS CENAB-PLP 410-962-3411
RA TECHNICAL POC ADDRESS: PLNG DIV-CIVIL PROJ DEV BRANCH
PO BOX 1715

BALTIMORE, MD 21203-1715

PA TECHNICAL POC: DAVID MEYER 252-728-8743
PA FINANCIAL POC: BRENDA FISHER 301-713-0174

ACCEPTED ☒ DIRECT FUND CITE
☒ REIMBURSABLE

DATE: 7/15/08 TITLE: Dep Dir cte

12. TRANSPORTATION ALLOTMENT (Used if FOB Contractor's plant)

13. MAIL INVOICES TO (Payment will be made by)

USACE FINANCE CENTER
BALTIMORE DISTRICT (E1)
C/O USACE FINANCE CENTER
5722 INTEGRITY DRIVE
MILLINGTON, TN 38054-5005

14. FUNDS FOR PROCUREMENT ARE PROPERLY CHARGEABLE TO THE ALLOTMENTS SET FORTH ON THE LINE ITEM NOS ABOVE. THE AVAILABLE BALANCES OF WHICH ARE SUFFICIENT TO COVER THE ESTIMATED TOTAL PRICE.

MARIE R LIMA
BUDGET ANALYST
ELECTRONICALLY SIGNED BY 20-MAR-2008

15. AUTHORIZING OFFICER (Type name and title)
KEVIN M BRENNAN
ENVIRONMENTAL PROTECTION SPECIALIST

16. SIGNATURE
KEVIN M BRENNAN
ELECTRONICALLY SIGNED BY

17. DATE
20-MAR-2008

DD Form 448

MEMORANDUM OF AGREEMENT
Among
BONNEVILLE POWER ADMINISTRATION
U.S. ARMY CORPS OF ENGINEERS
U.S. FISH AND WILDLIFE SERVICE
NATIONAL MARINE FISHERIES SERVICE
With Reference To
OREGON DEPARTMENT OF FISH AND WILDLIFE
Regarding
SPRING CREEK NATIONAL FISH HATCHERY REPROGRAMMING

I. PARTIES

This Memorandum of Agreement (hereinafter referred to as "Agreement") is made and entered into by and among the following Federal entities (hereinafter referred to as "Parties"):

- U.S. Army Corps of Engineers (the Corps);
- United States Fish and Wildlife Service (USFWS);
- National Marine Fisheries Service (NMFS); and
- Bonneville Power Administration (BPA).

II. PURPOSE

The purpose of this Agreement is to describe and document:

- (1) Changes in fish production at several Federally-funded mitigation fish hatcheries in order to eliminate releases from Spring Creek National Fish Hatcheries (Spring Creek NFH) and resultant requests for March spill at Bonneville Dam, beginning in 2009 (as described in Section VII. Spring Creek Reprogramming Production Plan);
- (2) Decision by the Corps, BPA, and the USFWS to commit funds to cover net cost increases associated with these changes (as described in Section VIII. Funding Responsibilities); and
- (3) Coordination of commitments by the Parties to address long-term changes in the Corps' John Day/The Dalles Mitigation program and Endangered Species Act (ESA) consultation responsibilities (as described in Section IX. Coordination Responsibilities and Long-term John Day / The Dalles Mitigation).

This Agreement does not provide a mechanism for the transfer or obligation of funds between or among the Parties or other entities. Rather, the Agreement documents funding decisions that will be executed using other means. This Agreement also does not create long-term commitments or precedents that prejudice the outcome of discussions regarding potential changes in long-term changes to the Corps' John Day / The Dalles Mitigation.

III. BACKGROUND

The USFWS produces tule fall Chinook at Spring Creek NFH and upriver bright fall Chinook at Little White Salmon NFH. The Oregon Department of Fish and Wildlife (ODFW) produce “upriver brights” among others, at the Bonneville Hatchery. Through discussions with the Columbia River fisheries managers, including state and federal agencies and tribes, the Parties developed a plan to reprogram Spring Creek NFH production to meet several goals. A primary goal of Spring Creek NFH reprogramming is to end the early releases of tule fall Chinook from Spring Creek NFH (as necessary to provide adequate pond space) that led to ongoing disputes over fish passage measures and spill at Bonneville Dam in March. Concurrently, regional entities have also been discussing long-term changes to the Corps’ John Day/The Dalles Mitigation program to mitigate for fish losses due to inundation of spawning and rearing areas lost due to construction of The Dalles and John Day dams. Spring Creek NFH Reprogramming is consistent with this broader reprogramming of the John Day/The Dalles Mitigation (see Section IX of this Agreement).

In May 2008, the Corps, BPA, and the Bureau of Reclamation entered into agreements with various state and tribal interests that are known as the Columbia Basin Fish Accords (hereafter referred to as the “Fish Accords”). One of these agreements was with the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Yakama Nation and the Columbia River Inter-Tribal Fish Commission (hereafter “the Lower River Accord”), which includes a specific provision about Spring Creek reprogramming and a more general provision about John Day mitigation wherein the Lower River Accord parties agree that,

Their common priority is to modify Spring Creek Hatchery production so that the early hatchery releases and spill at Bonneville Dam are unnecessary.¹

Further, the Corps committed to:

Take all action necessary and appropriate consistent with the resolution reached between the interested [Accord] Parties regarding mitigation programs for John Day and The Dalles dams. Any commitment from BPA in support of this resolution would be consistent with this agreement.²

This Agreement contributes to fulfilling the commitments made by the Corps and BPA in the Fish Accords. The *US v. Oregon* parties have indicated their support for this Spring Creek NFH Reprogramming action in a letter dated October 8, 2008 (see Exhibit A).

In a separate Fish Accord with the Confederated Tribes of the Colville Reservation, the Corps agreed to:

¹ 2008 Columbia Basin Fish Accords Memorandum of Agreement between the Three Treaty Tribes and FCRPS Action Agencies § II.E (May 2, 2008).

² *Id.* at § III.B.3.

Carry out government-to-government discussions with the Colville Tribes concerning any modifications that may be made to production practices in the hatchery mitigation program for John Day and The Dalles dams.³

The Corps has begun discussions with the Confederated Tribes of the Colville Reservation regarding this Agreement and they have indicated their support and intention to document their support in a letter.

IV. AUTHORITIES

The Parties enter into this Agreement using the following authorities:

- The Corps is authorized to mitigate for construction and operation of the John Day and The Dalles dams through § 204 of the Flood Control Act of 1950, Public Law 516—81st Congress.
- The NMFS and USFWS fulfill certain Federal responsibilities pursuant to the Mitchell Act as authorized by Special Act 52 Stat. 345, May 11, 1938 and amended at 60 Stat. 932, August 8, 1946.
- The NMFS and USFWS are authorized to fulfill Federal responsibilities through the Endangered Species Act, 16 U.S.C. §§ 1531-1544.
- The USFWS and NMFS are authorized to enter into this agreement under the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*
- BPA is authorized to fund mitigation costs for the power share of the Corps' dams under the Federal Columbia River Transmission System Act, section 11.
- Under authority contained in the National Energy Policy Act of 1992, Public Law 102-486, Section 2406, BPA may make available and the Corps use funding provided directly from BPA the mitigation costs attributable to power. 16 U.S.C. §839d-1.

V. DEFINITIONS

For the purposes of this Agreement, and for no other purposes, the following definitions apply:

- A. "John Day Mitigation" and "John Day / The Dalles Mitigation" means the Corps' fall Chinook mitigation program as authorized through Section 204 of the Flood Control Act of 1950 for the construction and operation of John Day and the Dalles Dam.
- B. "Mitchell Act" means a program for the conservation of fishery resources as authorized by Special Act 52 Stat. 345, May 11, 1938, and modified at 60 Stat. 932, August 8, 1946 that provides for the establishment, operation, and maintenance of one or more stations in Oregon, Washington, and Idaho, and for the conduct of necessary investigations, surveys, stream improvements, and stocking operations for these purposes.
- C. "Tule" means tule fall Chinook salmon.

³ 2008 Columbia Basin Fish Accords Memorandum of Agreement between the Colville Tribes and FCRPS Action Agencies § II.A.3.b (May 2, 2008).

- D. "Upriver brights", or "URB", means upriver bright fall Chinook salmon.
- E. "Zone 6" means the zone of the Columbia River treaty Indian commercial fishing area upstream from Bonneville Dam running from Bonneville to McNary dams.
- F. "*US v. Oregon parties*" means parties of *United States versus Oregon* Civil No. 68-513-KI (D.Or.); the State of Washington, State of Oregon, State of Idaho, the United States, the Shoshone Bannock Tribes, Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, and the Confederated Tribes and Bands of the Yakama Nation.
- G. "HGMP" means Hatchery and Genetic Management Plan, submitted as a Biological Assessment to describe individual hatchery programs.

VI. THE FACILITIES INVOLVED AND EXISTING FUNDING SOURCES

- A. ODFW and the Corps co-own the Bonneville State Hatchery (Bonneville Hatchery), and ODFW operates it.
- B. The Corps and USFWS own, and USFWS operates, the Spring Creek NFH for salmon production called for in two separate statutory mitigation programs, the Mitchell Act and John Day Dam Mitigation.
- C. USFWS owns and operates the Little White Salmon National Fish Hatchery (Little White Salmon NFH).
- D. NMFS receives appropriated dollars from Congress to fund and administer the Mitchell Act, which funds a portion of all three facilities involved in this Agreement.
- E. The Corps funds 45% of the total annual funding for the Bonneville Hatchery from the Corps' John Day Mitigation program under the 1990 Cooperative Agreement between the Corps and ODFW. These funds are obligated and executed through annual Task Orders describing responsibilities, funding, fish production plans, and payment procedures. The remaining 55% of funding is provided from appropriations under the Mitchell Act and other programs.
- F. The Corps funds a proportionate share (currently 57%) of the total annual cost at Spring Creek NFH based on the proportion of the John Day Mitigation program to the total production at Spring Creek NFH in accordance with Article 1 of the Memorandum of Understanding (effective November 1972 between the Corps and USFWS). Funds are obligated and executed through annual Task Orders describing responsibilities, funding, a fish production plan, and payment procedures.
- G. The Corps funds the share of the John Day Mitigation program attributable to the non-power purposes of John Day Dam using appropriations; it pays for the share attributable to the power purposes of John Day Dam using funds provided by BPA through a direct funding operation and maintenance agreement.
- H. BPA and the Corps believe they lack responsibility for any Mitchell Act program costs. Further, BPA believes that absent new legislation, it cannot share or assume

those costs. This Agreement will not be construed to suggest BPA has that authority or that BPA or the Corps has responsibility to fund any Mitchell Act costs.

VII. SPRING CREEK NFH REPROGRAMMING PRODUCTION PLAN

The Parties agree to implement Spring Creek NFH Reprogramming as described below, generally, for a three-year term (fiscal years 2009-2011). A summary of the changes in production of tule and URB fall Chinook salmon associated with this Agreement is provided in Table 1 below.

All Parties understand that the transfer dates, release dates, and fish sizes described herein are approximate and based on the agencies' best professional judgment regarding fish culture capabilities and known limitations at each unique facility. The estimates are for planning purposes only. Any significant changes in these figures will be disclosed and discussed among the Parties and conveyed to other interested entities.

All Parties agree that this plan will alleviate the need to release fish upstream of Bonneville Dam before the spring spill season begins. Consequently, none of the Parties involved will request or support requests from non-Parties for spill for hatchery releases as described in this Agreement prior to the spring spill season identified in the 2008 FCRPS BiOp.

Table 1. Summary of production changes associated with Spring Creek NFH Reprogramming

Tules						
	Number of fish	Brood Collection/ Egg take	Rearing	Mass Marking ¹	Acclimation and release	Notes
Original Program	15.0M	Spring Creek NFH	Spring Creek NFH	FWS	Spring Creek NFH	Only need to reprogram 4.5 million of total
Reprogrammed	10.5M	Spring Creek NFH	Spring Creek NFH	FWS	Spring Creek NFH	Fish will not be released prior to start of spring season spill program (typically April 10)
	2.8M	Spring Creek NFH	Bonneville SH	ODFW	Bonneville SH	Fish will not be released prior to start of spring season spill program (typically April 10)
	1.7M	Spring Creek NFH	Spring Creek NFH	FWS	Little White Salmon NFH	

Upriver Brights (URBs)						
	Number of fish	Brood Collection/ Egg take	Rearing	Mass Marking ¹	Acclimation and release	Notes
Original Program	4.5M	Bonneville SH	Bonneville SH	ODFW	Bonneville SH	Entire Bonneville URB production is 8.55M
Reprogrammed	2.0M	Bonneville SH Little White Salmon NFH or Bonneville SH	Bonneville SH	ODFW	Bonneville SH	Maintains back- up brood/egg source at Bonneville
	2.5M		Bonneville SH	ODFW	LWSNFH	Increases releases in Zone 6

1. The agency responsible for executing the mass marking program, but not funding, unless directed through Congressional appropriations. All releases associated with Reprogramming will be mass-marked, subject to appropriations.

ODFW participated in the technical workgroup that developed this plan. ODFW has indicated their ability to implement the production changes it describes at Bonneville Hatchery (See letter attached Exhibit B). USACE will describe these production changes (and provide funds) in annual task orders that it will issue to ODFW for operation of Bonneville Hatchery.

All Parties agree to change production of 4.5 million of the 15 million total production of tule fall Chinook at Spring Creek NFH as follows:

A. Tule fall Chinook:

Relocate production of 2.8M tule fall Chinook salmon at the eyed egg stage of development from Spring Creek NFH to Bonneville Hatchery under the care of ODFW for rearing to a size of approximately 80 fish per pound (fpp) for release in May. Additionally, ODFW will assume responsibility for mass-marking (i.e., adipose fin-clip) these fish and inserting 150,000 coded wire tags for evaluation purposes. These fish will be of Spring Creek NFH stock and provide a back-up broodstock source for Spring Creek NFH.

The remaining 1.7M tule that USFWS will continue to rear at Spring Creek will be transferred to Little White Salmon acclimation pond in early March at approximately 120-155 fpp. The USFWS will continue to mass mark these fish at Spring Creek NFH subject to Congressional appropriations and directions. USFWS will release these fish in April at approximately 110 fpp and assume responsibility to insert 150,000 coded wire tags to evaluate the release group.

USFWS will adjust the release timing of the remaining 10.5M tule at Spring Creek to provide suitable rearing densities within the existing pond space. USFWS will release 6M tule at approximately 110 fpp in April after the start of the spring season spill program at Bonneville Dam (2008 FCRPS Biological Opinion, which typically starts about April 10), and release 4.5M tule in May at approximately 70 fpp.

B. Upriver brights:

Of the 4.5M URBs currently reared and released entirely at Bonneville Hatchery, 2.0M upriver brights of Bonneville stock will continue to be reared, mass-marked, and released at Bonneville Hatchery. This program will continue to provide back-up brook stock supply for other upriver bright programs in the basin.

ODFW will continue to rear and mass-mark 2.5M upriver brights at Bonneville Hatchery, but will transfer them to Little White Salmon acclimation pond in mid-May at 100fpp, just after USFWS releases the 1.7M tule. ODFW will also insert 150,000 coded wire tags to evaluate this release group prior to transferring them to Little White Salmon acclimation. USFWS will acclimate these fish and release them at 80 fpp in June or July. These fish may be of Bonneville or Little White Salmon NFH stock depending on availability of fish and fishery co-manager objectives.

VIII. FUNDING RESPONSIBILITIES

The net cost increases associated with Spring Creek NFH Reprogramming production changes described in Table 1 of Section VII are summarized below in the Table 2.

All Parties agree to the funding strategy summarized in Table 2, wherein the USFWS and the Corps split net annual operating cost increases according to the current funding split at Spring Creek NFH (57% Corps/43% USFWS). All Parties agree to request, and to use their best efforts to secure funding needed to meet the production plan set forth in Table 1, including the incremental cost increases described below in Table 2. All Parties will commit and transfer funds through other means, such as annual task orders issued in accordance with a Cooperative Agreement.

Nothing herein shall be considered as committing the Parties to obligate funds or otherwise commit the Parties for the future payment of money in excess of appropriations authorized by law and administratively allocated for the activities associated with this Agreement.

Table 2. Summary of net cost increases from current program funding levels and funding strategy associated with Spring Creek NFH Reprogramming Production Plan

Facility	Funding Responsibilities		Total Net Cost Increase above FY09 Funding Request
	John Day Mitigation Net Cost Increases	USFWS Net Cost Increases	
Annual Costs ¹			
Bonneville Hatchery	\$134,000	\$101,000	\$235,000
Spring Creek NFH and Little White Salmon NFH (FWS Facilities)	\$5,000	\$4,000	\$9,000
Sub Total	\$139,000	\$105,000	\$244,000
One-time Costs			
Bonneville Hatchery			
Pond rehab	\$132,000		\$132,000
Incubation Trays		\$42,000	\$42,000
Spring Creek NFH and Little White Salmon NFH (FWS Facilities)		\$18,000	\$18,000
Sub Total	\$132,000	\$60,000	\$192,000
Grand Total	\$271,000	\$165,000	\$436,000

¹ These increases in annual costs account for savings expected at Spring Creek NFH and Bonneville Hatchery related to these reprogramming activities.

Specifically, each party agrees as follows:

- A. The Corps agrees to fund the John Day Mitigation program costs, as described in Table 2, which include: \$139,000 in net annual costs increases and a one-time cost of \$132,000 cost to repair ponds at Bonneville Hatchery to accommodate the additional tule production. The Corps will obligate funds using its normal processes for funding hatchery operation and maintenance activities. Thus, the Corps will issue annual task order(s) in accordance with the existing 1990 Cooperative Agreement with ODFW for Bonneville Hatchery Operations and the 1972 MOU for operation of Spring Creek NFH. Each task order will specify production changes associated with this Agreement.
- B. BPA will continue to fund the Corps for the power share of John Day Mitigation program costs, including those attributable to this reprogramming effort, using the agencies' existing operations and maintenance direct funding agreement. BPA will continue to

provide John Day mitigation funding using existing project cost allocation percentages. The costs associated with this effort will be absorbed into the 2009, 2010, and 2011 budgets.

- C. The USFWS agrees to fund \$105,000 in net annual cost increases and a one-time \$60,000 cost, as detailed in Table 2. The one-time costs are to purchase bird netting, a vacuum pump, an egg picker and additional life rings at Little White Salmon NFH and additional incubator trays at Bonneville Hatchery. The USFWS will not request any additional Mitchell Act funds to cover the net cost increases related to this Agreement.
- D. NMFS will continue to seek funding for the Mitchell Act Program as described in the *US v OR* 2008-2017 Management Agreement. However, NMFS will not be responsible for providing additional Mitchell Act funds to accommodate increased costs at Mitchell Act-funded facilities addressed in this Agreement.

IX. COORDINATION RESPONSIBILITIES AND JOHN DAY /THE DALLES MITIGATION

Long-term Changes in the John Day /The Dalles Mitigation

- A. All Parties agree to implement Spring Creek Reprogramming for fiscal years 2009-2011 and work together to resolve long-term John Day/The Dalles mitigation discussions. The ultimate plans and funding responsibilities for production at facilities discussed in this Agreement will be addressed as part of the overall John Day / The Dalles Mitigation discussions, in consultation with the Parties and all affected states and tribes. This Agreement does not prejudice or create any precedent for long-term production or funding responsibilities for John Day / The Dalles Mitigation.
- B. USFWS and NMFS agree to work with the tribes and states within the Production Advisory Committee (PAC) and Technical Advisory Committee (TAC) forums, outlined in the 2008-2017 *US v. Oregon* Management Agreement dated May 2008, to prepare and present a proposed change to the John Day/The Dalles mitigation requirement to the other Parties by January 2009. This proposal will be followed by regional consultation and resolution regarding production plans, funding, and responsibilities by April 2009, as referenced in Exhibit A. USFWS and NMFS will work and consult with interested Tribes, as appropriate.
- C. Consistent with the Fish Accords (as described in Section III), the Corps will conduct government to government discussions with the Confederated Tribes of the Colville Reservation regarding any future potential recommended changes to its John Day / The Dalles Mitigation program.

Endangered Species Act Consultation

- A. USFWS agrees to assume the lead for Endangered Species Act (ESA) compliance for Service-operated facilities associated with the reprogramming effort. USFWS will collaborate with the other Parties during consultation under the ESA.
- B. The Corps and NMFS agree to work with ODFW to complete ESA consultation on an updated HGMP for Bonneville Hatchery fall Chinook in accordance with the timeline identified in RPA 39 of the FCRPS Biological Opinion.

X. OTHER PROVISIONS

- A. **Term of Agreement:** This Agreement shall be in effect when executed by the Signatories (on the date of last signature) and shall continue in effect until September 30, 2011, unless otherwise modified by the Parties.
- B. **No Precedent:** This Agreement is intended to allow expeditious implementation and does not prejudice or set any precedents regarding funding or legal responsibilities in this or any other proceeding. All Parties believe that this Agreement is consistent with current agency directives. However, if a Party later determines that any term of this Agreement is inconsistent with existing agency directives, then the Parties will meet to discuss how to modify the Agreement, or enter into the dispute resolution process described in this Section X. E.
- C. **Annual Meeting:** The Parties agree to meet annually to discuss any issues relating to implementation of this Agreement.
- D. **Modifications:** This Agreement may not be modified in any manner whatsoever except with joint written consent of the duly authorized representatives of the Parties to this Agreement.
- E. **Dispute Resolution:** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to implementation of this Agreement in accordance with this section and without resort to administrative, judicial or other formal dispute resolution procedures. The purpose of this section is to provide the Parties an opportunity to fully and candidly discuss and resolve disputes without the expense, risk and delay of a formal dispute resolution.

If the Parties are unable to resolve the dispute through informal dispute resolution, then the dispute shall be elevated to negotiating between Federal agency executives or officials who have authority to settle the controversy and who are at a higher level of management than the person with direct responsibility for administration of this Agreement.

In the event a dispute over material non-compliance with the Agreement has not been resolved by negotiation, the affected Party may seek to withdraw by providing written notification to the other signatories 30 days prior to withdrawal.

Such notice shall be in writing and shall be deemed properly given or made if delivered in person, sent by electronic transfer, by acknowledged delivery, or by registered or certified mail, postage prepaid.

- F. Signing in Counterparts:** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the signatory Parties to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures, and may be attached to another counterpart of this Agreement identical in form having attached to it one or more signature pages.

IX. ACCEPTING THIS AGREEMENT ON BEHALF OF THE PARTIES:

BPA:



Date: OCT 22 2008

Stephen J. Wright
Administrator and Chief Executive Officer
Bonneville Power Administration
905 NE 11th Ave./ PO Box 3621
Portland, OR 97208-3621

The Corps:

Date: _____

Steven R. Miles, P.E.
Colonel, Corps of Engineers
District Commander
US Army Corps of Engineers
Portland District
PO Box 2946
Portland, OR 97208-2946

USFWS:

Date: _____

David J. Wesley
Acting Regional Director
US Fish and Wildlife Service
Region 1
911 NE 11th Ave.
Portland, OR 97232

NMFS:

Date: _____

D. Robert Lohn
Regional Administrator
National Marine Fisheries Service
1201 NE Lloyd Blvd Suite 1100
Portland, OR 97232

Any Party may, by written notice to the other Party, change the designation or address of the person so specified as the one to receive notices pursuant to this Agreement.

IX. ACCEPTING THIS AGREEMENT ON BEHALF OF THE PARTIES:

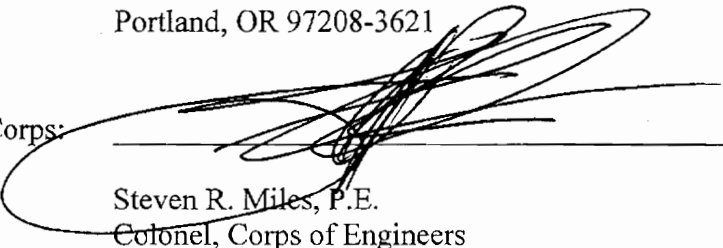
BPA: _____

Date: _____

Stephen J. Wright
Administrator and Chief Executive Officer
Bonneville Power Administration
905 NE 11th Ave./ PO Box 3621
Portland, OR 97208-3621

The Corps: _____

Date: 23 OCT 06


Steven R. Miles, P.E.
Colonel, Corps of Engineers
District Commander
US Army Corps of Engineers
Portland District
PO Box 2946
Portland, OR 97208-2946

USFWS: _____

Date: _____

David J. Wesley
Acting Regional Director
US Fish and Wildlife Service
Region 1
911 NE 11th Ave.
Portland, OR 97232

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BPA: _____ Date: _____

Stephen J. Wright
Administrator and Chief Executive Officer
Bonneville Power Administration
905 NE 11th Ave./ PO Box 3621
Portland, OR 97208-3621

The Corps: _____ Date: _____

Steven R. Miles, P.E.
Colonel, Corps of Engineers
District Commander
US Army Corps of Engineers
Portland District
PO Box 2946
Portland, OR 97208-2946

USFWS:  _____ Date: 10/22/08

David J. Wesley
Acting Regional Director
US Fish and Wildlife Service
Region 1
911 NE 11th Ave.
Portland, OR 97232

NMFS: _____ Date: _____

D. Robert Lohn
Regional Administrator
National Marine Fisheries Service
1201 NE Lloyd Blvd Suite 1100
Portland, OR 97232

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IX. ACCEPTING THIS AGREEMENT ON BEHALF OF THE PARTIES:

BPA: _____ Date: _____

Stephen J. Wright
Administrator and Chief Executive Officer
Bonneville Power Administration
905 NE 11th Ave./ PO Box 3621
Portland, OR 97208-3621

The Corps: _____ Date: _____

Steven R. Miles, P.E.
Colonel, Corps of Engineers
District Commander
US Army Corps of Engineers
Portland District
PO Box 2946
Portland, OR 97208-2946

USFWS: _____ Date: _____

David J. Wesley
Acting Regional Director
US Fish and Wildlife Service
Region 1
911 NE 11th Ave.
Portland, OR 97232

NMFS: _____ Date: 10/21/08

D. Robert Lohn
Regional Administrator
National Marine Fisheries Service
1201 NE Lloyd Blvd Suite 1100
Portland, OR 97232

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X. EXHIBITS

Exhibit A: Letter of Support from *US v Oregon* Policy Committee

Exhibit B: Letter of Support from State of Oregon

EXHIBIT A

October 8, 2008

Steven R. Miles, P.E.
Colonel, Corps of Engineers
District Commander
U.S. Army Corps of Engineers
Portland District
PO Box 2946
Portland, OR 97208-2946

Steven Wright
Administrator
Bonneville Power Administration
905 NE 11th Ave.
Portland, OR 97208-3621

Dear Colonel Miles and Mr. Wright,

This correspondence transmits the *U.S. v Oregon* Policy Committee's (Policy Committee) support for implementing Spring Creek Reprogramming (Reprogramming) as identified in Table 1 (attached). It is understood that the Federal Agencies (Agencies) have developed a reprogramming agreement among the Bonneville Power Administration (BPA), U.S. Army Corps of Engineers (COE), and U.S. Fish and Wildlife Service with reference to the Oregon Department of Fish and Wildlife (operators of Bonneville Hatchery). The proposal maintains existing fall Chinook production within the basin but moves rearing and release locations. This will result in more upriver bright juveniles released in the Zone 6 fishery area and moving tule fall Chinook below Bonneville Dam to eliminate the need for March spill.

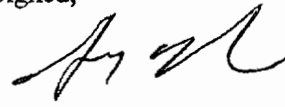
It is also understood by the Policy Committee that this three year reprogramming agreement provides no long-term commitments or precedents that prejudice the outcome of future proposed changes to John Day/The Dalles Mitigation (JMD/TD). Rather it serves as a bridge agreement as the *U.S. v Oregon* Parties develop and provide proposed changes to the JMD/TD mitigation program. Further, the Parties expect that the reduction of 300,000 fall Chinook released above Bonneville Dam from the 2008-2017 *U.S. vs. Oregon* Management Agreement will be restored under the development of a long term JMD/TD mitigation program. To this end, the Policy Committee intends to notify the COE of their agreed-to position for appropriate John Day and The Dalles Dams mitigation levels by December 2008. Following discussion and agreement with the COE on this level the *U.S. v Oregon* Parties will develop a production program that best meets the desires and needs of the Basin by April, 2009. We look forward to engaging the COE

EXHIBIT A

and BPA as we work towards a mutually beneficial outcome to this important mitigation program.

This correspondence fulfills the Agency's desire for a letter of support for the fish production changes outlined in the MOA (Table 1) and for changes to Table B5 of the *U.S. v Oregon* 2008-2017 Management Agreement (Table B5-modified). If you have any questions regarding this letter, please contact Becky Johnson, *U.S. v Oregon* Production Advisory Committee chair, at (208)843-7320, ext. 2433.

Signed,

A handwritten signature in black ink, appearing to read 'Guy Norman', written over a horizontal line.

Guy Norman
Policy Committee Vice-chair,
U.S. v Oregon

EXHIBIT A

Table 1. Summary of Spring Creek NFH production changes

Tules						
	Number of fish	Brood Collection/ Egg take	Rearing	Mass Marking ¹	Acclimation and release	Notes
Original Program	15.0M	Spring Creek NFH	Spring Creek NFH	FWS	Spring Creek NFH	Only need to reprogram 4.5 million of total
Reprogrammed	10.5M	Spring Creek NFH	Spring Creek NFH	FWS	Spring Creek NFH	Fish will not be released prior to start of spring season spill program (typically April 10)
	2.8M	Spring Creek NFH	Bonneville SH	ODFW	Bonneville SH	Fish will not be released prior to start of spring season spill program (typically April 10)
	1.7M	Spring Creek NFH	Spring Creek NFH	FWS	Little White Salmon NFH	

Upriver Brights (URBs)						
	Number of fish	Brood Collection/ Egg take	Rearing	Mass Marking ¹	Acclimation and release	Notes
Original Program	4.5M	Bonneville SH	Bonneville SH	ODFW	Bonneville SH	Entire Bonneville URB production is 8.55M
Reprogrammed	2.0M	Bonneville SH Little White Salmon NFH or Bonneville SH	Bonneville SH	ODFW	Bonneville SH	Maintains back-up brood/egg source at Bonneville
	2.5M	Bonneville SH	Bonneville SH	ODFW	LWSNFH	Increases releases in Zone 6

1. The agency responsible for executing the mass marking program, but not funding, unless directed through Congressional appropriations.

Table B5—modified (changes: bold & underlined; deletions: strikethrough). Fall Chinook Production for Brood Years 2008-2017 (Several programs may change pending the outcome of John Day Mitigation discussions. The Parties will discuss and agree to any changes prior to implementation. For Snake Basin production, see Table B4A and B4B).

Basin **Columbia River Above McNary**

Release Site	Rearing Facility	Stock	Life stage	Target Release Number	Mark ¹	Non-Ad-Clipped ²	Primary Program Purpose	Funding
Marion Drain (Yakima) ³	Prosser	URB-Local	Subyearling	50,000	CWT-only ³	50,000	Supplementation	BPA
Prosser	Prosser	URB-Local	Subyearling	320,000	TBD	320,000	Supplementation	BPA
On Station Prosser ³	Little White Salmon NFH	URB	Subyearling	1,700,000 ³	200K Ad-CWT 100% Ad-Clip	0	Supplementation Fishery	MA/BPA
On Station Ringold	Bonneville	URB	Subyearling	3,500,000	100% Ad-Clip 430K Ad-CWT	0	Fishery	COE
On Station Priest Rapids ⁴	Priest Rapids Hatchery	URB	Subyearling	6,000,000	400-600K Ad-CWT	TBD	Fishery	Grant PUD
Priest Rapids Reservoir ⁴	Priest Rapids Hatchery	URB	Fry	1,000,000	TBD	TBD	Fishery	Grant PUD
On Station Priest Rapids	Priest Rapids Hatchery	URB	Subyearling	1,700,000	100% Ad-Clip CWT-TBD	0	Fishery	COE
Subtotal				14,270,000		370,000		

Basin **Columbia Bonneville to McNary**

Release Site	Rearing Facility	Stock	Life stage	Target Release Number	Mark ¹	Non-Ad-Clipped ²	Primary Program Purpose	Funding
On Station	Little White Salmon NFH	MCB	Subyearling	2,000,000 4,500,000	200350K Ad-CWT 200K CWT only 4-6 3.95M Ad-Clip	200,000	Fishery	Mitchell Act
Umatilla River (½ direct, ½ Thornhollow Acclimation Site) ⁵	Umatilla	MCB	Subyearling	600,000	100% Ad-CWT	0	Supplementation/ Fishery	BPA
Umatilla River (Thornhollow, Pendleton Acclimation Sites) ⁵	Bonneville	MCB	Yearling	480,000	50K Ad-CWT, 430K Ad-BWT ⁶	0	Supplementation/ Fishery	COE/BPA

EXHIBIT A

Table B5 Continued. Fall Chinook								
Release Site	Rearing Facility	Stock	Life stage	Target Release Number	Mark ¹	Non-Ad-Clipped ²	Primary Program Purpose	Funding
Klickitat ⁷	Klickitat Hatchery	MCB	Subyearling	4,000,000	650K Ad-CWT 100% Ad-Clip	0	Fishery	MA
On Station	Spring Creek NFH	Tule	Subyearling	15,000,000 <u>10,500,000</u>	450K Ad-CWT 450K CWT only 14.4 9.6M Ad-Clip only	450,000	Fishery	MA, COE
On Station	Spring Creek NFH/Little White Salmon NFH	Tule	Subyearling	1,700,000 22,080,000 <u>21,780,000</u>	150K Ad-CWT 100% Ad-Clip	0	Fishery	COE, MA (FWS)
Subtotal						650,000		
Grand Total				36,350,000 <u>36,050,000</u>		1,020,000		



Oregon

Theodore R. Kulongoski, Governor

EXHIBIT B

Department of Fish and Wildlife

Office of the Director
3406 Cherry Avenue, NE
Salem, OR 97303
503.947.6044
FAX 503.947.6042
TTY 503.947.6339
www.dfw.state.or.us



October 20, 2008

Steven R. Miles P.E.
Colonel, Corps of Engineers
District Commander
U.S. Army Corps of Engineers
Portland District
PO Box 2946
Portland, OR 97208-2946

Dear Colonel Miles,

This correspondence transmits support for implementing Spring Creek Reprogramming (Reprogramming) by the Oregon Department of Fish and Wildlife (ODFW). We have reviewed a draft of your Memorandum of Agreement (MOA) among the Bonneville Power Administration (BPA), U.S. Army Corps of Engineers (the Corps), U.S. Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS), with reference to the ODFW, regarding reprogramming of fish production from Spring Creek National Fish Hatchery (Spring Creek Reprogramming) to other facilities. ODFW assisted the parties to this agreement in developing the production plan and supports the production changes it describes, and has expressed its support in the *US v OR* Policy Committee letter of October 8, 2008.

A component of the plan involves moving full production of 2.8M tule fall Chinook from Spring Creek NFH to Bonneville State Hatchery, which is operated by ODFW. Eggs will be shipped from Spring Creek NFH to Bonneville in late October. The reprogramming plan also involves rearing, mass-marking and transferring 2.5M URBs (historically produced and released at Bonneville) to Little White Salmon NFH at a size of approximately 100 fish per pound around May. ODFW understands that 2.0M URBs will continue to be reared, mass-marked, and released on-station. ODFW provided the MOA Parties with the following net cost increases costs associated with the production changes.

Item	Cost ^{1, 2}
One-time costs	
Pond Repair	\$132,000
Additional 400 incubation trays	\$ 42,000
Total one-time costs	\$174,000
Annual O&M costs	
Salaries, chemicals, contract services	\$83,000
Fish feed	\$10,000
Mass Marking (2.8M tules @ \$40/1000)	\$112,000
Evaluation Marking (150k CWTs for each of two release groups @ \$100/1000 net CWT cost)	\$30,000
Total annual O&M costs	\$235,000

¹Includes overhead/indirect rate of 32.09%, if applicable

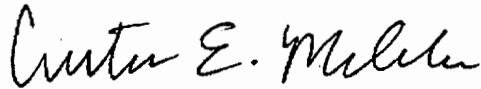
²annual O&M costs may increase over the three-year term of the Agreement, due to inflation. We reserve the right to discuss funding needs to cover those increased costs in the future.

EXHIBIT B

In Task Order NWPOD-08-FH-01 Amendment 2, the Corps provided ODFW with \$132,000 necessary to repair the ponds at Bonneville Hatchery, and the USFWS has already provided ODFW with the additional incubator trays. ODFW expects the annual O&M costs described above to be provided in additional annual task orders that specify the changes in production described in the agreement (in addition to other mitigation production).

ODFW looks forward to working with the MOA parties to implement the changes described in the Spring Creek Reprogramming MOA and towards exploring potential alternatives for long-term changes in John Day and The Dalles Mitigation. If you have any questions regarding this letter, please contact John Thorpe of my staff at 503-947-6212.

Sincerely

A handwritten signature in black ink, reading "Curtis E. Melcher". The signature is written in a cursive, flowing style.

Curtis E. Melcher, Deputy Director
Fish and Wildlife Programs

EXHIBIT B

Table 1. Summary of Spring Creek NFH production changes

Tules						
	Number of fish	Brood Collection/Egg take	Rearing	Mass Marking ¹	Acclimation and release	Notes
Original Program	15.0M	Spring Creek NFH	Spring Creek NFH	FWS	Spring Creek NFH	Only need to reprogram 4.5 million of total
Reprogrammed	10.5M	Spring Creek NFH	Spring Creek NFH	FWS	Spring Creek NFH	Fish will not be released prior to start of spring season spill program (typically April 10)
	2.8M	Spring Creek NFH	Bonneville SH	ODFW	Bonneville SH	Fish will not be released prior to start of spring season spill program (typically April 10)
	1.7M	Spring Creek NFH	Spring Creek NFH	FWS	Little White Salmon NFH	

Upriver Brights (URBs)						
	Number of fish	Brood Collection/Egg take	Rearing	Mass Marking ¹	Acclimation and release	Notes
Original Program	4.5M	Bonneville SH	Bonneville SH	ODFW	Bonneville SH	Entire Bonneville URB production is 8.55M
Reprogrammed	2.0M	Bonneville SH Little White Salmon NFH or Bonneville SH	Bonneville SH	ODFW	Bonneville SH	Maintains back-up brood/egg source at Bonneville Increases releases in Zone 6
	2.5M		Bonneville SH	ODFW	LWSNFH	

1. The agency responsible for executing the mass marking program, but not funding, unless directed through Congressional appropriations.