

**Memorandum of Agreement  
between  
The National Marine Fisheries Service  
and  
The Port of Kalama,  
The Port of Longview,  
The Port of Portland, and  
The Port of Vancouver**

**PREAMBLE**

This Memorandum of Agreement (“Agreement”) is entered into between the National Oceanic and Atmospheric Administration’s (“NOAA”) National Marine Fisheries Service (“NMFS”) and the Port of Kalama, Washington, the Port of Longview, Washington, the Port of Vancouver, Washington, and the Port of Portland, Oregon (collectively “Ports”). In this Agreement, NMFS and the Ports together, will be referred to as the “Parties,” and individually, as a “Party”.

**I. PURPOSE AND BACKGROUND**

Wakes from ocean going vessels (“OGV”), recreational, and other vessel traffic in the Columbia River can affect fish species. The purpose of this Agreement is to record intentions and understandings regarding: a) efforts to study the location, occurrence, and magnitude of wake stranding effects on Endangered Species Act (“ESA”), 16 U.S.C. § 1531 et seq., listed species caused by OGV traffic in the lower Columbia River (“LCR”); and b) the application of ESA Section 7 consultation requirements to federal actions involving Port facilities where a Port or a Port tenant is an applicant for purposes of the ESA consultation, in accordance with and defined by ESA implementing regulations. The Parties acknowledge that currently the best available science concerning the location, occurrence, and magnitude of wake stranding of ESA listed species is limited. Each of the ports is interested in and willing to participate in the development, funding, and/or implementation of a study to improve the best available science related to wake stranding of ESA listed species. No Party intends to suggest by this Agreement that the Ports have any particular responsibility to address wake stranding issues in the LCR. The Parties envision that the study is likely to generate science that can inform future consultations, pursuant to Section 7 of the ESA (16 U.S.C. § 1536), as well as future efforts to reduce the effects of wake stranding of ESA listed species. NMFS wholeheartedly encourages and supports the Ports’ intentions and is willing to collaborate and partner with the Ports in the development and implementation of the study.

**II. AUTHORITY**

1. NMFS is a line office of NOAA, which is a bureau within the United States Department of Commerce. The authorities for NMFS to enter into this Agreement include: the Fish and Wildlife Coordination Act, 16 U.S.C. § 661 et seq.; ESA, 16 U.S.C. § 1531 et seq.; the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801 et seq., and other applicable laws and regulations.

2. Each of the ports has authority to enter into this Agreement and undertake the work anticipated under this Agreement pursuant to each Port's respective enabling authority and statutes authorizing joint cooperative action.

### III. WAKE STRANDING STUDY

1. Commencing upon the Effective Date, the Ports and NMFS intend to jointly develop and implement a study plan which will collect and assess information about wake stranding of ESA listed species from OGV in the LCR ("Wake Stranding Study" or "Study"). The Ports and NMFS will partner and collaborate during the three phases of the Study, as described below.

2. The goal of the Wake Stranding Study is to generate reliable scientific information about the geographic locations, the occurrence, and the magnitude of wake stranding effects on ESA listed species, and about what measures may be appropriate and effective to avoid, minimize, or mitigate wake stranding of ESA listed species.

3. The Wake Stranding Study will have the following three phases:

Phase 1: The Ports will develop a map that identifies specific beaches along the length of the LCR from river mile 3 to river mile 105.5 which, based upon geomorphic features and other factors, may or may not be susceptible to wake stranding ("Lower Columbia River Map"). This map will also identify specific beaches that have public access and are capable of being monitored. The development of the Lower Columbia River Map during Phase 1 will be informed by the April 3, 2019 White Paper by the Ports describing the current understanding and information gaps about wake stranding in the LCR. In addition, the Ports may seek input from expert technical advisors and rely on other information that NMFS and the Ports identify as relevant science to the map development. Prior to developing the Lower Columbia River Map, the Parties will agree on the methodology for developing the map, the implementation of the mapping project, and contents of the final map product. During Phase 1, the Ports will seek NMFS' technical assistance throughout, share preliminary research findings, and hold meetings with NMFS as appropriate and practicable. The Ports will partner and work collaboratively with NMFS as they develop and implement the mapping project, evaluate the preliminary mapping data, and generate the map. Prior to proceeding to Phase II, the Parties will agree to the final map product.

Phase 2: Upon the Ports' completion of the Lower Columbia River Map, NMFS and the Ports will jointly develop a monitoring survey program, which will include seasonal surveys of wake stranding of ESA listed species at selected beaches. The monitoring survey program will include agreed upon monitoring protocols and data quality control measures. The Parties will confer at a future date regarding the implementation of the monitoring survey program (including qualifications of surveyors).

Phase 3: Upon completion of the Phase 2 monitoring surveys, NMFS and the Ports will partner and collaborate on preparing a report that analyzes the findings of the study and provides recommendations on measures to avoid, minimize, or mitigate the effects of wake stranding on ESA listed species ("Waking Stranding Report").

**IV. PORTS' INTENTIONS AND UNDERTAKINGS**

1. The Ports will partner and collaborate with NMFS during the three phases of the Study as described above and further described in this section.
2. The Ports will attend meetings with NMFS about the Study as appropriate and practicable.
3. Each Port will designate a Representative from its organization who shall represent the Port in implementation of this Agreement, except that, where appropriate, the Representative may designate other individuals to participate.
4. Nothing in this Agreement shall be interpreted as requiring an individual Port to undertake a specific commitment regarding the development, funding, and/or implementation of the Study.
5. The Ports intend to define through separate agreement each Port's respective roles and responsibilities (if any) with respect to development, funding, and/or implementation of the Study.

**V. NMFS INTENTIONS AND UNDERTAKINGS**

1. NMFS will partner and collaborate with the Ports during the three phases of the Study as described above and further described in this section.
2. NMFS will designate a Representative from its West Coast Region Oregon & Washington Coastal Office, and an alternate, who shall represent NMFS in implementation of this Agreement, except that, where appropriate, the NMFS Representative or the alternate may designate other NMFS staff to participate.
3. NMFS will attend meetings with the Ports about the Study as appropriate and practicable.
4. NMFS anticipates that the information generated by the Study will improve the best available science on the location, occurrence, and magnitude of wake stranding of ESA listed species and such information will be used as follows:
  - a. To the extent the Study provides best available science about the condition of the listed species or its critical habitat in the action area, it will inform the environmental baseline in Section 7 formal consultations when assessing future projects (including Port terminal projects) with an applicable action area, in accordance with ESA implementing regulations.
  - b. To the extent the Study provides best available science, it will inform the analysis of the effects of the action for Section 7 consultations involving future projects (including Port terminal projects) in accordance with ESA implementing regulations.

c. To the extent the Study leads to implementation of activities that avoid, minimize, or mitigate the effects of wake stranding on ESA listed species from OGV, and those activities are taken (or consulted on) prior to the implementation of new projects, the effects of such activities will be included in the environmental baseline for Section 7 formal consultations assessing future projects (including Port terminal projects) with an applicable action area, in accordance with ESA implementing regulations.

d. To the extent the Study results provide best available science about measures likely to avoid, minimize, or mitigate the adverse effects from wake stranding on ESA listed species, that information will be used by NMFS to identify and recommend any appropriate modifications to draft proposed actions involving OGV in the LCR, in accordance with 50 CFR 402.13(b).

e. To the extent the Study results provide best available science about measures likely to minimize the impacts of incidental take caused by wake stranding, that information will be used by NMFS to develop any necessary and appropriate Incidental Take Statement terms and conditions (which would also need to comply with the minor change rule at 50 CFR 402.14(i)(2)), including, where applicable, terms and conditions directed at third parties responsible for increased OGV activity.

5. For ESA Section 7 consultations involving any of the Ports' facilities where a Port or Port tenant is an applicant for purposes of the ESA Section 7 consultation during the implementation of the MOA, NMFS intends to use the same methodology to evaluate wake stranding effects on ESA listed species as is articulated in biological opinions WCR-2015-3594 (Kalama Manufacturing and Marine Export Facility) and WCR-2018-00153 (Millennium Coal Export Terminal), to the extent such methodology provides best available science regarding wake stranding effects on ESA listed species.

6. NMFS anticipates that the Study will result in improved scientific information which will potentially inform efforts to reduce wake stranding effects on ESA listed species. For ESA Section 7 consultations initiated after the effective date of the MOA involving any of the Ports' facilities where a Port or a Port tenant is an applicant for purposes of the ESA Section 7 consultation, NMFS intends to work with the U.S. Army Corps of Engineers ("Corps") to prioritize completing those consultations within 135 days of initiating formal consultation.

## **VI. ACKNOWLEDGEMENTS**

The Parties acknowledge that factors beyond the control of the Parties, such as litigation related to wake stranding or new developments in what qualifies as best available science, may impact the analytical processes used or timelines followed by NMFS and the Corps during the consultation process.

## **VII. PERIOD OF PERFORMANCE AND RENEWAL OF AGREEMENT**

1. This Agreement shall be effective on the date of the last signature of either Party ("Effective Date"). The Period of Performance for this Agreement will begin upon the Effective Date and end ten (10) years after that date unless one of the Parties terminates the Agreement.

2. This Agreement may be renewed through written mutual consent of the Parties. Both Parties anticipate renewing this Agreement prior to its termination.

## VIII. EARLY TERMINATION OF AGREEMENT

This Agreement shall terminate prior to the end of the Period of Performance specified in Section VII by any one of the Parties upon sixty (60) days' written notice to the other Parties. If one or more of the Ports (but not all of the Ports) provides a written notice to NMFS and the other Ports to terminate the Agreement, the Agreement will terminate as it relates to the Ports that provided written notice of termination, but the Agreement will not terminate as to NMFS and the remaining Ports who did not provide a notice to terminate.

## IX. MISCELLANEOUS PROVISIONS

1. Authorities of the Parties are not altered. Nothing in this Agreement alters, limits, or supersedes the authorities or responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this Agreement shall require any of the Parties to perform beyond their respective authorities.

2. Financial obligations. In no event are the Parties obligated under this Agreement to incur any expense, except as it may choose to do so in furtherance of its participation hereunder. Nothing in this Agreement shall require either of the Parties to assume any financial obligation or expend any sum or funds in excess of available authorized appropriations. Specifically, unless the Ports elect to participate in the Phase 2 monitoring surveys, the Ports are not committing to and will not be responsible for funding or implementing the Phase 2 monitoring surveys. Additionally, nothing in this Agreement shall be interpreted as requiring an individual Port or Port tenant to implement a recommendation included within the Wake Stranding Report.

3. Immunity and defenses retained. Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Agreement and cooperative work performed thereunder.

4. Legal liabilities and other liabilities. Nothing in this Agreement shall require any of the Parties to assume any legal liabilities or other liabilities on behalf of the other Parties.

5. No third-party rights. This Agreement shall not be the basis of any claims, rights, causes of action, challenges, or appeals by any person or entity not a Party to this Agreement. Nothing in this Agreement shall be construed to create privity of contract between NMFS and any third parties.

6. Public disclosure laws. The Parties acknowledge that all data and information shared by them with the other Parties may become part of the other Parties' official records and will be available for public review, except as otherwise determined not to be released pursuant to applicable public disclosure laws. If information is requested through the Freedom of Information Act, the Washington Public Disclosure Records Act, the Oregon Public Records Law, or other public disclosure laws, the Parties will coordinate regarding potential disclosure.

7. Savings clause. Nothing in this Agreement is intended to conflict with current law, regulations, or directives promulgated by the Ports or NMFS. If a term of this Agreement is inconsistent with such authority, then that term shall be stricken and the remaining terms and conditions of this Agreement shall remain in full force and effect.

8. Amendments. This Agreement may be amended only in writing agreed to and signed by all Parties.

9. Severability. If any provision of this Agreement is held to be unlawful or invalid by any court of law with duly established jurisdiction over this Agreement, the Parties intend that the remainder of this Agreement shall remain in full force and effect notwithstanding the severance of the unlawful or invalid provision(s).

10. Press Announcements and Stakeholder Engagement. To extent practicable, the Parties will confer on any press announcement or stakeholder engagement by a Party regarding the subject matter of this Agreement.

11. Dispute resolution. The Parties will cooperate in good faith to achieve the objectives of this Agreement and to avoid disputes. The Parties will use good faith efforts to resolve disputes at the lowest organizational level and, if a dispute cannot be so resolved, the Parties will then elevate the dispute to the appropriate officials within their respective organizations.

12. Aspirational Agreement. This Agreement is aspirational in nature. The Parties intend to carry out its terms in good faith, but this Agreement is not intended to, and does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any Party against the other Parties.

## X. CONTACT INFORMATION/COMMUNICATIONS

The individuals named below shall be the Representatives for purposes of this Agreement. Contact information for the Representatives is as follows:

**WCR/NMFS**  
**Administrative/Technical POC**  
 Valeen Flowers  
 501 W. Ocean Blvd. Suite 4200  
 Long Beach CA 90802  
 Valeen.Flowers@noaa.gov  
 (562)980-3244

Michelle McMullien  
 501 W. Ocean Blvd. Suite 4200  
 Long Beach CA 90802  
 (541)957-3378  
Michelle.McMullien@noaa.gov

**Port of Longview:**  
Lisa Hendriksen  
10 International Way  
Longview, WA 98632  
Phone: (360) 425-3305

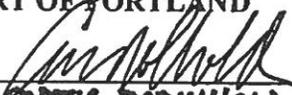
**Port of Vancouver USA:**  
Patty Boyden  
3103 Lower River Road  
Vancouver, WA 98660-1027  
Phone: (360) 693-3611

**Port of Kalama:**  
Tabitha Reeder  
380 W. Marine Drive Kalama, WA 98625  
Phone: (360) 673-2325

**Port of Portland**  
Michelle Hollis  
7200 NE Airport Way, Portland, OR 97218  
Phone: (503) 415-6832

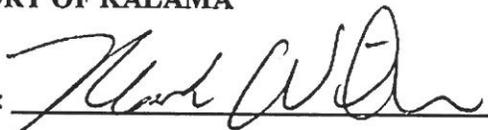
**IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized Representatives, intending to be bound legally.**

**PORT OF PORTLAND**

By:   
**CORTIS ROBINHOLD**  
Title: EXECUTIVE DIRECTOR

Date: January 13, 2022

**PORT OF KALAMA**

By:   
Title: Executive Director

Date: 5-Jan-22

**PORT OF VANCOUVER**

By:   
Title: CEO

Date: January 11, 2022 

**PORT OF LONGVIEW**

By:   
Title: CEO

Date: 06 Jan 2022

**NATIONAL MARINE FISHERIES SERVICE**

By:   
Digitally signed by  
RUMSEY.SCOTT.MATHEW.136588  
8341  
Date: 2021.12.06 08:37:12 -08'00'

Date: 12/03/2021

Title: Deputy Regional Administrator