

MEMORANDUM of UNDERSTANDING
between the
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
and the
NORTHWEST INDIAN FISHERIES COMMISSION
regarding the
PACIFIC COASTAL SALMON RECOVERY FUND

INTRODUCTION

This Memorandum of Understanding (MOU) is entered into by the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS), a federal agency within the Department of Commerce, and the Northwest Indian Fisheries Commission (Commission), a Pacific Northwest tribal organization whose members are the Hoh, Jamestown S’Klallam, Lower Elwha Klallam, Lummi, Makah, Muckleshoot, Nisqually, Nooksack, Port Gamble S’Klallam, Puyallup, Quileute, Quinault, Sauk-Suiattle, Skokomish, Squaxin Island, Stillaguamish, Suquamish, Swinomish, Tulalip, and Upper Skagit Tribes (tribes).

NMFS and the Commission enter into this MOU pursuant to authorities under the Endangered Species Act of 1973 (ESA), the federal-tribal trust relationship, treaties between the tribes and the United States as affirmed in U.S. v Washington, and other federal court decisions, and in furtherance of 16 U.S.C. 3645(d)(2) and Congressional intent and authorizations for the Pacific Coastal Salmon Recovery Fund (PCSRF).

This MOU provides the basis for the Commission to approve projects and disburse PCSRF funds to tribal organizations, as authorized by Congress for Pacific coastal tribes in 16 U.S.C. 3645(d)(2).

This MOU supersedes the prior MOU and amendments previously implemented between NMFS and the Commission regarding the PCSRF.

PARTIES

The tribes enter into this MOU through the Commission. Formed in 1975, the Commission’s role is to provide its members with a single, unified voice on fisheries management and

conservation issues, and to assist the tribes in conducting orderly and biologically sound salmon fisheries and recovery programs. The Commission supports the tribes' fisheries management programs through the provision of technical assistance, information sharing, policy coordination, and grant administration. Notwithstanding their membership in the Commission, the tribes have and maintain an independent, government-to-government relationship with each other and with the United States Department of Commerce.

NMFS enters into this MOU through its Northwest Regional Office, which has primary day-to-day responsibility for federal activities related to the protection and recovery of salmon and steelhead populations in the Pacific Northwest.

PURPOSE AND GOALS

The PCSRF provides much needed funding to the tribes to support their ongoing efforts to protect and recover depleted salmon stocks within their usual and accustomed areas in the Pacific Northwest. Three salmon ESUs in this region are listed as threatened under the ESA. In addition, many other salmon stocks not currently listed under the ESA are severely depleted, and some have been identified as candidate species for listing under the ESA. There are also several salmon stocks in this region which are essential to the full exercise of several tribes' treaty rights to salmon and steelhead. Pursuant to 16 U.S.C. 3645(d)(2), this MOU provides a basis for allocating funds to the tribes for projects related to "salmon habitat restoration, salmon stock enhancement, salmon research, and supplementation activities."

It is not the intent of this MOU to provide federal approval of each tribal project. Rather, this MOU contains guidelines for efficient distribution of funds through the Commission, to implement projects in a manner consistent with Congressional authorizing language. To that end, a project funding process is established in this MOU to identify projects eligible for funding. To obviate the need for NMFS approval of each project, the Commission will implement project funding in accordance with the criteria set forth herein, and with applicable intertribal agreements that are consistent with this MOU.

PROJECT FUNDING PROCESS

The Commission will assist the tribes by coordinating salmon recovery efforts and facilitating efficient and productive use of PCSRF funds. The Commission will enter into sub-recipient agreements with each tribe that establish funding criteria consistent with this MOU and intertribal agreements concerning distribution of these funds. Tribal sub-recipient agreements will specify project proposal, reporting, and monitoring criteria to ensure tribal activities funded through this MOU are consistent with Congressional intent to advance Pacific coastal salmon recovery efforts. It is not the Commission's function or intent to determine which projects are submitted by the tribes for the use of these funds. Tribal governments and leaders will decide which projects are submitted for their communities and in their watersheds. Rather, the Commission's role is to coordinate the tribes' overall strategy to enhance their salmon recovery efforts by ensuring projects are consistent with PCSRF authorizations and performance goals,

and that tribal projects are likely to result in measurable benefits for salmon and steelhead and their habitats.

Covered Projects

In accordance with the performance goals of the PCSRF, projects proposed by the tribes will address: salmon habitat protection and restoration, enhancement, research and monitoring, watershed planning and assessment, and public outreach and education. Funded projects will be consistent with Congressional authorizing language, and promote recovery and conservation of salmon populations, including those listed under ESA or those at risk of listing because of declining status, and those essential to the full exercise of the tribes' treaty rights to harvest salmon and steelhead. Implementation of recovery plans, and restoration and protection of salmon habitat, will be of central importance.

Project Proposals and Approval

Project proposals shall be submitted to the Commission by each tribe for review and approval. Tribal proposals shall include the following information:

- A clear statement of objectives and how the project will contribute to salmon recovery
- A description of methods
- The location and other PCSRF data on the project
- Performance measures - how to assess achievements
- A detailed budget

The Commission shall review, approve, and fund projects consistent with this MOU and other applicable inter-tribal agreements. If a project proposal is not consistent with this MOU or applicable agreements, the Commission shall promptly contact the applicant tribe and offer suggestions for modifications necessary to allow funding.

The tribes have been actively engaged in diverse aspects of salmon recovery for more than 20 years (i.e. long before the recent ESA listings and implementation of the PCSRF). NWIFC will consult with NMFS on project proposals that include activities previously supported by other funding and document the decision to continue or augment these activities under PCSRF funding.

REPORTING

NWIFC and the tribes will update the NMFS PCSRF database as new or modified project information becomes available, or at least quarterly, so that the PCSRF database contains accurate descriptions and performance metrics for all completed, ongoing, and proposed projects. On a quarterly basis, the NWIFC will download and complete the PCSRF fiscal verification report and submit it to NMFS.

FUND DISTRIBUTION

The Commission shall allocate and disburse funds to each of the tribes for projects consistent with this MOU and applicable agreements. Some tribes may elect to apply for and receive funding through their local councils or cooperatives. The Commission will utilize funds to assist the tribes with salmon and steelhead recovery, administer tribal agreements, monitor status and progress, and ensure the maintenance of up-to-date data in the PCSRF database. No other individual, organization or entity is entitled to funding under this MOU.

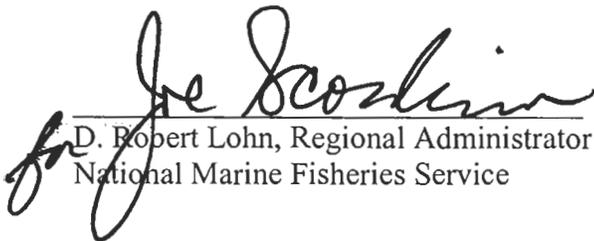
OTHER PROVISIONS

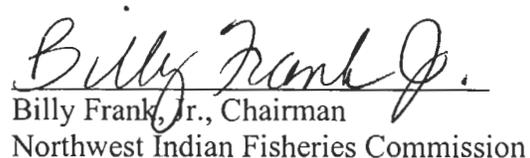
Nothing herein is intended to conflict with current Department of Commerce or Commission directives. If the terms of this MOU are inconsistent with existing directives of either of the agencies entering into this MOU, then those portions of this MOU which are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. Any changes to this MOU will be accomplished by either an amendment or by entering into a new MOU; whichever is deemed expedient to the interest of both parties. Any disputes regarding this MOU or its implementation which cannot be resolved at the operating level shall be resolved by the NMFS Northwest Regional Administrator, and the Chairman or Executive Director of the Commission. Execution of this MOU does not imply authorization of incidental "take" of species listed under the ESA.

IMPLEMENTATION

This MOU is effective upon execution by the parties. Federal funding for the tribes, contingent on availability, will be provided to the Commission through a Financial Assistance Award.

Signed this 12th day of May 2005.


D. Robert Lohn, Regional Administrator
National Marine Fisheries Service


Billy Frank, Jr., Chairman
Northwest Indian Fisheries Commission