



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

December 22, 2004

MEMORANDUM FOR: Gary C. Reisner
Director, Office of Management and Budget

FROM: *FWR* James W. Balsiger *James W. Balsiger*
Administrator, Alaska Region

SUBJECT: Joint Project Agreement with the Nature Conservancy of Alaska

Attached is a new joint project agreement with The Nature Conservancy of Alaska (TNC) for your review and transmittal to the Office of General Counsel for clearance. The agreement addresses the scope and purpose; cites authorities; and includes descriptions of the roles of both parties and the apportionment of total project costs and budget, including direct labor and overhead. My staff has discussed this agreement with Mary Frye in your office.

This agreement supports a pilot project to test the need and viability of such a cooperative arrangement in support of Berners Bay monitoring studies. Continuing the cooperative efforts to include additional years of monitoring and other studies will depend on an assessment of the first-year results, and mutual agreement by the parties. However, we expect that a cooperative arrangement will continue for a number of years. TNC will have a concurrent clearance process for this joint project agreement.

The following additional information is provided to aid the clearance process:

Partner Agency: TNC

Amount of Reimbursement: \$25 K

Total Amount of Project: \$55,186

NMFS Cost: \$27,686 (\$52,686 minus the \$25,000 NMFS will receive from TNC)

TNC Cost: \$27,500 (\$25,000 to NMFS and \$2,500 overhead)

Technical Contact Person: Cindy Hartmann

Responsible Office: Alaska Regional Office (AKRO)

Who Will Accomplish the Work: AKRO Habitat Conservation Division and Alaska Fisheries Science Center, Auke Bay Laboratory

Subject/Key Word: Berners Bay Monitoring

New/Existing Agreement: New

NMFS Authority: 15 U.S.C. Section 1525; 15 U.S.C. Section 713c-3;
16 U.S.C. Section 742a-742j-2

Number of FTE(s) Required: 0.2 FTE per annum

Organization: AKRO



John Lepore is the General Counsel contact. He can be reached at (907) 586-7414 x 230 or john.lepore@noaa.gov. Cindy Hartmann is the AKRO contact. She can be reached at (907) 586-7585 or cindy.hartmann@noaa.gov. If you have any administrative questions please contact the above mentioned people.

Attachment

**MEMORANDUM OF AGREEMENT
ESTABLISHING A JOINT PROJECT**

BETWEEN THE

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

AND

THE NATURE CONSERVANCY OF ALASKA

Agreement No. _____

I. PARTIES

This document constitutes an agreement between the National Marine Fisheries Service (NMFS), U.S. Department of Commerce, and The Nature Conservancy of Alaska (TNC), which is a non-profit organization.

II. AUTHORITIES

NMFS has authority to participate in the project with TNC under:

- (1) 15 U.S.C. Section 1525, the Department's Joint Project Authority, which provides that the Department may enter into joint projects with non-profit, research, or public organizations on matters of mutual interest, the cost of which is equitably apportioned;
- (2) 15 U.S.C. Section 713c-3, Fish and Wildlife Act of 1956, authorizes funds to be used to implement the national fisheries research and development program;
- (3) 16 U.S.C. Section 742a-742j-2, authorizes NMFS to conduct investigations, prepare and disseminate information and reports regarding fish and their habitats in order to provide for proper development of fish resources.

III. PURPOSE

The purpose of this Joint Project Agreement (JPA) is to facilitate cooperative efforts between TNC and NMFS for coastal and marine conservation projects including the long-term monitoring of marine habitats in the vicinity of proposed facilities located at Cascade Point and Slate Cove in Berners Bay, Alaska. The agreement initially supports a pilot project to test the need and viability of such a cooperative arrangement in support of

Berners Bay monitoring studies. Continuing the cooperative efforts to include additional years of monitoring and other studies will depend on an assessment of the first-year results, and mutual agreement by the parties that continuing the cooperative arrangement is in their best interest. Monitoring will include:

- Polycyclic aromatic hydrocarbons (PAHs) baselines;
- PAH monitoring;
- Biological baselines;
- Biological monitoring;
- Cascade Point breakwater monitoring.

This agreement establishes the understanding between NMFS and TNC regarding use of available funds to assist in a pilot project to monitor the long-term effects of development in Berners Bay. Together, NMFS and TNC can develop and carry out monitoring in Berners Bay which will provide important resource information to regulatory agencies and to the public. At the conclusion of the pilot project the parties will meet to discuss the project and decide whether to continue to work together on a long-term monitoring program.

This project is necessary and essential to further the mission of the Department in that it will determine the impact of transportation and construction activities on the fisheries and aquatic resources of Berners Bay. Information from this research and monitoring project will be made available to regulatory agencies and to the public and will help to make informed decisions in resource development.

NMFS has determined that this project cannot be done as effectively without the participation of TNC. Without TNC's contribution the project would not be able to gather and analyze as much data and would not be as comprehensive or as useful to regulatory agencies and the public.

Background

TNC and NMFS each have responsibilities and interest in programs that manage, conserve, restore, and sustain biological diversity of freshwater, coastal, and marine resources. TNC is an international, non-profit organization dedicated to preserving the plants, animals, and natural communities that represent the diversity of life on earth by protecting the lands and waters they need to survive. Of particular interest to TNC are near-shore habitats such as estuaries, coral reefs, seagrass beds, emergent wetlands, and shallow water zones that are heavily affected by human activities. TNC is escalating its focus on freshwater, coastal, and marine sites using sound science, sound public and private partnerships, an ecosystem approach and site-based conservation. NMFS uses science to manage, conserve, protect, restore, allow sustainable use, and promote stewardship of living freshwater, coastal, and marine resources, and the ecosystems that support them, for the benefit of the nation. NMFS strives to balance competing public needs and interests in the use and enjoyment of living marine resources while preserving

their biological integrity. NMFS utilizes partnerships with other organizations to fulfill its mission.

Berners Bay is a relatively pristine marine environment in Lynn Canal north of Juneau, Alaska. The bay has sensitive habitats that are used at critical times by several species, and is a critical habitat for the upper Lynn Canal ecosystem with its herring and eulachon runs which provide a forage base for salmon and other fish, marine mammals and birds. Several projects, currently under consideration for development, could adversely impact habitats and water quality in Berners Bay. The largest of these is the Kensington Mine project that would require construction of marine terminals in Berners Bay. Cascade Point, Echo Cove and Slate Creek Cove are being considered for terminal sites in the environmental impact statement for the proposed mine project. In addition, Gold Belt Inc. owns property in the Echo Cove/Berners Bay area and may develop it for commercial purposes.

The effects of the proposed marine terminals on Pacific herring and the ecosystems in which they play a role, are difficult to predict. Development of marine facilities in Berners Bay could have a negative impact on the herring resource and on other marine resources. Because spawning herring deposit eggs on kelp, if the project reduced kelp abundance or variety that could directly affect spawning success. Increased disturbance from vessel traffic, transient lighting, increased turbidity and sedimentation, and increased petroleum hydrocarbons in the water from oil and/or gas spills are all concerns. Resource managers lack information regarding specific habitat factors and potential environmental stressors from development projects such as the marine terminal to fully understand the environmental consequences of development.

The high value marine resources in Berners Bay are a public resource and are important and valued by NMFS, TNC, other agencies and organizations, and the public.

IV. MUTUAL INTEREST OF THE PARTIES

The parties have a mutual interest in collaboration and cooperation in coastal and marine conservation projects. This Memorandum of Agreement will facilitate cooperation in projects to better understand and monitor coastal, nearshore and marine species and habitats. The monitoring of sites within and near Berners Bay for changes in water quality, fish habitat, and fish populations, is of specific interest to the parties. NMFS and TNC have interests in understanding the ecosystem role of herring and other forage fish, and in understanding the effects that vessel activities and construction have on nearshore fish habitat. Such monitoring thus will expand the parties' understanding of forage fish ecology and habitat status and change, and will contribute to maintaining healthy coastal lands and waters.

V. RESPONSIBILITIES OF THE PARTIES

NMFS agrees to perform the following activities and provide the following resources in support of the monitoring program in Berners Bay:

- a. PAH baselines: Establish baseline concentrations of PAHs near Cascade Point and Slate Cove, sites proposed for dock facilities to service the Kensington Mine; in Echo Cove, a popular recreation site; and at control sites in and outside of Berners Bay.
- b. PAH monitoring: If the project is continued past the pilot year, PAH concentrations and ecological parameters will be monitored periodically during construction, operation and in the post operation phase of the two proposed facilities at impacted and control sites.
- c. Biological baselines: Establish biological and physical baseline conditions near Cascade Point and Slate Cove, and at control sites in and outside of Berners Bay. Map eelgrass and kelp forests in the area, fish habitat use, and associated physical parameters.
- d. Biological monitoring: If the project is continued past the pilot year, biological conditions will be monitored periodically during construction, operation and in the post operation phase of the two proposed facilities at impacted and control sites.
- e. Conduct dive surveys to monitor colonization, habitat value and habitat use of the proposed Cascade Point breakwater and changes to adjacent habitats over time.
- f. Provide annual progress reports to TNC.

TNC agrees to contribute resources as available to support the monitoring activities in Berners Bay. These resources will not exceed 60% of the cost of the monitoring or be less than 40% of the cost of the monitoring. Twenty seven thousand five hundred dollars, less 10% administrative expenses, is available for the first year of the monitoring study. Available funds may vary from year to year. TNC funds will be used to cover the cost of sample analysis and some field supplies/equipment.

These activities are new obligations to both entities and are not pre-existing obligations.

VI. EQUITABLE APPORTIONMENT OF COSTS

The costs of this activity are equitably apportioned with a matching contribution from TNC and in-kind services by NMFS. TNC will contribute financial support, as funds are available for that purpose. NMFS will contribute labor, sampling apparatus and expertise, data interpretation, and manuscript preparation in addition to the chemical analyses supported in part by TNC funds.

The Department's estimated percentage of total costs of this project is approximately 50%. TNC's estimated percentage of total costs to this project is approximately 50%. The intent is for both parties' contribution to be approximately equal for the pilot year and in future years if the project continues. In each year, the contribution of the Department in labor and sample analyses will not exceed the financial contribution of TNC. Attached is a copy of the estimated budget for this project that shows each partner's contribution to the project. For the pilot year, the estimated total monitoring cost is \$52,686. NMFS in-kind services are estimated to be \$27,686. TNC's costs are estimated at \$27,500 (\$25,000 contribution to NMFS and \$2,500 overhead)

VII. CONTACTS

The contacts for each party to this agreement are:

Cindy Hartmann
Fishery Biologist
Habitat Conservation Division
Alaska Region
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802
Phone: (907) 586-7585
Fax: (907) 586-7358
E-Mail: cindy.hartmann@noaa.gov

Robert G. Bosworth
Southeast Alaska Program Director
The Nature Conservancy of Alaska
119 Seward Street, Suite 2
Juneau, Alaska 99801
Phone: (907) 586-8621
Fax: (907) 586-8622
E-Mail: rbosworth@tnc.org

The parties agree that if there is a change regarding the information in this section, the party making the change will notify the other party in writing of such change.

VIII. PERIOD OF AGREEMENT AND MODIFICATION/TERMINATION

This agreement will become effective when signed by both parties. The agreement will terminate on September 30, 2010, but may be amended at any time by mutual consent of the parties. At the conclusion of the pilot project the parties will meet to discuss the project and decide whether to continue to work together on a long-term fish monitoring program. If the pilot project is successful and the parties agree to continue the parties will

review this agreement at least once every three years to determine whether it should be revised, renewed, or canceled. Either party may terminate this agreement by providing 45 days written notice to the other party. In the event this agreement is terminated, each party shall be solely responsible for the payment of any expenses it has incurred. This agreement is subject to the availability of funds.

IX. OTHER PROVISIONS

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 with thirty days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate action.

Under the Inspector General Act of 1978, as amended, 5 USC App. 3, a review of this agreement may be conducted at any time. The Inspector General of the Department of Commerce, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the parties to this agreement, whether written, printed, recorded, produced, or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law.

Any materials or statements offered to inform the public of the nature of this joint project, or to promote the existence of the project and the parties, shall only be released to the public upon agreement from NMFS.

Signature	Date
William T. Hogarth, Ph.D. Assistant Administrator for Fisheries U.S. Department of Commerce National Marine Fisheries Service Silver Spring, MD 20910	

Signature	Date
T. David Banks Alaska State Director The Nature Conservancy 715 L. Street Anchorage, AK 99501	

ATTACHMENT: Budget for the MOA Establishing a JPA Between NMFS and TNC of Alaska¹

Annual Budget for the Proposed Monitoring Project in Berners Bay, Alaska

Department of Commerce, National Marine Fisheries Service

Chemical Analyses	Sample Type	# Samples 2004	Analysis Costs @	Annual Cost
water	PEMD	44	300	13,200
water	MeCL ₂ extract	4	300	1200
Sediment	Sediment	4	400	1600
tissue	Mussel	4	400	1600
Field Supplies				600
Contract Labor				2800
TOTAL				\$21,000

Additional Equipment

Differential general positioning system (GPS) unit: \$4,000

2004 Field Person days and Estimated Cost

Activity	Person Days	Estimated Cost
Chemical Sampling: 3 persons x 5 days ²	15 person days	\$ 7,620
Ecological Sampling: 3 persons x 4 days	12 person days	\$ 6,096
Temperature logger retrieval 3 persons x ½ day (1 trip/year in addition to sampling trips)	1.5 person days	\$ 762
Breakwater monitoring: 2 people x 5 days (accounting for multiple trips due to site conditions)	10 person days	\$ 5,080
Report Preparation:	16 person days	\$ 8,128
Total Person Days and Estimated Labor Cost	54.5 person days³	\$27,686
Total Monitoring Project Cost		\$52,686

The Nature Conservancy

Contribution to Project Costs for Pilot Year of Project	\$25,000
Overhead (approximately 10 % of contributed funds)	\$ 2,500
Total Costs	\$27,500

¹ Revised as of December 20, 2004

² The estimated cost per person day is \$508.00, which includes salary, benefits, and overhead.

³ 0.2 FTE's