MEMORANDUM OF UNDERSTANDING

among the

Northwestern Division, U.S. Army Corps of Engineers,

Northwest Region, National Marine Fisheries Service, National Oceanic and Atmospheric Administration,

Pacific Region Office, U.S. Fish and Wildlife Service, and

the Puget Sound Partnership, a State of Washington agency,

**Regarding Collaboration to Advance Levee Flood Risk Management Policy Solutions in Puget Sound**

This MEMORANDUM OF UNDERSTANDING (MOU) is made by and between the Northwestern Division, U.S. Army Corps of Engineers (USACE); the Northwest Region, National Marine Fisheries Service, National Oceanic and Atmospheric Administration; the Pacific Region Office, U.S. Fish and Wildlife Service; and the State of Washington agency, the Puget Sound Partnership (the Parties).

## I. PURPOSE AND SCOPE:

The purpose of this MOU is to establish a collaborative process that facilitates effective and efficient management of important flood risk reduction infrastructure as well as protection of valuable ecosystem function, within the context of the USACE's civil works mission, federal regulatory missions, and the recovery of the Puget Sound ecosystem.

The geographic scope of this MOU is the jurisdictional reach of the Puget Sound Partnership, which extends to Puget Sound and related inland marine waters including Hood Canal and waters of the Strait of Juan de Fuca east of the Pacific Ocean and south of the international boundary with British Columbia, as well as all rivers, streams, and watersheds draining to Puget Sound.

## II. AUTHORITIES:

USACE Northwestern Division enters into this MOU in furtherance of the execution of its authorities under Public Law 84-99 (33 U.S.C. 701n), as well as execution of its responsibilities under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)

Northwest Region, National Marine Fisheries Service, National Oceanic and Atmospheric Administration and Pacific Region Office, U.S. Fish and Wildlife Service enter into this MOU

under the authority of the Fish and Wildlife Coordination Act (16 U.S.C. 661), and the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Puget Sound Partnership, an agency of the state of Washington, enters into this MOU in furtherance of and in accordance with RCW 90.71.

**III. BACKGROUND:**

The Parties share a commitment to collaborate to better integrate, organize and focus management efforts in Puget Sound through the coordination of science and habitat/ecosystem management programs, policies, information and outreach to support, monitor and sustain the recovery of the Puget Sound ecosystem and reduce flood risk to human life and property by delivering enduring solutions.

Puget Sound's levees reduce risk to human life and billions of dollars of public and private investment in infrastructure, buildings, facilities, agricultural and other lands supporting transportation, commerce, and civic life from inundation due to flooding. Every major watershed within the Puget Sound basin is home to one or more populations of native salmonid species that are listed under the Endangered Species Act (ESA) and contribute substantially to commercial, recreational, subsistence, and ceremonial fisheries, and whose recovery is at least in part dependent upon the improvements in the quality and quantity of riparian, floodplain and coastal habitats. Levee systems enrolled in the federal Public Law 84-99 program in the Puget Sound basin are inextricably connected to approximately 262 miles of riparian habitat.

The Puget Sound is also home to many federally recognized sovereign Indian tribes that through treaties with the United States government (government) have protected treaty rights relative to the management and use of the salmon resource, with associated responsibilities and duties ascribed to the government.

The USACE has issued the Memorandum, **"HQ USACE (CECW–HS), Subject: Policy for Development and Implementation of System-wide Improvement Frameworks (SWIFs), 29 November 2011"**. The SWIF provides a process using an interagency approach within which levee sponsors engage with federal, state, local and Tribal agencies and organizations in longer-term system-wide improvement efforts to optimize flood risk reduction by identifying solutions that efficiently use resources, prioritize improvements and corrective actions based on risk, and establishes frameworks for coordinating overlapping or complementary programs and requirements. The process facilitates interagency collaboration to address complex levee system deficiencies and encourage the establishment of interagency teams to jointly identify and implement regionally appropriate, science based solutions and tools to help reduce risk associated with levees or levee systems while allowing for integration of environmental and treaty requirements.

The USACE is proposing revisions to its nationwide policy for obtaining variances from its national levee vegetation management standards, in light of a demonstrated need to preserve, protect, and/or enhance natural resources in the draft Policy Guidance Letter "**Process for Requesting a Variance From Vegetation Standards for Levees and Floodwalls**" 77 Fed Reg 9637, 17 Feb 2012 (hereinafter referred to as the "draft PGL"). These vegetation management standards are applied as a basis for determining eligibility for Federal repair assistance under the USACE's Public Law 84-99 Rehabilitation and Inspection Program (RIP). As of the date of this agreement this Policy remains in draft while public comment is reviewed.

As the state of the science is advanced, there is an increasing understanding of climate change and the potential for an increase in the impacts from the magnitude, frequency, and duration of flood events and impacts to species and human activities. This adds an additional level of risk of uncertainty and complexity in the planning process.

The levee systems and flood risk management infrastructure in Puget Sound watersheds is aging and requires a comprehensive, long-term program to address related public safety risks in a manner that is consistent with ESA, National Environmental Policy Act, Clean Water Act, National Historic Preservation Act, and other environmental and ecosystem responsibilities including Puget Sound recovery goals. As Puget Sound levee system owners consider their various available alternatives to ensure flood risk reduction system performance in the context of continued participation in the Corps' RIP, the Parties to this MOU share a mutual goal of addressing the public safety interest and natural resource conservation imperatives through a prudent and deliberate approach to managing both flood risk and vegetation.

**IV. DESIRED OUTCOMES:**

The Parties to this MOU seek to collaborate in support of complementary actions that effectively facilitate the maintenance of safe levees, reduce flood risk and improve levee system performance, improve habitat for listed salmon, and allow cost-effective management actions to achieve these objectives. In furtherance of these objectives, the Parties to this MOU have established and seek to formalize, continue, and structure their collaborative efforts to assist in the resolution of seemingly conflicting objectives over the management of vegetation on levees and protection of valuable ecosystem function and habitat in the Puget Sound basin.

The Parties to this MOU intend to achieve these objectives through the development and implementation of a durable and effective management approach, incorporating well-conceived and documented SWIF and/or variances from the USACE national standards for the management of vegetation on levees that fosters comprehensive flood risk reduction assessments and actions, promotes improved riparian, floodplain and coastal habitats for ESA-listed salmonids and tribal fisheries, and provides for cost-effective operational and capital expenditures by levee owners and the federal government.

## V. SPECIFIC AGENCY ACTIONS:

The Parties to this MOU seek to achieve the purpose and desired outcomes identified in this MOU by:

1. Working together and with other public and private entities and tribal governments to communicate and gain support for achieving the purpose and desired outcomes described in this MOU. Activities may include but not be limited to engaging parties, stakeholder groups and local communities to obtain individual input, supporting pilot projects, prioritizing flood risk reduction actions within watersheds around Puget Sound, and developing mechanisms to share and leverage resources in support of SWIF implementation.

2. Employing authorities and resources and instituting programmatic and policy mechanisms as available and appropriate within our respective agencies and with others in support of achieving the purpose and desired outcomes addressed in this MOU. Activities may include but not be limited to scoping and implementing a coordinated, prioritized research program, developing policy and program guidelines consistent with the limitations of the Parties' respective agency authorities and guidance, and identifying Best Management Practices.

3. Proactively identifying and resolving issues that impede the achievement of the purpose and desired outcomes addressed in this MOU.

## VI. TIMEFRAME FOR IMPLEMENTATION:

This MOU becomes effective when signed by all signatory Parties and remains in effect until modified or terminated. The Parties anticipate periodically revisiting this MOU and its elements and revising them as needed to ensure that the MOU is an effective tool in support of their collaborative efforts. It is anticipated the initial review will occur no later than three years after the draft PGL is promulgated as a final document.

## VII. LIMITATIONS:

This MOU does not (1) restrict the Parties from involvement in similar activities with other public and private entities, organizations, and individuals; (2) obligate the Parties to expend funds or provide resources; or (3) create any rights in, confer any benefits to, or relieve any liability of, any Party or non-party to this MOU.

Nothing in this MOU is intended to pre-determine or substitute for any environmental reviews required by law, or establish the scope or method for such reviews, including but not limited to review under the Endangered Species Act.

**VIII. MODIFICATIONS AND TERMINATION:**

Modifications of the scope of this MOU shall be made by formal consent of the Parties, by the issuance of written modification, signed by the authorized representative for signatory entities, prior to any changes becoming effective. Any Party may terminate or withdraw participation in whole or part from this MOU at any time by providing written notification to the other Parties.

**IX. SIGNATORY PARTIES:**

14 JUN 2012

John McMahon — Date

Commander, Northwestern Division

U.S. Army Corps of Engineers

6/14/12

Will Stelle — Date

Administrator, Northwest Region

National Marine Fisheries Service

National Oceanic and Atmospheric Administration

Robyn Thorson — 6-14-2012

Robyn Thorson — Date

Director, Pacific Region Office

U.S. Fish and Wildlife Service

6-14-12

Gerry O'Keefe — Date

Executive Director

Puget Sound Partnership