

# Additional Information for Hatchery Creek and Martin Slough Culvert Design Projects

## For Both crossings:

1. Guidelines for Salmonid Passage at Stream Crossings in Washington, Oregon, and Idaho <https://www.fisheries.noaa.gov/resource/document/guidelines-salmonid-passage-stream-crossings-oregon-washington-and-idaho>
2. West Coast Region Guidance to Improve the Resilience of Fish Passage Facilities to Climate Change <https://www.fisheries.noaa.gov/resource/document/west-coast-region-guidance-improve-resilience-fish-passage-facilities-climate>

## For Martin Slough:

1. Washington State Salmon Recovery Manual 18, Appendix D: Design and Restoration Project Deliverables <https://rco.wa.gov/wp-content/uploads/2019/05/SAL-Manual18.pdf>

## For Hatchery Creek:

1. See additional pages

## Specific Award Conditions

**Award Number:** NA23NMF4630035

**Amendment Number:** 0

### 1) New Award SAC

This award number NA23NMF4630035, to SKAGIT RIVER SYSTEM COOPERATIVE, supports the work described in the Recipient's proposal entitled "Skagit Basin Tribal Priority Barrier Correction Program" dated 08/29/2022, and revision dated 12/21/2022, which are incorporated into the award by reference. Where the terms of the award and proposal differ, the terms of the award shall prevail.

### 2) Multi-Year Special Award Conditions (New Awards)

(MULTI-YEAR) The period of performance and budget incorporated into this award cover a 3-year 5 month period for a total amount of \$1,230,955.00 in Federal funds. However, Federal funding available at this time is limited to \$320,314.00. Receipt of any prospective funding is contingent upon the availability of funds from Congress, program authority, satisfactory performance, compliance with terms and conditions of the Federal award, continued relevance to program objectives and will be at the sole discretion of the Department of Commerce. The Department of Commerce is not liable for any obligations, expenditures, or commitments which involve any amount in excess of the Federal amount presently available. The recipient will be responsible for any and all termination costs it may incur should prospective funding not become available. No legal liability will exist or result on the part of the Federal Government for payment of any portion of the remaining funds which have not been made available under the award. Notifications affecting funding or notice of non-availability of additional funding for prospective years will be made only by the Grants Officer. The amendment to obligate prospective funding available shall be made on Form CD-451 (Amendment to Financial Assistance Award) if possible, prior to the expiration of each year's activities.

The period of performance for this action is 02/01/2023 through 01/31/2024 and may be extended through 06/30/2026.

### 3) Part 1 - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Pursuant to the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. No. 117-58, which includes the Build America, Buy America (BABA) Act, Pub. L. No. 117-58, §§ 70901-52 and OMB M-22-11, recipients of an award of Federal financial assistance from the Department of Commerce (DOC) are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- 1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- 2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

3) all construction materials (1) are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

#### **4) Part 2 - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials WAIVERS**

When necessary, recipients may apply for, and DOC may grant, a waiver from these requirements. DOC will notify the recipient for information on the process for requesting a waiver from these requirements.

1) When DOC has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which DOC determines that:

- a. applying the domestic content procurement preference would be inconsistent with the public interest;
- b. the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- c. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. DOC will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [whitehouse.gov/omb/management/made-in-america](https://whitehouse.gov/omb/management/made-in-america).

#### **DEFINITIONS**

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives(2)—that is or consists primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass);

lumber; or drywall.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

"Infrastructure" includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

"Project" means the construction, alteration, maintenance, or repair of infrastructure in the United States

--

1 Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

2 IIA, § 70917(c)(1).

## **5) Pre-Award Costs – 90 Days**

Pre-award costs incurred within 90 days prior to the award start day are allowable only to the extent of their reasonableness and relationship to the proposed activities of this award. The approved pre-award costs are a portion of, not in addition to, the approved total budget.

## **6) Implementation of Domestic Sourcing Requirements**

Prior to initiation of any construction that may arise in this award, the Recipient is required to inform the NOAA Grants Officer and the Federal Program Officer whether it is using iron, steel, manufactured products, or construction materials as described in the Specific Award Condition in this award on Required Use of American Iron, Steel, Manufactured Products, and Construction Materials. In addition, the Recipient is required to inform the NOAA Grants Officer and the Federal Program Officer whether those materials are produced or manufactured in the United States, or alternatively, it is requesting one or more waivers, as described in the award condition. The Recipient is required to coordinate with NOAA regarding its compliance with this term.

## **7) Indirect Rate Agreement SAC**

The proposal for the indirect cost rate used in this award is 25.9% was submitted to the cognizant federal agency but not yet approved. Once the new rate is approved, your organization must submit the new NICRA to NOAA within 30 calendar days of receipt of the approved negotiated rate agreement, and may submit a rebudget request (if necessary).

## **8) Post Award NEPA Review Process**

By accepting this award, the Recipient agrees to assist and cooperate with NOAA Fisheries in the preparation of any outstanding National Environmental Policy Act (NEPA) compliance documentation. For purposes of NEPA compliance, Phase 1 of the project includes consultant selection, design and engineering, permitting, outreach, and training of staff. The activities for which work can proceed (as described above) will have no significant individual or cumulative adverse effects on the environment. The Recipient will not expend any funds for Phase 2 project implementation (which includes culvert removal and bridge installation) until impacts have been assessed, and NEPA compliance documentation has been completed by NOAA. Funding for excavator rental, bridge purchase and construction materials is unavailable. The remaining award funds will be available after the NOAA Program Officer provides NEPA clearance by confirming in Grants Online that this award condition has been satisfied.

## **9) Cooperative Agreement**

This award is a cooperative agreement as described in 2 C.F.R. Sec. 200.1, meaning that NOAA is “substantially involved” in the project. NOAA Fisheries’ participation will be crucial to ensuring the timely implementation of the most beneficial habitat restoration project. NOAA may participate in one or more of the following ways:

- collaboration on the scope of work through participation in meetings and review of documents;
- providing assistance with technical aspects of the habitat restoration project such as assistance with permitting or development of detailed work plans and monitoring plans;
- review and comment on design plans at the beginning of the award, at various stages throughout any portion of the design process that occurs during the award (e.g. conceptual, 30%, 60%, and 90% completion), and at the final completion stage;
- review of procurement materials to the extent authorized by 2 C.F.R. Sec. 200.325;
- tracking the progression of the restoration from planning through implementation and post-construction monitoring, with particular emphasis on tracking Recipient achievement of targets for major milestones and performance metrics and sharing results;
- other involvement consistent with Office of Management and Budget Guidance on Substantial Involvement. See 43 Federal Register 36860 (Aug. 18, 1978).

## **10) Performance Progress Reports**

Reporting requirements are described in 2 C.F.R. Sec. 200.328-.330, and 200.300(b); Department of Commerce Financial Assistance Standard Terms and Conditions Sec. A.01, C.03, and G.05; and Bureau-Specific NOAA Administrative Standard Award Conditions, with the following supplement.

Progress reports must be submitted using the NOAA Community-based Restoration Program's Performance Progress Report (PPR) reporting form approved by OMB under control number 0648-0718, or a successor form. The NOAA Federal Program Officer will provide this form to the Recipient. Interim semi-annual progress reports are due no later than 30 days after the semiannual reporting periods ending March 31 and September 30 for the entire duration of the award. These follow the same frequency and have the same due dates (April 30 and October 30, respectively) as the SF-425 Federal Financial Reports, which also must be submitted as a condition of this award.

A comprehensive final report covering all activities during the award period is required and must be received by the NOAA Program Officer within 120 days after the end date of this award, but a final semi-annual report is not required.

### **11) Contact Information**

Contact information for NOAA and the Recipient is maintained in the NOAA Grants Online award management system.

In addition:

The Federal Program Officer for this award is: Melanie Gange; 301-427-8664; melanie.gange@noaa.gov

The Technical Monitor for this award is: Laurel Jennings; 206-526-4601; laurel.jennings@noaa.gov

### **12) Any Other Programmatic restrictions placed on this Award**

To ensure adequate and timely progress towards project completion, NOAA and the Recipient have cooperatively identified several milestones as outlined in the revised proposal narrative on page 12. Project progress will be evaluated throughout the award with particular emphasis on meeting these milestones. NOAA reserves the right to pursue enforcement action for the award under 2 C.F.R. 200.339-.343 at any time throughout the award period should NOAA determine that a Recipient is not meeting project milestones as outlined in the application submitted to the NOAA Grants Management Division for funding.

### **13) Changes to the Scope of Work**

By accepting this award, the Recipient agrees to assist and cooperate with NOAA Fisheries in the preparation of any outstanding National Environmental Policy Act (NEPA) compliance documentation. Recipients who plan any changes to the activities described in the award documentation approved by NOAA should contact their Federal Program Officer at least 90 days in advance of any changes, so that NOAA can confirm that all environmental compliance review is complete, and all documentation is in place. Other requirements related to changes in the Scope of Work are contained in the NOAA Standard Terms and Conditions.

### **14) Project Files**

The Recipient must maintain project files for all restoration activities taking place under this agreement consistent with 2 C.F.R. Sec. 200.334. These files must contain, at a minimum, project work plans and copies of all federal and state permits/consultations associated with project implementation.

### **15) Outreach and Communications**

Department of Commerce Financial Assistance Standard Term and Condition G.05.k.3. is supplemented as follows consistent with NOAA's collaboration on this project. The Recipient will coordinate with NOAA on outreach plans, events, products, and media coverage associated with the project. Please coordinate with the Federal Program Officer listed under the Contact Information award condition. Grantees will provide copies of final outreach products, website mentions, press materials, photos, etc. via the standard progress reports to NOAA, or when available throughout the award

period. Grantees will provide NOAA with high-resolution before, during, and post-implementation photos of the project. Photos of the site prior to construction and during project implementation should be submitted with progress reports or as requested by NOAA.

#### **16) Acknowledgement of Project Contributors**

The Recipient must display, where appropriate and practical, publicly visible signs indicating that the project has received funding from the NOAA Restoration Center. These signs should also identify other contributing partners. These contributions should also be acknowledged in all communications with the media and the public and in all outreach related to the projects, consistent with Department of Commerce Financial Assistance Standard Term and Condition G.05.k.3.

#### **17) Project Safety**

The Recipient must have a written safety plan for management of the project, which should specifically address safety of project personnel, associates, visitors, and volunteers. The Recipient must conduct a safety briefing for volunteers immediately prior to their participation in hands-on restoration activities under this award.

In addition, for any Self-Contained Underwater Breathing Apparatus (SCUBA) diving activities in a project, it is the responsibility of the Recipient to ensure that SCUBA divers are certified to a level commensurate with the type and conditions of the diving activity being undertaken. Furthermore, it is the responsibility of the Recipient to ensure that any SCUBA diving activities under this award meet, at a minimum, all applicable Federal, State, and local laws and regulations pertaining to the type of SCUBA diving being undertaken.

#### **18) Compliance with Applicable Laws, Obtaining Permits, and Consultation Requirements**

The Recipient is required to comply with national policy requirements consistent with 2 C.F.R. Sec. 200.300 and Department of Commerce Financial Assistance Standard Terms and Conditions, Section G. The Recipient will ensure that implementation of the project will meet all Federal laws and regulations by obtaining all Federal, state, and local permits and consultations applicable to the project prior to expenditure of award funds for those activities requiring permits and consultations. This includes, but is not restricted to, consultations required under the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat), National Historic Preservation Act, and Coastal Zone Management Act. The Recipient will be cognizant of all conditions and restrictions required by their permits and consultations, and will immediately halt activities and contact their NOAA Technical Monitor if events occur that threaten to violate the conditions or restrictions required by their permits and consultations.

#### **19) Verification of Permits and Consultations**

Verification of permits and regulatory compliance related to this project must be presented to the NOAA Technical Monitor prior to project implementation. The Recipient should provide a list of Federal, tribal, state, and local permits acquired for this project by email or letter to the NOAA Technical Monitor.

