

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.	8A
Date of Meeting	January 11, 2022

DATE: December 28, 2021

TO: Managing Members

FROM: John Wolfe, Chief Executive Officer

Sponsors: David Morrison, Chief Financial Officer, NWSA
Ryan McFarland, Sr. Manager, Government Affairs, NWSA

SUBJECT: Harbor Maintenance Tax (HMT) Donor Port Funding Overview and Section 2106 Funds distribution for 2022

A. ACTION REQUESTED

Request waiver of second reading and request adoption of Joint Resolution of the Port of Seattle (No. 3798) and Port of Tacoma (2022-01-PT) transferring the WRRDA Section 2106 funds received by the home ports in 2022 to the NWSA, authorizing the use of the Section 2106 funds by the NWSA for eligible projects within the specified home port harbors, continuing the use of a fund within the NWSA that does not impact the 50/50 split of membership interest based on the Section 2106 distributed to the NWSA, and authorizing the use of cash for eligible NWSA capitalized projects and the return of cash to the two home ports for expensed projects.

B. BACKGROUND

1. GENERAL HARBOR MAINTENANCE TAX (HMT) BACKGROUND

In 1986, Congress enacted the HMT to help fund operation and maintenance (O&M) costs at U.S. coastal and Great Lakes harbors through a tax on maritime shippers. O&M consists mostly of the dredging of Federal channels to their authorized depths and widths. The tax is levied on importers and domestic shippers using coastal or Great Lakes ports.¹ The tax is assessed at a rate of 0.125% of cargo value (\$1.25 per \$1,000 in cargo value). The tax revenues are deposited into the Harbor Maintenance Trust Fund (HMTF) from which Congress appropriates funds for harbor dredging and other maintenance activity in federal waterways. The tax is also assessed at a rate of 0.125% on the value of cruise passenger tickets

¹ Due to the Supreme Court decision of *U.S. v. United States Shoe Corp.*, 523 U.S. 360 (1998), exporters no longer pay the tax because it was found unconstitutional and in violation of the Export Clause, U.S. Const., Art. I, §9.

2. HMT REFORM AND WRDA SECTION 2016

HMT reform has long been a top priority of the home ports and the NWSA. HMT is collected to pay for maintenance dredging at ports around the country. Each ports' maintenance dredging needs vary, and what are now known as "HMT donor ports" generate far more HMT than they receive in return. For example, because Puget Sound ports are naturally deep, our ports traditionally have received only pennies from the HMT fund for every HMT dollar our ports generate. Furthermore, because of the additional cost it places on cargo brought through our ports, it is also contributing to diversion of US cargo and associated jobs to Canada, where no HMT is charged.

As a first step in addressing these longstanding concerns, Senator Patty Murray led the creation of a program for donor ports under Section 2106 in the Water Resources Reform and Development Act of 2014 (WRRDA). Section 2106 allows Seattle, Tacoma, and other donor ports² to offer incentives to shippers to help offset the HMT cost disadvantage relative to Canadian ports. Section 2106 funding also can be used for a limited number of "expanded uses" beyond the traditional uses of the HMT, including maintenance dredging in berths.

Until 2021, the NWSA elected to use our Section 2106 funds for importer incentives, which were issued by Customs and Border Protection (CBP) under the structure established by WRRDA 2014 and subsequent implementation guidance. For 2021, the Managing Members approved the staff recommendation to transfer all Section 2106 funds received in 2021 to the NWSA. This allowed other NWSA generated funds to finance an incentive program that meets the NWSA objectives of increasing cargo through the gateway.

The 2020 Water Resources Development Act (WRDA) bill included additional HMT reform provisions that will significantly increase the amount of funds returned to donor ports. Under WRDA 2020, donor ports will continue to receive Section 2106 funds, but in addition that, donor ports also will receive eight percent of total annual O&M appropriations out of the HMTF. The HMT reform provisions in WRDA 2020 also increased the list of eligible expanded uses for which Section 2106 and HMT funds can be used. The mechanism used for the distribution of the increased funding will be the same structure used for the Section 2106 funds. Staff will propose how to distribute and use HMT and future WRRDA Section 2106 funds after 2022 during the 2023 budget process.

3. USES OF FUNDS

Below is a list of the eligible uses of WRRDA Section 2106 and HMT funds, as amended in the 2020 WRDA bill. HMT funds cannot be used for #1 Rebates and #6 Environmental remediation related to dredging berths and Federal navigation channels but can be used for the other items.

² Current donor ports: Seattle, Tacoma, Los Angeles, Long Beach, New York/New Jersey, Miami, Hueneme, San Diego, and Everglades. WRRDA 2014 also made Section 2106 available to "energy transfer ports:" South Louisiana, New Orleans, Baton Rouge, Plaquemines, Lake Charles, Houston, Beaumont, Corpus Christi, Texas City, Baltimore, Long Beach, Mobile, NY/New Jersey, and Norfolk.

1. Rebates (“to provide payments to importers entering cargo through that port, as calculated by the Secretary according to the value of discretionary cargo”). These rebates are distributed by Customs and Border Protection (Section 2106 only; not allowed for HMT funds)
2. Maintenance dredging “of a berth in a harbor that is accessible to a federal navigation project and that benefits commercial navigation at the harbor”
3. Dredging and disposal of legacy-contaminated sediment and sediment unsuitable for open water disposal. This applies to both federal channels and berths. Material must be associated with maintenance dredging (does not include deepening)
4. An in-water improvement if the improvement—
 - a. is for the seismic reinforcement of a wharf or other berthing structure, or the repair or replacement of a deteriorating wharf or other berthing structure, at a port facility.
 - b. benefits commercial navigation at the harbor; and
 - c. is located in, or adjacent to, a berth that is accessible to a federal navigation project
5. An activity to maintain slope stability at a berth in a harbor that is accessible to a federal navigation project if such activity benefits commercial navigation at the harbor
6. Environmental remediation related to dredging berths and Federal navigation channels (Section 2106 only; not allowed for HMT funds)

4. WRRDA SECTION 2016 FUNDS RECEIVED IN 2022 AND FUTURE WRDA AND HMT FUNDS

The Port of Seattle will receive approximately \$2.7 million, and the Port of Tacoma will receive approximately \$2.7 million in Section 2106 funds in 2022. HMT Funds will be received starting FY 2023. It is difficult to determine exactly what activity our ports' WRDA donor port funds are associated with. Applying the HMT rate of .125% to home port and NWSA cargo and cruise activity that is subject to the HMT, NWSA staff estimate that over 97% of the 2022 WRRDA Section 2106 funds are associated with cargo activity. In addition, the HMT reform work both home ports and NWSA have been engaged in over the last decade was undertaken specifically to address the competitive position of our cargo facilities compared with Canadian ports. Therefore, staff proposes that all Section 2106 funds received in 2022 be transferred to the NWSA. This is consistent with the action taken for the 2021 WRDDA 2106 funds. The NWSA is in the best position to expend these funds for improvements in each harbor and incentive programs to enhance the competitiveness of the gateway.

While the legislation is unclear as to where the funds must be used, staff proposes that all funds received from a certain harbor in turn be used in that harbor unless the US Army Corps of Engineers provides guidance in the future allowing funds to be used in harbors other than where the funds were generated. Additionally, staff recommends that a policy decision be made by the Managing Members that the contribution of these funds from the two home ports

does not impact the 50/50 membership interest in the NWSA. This is consistent with the action for 2021 2106 funds.

C. FINANCIAL IMPLICATIONS

The proposal is to transfer all WRRDA Section 2106 funds received in 2022 to the NWSA. The funds will be tracked and spent in the appropriate harbor for projects that meet the allowable criteria. A new fund was created in 2021 to track the funds and will ensure that funds received from a harbor are spent in that harbor. Proposed usage for Section 2106 funds received in 2022 include:

Seattle: \$2.7M for T5 toe wall

Tacoma: \$2.7M for PCT fender replacement, remaining funds to PCT berth maintenance dredge, potential Pony dock repair of \$0.3M.

Transferring the funds to the NWSA will reduce the capital contributions required when the Section 2106/HMT funds are used on capitalized projects and/or increase cash flow from the NWSA when the funds are used on expensed projects. For capitalized projects, cash in the fund will be used to pay for those projects. For expensed projects, cash in the fund will be distributed back to the home ports in an amount equal to the expensed project in a 50/50 split as is done with Distributable Cash.

This resolution proposes that as a matter of policy, the 2022 Section 2106 received by a homeport be transferred to the NWSA for eligible uses without impacting the membership interests of each homeport in the NWSA.

Staff will make a recommendation on the use of the Section 2106 and HMT funds to be received during the Federal Government's Fiscal Year 2023 (Starting October 2022) and future years during the 2023 budget process.

D. PREVIOUS ACTIONS OR BRIEFINGS

The Managing Members have received several memorandums concerning HMT and Section 2106 funds and approved the transfer of all Section 2106 funds received in 2021 to the NWSA. This proposal is focused solely on the Section 2106 funds to be received in 2022. Additional actions will be required for future Section 2106 funds and for HMT funds.