



# UPDATES TO THE NORTHWEST SEAPORT ALLIANCE CHARTER

Presenters Carolyn Lake and Tom Tanaka, NWSA Legal Counsels

# Updates to The Northwest Seaport Alliance Charter

## **ACTION REQUESTED:**

- This briefing provides an overview of amendments to the Northwest Seaport Alliance (“NWSA”) Charter as proposed and described below.
- Based on the first several complete years of operations, Staff has identified several changes which correct, clarify and or modify various sections to align with the preferred structure of operations. The modifications fall into three principle categories: Environmental, Finance, and Litigation Management. Details are provided below.

# ACTION REQUESTED:

- The proposed changes have been reviewed by Bond Counsel and by Legal Counsels for Ports of Seattle, Tacoma, and the NWSA.
- The NWSA Charter was created by August 4, 2015 Resolutions of the Commissions of the two Homeports.
- Once created by the Homeport, future amendments are carried out by the Managing Members, and the amendments are authorized to be made by Motion.



# ACTION REQUESTED:

- After Managing Member adoption, the NWSA is required to file the Second Amended Charter with the Federal Maritime Commission (FMC) for their oversight, because, in addition to the authorizing state law provisions, the creation of the NWSA was authorized by the FMC.
- The FMC has 45 days after the changes are filed to review the Agreements and act.
- If the FMC fails to act within the 45 days, the Third Amended Charter is deemed approved. If the FMC or a third-party objects, there is a quasi-judicial process for the parties to the Charter to justify why the intended amendments would not negatively affect rates or the market.



# Updates to The Northwest Seaport Alliance Charter

## BACKGROUND:

- On August 4, 2015, the Managing Members adopted various founding documents to create The Northwest Seaport Alliance.
- On January 19, 2016, the Managing Members approved the first revision of the Charter and other founding documents.
- On April 4, 2017, staff briefed the Managing Members on proposed environmental and financial recommended amendments.
- The 2017 proposed Amendments are brought forward again now, and are refreshed by some additional requested updates.



# Updates to The Northwest Seaport Alliance Charter

**Based on the years of operations, Managing Members are requested to make the following changes to the Charter.**

➤ **Environmental:**

- Section 1.1(n) Definition of Legacy Contamination
  - (new definition)
- Section 3.2, “Allocation of Environmental Costs”
  - (at subsections a, b, c, e, f and g).



# Updates to The Northwest Seaport Alliance Charter

## ➤ Finance:

### ○ **Finance Staff recommended amendments to:**

- Section 1.1(h) Definition of “Distributable Cash”
- Section 3.7, “Working Capital”
- Section 3.8, “Working Capital Reserve Policy,”
- Section 3.9, “No Additional Contributions Without Managing Member Vote”
- Section 3.12, “Capital Construction”
- Section 4.2(b), “Bond Income Calculations”
- Section 4.2 (c) “Rate Coverage Management” (changed and moved to new section)
- Schedule 1 - to clarify the initial contribution from each Managing Member is “Working” Capital Contribution



# Updates to The Northwest Seaport Alliance Charter

- Schedule 2, amends Port of Tacoma Licensed Properties to provide more clarity concerning the South Intermodal Yard. The valuation of Port of Tacoma's contribution does not change.
- Litigation Management:
  - This amendment adds a new Section 6.6 to formalize a structured process for CEO and Homeport Executive Directors(s) to consult and determine the appropriate entity to assume lead responsibility when the NWSA or a Homeport receives a claim, potential claim and/or litigation matter





# Updates to The Northwest Seaport Alliance Charter

- One housekeeping change:
- References to “Port Development Authority Act” have been updated throughout the Charter:
- The updated reference cites to the new PDA law replaced the former book-marking reference:
- Chapter 53. 57 RCW (ESHB 1170, WA Session Laws of 2015-6). (~~RCW 53.08 [new sections]~~), as amended.



# Updates to The Northwest Seaport Alliance Charter

- Charter Text Amendments:
- Additions to Charter language are shown by double underlined, deletions are shown in ~~strike through text~~.
- Following each of the fifteen proposed text changes, a brief explanation for the change is provided.
- To maintain consistency within the Charter, the NWSA is referenced as the “PDA” (“Port Development Authority”). Statutory references were updated, where appropriate.

# Section 3.2 Allocation of Environmental Costs

- **New Definition. 1.1** (n) “Legacy Contamination means contamination on Licensed Properties that occurred before the Effective Date.”
  - Adds “Legacy Contamination” to the listed definitions. (page 2).
- **Section 3.2(a) General Intent.** Clarifies investigation and remediation costs are included and references Legacy Contamination. (page 7)
- **Section 3.2(b) Remediation of Pre-Effective Date Contamination**
  - Inserts the phrase Legacy Contamination for consistency, clarifies investigation and remediation costs are included, and
  - Legacy Contamination – In general, Homeports by default retain the responsibility for the costs of Legacy Contamination for properties licensed to the NWSA by the Homeport, regardless of whether cleanup is undertaken pursuant to any regulatory order or administrative process. However, The NWSA is allocated responsibility if the contaminates are unearthed or disturbed as a result of NWSA operations. (page 8)

# Section 3.2 Allocation of Environmental Costs

- **Section 3.2(c) Maintenance & Clean Up Dredging**
  - Dredging sediments – Allocates maintenance dredging costs to the NWSA, where that activity is associated with NWSA operations. The Homeport will bear any incremental additional costs if the dredge sediment is contaminated. (Example: landfill rather than open water disposal).
  - Dredging required by regulatory Order (Cleanup Dredge) is the responsibility of the Homeports. (page 8)
- **Changes to Charter Sections (d) (e) and (f):**
  - Section (d) has no changes,
  - Section (e) is deleted as redundant with the current language changes. Section (f) adds the clarifies that the cost of investigation as well as remediation associated with cleanup of Post NWSA acquired property is borne by the NWSA. (page 8)



# Section 3.2 Allocation of Environmental Costs

- **Section 3.2(f)(i) Post Formation Habitat Mitigation**

- Includes Public Access & Wetlands within the type of mitigation covered by this section
- Adds the word “bank” to habitat mitigation credit options.

(Page 8)

- **Section 3.2(f)(ii) and (iii) Future Habitat, Wetlands, and Public Access Mitigation Sites**

- Changes to Charter Section (f)(ii) and (iii) clarifies that:
- The NWSA is responsible for replacement of existing habitat and or public access mitigation sites if required as a result of NWSA redevelopment/expansion needs
- Homeport is to develop an all-in cost for sale of mitigation credits, any long term operational and maintenance costs would need to be included in per acre credit price, and that that Homeport sale of advance credits is discretionary and not mandatory. (page 9)



## Section 3 Membership Interest, Budgeting, Working Capital, Cash Use and Reserves, And Capital Construction

- **Section 1.1(h) changes the definition of distributable cash.** Currently, cash received from grants and from interest earned on the NWSA's cash are not automatically distributed per the Charter, but instead requires a vote of the Managing Members to distribute.
- Since the Managing Members or the CEO through delegated authority will have already authorized the receipt of grants, a second Managing Member vote to distribute the grant cash is redundant.
- Additionally, any cash interest earned from the NWSA operating reserve is based on contributions to the reserve from the two Homeports. Over time, the balance of interest has accumulated and has effectively increased the size of the reserve. Depending on the financial market conditions, and the market-to-market valuation of the investments in the reserve, the NWSA Treasurer should be authorized to redistribute the cash interest earned to the two Homeports for their use.

(page 2)



# Section 4 Cash Distributions, Reserves, and Member Bond Obligations

- **Section 3.7 Working Capital**

- Clarifies actual use of working capital reserve and actual flow of funds.
- Working Capital has a “reserve” component to be used only when needed, and a “liquidity” component for working capital
- Working capital may be used to pay for capital construction temporarily until capital (cash) is provided by the two home ports. This allows timely payment of invoices.

- **Section 3. 8 Working Capital Reserve Policy**

- The amendment to Section 3.8 clarifies that the Working Capital Reserve Policy allows the Working Capital Reserve amount to be less than the targeted amount to allow for liquidity needed due to the reimbursement processes among the NWSA and the Homeports.



# Section 3 Membership Interest, Budgeting, Working Capital, Cash Use and Reserves, And Capital Construction

- **Section 3.9 No Additional Contributions Without Managing Member Vote.**
  - Allows funding of projects that fall within the limits of the CEO's delegation of authority without an additional vote of the Managing Members.
  - This creates consistency between the Charter and the Managing Members' approved Master Policy, Delegation of Authority.
  - If a Managing Member vote is required to fund projects delegated to the CEO, this is counter to and essentially eliminates the delegation.
  - (page 10)





# Section 3 Membership Interest, Budgeting, Working Capital, Cash Use and Reserves, And Capital Construction

## 3.12 Capital Construction.

- Allows funding of delegated projects without a vote of the Managing Members, where such funding falls within the threshold dollar amount delegated to the CEO by the Managing Members Master Policy Delegation of Authority Resolution.
- Requiring a vote to fund projects delegated to the CEO essentially eliminates the delegation. Additionally, the amendment clarifies the actual use of working capital reserve and actual flow of funds. (page 10)



# Section 4 Cash Distributions, Reserves, and Member Bond Obligations

- **Section 4.2(b) Bond Income Calculation**
  - Clarifies that the bond income calculation applies to the bonds outstanding on August 4, 2015, when the NWSA was formed and clarifies that the bond income is based on cash income by excluding depreciation.
  - Also clarifies that in the case of the Port of Seattle, the Bond Income Calculation excludes bonds issued to fund Airport Facilities. (page 11)
- **Section 4.2(c) Rate Coverage Management**
  - Created a new section 4.2(c) by separating this from section 4.2(b). This clarifies that this is a separate stand-alone requirement different from the Bond Income Calculation.
  - Subsequent sub-paragraphs are renumbered accordingly with no content changes. No new requirements. (Page 12)



# Schedule 1 - Capital Contribution and Membership Interest”

- Update Schedule 1 to clarify the initial contribution from each Managing Member to Working Capital.
- No amounts were changed. The footnote to the table is updated to include “This is also called Working Capital” for clarity.
  - i. Current Title: “Capital Contribution and Membership Interest”
  - ii. Proposed Title: “Working Capital Contribution and Membership Interest”. (page 29)



# Schedule 2 Licensed Properties and Maps

- **South Harbor SIM Yard**

- Clarifies that the business located at the SIM is included in the NWSA but that the property is not.
- The SIM real estate is owned by the City of Tacoma and leased by the Port of Tacoma, and all improvements revert back to the City if the lease is ever cancelled.
  - No change to valuation or NWSA income.
  - The footnote to the table is updated to include “This is also called Working Capital” for clarity. (page 30)



# LITIGATION MANAGEMENT CHANGES:

- **Adds a new Section 6.6 re: Litigation Management**
  - Formalizes a structured process for the NWSA CEO and Homeport Executive Directors(s) to consult and determine the appropriate entity to assume lead responsibility when the NWSA or a Homeport receives a claim, potential claim and/or litigation matter.
  - The process defines that the Executives of the involved entities shall confer and determine which entity shall assume lead responsibility in responding and defending the claim, potential claim or litigation.
  - If the Executives do not agree, then the managing Members shall make that determination.
  - Thereafter the litigation shall be managed using the requirements the Delegation of Authority Master Policy Resolution of the NWSA or Homeport which assumes lead responsibility. (page 16-17)



# Updates to The NWSA Charter

- **FINANCIAL IMPLICATIONS**

- There are no financial impacts associated with the proposed changes.

- **ECONOMIC**

- There are no economic impacts associated with the proposed changes.

- **ENVIRONMENTAL**

- There are no environmental impacts associated with the proposed changes.

- **NEXT STEPS – Upon Managing Member Approval:**

- After Managing Member consideration and adoption, the Second Amended Charter will be filed with the Federal Maritime Commission, as an update to the NWSA founding documents.
- NWSA staff and legal counsel will continue to monitor and advise if/when future revisions may be required.

