

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.	8B
Date of Meeting	May 4, 2021

DATE: April 27, 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: Water Resources Reform and Development Act (WRRDA) of 2014 and Harbor Maintenance Tax (HMT) Donor Port Overview and Section 2106 Funds distribution for 2021

A. ACTION REQUESTED

Consider Joint Resolution (Port of Tacoma No. 2021-10-PT and Port of Seattle No. 3788) transferring the WRRDA 2106 funds received by the home ports in 2021 to the NWSA, authorizing the use of the 2106 funds by the NWSA for eligible projects within the specified home port harbors, creating a new fund within the NWSA that does not impact the 50/50 split of membership interest based on the 2106 amounts 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

A. 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.

B. 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 this year, the NWSA elected to use our Section 2106 funds for importer incentives, which were issued by Customs and Boarder Protection (CBP) under the structure established by WRRDA 2014 and subsequent implementation guidance. For 2021, staff recommends that Section 2106 funds be used for infrastructure. This will allow other NWSA generated funds to finance an incentive program that meets the NWSA objectives of increasing cargo through the gateway.

The 2020 WRRDA bill included additional HMT reform provisions that will significantly increase the amount of funds returned to donor ports. The 2020 HMT reform provisions 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 2106 funds at a later date.

C. USES OF FUNDS

Below is a list of the eligible uses of WRRDA Section 2106 funds, as amended in the 2020 WRRDA 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.

1. Rebates ("to provide payments to importers entering cargo through that port, as calculated by the Secretary according to the value of discretionary

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.

- cargo”). These rebates are distributed by Customs and Boarder Protection
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

C. WRRDA SECTION 2016 FUNDS RECEIVED IN 2021

The Port of Seattle will receive \$2.782 million, and the Port of Tacoma will receive \$2.744 million in Section 2106 funds in 2021. It is difficult to determine exactly what activity our ports’ WRDDA 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 2021 WRRDA Section 2106 funds are associated with cargo activity. Therefore, staff proposes that all 2106 funds received in 2021 be transferred to the NWSA as 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 gateway facilities compared with Canadian ports. 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. For these reasons, staff proposes that all future WRRDA 2106 and HMT funds be transferred to the NWSA.

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.

D. FINANCIAL IMPLICATIONS

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

Seattle: \$2.782M for T5 toe wall

Tacoma: \$2.744M for Husky fenders and berth dredge, WUT berth dredge and Blair wharf fender repair.

Transferring the funds to the NWSA will reduce the capital contributions required when the WRRDA 2106 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 the 2021 WRRDA Section 2106 funds received by a homeport be transferred to the NWSA for eligible uses without impacting the membership interests of each homeport in the NWSA.

E. PREVIOUS ACTIONS OR BRIEFINGS

The Managing Members have received several memorandums concerning HMT and WRRDA 2106 funds. This proposal is focused solely on the WRDA 2106 funds to be received in 2021. Additional actions will be required for future funds and for HMT donor port funds. Staff is evaluating options to add a new fund to the Charter relating to the income of the HMT and 2106 funding so the 50/50 membership interest of the Managing Members is not impacted by these cash contributions.

A JOINT RESOLUTION OF
THE PORT of SEATTLE No. 3788 and PORT of TACOMA No. 2021-10-PT

Regarding Section 2106 Funds distribution for 2021

WHEREAS, in 1986, Congress enacted the Harbor Maintenance Tax (“HMT”) to help fund operation and maintenance (O&M) costs at U.S. coastal and Great Lakes harbors through a tax on maritime shippers;

WHEREAS, the HMT is levied on importers and domestic shippers using coastal or Great Lakes ports at a rate of 0.125% of cargo value (\$1.25 per \$1,000 in cargo value). HMT is also assessed at a rate of 0.125% on the value of cruise passenger tickets;

WHEREAS, HMT operates to create a competitive disadvantage for American ports when compared with Canadian ports;

WHEREAS, HMT 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 around the country;

WHEREAS, each port’s maintenance dredging needs vary, and what are now known as “HMT donor ports” such as the Ports of Seattle and Tacoma (also referred to collectively herein as “Homeports) generate far more HMT than they receive in return;

WHEREAS, HMT reform has long been a top priority of the Homeports and of the Northwest Seaport Alliance (NWSA);

WHEREAS, as a first step in addressing these longstanding concerns, a program has been created for donor ports under Section 2106 in the Water Resources Reform and Development Act of 2014 (WRRDA) allowing Seattle, Tacoma, and other donor ports to offer incentives to shippers to help offset the HMT cost disadvantage relative to Canadian ports;

WHEREAS, 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;

WHEREAS, prior to 2021, the NWSA elected to use Section 2106 funds for importer incentives, which were issued by Customs and Boarder Protection (CBP) under the structure established by WRRDA 2014 and subsequent implementation guidance;

WHEREAS, for 2021, staff recommends that Section 2106 funds be used for infrastructure to allow other NWSA-generated funds to finance an incentive program that meets the NWSA objectives of increasing cargo through the gateway;

WHEREAS, when the Section 2106 program was established, the Homeports agreed that instead of the NWSA directly seeking Section 2106 funding, the Homeports would seek funding separately so as to increase the overall amount of funding to be provided to the NWSA gateway;

WHEREAS, the Port of Seattle will receive approximately \$2.782 million, and the Port of Tacoma will receive approximately \$2.744 million in Section 2106 funds in 2021;

WHEREAS, due to difficulty in determining exactly what activity the Homeports’ WRDDA donor port funds are associated with, applying the HMT rate of .125% to Homeport and

NWSA cargo and cruise activity that is subject to the HMT results in an estimate that over 97% of the 2021 WRRDA Section 2106 funds are associated with cargo activity;

WHEREAS, both Homeports and NWSA have been engaged HMT reform work over the last decade, and this work was undertaken specifically to address the competitive position of our gateway facilities compared with Canadian ports;

WHEREAS, the NWSA is in the best position to expend these 2106 funds for improvements in each harbor and incentive programs to enhance the competitiveness of the gateway;

WHEREAS, in 2021, staff proposes that all funds received from a certain harbor in turn be used in that harbor; and

WHEREAS, transferring the funds to the NWSA will reduce the capital contributions required when the WRRDA 2106 funds are used on capitalized projects and/or increase cash flow from the NWSA when the funds are used on expensed projects.

NOW, THEREFORE, BE IT RESOLVED BY the PORT OF SEATTLE AND PORT OF TACOMA COMMISSIONS that:

All WRRDA 2106 funds received in 2021 by either the Port of Seattle or the Port of Tacoma shall be transferred to the NWSA and tracked and spent in the corresponding harbor for projects that meet the allowable criteria;

The 2021 WRRDA Section 2106 funds received by either the Port of Seattle or the Port of Tacoma shall be transferred to the NWSA for eligible uses and such transfer shall not impact the membership interests of each Homeport in the NWSA;

NWSA shall utilize any 2021 WRRDA Section 2106 funds transferred from the Homeports in compliance with the requirements of any related agreement or memorandum of agreement executed by a Homeport with the Department of the Army, U.S. Army Corps of Engineers; and

NWSA shall assist the Homeports in completing any reporting needed to adhere to the requirements of any agreement or memorandum of agreement executed by a Homeport with the Department of the Army, U.S. Army Engineers relating to any 2021 WRRDA Section 2106 funds transferred from the Homeports.

ADOPTED by a majority of the members of the Port of Tacoma Commission and by a majority of the members of the Port of Seattle Commission held on the 4th day of May, 2021, majority of the members of both Port Commissions being present and voting on this joint resolution and signed by the Commission Officers of both Ports in authentication of its passage this 4th day of May, 2021.

PORT OF SEATTLE

PORT OF TACOMA

Fred Felleman, President
Port of Seattle Commission

Richard Marzano, President
Port of Tacoma Commission

Ryan Calkins, Vice President
Port of Seattle Commission

Don Meyer, Vice President
Port of Tacoma Commission

Sam Cho, Secretary
Port of Seattle Commission

Deanna Keller, Secretary
Port of Tacoma Commission

Stephanie Bowman
Port of Seattle Commission

Kristin Ang, 1st Assistant Secretary
Port of Tacoma Commission

Peter Steinbrueck
Port of Seattle Commission

John McCarthy, 2nd Assistant Secretary
Port of Tacoma Commission

draft



Item No. 8B
Date of Meeting: May 4, 2021

**Water Resources Reform and
Development Act (WRRDA) Section
2016 And Harbor Maintenance Tax
(HMT) Donor Port Overview and 2021
WRRDA 2106 Funds Distribution
Resolution 2021-06**

David Morrison, Ryan McFarland

Harbor Maintenance Tax Overview

Harbor Maintenance Tax (HMT) source of funds:

- The tax is assessed at a rate of 0.125% of cargo value (\$1.25 per \$1,000 in cargo value or cruise ticket value). The tax revenues are deposited into the Harbor Maintenance Trust Fund (HMTF) from which Congress appropriates funds for harbor dredging.
- HMT is collected to pay for maintenance dredging at ports around the country. Each port's maintenance dredging needs vary, and what are now known as "HMT donor ports" generate far more than they receive in return.
- The HMT does not apply to cargo flowing through Canada to the United States, putting the NWSA at a competitive disadvantage.

HMT and WRDA 2106 Reform

- HMT reform giving rise to payments to donor ports from HMT Trust was specifically driven by the donor ports to address the unequal distribution of the funds collected. The Ports of Seattle and Tacoma specifically focused on the competitive disadvantage the HMT tax imposed on the NWSA and its facilities compared with Canadian ports
- Senator Murray led the creation of a program for donor ports under Section 2106 in the Water Resources Reform and Development Act of 2014 to allow donor ports to receive some HMT funds for customer rebates or limited uses beyond the historical use of HMT funds
- The 2020 WRDA bill included additional HMT reform provisions that will significantly increase the amount of funds returned to donor ports.

2106 & Harbor Maintenance Tax Overview

Allowable usage for donor ports:

1. Rebates (“to provide payments to importers entering cargo through that port, as calculated by the Secretary according to the value of discretionary cargo”)
2. Maintenance dredging in berths
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—
 - 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;
 - benefits commercial navigation at the harbor; and
 - 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



2106 & Harbor Maintenance Tax Overview

- The Ports of Seattle and Tacoma are donor ports and will receive 2106 funds in 2021 as follows:
 - POS \$2.782 million
 - POT \$2.744 million
- Staff calculates that over 97% of funds are generated by cargo activity
- Future amounts of WRRDA 2106 and HMT will be determined
 - Initially 8% of annual HMT appropriations will go to donor ports
- The NWSA is in the best position to expend HMT and WRRDA 2106 funds for improvements in each harbor to enhance the competitiveness of the gateway

NWSA Charter Funds

The NWSA charter has two defined funds

- Working Capital – Each port contributed \$25.5M for 7 months of working capital for the NWSA
- Capital Construction – Funds contributed by the home ports for capital projects
- Both home ports have a 50/50 share in the NWSA
- New fund needed that does not impact the 50/50 split
 - 2106 & HMT funds will be spent in the designated harbor
 - The amount received will not be the same in each harbor in any year
 - 2106 & HMT funds can be used on capital and expensed projects
- Proposed new fund to be added to the Charter to allow WRRDA 2016 and HMT cash to be used on approved projects and will reduce the capital construction contribution needed and/or increase distributable cash (all else being equal) depending on how the HMT funds are spent

Proposed Joint Resolution (Seattle 3788, Tacoma 2021-10-PT)

- **Transfer 2021 WRRDA Section 2106 funds from home ports to NWSA.**
 - Future year funds policy will be addressed in the future.
- **Funds transferred do not impact the 50/50 Membership Interest**
- **Funds will be spent in the harbor from which the amounts were received on allowable projects.**
 - Unless the US Army Corps of Engineers provides additional clarity relaxing this requirement.
- **For capitalized projects, cash in the fund will be used to pay for those projects. No Capital Construction contribution from home ports will be required 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.**

