



## 2020 Position Paper

### Harbor Maintenance Trust Fund

#### **Summary:**

The Harbor Maintenance Tax is a fee collected from companies that ship goods through the nation's ports. The purpose of the tax is to fund the Army Corps of Engineers' operation and maintenance activities. In the Great Lakes, these activities include regular dredging of harbors, maintenance of breakwaters, and operation of the Soo Locks. Despite the fact that adequate revenue is being collected (approximately \$1.7 billion annually), Congress has historically restricted spending on harbor maintenance due to budgetary constraints. The result is crumbling infrastructure and harbors choked with sand and silt. In the Great Lakes region there is a \$150 million dredging backlog. Breakwaters and jetties need \$300 million in repairs, and the Soo Locks require \$73 million in upgrades.

A number of legislative initiatives have been pursued or are currently underway to address this problem. First, the Water Resources Reform and Development Act (WRRDA) of 2014 called for full use of harbor maintenance tax revenue and laid out incrementally larger spending targets for the Appropriations Committees to meet between FY2015-25. Second, the House of Representatives enacted legislation (H.R. 2440) last year to provide special budgetary treatment for expenditures from the Harbor Maintenance Trust Fund, effectively removing any motive for the Appropriations Committee to constrain spending. Third, the American Association of Port Authorities has developed a broadly supported, equitable, funding distribution scheme to ensure that all ports benefit from the Harbor Maintenance Tax.

#### **AGLPA Position:**

Congress should hit the target established in Section 2101 of WRRDA and provide at least \$1.67 billion in the FY2021 Energy and Water Development Appropriations Bill to fund the Corps of Engineers' operation and maintenance activities.

The Senate should enact H.R. 2440, legislation approved by the House on October 28, 2019, which will provide special budgetary treatment for expenditures from the Harbor Maintenance Trust Fund, effectively removing any motivation to constrain spending on the program.

Congress should include provisions in the 2020 Water Resources Development Act (WRDA) to enact the funding distribution scheme developed by the American Association of Port Authorities.

## **Additional Background:**

The U.S. Harbor Maintenance Tax (HMT) was enacted by Congress in the Water Resources Development Act of 1986 (P.L. 99-662). The HMT is an "ad valorem" tax, meaning a tax on the value of cargo. Originally, Congress set the HMT at 0.04 percent of the value of cargo carried on ships. In 1990, the tax was increased to 0.125 percent of the value of cargo. The tax is not paid by the vessel owner, nor the port, but rather, by the owner of the cargo in each ship.

While the original tax applied to all cargo transported by ship (with a few exceptions), in 1998 the Supreme Court struck down the taxation of export cargo as unconstitutional. As a result, the Harbor Maintenance Tax is assessed on cargo transported between any two U.S. coastal ports - including Great Lakes ports - and cargo imported to U.S. ports from other countries. The tax is not assessed on export cargo. It is important to note that the Harbor Maintenance Tax is also not assessed on shipments through inland river ports. Congress has enacted a separate user fee for the river barge industry. (Commercial barge operators pay a federal fuel tax).

The purpose of the HMT is to generate revenue from port users for port maintenance conducted by the U.S. Army Corps of Engineers. Specifically, the Army Corps of Engineers maintains federal shipping channels by conducting periodic dredging. Such dredging is necessary to remove sand and silt that naturally accumulate. In the Great Lakes the Corps of Engineers also engages in additional operation and maintenance activities such as repair of breakwaters and jetties and operation of the Soo Locks.

Harbor Maintenance Tax receipts are placed in the Harbor Maintenance Trust Fund, which serves as a source of revenue from which Congress appropriates funds for the Corps of Engineers' dredging activity. However, there is no direct link between the inflow of tax revenue to the federal government and the outflow of dredging funds. Tax collections are determined by the volume of trade, which has generally grown over the last two decades. Last year, tax revenues were estimated at \$1.7 billion. Expenditures are determined by the Congressional budget and appropriations process, which has historically been constrained. For this reason, at the beginning of calendar year 2020 there was an excess balance of approximately \$9 billion in the Harbor Maintenance Trust Fund.

## **Full Use of the Tax - Annual Appropriations Should "Hit the Target"**

Section 2101 of the Water Resources Reform and Development Act of 2014 (WRRDA) calls for increased spending from the Harbor Maintenance Trust Fund and lays out a series of funding targets between FY2015-25, with the goal of reaching full utilization of the tax by 2025. The ten-year targets are:

For fiscal year 2015, 67 percent of the HMT received the prior fiscal year.  
For fiscal year 2016, 69 percent of the HMT received the prior fiscal year.  
For fiscal year 2017, 71 percent of the HMT received the prior fiscal year.  
For fiscal year 2018, 74 percent of the HMT received the prior fiscal year.  
For fiscal year 2019, 77 percent of the HMT received the prior fiscal year.  
For fiscal year 2020, 80 percent of the HMT received the prior fiscal year.  
For fiscal year 2021, 83 percent of the HMT received the prior fiscal year.  
For fiscal year 2022, 87 percent of the HMT received the prior fiscal year.  
For fiscal year 2023, 91 percent of the HMT received the prior fiscal year.  
For fiscal year 2024, 95 percent of the HMT received the prior fiscal year.  
For fiscal year 2025, 100 percent of the HMT received the prior fiscal year.

In 2016, Congress passed the "Water Infrastructure Improvements for the Nation Act." This legislation amended the 2014 targets by providing for a 3 percent increase for any year in which the target calculation would result in a lower number than the amounts appropriated the previous year. For example, this would be the case if revenue into the trust fund dropped, or if Congress appropriated a generous amount the previous year.

The targets have provided a useful roadmap to achieve a key policy goal - full use of the Harbor Maintenance Tax. For the first six years of this plan, Congress has met or exceeded the targets.

As Congress begins work on the FY2021 Energy and Water Development Appropriations Bill, it should continue to follow the targets and provide \$1.67 billion for U.S. Army Corps of Engineers coastal navigation operation and maintenance.

#### **Full Use of the Tax - Harbor Maintenance Spending Should be Mandatory**

Another approach to ensure full use of HMT revenue is for Congress to provide special budgetary treatment for the Harbor Maintenance Trust Fund. Such an approach is the purpose of H.R. 2440, legislation introduced during the 116th Congress by Rep. Peter DeFazio (D-OR) and Mike Kelly (R-PA). H.R. 2440 was enacted by the House of Representatives on October 28, 2019. The legislation would exempt expenditures from the Harbor Maintenance Trust Fund from discretionary budget caps, thus, removing any motivation to underfund the program.

The Senate should follow the House's lead and enact H.R. 2440.

#### **National Port Funding Distribution Scheme**

In January, 2018, the nation's ports reached an agreement to equitably share in distribution of HMT revenue. The agreement calls for full use of HMT revenue and a funding distribution plan with ten percent of funds distributed to each of six port regions (N. Atlantic, S. Atlantic, Great Lakes, Gulf, Pacific Northwest, Pacific Southwest); 10 percent of funds going to emerging harbors (ports handling less than 1 million tons of cargo/year); and a share of funds (between 10-20 percent) going to donor and energy transfer ports depending on overall spending levels. Congress should include language in the 2020 Water Resources Development Act to implement this agreement.