The Harbor Maintenance Trust Fund

Much of the nation's bulk commodities and containerized goods are shipped via the nation's ports and waterways. These waterways often require dredging and upkeep from the U.S. Army Corp of Engineers (USACE) to maintain specific depths for shipping. Funding for maintenance dredging comes from the Harbor Maintenance Tax (HMT) with proceeds deposited into the Harbor Maintenance Trust Fund (HMTF) and appropriated by Congress. Although the trust fund has experienced large surpluses over the last decade, problems exist: many ports are not dredged to their authorized depths and the system perpetuates significant cross subsidies from revenue generating ports to ports with a smaller share of the nation's maritime traffic. In addition, expansion of the Panama Canal to carry larger, deeper draft container ships starting in 2014 has generated significant pressure to use the HMTF to increase the depths of numerous – particularly East Coast – ports, but without any regional or national port planning process. Congress must make decisions on federal investments in ports based on national needs and address the inequities of port cross subsidization before any discussion should occur about spending down the HMTF.

Background and Current Policies[1]

The Water Resources Development Act of 1986 established the Harbor Maintenance Trust Fund for the operation and maintenance (O&M) of harbors. The HMTF was originally supported by a 0.04% HMT on the value (*ad valorem*) of imported, exported, and domestic cargo handled at ports in addition to the value per cruise ship ticket. HMT revenues were originally designed to cover 40% of the USACE's port O&M costs and 100% of the USACE's O&M costs for the St. Lawrence Seaway.

The HMTF is used to fund maintenance dredging, dredged material disposal areas, jetties, and breakwaters and cannot be used for any new construction of port facilities.[2]

New construction including the deepening or expanding the width of channels requires an act of Congress.

In 1990, Congress increased the HMT to 0.125% to cover 100% of the USACE's port O&M costs. In 1998, the U.S. Supreme Court found that taxing exported goods was unconstitutional due to a violation of the Constitution's export clause, but taxes on imported and domestic shipments were constitutional. Additionally, a 2000 Supreme Court decision found assessing HMT on passenger transportation — namely, cruise ship passengers — was also constitutional. Since these rulings, nearly all of the HMT revenue generated by the 0.125% tax comes from imported waterborne cargo. Domestic cargo shippers — shipments from U.S. port to U.S. port — generate about 5% of the HMTF revenues while cruise ship passengers generate less than one percent. Cargo and passengers from Alaska, Hawaii, and other U.S. territories are exempt from the HMT, in addition to ports on inland rivers which are assessed fuel taxes that support the Inland Waterways Trust Fund. Ports on the Great Lakes contribute to the HMTF. HMT revenues pay for all the maintenance dredging costs at ports up to 45 feet deep; for deeper ports, the incremental maintenance cost is 50% from the HMTF and 50% from the local sponsor (the port).

Fiscal year (FY) 2011 estimates for the HMTF receipts totaled $1.383 billion while estimated expenditures totaled $790 million, an aggregate estimated surplus of $6.397 billion.[3]

Trust Fund Problems

The current HMT generates a national pool of funding which is distributed without any bearing to which ports generate the most revenues. The Congressional Research Service (CRS) finds ports handling large amounts of imported cargo are likely to contribute exceptional amounts of revenue for the HMTF. For instance, the Ports of Los Angeles and Long Beach are the nation's largest importers of freight by value, and the largest contributors to the HMTF. They require little annual dredging to maintain their navigation depth, however, because they are close to the coast line with naturally deep approaches. Consequently, they receive less than a penny of HMTF expenditures for every dollar of HMT they generate.

Meanwhile, Louisiana has received the majority of HMTF expenditures — 19.5% of total — between FY1999-FY2008 while none of its port facilities rank in the top 10 of ports by value of imported cargo. As further example of this, North Carolina ports handled 8% more commercial cargo than Rhode Island in 2007 but HMTF expenditures for North Carolina ports were 20 times greater than Rhode Island ports.

Top 10 Ports by Value of Imported Cargo, 2005				
Rank	State	Port	Import Value	% of Total
1	CA	Los Angeles	$116,489,000	13.7%
2	NY	New York	$104,366,000	12.2%
3	CA	Long Beach	$103,801,000	12.2%
4	TX	Houston	$52,306,000	6.1%
5	SC	Charleston	$36,487,000	4.3%
6	WA	Tacoma	$28,743,000	3.4%
7	VA	Hampton Roads	$27,540,000	3.2%
8	WA	Seattle	$27,519,000	3.2%
9	MD	Baltimore	$27,048,000	3.2%
10	CA	Oakland	$23,880,000	2.8%

Collection of the harbor maintenance tax has also been less than stellar. As of 2009, an estimated $500 million remains uncollected from domestic shippers — almost 44% of the total taxable amount. Although the HMTF has no revenue shortage, poor collection indicates that import shippers are unjustly bearing U.S. ports' O&M costs.[4]

CRS finds over the last ten years, 16% of HMTF expenditures have been spent on the maintenance of shallow draft channels. Shallow draft channels are primarily used for recreational boating and fishing and contribute little to no revenue to the HMTF.

Based on these figures and additional analysis of the nation's ports, CRS finds that only 30 to 45 cents of every HMT dollar paid by shippers is spent on harbors that these shippers actually use. Furthermore, CRS estimates that the nation's top 10 busiest ports generate more than enough HMT revenue to cover the USACE's O&M costs at their port. This assessment even includes dredging-intensive ports such as those in Louisiana and along the Mississippi River.

Corps Projects requiring most HMTF expenditures, FY1999-2008				
Rank	State	USACE Project Name	Total Expenditures	% of Total
1	LA	Mississippi River - Baton Rouge to Gulf	$569,255,421.00	8.3%
2	AL	Mobile Harbor	$237,965,413.00	3.5%
3	MI	St. Marys River	$171,830,189.00	2.5%
4	LA	Atchafalaya River and Bayous Chene (Morgan City)	$170,549,189.00	2.5%
5	OR	Columbia and Lower Willamette Rivers Below Portland	$170,246,210.00	2.5%
6	LA	Calcasieu River and Pass (Lake Charles)	$169,437,833.00	2.5%
7	PA	Delaware River (Philadelphia to the Sea)	$168,603,475.00	2.5%
8	LA	Mississippi River Gulf Outlet (MRGO)	$165,273,740.00	2.4%
9	TX	Sabine-Neches Waterway (Port Arthur, Beaumont)	$140,012,326.00	0.2%
10	DE	Intracoastal Waterway, Delaware River to Chesapeake Bay	$128,293,084.00	1.9%

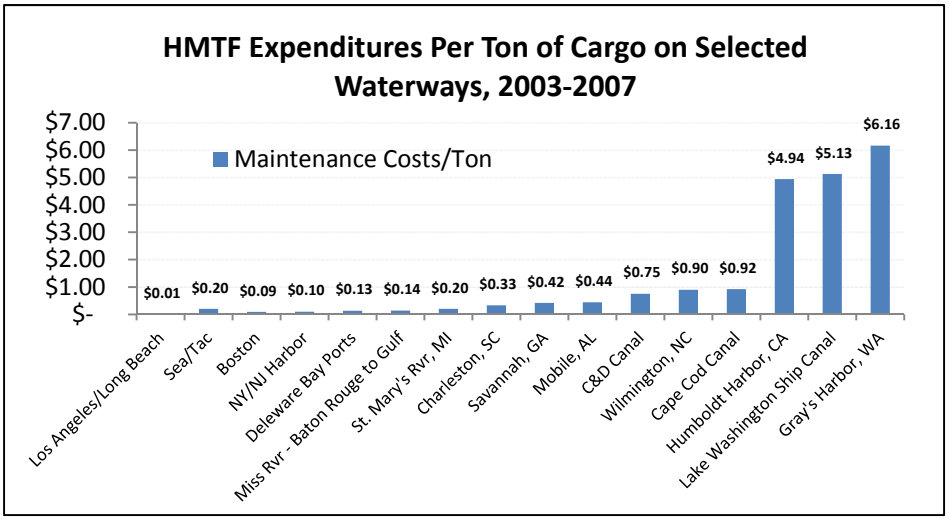
What's been outlined here is a system of cross-subsidization between the nation's ports. Although this could be argued as 'leveling the playing field' between ports, it is no more than a direct subsidy of HMT revenues from more efficient ports for less-efficient ports, thus raising the overall cost of moving goods on the nation's waterways and hampering competition. Furthermore, the nation's shippers — and ultimately the consumers of these shipped goods — are unfairly paying O&M costs for ports serving primarily commercial fisherman, charter boat operators, and recreational boaters. These are not contributors to the HMTF nor do O&M expenditures on these waterways users benefit shippers.

Fixing the HMTF – Options for the future…

Congress has several options for improving the financing of the nation's ports and ensuring that taxpayer money is spent appropriately and equitably.

Port-specific funding: Cross subsidization could be eliminated if Congress reserved some or all port-specific HMT revenues only for that port's dredging needs. This has the potential to favor higher traffic ports which charge less per ship to recover dredging costs. Smaller charges per ship could reduce maritime shipping costs, thus lowering consumer costs while funneling taxpayer dollars into more efficient, less costly ports. But any transition to this type of financing must be done with caution, for many of the nation's exporters (who don't pay the HMT tax) depend on smaller ports for the transport of bulk goods. In addition, this may reduce flexibility to address national needs.

Shift HMT to fee based on actual maintenance costs: Under the current ad valorem system, a ship with a greater draft but less valuable cargo (grain, coal, etc.) will generate less tax than a shallower draft vessel with more valuable cargo (containers of electronic goods). This removes a key market signal to only encourage port development where it makes economic sense.



Local-user O&M financing: Several legislative proposals have called for commercial fisherman and other non-shipping waterway users to pay their share of port and waterway O&M. For instance, as originally introduced to Congress, commercial fisherman would have been assessed the HMT but were exempted during a Senate committee consideration. Congress could reconsider this policy to bring greater fairness and equity to the HMTF, but such a change has the potential to raise the cost of seafood products. During the 1990s, the Clinton Administration proposed replacing both the HMT and HMTF with a Harbor Services User Fee and Harbor Services Fund.[5] The proposed Harbor Services User Fee would establish a closer link between the users of port facilities and port projects.

Additionally, funds could be made available for port and waterway O&M from the Sport Fish Restoration and Boating Safety Trust Fund. This fund is paid by recreational boaters through fuel taxes and import duties. This fund generates an amount equivalent to the HMTF.

Spending guarantee: There are legislative proposals to provide a spending guarantee from the HMTF. This would effectively match annual HMT expenditures on port O&M to total annual HMT revenues plus interest on the existing HMTF surplus. The Obama Administration has also requested a pilot project be carried out to examine the feasibility of local user financing with $1.4 million provided in FY2010.

Major changes must be made to the HMTF

The country needs deliberate, fact-based, prioritization of port development and expansion based on national needs, not parochial interests or political power. With large increases expected in maritime shipping due to the nearly completed expansion of the Panama Canal to accommodate deeper draft ships, a "race to the bottom" has already started amongst East Coast ports. Yet the USACE has not conducted a multiport analysis to determine which U.S. ports need to be maintained at a 50-foot depth to accommodate the anticipated increase in traffic. Rather than changing the

law to allow spending down the HMTF to increase the depth of ports or deepen numerous harbors that will increase demand for annual dredging, Congress needs to engage in a multiport analysis to consider the geographic, intermodal access, cost and logistical factors to determine which ports are best able to absorb increased traffic.

With greater port dredging needs, the USACE must demonstrate that O&M spending for ports that don't substantially contribute to the HMTF provide a significant national benefit for taxpayers and shippers alike. Lawmakers should evaluate options for extending the HMT to other users of ports and waterways who currently do not contribute to the HMTF, such as commercial fisherman, recreation boaters, and other non-shipper entities. Additionally, Congress should re-evaluate the current ad valorem tax and consider shifting toward a system that reduces cross subsidies of ships with similar channel depth needs paying a different amount of tax. This would make for a more accountable and balanced approach to port O&M allocations which lowers the cost of shipping and ensures the most efficient use of taxpayer dollars.

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[1] "Harbor Maintenance Trust Fund Expenditures" Congressional Research Service. January 10, 2011. http://opencrs.com/document/R41042/
"Report to Congress on the Annual Status of the Harbor Maintenance Trust Fund For Fiscal Years 2005 and 2006" USACE. 2009. http://www.iwr.usace.army.mil/docs/iwrreports/Harbor_main_trust_fund_2005_2006.pdf
[2] Realize America's Maritime Promise, Harbor Maintenance Trust Fund Fairness Coalition. 2008. http://www.ramphmtf.org/index.html
[3] "Overview Of Selected Tax Provisions Relating To The Financing Of Infrastructure" The Joint Committee on Taxation. May 13, 2011. http://www.jct.gov/publications.html?func=startdown&id=3789
[4] See note 1.
[5] Report to Congress on the Annual Status of the Harbor Maintenance Trust Fund For Fiscal Years 2005 and 2006" USACE. 2009. http://www.iwr.usace.army.mil/docs/iwrreports/Harbor_main_trust_fund_2005_2006.pdf

***All graphics generated from data provided by the following source**:* "Harbor Maintenance Trust Fund Expenditures" Congressional Research Service. January 10, 2011. http://opencrs.com/document/R41042/