



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**

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Chairman

Washington, DC 20515

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Ranking Member

July 1, 2011

James W. Coon II, Chief of Staff

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**MEMORANDUM**

TO: Members of the Subcommittee on Water Resources and Environment

FR: Bob Gibbs  
Subcommittee Chairman

RE: Hearing on Harbor Maintenance Trust Fund

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**PURPOSE OF HEARING**

The Water Resources and Environment Subcommittee is scheduled to meet on Friday, July 8, 2011, at 10:00 a.m. in 2167 Rayburn House Office Building, for a legislative hearing and markup to consider H.R. 104, the "Realize America's Maritime Promise (RAMP) Act. The Subcommittee will receive testimony from the sponsor of the legislation, Representative Charles Boustany (R-LA), and representatives from the navigation community, including ports, shippers, and commercial fishermen.

**BACKGROUND**

The Harbor Maintenance Trust Fund (HMTF) provides funds for the United States Army Corps of Engineers (Corps) to carry out the dredging of navigation channels to their authorized depths and widths. It was established by the Water Resources Development Act of 1986 to fund the harbor operation and maintenance (O&M) activities of the Corps. The HMTF is based upon a user fee collected from shippers (not including exporters) that utilize the nation's coastal ports. In Fiscal Year 2010 (FY10) the HMTF grew by \$1.3 billion, but only \$828.6 million was spent in total operations, burgeoning the HMTF balance or surplus to nearly \$5.6 billion by the end of FY10. At the end of FY11 the HMTF is estimated to have a balance of \$6.1 billion and by the end of FY12 the HMTF is estimated to have a balance of \$6.93 billion. Since the HMTF is not "off-budget" or separate from the general fund, all surplus funds have, in effect, already been spent by the federal government.

Waterborne trade at the nation's ports is vital to the American economy. Millions of jobs throughout the country are dependent upon the commercial shipping industry. Even during periods of economic downturn, the maritime sector has added valuable jobs. Shipping accounts for the largest percentage of imports across all modes, and is the preferred method of transport of vital goods such as oil. It remains the cheapest, safest and most environmentally-friendly form of bulk cargo transport. Any impediment to safe, reliable shipping has ripple effects felt by workers, taxpayers and consumers.

### **Collection**

Prior to 1986, general funds were used to pay the federal share of navigation channel operations and maintenance. Today, the Harbor Maintenance Tax is an ad valorem tax assessed on the value of the international and domestic waterborne cargo at the rate of 0.125% (\$1.25 per \$1,000 in cargo value). Cruise ships are also taxed based on the value of passengers' tickets. The tax is collect by US Custom and Border Protection (CBP) agents at each port. Additional growth in the HMTF comes from interest earned on the balance. Since the tax is value based, the HMTF has demonstrated steady intake; as long as goods are being imported, revenue will be generated.

Exports from domestic ports are not taxed. The case of United States v. United States Shoe Corp., 523 U.S. 360 (1998) altered the collection of the HMT on exported goods. The Court found that the law violated the Export Clause of the Constitution ("No Tax or Duty shall be laid on Articles exported from any state." art. I, §9, cl. 5) and that it was unconstitutional to levy the tax on exporters. Further challenges have upheld the Constitutionality of the statute as a whole stating that the unconstitutional export provision does not invalidate the law in its entirety but was "severable". With the loss of its export ability, revenues were reduced by approximately 30 percent.

### **What the HMTF Does**

The purpose of the monies in the HMTF is to provide for the cost of Corps maintenance dredging to ensure that federally designated channels are at their authorized depths and widths. These are discretionary expenditures, appropriated by Congress for individual navigation projects. The Corps calculates that maintenance dredging costs \$3.19 per cubic yard. Some dredging operations are undertaken by the Corps itself, but most are contracted out to private companies that are overseen and permitted by the Corps. Properly dredged channels are vital for maritime safety, robust trade, and national security.

There are a few additional expenditures of the HMTF. A small amount pays the entire administration of the fund, including the collection by CBP. The American operation and maintenance activities of St. Lawrence Seaway Development Cooperation are paid through the HMTF. Dredged material disposal, breakwaters and jetties, and some other harbor infrastructure under responsibility of the Corps are also under the umbrella of operations and maintenance and thus paid for by the HMTF.

There are certain important limitations to the HMTF. It does not pay for the expansion of navigation channels beyond their authorized depths and widths; "New work" requires an act of Congress and the federal share is paid for by the Treasury General Fund. This specification of use supports the "trust fund" and "user fee" purpose of the tax. Recently, however, the Administration has suggested that HMTF monies be used to pay for expanded interests, beyond operation and maintenance of navigation channels. In testimony before the Subcommittee in March 2011, Jo-Ellen Darcy, Assistant Secretary of the Army (Civil Works), alluded to the Administration's interest in using the HMTF for port security in addition to other unarticulated priorities. Any change to the HMTF would require legislation.

### **HMT Balance**

Due to years of generally steady revenues that far exceed appropriations, the HMTF has developed a significant balance. The interest on the balance alone generated almost \$77 million in revenue for FY10. This balance however is theoretical, not actual. Since HMTF is not off-budget, the funds (including the interest that is generated from the balance), are spent on non-port-related activities.

Despite the significant revenue and balance of the HMTF, years of insufficient appropriations have led America's maritime infrastructure into disrepair. Only one third of the nation's navigation channels are at their authorized depths and widths, portions of the important Atlantic Intracoastal Waterway have been closed to commercial navigation due to lack of maintenance dredging, and 8 out of the nation's 10 largest ports are not at their authorized depths and widths.

Un- and under-maintained navigation channels present many challenges. For shippers they are dangerous, inconvenient, and costly. Ships in unmaintained channels are more likely to run aground, collide, or contribute to a cargo or oil spill. The limited depth of unmaintained channels increases the expense of each shipment; ships must wait for tidal changes, which waste valuable time, or run expensive 'light loads' at diminished capacity as to have a reduced draft. Though the HMT is only levied on imported cargo, America's export operations face the same dangers and challenges as imports.

### **Legislation related to the HMTF**

The HMTF has long been subject to legislative interest. In the 111<sup>th</sup> Congress, multiple bills related to the HMTF were introduced. Some bills would have increased the tax rate and expand the use of the HMTF to include landside developments and improvements. Multiple House and Senate bills would have addressed the HMTF and short-sea shipping on the Great Lakes. Rep. Charles Boustany (R-LA) introduced the House version of a bill that would have ensured that amounts credited to the Harbor Maintenance Trust Fund are used for harbor maintenance. None of the bills became Law.

Early in the 112<sup>th</sup> Congress, Representative Boustany (R-LA) introduced H.R. 104, the Realize America's Maritime Promise (RAMP) Act. The proposed legislation ties HMTF revenue to expenditures. It would require the total budget resources for expenditures from the HMTF for harbor maintenance programs to equal the level of receipts plus interest credited to the HMTF for that fiscal year. The Airport and Airways Trust Fund operates in a similar manner. The RAMP Act is able to achieve these goals by declaring that it shall be out of order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause total budget resources for the Fund in a fiscal year for harbor maintenance programs to be less than the level of receipts plus interest credited to the Fund for that fiscal year.

The RAMP Act has gained wide bipartisan support in Congress and has more than 100 bipartisan cosponsors. A companion bill has been introduced in the Senate.

If enacted, the legislation could significantly change maritime shipping in the United States and worldwide. Based on the Corps' estimate that maintenance dredging costs \$3.19 per cubic yard, the HMT revenues from FY10 alone would provide for approximately 410 million cubic yards to be dredged if the HMTF were dedicated to operation and maintenance activities.

Benefits of increased dredging include wider, deeper and safer channels; more consistent channel availability; the ability to accommodate larger vessels; and growth in shipping and dredging industry. Additionally, because the tax is an ad valorem tax, as the value of cargo increases with the size of the ships, so will revenue, reinforcing a cycle of harbor maintenance.

**WITNESSES**

The Honorable Charles Boustany (R-LA)

Mr. Gary LaGrange, President and CEO,  
Port of New Orleans

Mr. Jim Weakley, President,  
Lake Carriers Association

Ms. Bonnie Brady, Executive Director,  
Long Island Commercial Fishing Association

Witness TBA