Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

September 10, 2020

Distribution of Harbor Maintenance Trust Fund Expenditures

As Congress deliberates on authorization legislation for Army Corps of Engineers water resource projects (House-passed H.R. 7575, Senate-reported S. 3591), it is considering how to direct the use of funding available for harbor maintenance. Harbor maintenance consists mostly of the dredging of navigation channels and harbors along the coasts and Great Lakes, and to a lesser extent at inland ports. The policy choices offered by these bills will have consequences for navigation efficiency and safety, recreation uses, and the levels of state and private investment in port infrastructure. They may also affect competition among U.S. ports to capture import and export cargo and the associated logistics-industry jobs.

At the center of these policy decisions is the Harbor Maintenance Trust Fund (HMTF), created by Congress in 1986 and funded primarily by receipts from a tax on importers of waterborne cargo (assessed at a rate of $1.25 per $1,000 worth of cargo). In FY2019, harbor maintenance tax collections totaled $1.6 billion, investment earnings totaled $214 million, and expenditures from the fund through annual appropriations totaled $1.6 billion.

The amount of maintenance required to keep channels open varies considerably among harbors. Some of the ports that draw large flows of imports, and therefore generate a large portion of harbor maintenance tax revenue, are naturally deep and require relatively little maintenance dredging. While channels at other major commercial ports are generally adequately maintained, some harbors with lower volumes of commercial cargo have maintenance backlogs, potentially affecting fishing and recreational boat traffic.

The Unspent Balance

The value of U.S. imports has increased at a faster rate than HMTF expenditures, so the trust fund has built up an unspent balance of more than $9 billion. H.R. 7575 potentially facilitates spending down the unspent balance by removing this amount from counting toward the limits on discretionary spending set in the annual budget resolution. These limits apply to spending provided in appropriations acts and constrain spending under the jurisdiction of each appropriations subcommittee (in this case, the Subcommittees on Energy and Water Development in each house of Congress). Thus, if H.R. 7575 were to be enacted, spending more from the HMTF would not require spending less on other activities within annual Energy and Water appropriations bills.

This approach would further recent enactments intended to spend more from the trust fund. In the CARES Act (P.L. 116-136, §14003), Congress directed that the use of HMTF funds up to the prior fiscal year's deposits into the fund would not count against annual discretionary budget limits.

In the Water Resources Reform and Development Act of 2014 (WRRDA 2014; P.L. 113-121, §2101), Congress set a "target" annual increase in the percentage of each year's harbor maintenance tax revenue that should be spent on harbor maintenance, such that by FY2025 an amount equal to the prior year's receipts would be targeted for spending.

Since 2014, Congress has generally appropriated at least the targeted percentage of harbor maintenance tax revenues for each fiscal year. Although HMTF annual outlays averaged $843 million from FY2009 to FY2013, they averaged $1.392 billion from FY2015 to FY2019. Section 1108 of the Water Resources Development Act (WRDA) of 2016 (Title I of P.L. 114-322) established a "floor," should HMTF collections decrease from one year to the next, which would keep spending from decreasing in proportion to the decrease in collections. Due to Coronavirus Disease 2019 (COVID-19) and a drop in waterborne trade, harbor maintenance tax receipts are down 17% for the first half of CY2020 compared to CY2019.

Minimum Percentages for Smaller Ports

H.R. 7575 would guarantee that *emerging harbors*, defined as those handling less than 1 million tons of cargo annually, receive at least 20% of HMTF expenditures annually, in lieu of the current 10% guarantee (33 U.S.C. §2238). For context, an average-size ship transporting oil or containers internationally carries around 80,000 tons, so an emerging harbor transits the equivalent tonnage of one average-size shipload per month. The bill would also increase the minimum share for the Great Lakes Navigation System to 12% of total HMTF expenditures, rather than the current 10% of a smaller subset of HMTF expenditures.

These provisions reflect continued congressional concern that cargo volume not be the sole criterion in setting HMTF spending priorities. Until 2014, the Corps of Engineers evaluated the economic consequences of not sufficiently maintaining a harbor's channels mainly by estimating the likely effect on cargo volume. In WRRDA 2014 (§2102), Congress directed the Corps to also consider a "needs assessment" of harbor conditions, the national and regional significance of a harbor, and any support it provides for military readiness. WRRDA 2014 also established that emerging harbors and the Great Lakes Navigation System receive at least a certain minimum percentage of HMTF spending. According to the Corps, annual appropriations have met these targets for emerging harbors and for the Great Lakes Navigation System.

Expanding Eligible Uses of the HMTF

The Corps is authorized to use the HMTF only for harbor *operations and maintenance*, or O&M (33 U.S.C. §2241). New project construction, such as dredging to deepen or

widen a channel to new dimensions authorized by Congress, is paid for from the general fund, with ports contributing 20% to 60% depending on the depth of the construction work (33 U.S.C. §2211). Besides maintenance dredging, eligible uses of HMTF funds include breakwater and jetty maintenance, and construction and operation of dredged material disposal facilities.

The HMTF is used to pay for 100% of the maintenance costs of harbors (there is no local cost share), except for dredging at depths greater than 50 feet. Nonfederal interests, such as port authorities, must contribute half the additional cost of maintaining channel depths greater than 50 feet. The 50% nonfederal cost share formerly applied to dredging at depths greater than 45 feet; WRRDA 2014 (§2102(b)) changed this to 50 feet.

H.R. 7575 would further expand eligible uses of HMTF funds at certain harbors to activities traditionally funded by state or local government, or private industry. For instance, H.R. 7575 would allow up to $5 million be spent at up to 10 emerging harbors for dredging a marina or berthing area (where vessels dock) that is connected to a federal channel. The bill would also make repair or replacement of wharfs and piers and reinforcing slope stability of dredged berths an HMTF-eligible expense, but only at *donor ports* and *energy transfer ports*, as discussed below.

Donor and Energy Transfer Ports

Donor ports were defined by Congress in WRRDA 2014 (§2106) as a means of directing HMTF funds to harbors that generate significant harbor maintenance tax revenue but require little dredging. Donor ports are defined as generating at least $15 million in annual tax revenue but receiving less than 25% of the amount they generate in harbor maintenance funding. In the same law, Congress also defined energy transfer ports at which energy commodities comprise more than 25% of the tonnage.

WRRDA 2014 authorized an annual appropriation of $50 million that can be used by both types of ports for dredging berths and contaminated sediments, and by donor ports for rebating importers some of their harbor maintenance tax payments. Such dredging is funded by the HMTF, but the tax rebates are paid for by the general fund. WRDA 2016 (§1110) defined *medium-sized donor ports*, those that generated $5 million to $15 million in harbor maintenance tax revenue and received less than 25% of tax payments in harbor maintenance funding, and made them eligible for a share of the $50 million. Congress partially funded from 2016 to 2018 and then fully funded in FY2019 and FY2020 the $50 million for donor and energy transfer ports. Half of the amounts are provided to donor ports, and half are equally distributed to states with energy transfer ports. As identified by the Corps, these ports are

- donor ports: Los Angeles, Long Beach, Miami, New York/New Jersey, Seattle, Tacoma;
- medium-sized donor ports: Port Everglades, Port Hueneme, San Diego; and
- energy transfer ports: Mobile, Long Beach, Baton Rouge, Lake Charles, New Orleans, Plaquemines, South Louisiana, Baltimore, New York/New Jersey, Beaumont, Corpus Christi, Houston, Texas City, Norfolk.

H.R. 7575, in addition to the $50 million appropriation, would provide 10% of HMTF expenditures for expanded uses at donor ports.

In WRRDA 2014, Congress also specified that any funds appropriated each year above the FY2012 funding level of $898 million would be classified as *priority funds*, and directed that a minimum of 10% of the priority funds be used for harbors that have generated more harbor maintenance tax revenue than they have received over the prior three years; these funds can also be used for dredging berths and contaminated sediments (§2102). The Corps has not publicly reported whether 10% of priority funds has been used this way in recent fiscal years.

Beneficial Placement of Dredged Material

Rather than separately dredging sand from an offshore location for use in replenishing a beach or restoring a wetland, Congress has encouraged the Corps to use dredged material from navigation projects. The HMTF may pay for beneficial placement, if it is authorized as part of a navigation project. In those cases where it costs more to beneficially place sediment rather than dumping it in open water, the nonfederal sponsor is typically required to pay these additional costs. In WRDA 2016 (§1122) Congress created a pilot program for 10 beneficial use projects in which the nonfederal interest would *not* be required to bear the additional cost of transporting and disposing sediment for beneficial use. In WRDA 2018 (Title I of P.L. 115-270), Congress expanded the pilot to 20 projects.

H.R. 7575 would expand the beneficial use pilot to 30 projects; the bill also would allow for the economic benefits and efficiencies of beneficial use to be considered when the Corps is determining how to dispose of dredged material. S. 3591 as reported contains provisions that would encourage beneficial placement of dredged sediment, and would expand the beneficial use pilot to 40 projects.

Data to Inform Decisionmaking

Some specific information from the Corps on HMTF spending is generally not publicly available or reported on. Since FY2006, the Corps has not published annual reports on the status of the HMTF. Before then, these reports itemized project-level spending.

The long-term trend in Corps dredging has been flat or declining volumes of material dredged, despite significant increases in annual spending. The Corps' unit cost of dredging (the cost per cubic yard of material dredged) has increased steadily since the mid-1990s. However, the Corps does not itemize dredging costs by activity (e.g., excavating vs. transport and disposal) to determine the causes of these trends (see CRS Insight IN11133, *Harbor Dredging: Issues and Historical Funding*). The trends raise questions of how proposed changes to the HMTF may increase Corps maintenance dredging costs and quantities.

John Frittelli, Specialist in Transportation Policy
Nicole T. Carter, Specialist in Natural Resources Policy

IF11645

Disclaimer