

## Questions and Answers about America's Ports and the Harbor Maintenance Tax

### Q. How do port authorities benefit the nation?

A. Waterborne commerce has been key to the growth and security of the nation since Colonial times. The entire U.S. economy depends on a safe, efficient and reliable transportation system to remain competitive in domestic and international markets. International trade's impact on the U.S. Gross Domestic Product (GDP) is growing dramatically. In 1970, international trade represented 13 percent of U.S. Gross Domestic Product (GDP). In 2003, international trade was 24.1 percent of GDP, or about \$3.2 trillion.

Commercial port activities, port users and port capital expenditures in 1994 provided employment for 16 million Americans, contributed \$783 billion to the U.S. Gross Domestic Product (GDP), and personal income of \$515 billion. Port activities also accounted for Federal taxes of \$154 billion, and State and local tax revenues amounting to \$56 billion.

Navigable channels, railways, highways, and ports are links in the transportation chain that allow manufacturers, buyers, and sellers to send and receive goods quickly, safely, and efficiently. The resulting benefits are ready access to a wide variety of products and services, internationally competitive exports, and lower costs for consumers. Maintenance of deep-draft navigation channels is a key component of an efficient national transportation system, and increasingly so as larger and larger vessels are built.

### Q. Why do port authorities need to dredge?

A. Over 90 percent of the nation's top 50 ports in foreign waterborne commerce require regular maintenance dredging. Together these ports move nearly 99 percent of U.S. overseas trade by weight and 61 percent by value.

Many deep draft seaports in the United States are located at the mouths of rivers where upstream runoff collects sediments which are carried down river and deposited on harbor bottoms. Most ports are not naturally deep harbors; they are man-made through a process of dredging and landfilling. In parts of New York harbor, for example, the navigation channels are naturally only 18 feet deep, while sections of the Mississippi are only 6 feet deep.

Today's modern ships can require drafts of up to 45 or 50 feet. Sediment also has to be removed to provide turning basins for ships and adequate water depth along waterside facilities. Without routine dredging, areas of navigation channels could change from 40 to 35 feet in one year. Such a dramatic change would prohibit many ships from entering the channel or force ships to carry only a fraction of their intended load. Channels that accumulate sediment become dangerous because they increase the risk of ships running aground. Groundings are expensive not only in cargo and time lost, but groundings may also pollute the environment if ships' hulls are breached or cargo is spilled.

### Q. Aren't ports responsible for keeping harbors dredged?

A. Since the birth of our nation, Congress has authorized and funded activities to ensure free and open access of the nation's waterways to navigation. U.S. port development and maintenance is a shared responsibility of Federal, state, and local governments, with extensive private sector participation. Under this relationship, rooted in the U.S. Constitution, the Federal government maintains harbor access channels.

Individual ports construct and maintain the landside terminal facilities, dredge their own berths, and contribute to channel improvement cost-sharing programs. In addition, local ports fund a share of Federal navigation improvement projects, either 35 percent or 60 percent depending on the depth of the project. Relying in good faith on this long-standing partnership, local port authorities have spent over \$16.8 billion since World War II

and expect to spend an additional \$1.3 billion annually to construct and maintain the landside facilities over the next five years.

**Q. What is the Harbor Maintenance Tax?**

A. In 1986, Congress created the Harbor Maintenance Trust Fund to pay for a portion of channel maintenance dredging. (Previously the Federal Government funded maintenance dredging of Federal navigation channels from General Treasury revenues.) Originally, revenue for the Harbor Maintenance Trust Fund was generated by assessing a .04 percent fee (the "Harbor Maintenance Tax" or HMT) on the value of export, import and domestic cargo moving through the nation's deep draft ports. At the same time, local cost-sharing was instituted for funding new construction projects (widening and deepening) projects.

The HMT ultimately added hundreds of dollars to the cost of shipping a single container of high value cargo, and has caused traffic to be diverted to non-U.S. ports to avoid payment. The imposition of the HMT caused a rail-barge service on the Great Lakes to go out of business.

**Q. Why was the HMT declared unconstitutional?**

A. In the 1990 budget agreement, Congress tripled the HMT to .125 percent and to date a \$1.2 billion surplus has accumulated in the Trust Fund. Exporters filed suit and the U.S. Court of International Trade (USCIT) issued an opinion in November 1995 that the Harbor Maintenance Fee constituted an unconstitutional "tax" on exports, not a "user fee" which must be set at a level equal to the actual services provided, that is, dredging. In June 1997, the Federal Circuit Court affirmed the lower court opinion that the Harbor Maintenance Tax is an unconstitutional tax on exports.

In March 1998, the Supreme Court ruled HMT is not a true user fee and is, thus, a tax applied unconstitutionally against exports. Exports are protected from taxation in the Constitution because of their importance to the health of the nation. The decision states that the ad valorem tax is not a fair approximation of services, facilities or benefits furnished to the exporter. The Court said that in order to be a user fee, the connection between a service the government renders and the compensation it receives for that service must be closer than is present in the case.

**Q. Why was it enacted in the first place?**

A. The cost sharing plan enacted in 1986 passed Congress after a long stalemate over water resources development policy. Although the benefits are clearly national in scope, the HMT and cost-sharing reforms were instituted in an effort to recover the cost of maintenance dredging from navigation channel users.

**Q. How do ports propose funding maintenance dredging rather than the HMT?**

A. Ports are advocating a return to funding navigation channel maintenance from the U.S. General Treasury, as was the case before 1986. There is no user-fee system that can equitably raise revenues from the users of navigation channels in reasonable relation to the distribution of benefits to the nation. Many options were considered in developing the ad valorem HMT funding mechanism for maintenance dredging. Unfortunately, the only option to survive the debates from 1981 to 1986, the HMT, was found unconstitutional by the Supreme Court. It does not appear that there are significant new or old options that would work better today.

**Q. Why should the Federal Government pay for maintenance dredging?**

A. Investment decisions made by the Federal Government, local ports and the private sector have been based on the expectation that the Federal Government will continue to fund maintenance dredging. These local investments have created the system of ports the nation relies on to meet its national defense needs and growing international trade.

The benefits of safe and efficient trade provided by a national system of navigation channels are spread throughout the country. In addition, the benefits to the nation resulting from national defense, commercial fishing, and recreational users are immeasurable. The costs for dredging Federal navigation channels should be spread across the whole nation because all citizens benefit. The Federal government recognized this long ago in the U.S. Constitution. Based on the U.S. Supreme Court decision and the rancorous debate about the fee in the 1980s, any alternative trade/tax/user fee funding mechanism will have significant legal and political challenges to overcome.

**Q. Why not assess a vessel tonnage fee to pay for maintenance dredging?**

A. The assessment of a tonnage fee on cargo or vessels would severely affect bulk commodities, such as grain or coal, which compete in international markets where pennies a ton can make or break a sale. For example, maintaining a channel at 43 feet instead of 44 feet may mean the difference of 750 fewer tons of coal loaded on a single ship, often five percent of a ship's total cargo potential. These shipments, which are amongst our Nation's leading export products, now use the most cost-effective route--typically moving by barges down rivers to coastal harbors. Those harbors, in turn, tend to require significant maintenance dredging because of the river sediment. In general, dredging demands related to the shipping of these types of export products are greater than those related to import products.

**Q. Can't ports pay for their own dredging?**

A. Requiring local ports to raise their own funding for maintenance dredging could pit U.S. ports against each other, the result of which could impact commerce and national security. The concept also alters the fundamental Federal role in maintaining the national navigation system. Like a tonnage tax, local funding, if passed on to port users, could increase transportation costs, pricing bulk commodities out of international markets either through increased charges at the currently utilized port(s) or by increasing inland transportation costs due to diversion from the inland waterway system.

Recognizing that these options could be injurious to the nation's trading position, and to individual ports, Congress in 1986 chose to enact a uniform ad valorem tax on cargo. By applying a uniform fee on all cargo moving through any port in the country, the tax did not affect the competitive position of any port. (This is true relative to U.S. ports, but ignores the fact that cargo has been diverted to Canadian ports to avoid paying the fee.)

**Q. How about asking other waterways users to pay for dredging?**

A. Other options for raising revenue from direct users of the navigation channels are not likely to produce sufficient funds. In addition, direct navigation users are already significantly taxed. A 1993 General Accounting Office study found that 12 Federal agencies levy 117 assessments on waterborne trade. In 1996, receipts from these fees were 154 percent of the level raised only ten years earlier, making our exports more expensive and less competitive in international markets.

**Q. How is maintenance of inland waterways funded?**

A. In contrast to the Harbor Maintenance Trust Fund, on the inland waterways operations and maintenance costs are paid out of the General Treasury and new construction costs are funded, in part, by an inland waterways fuel tax.

**Q. If the Federal Government were to stop dredging all but a few major ports, what would happen?**

A. In many communities, ports represent economic development and other economic activities, not just traditional port activities. Ports are just one part of the much broader intermodal transportation/trade routing system.

The view that many "inefficient" ports may disappear in favor of huge mega ports does not take into full account the local interest and investment in deep draft ports. Within the national transportation system there is room for a diverse array of ports to serve niche cargo and economic development needs in local communities. A diverse multitude of ports will get consumers the most cost-effective prices with a variety of product styles, qualities and costs.

With fewer port options, shippers' costs could increase. Bulk commodities could be priced out of international markets either through increased charges at current ports or by increasing inland transportation costs due to diversion from the inland waterway system.

Trade is expected to triple by the year 2020. A few ports will be unable to handle the tremendous influx of cargo if shippers' options are limited.