

Statement by Commissioner Lidinsky

SECOND ANNIVERSARY OF FMC REPORT: U.S. Inland Containerized Cargo Moving through Canadian and Mexican Seaports 2014 NEW LAW AND REGULATORY ACTION AID U.S. PORTS

This is the second anniversary of the Federal Maritime Commission's (FMC) 2012 *Study of U.S. Inland Containerized Cargo Moving through Canadian and Mexican Seaports* (FMC Ports Study). Over the past year there have been some significant developments which will make U.S. ports more competitive with their Canadian and Mexican counterparts on issues identified in the FMC Ports Study. Specifically, the Federal Maritime Commission unanimously approved a discussion agreement between the ports of Seattle and Tacoma in Washington State, and Congress passed the first Water Resources Bill in nearly seven years.

Background

Initial FMC Ports Study

In July 2012, the Commission issued its initial FMC Ports Study. In undertaking the *Study of U.S. Inland Containerized Cargo Moving Through Canadian and Mexican Seaports*, the Commission was guided by Congressional requests "to study the impacts and the extent to which the U.S. Harbor Maintenance Tax (HMT), other U.S. policies, and other factors may incentivize container cargo to shift from U.S. West Coast ports to those located in Canada and Mexico." The FMC Ports Study posed three basic questions: first, whether there were any legal or regulatory bars to the carriage by sea and movement of U.S. inland containerized cargo entering via the Canadian or Mexican border; second, what competitive factors would drive a U.S. importer or exporter to route cargo through Mexican or Canadian ports; third, what Congress could do to "level the playing field" in facilitating U.S. ports' competition with other North American cross-border ports by addressing the HMT structure.

This study by the Commission was conducted in consultation with federal and state government agencies in the U.S. The FMC also consulted directly with the governments of Canada and Mexico. The FMC Ports Study concluded in part that Congress has many options to consider with regard to replacing the current HMT structure to ensure maximum competitiveness for all U.S. ports.

First Anniversary Update

In August 2013, Commissioner Lidinsky provided the first annual update to the FMC Ports Study. This update noted the cargo volumes in 2013 appeared to indicate that the Port of Prince Rupert's annual capacity growth may have begun to flatten. This lower growth rate could be attributed to several factors including a slow-down of the global economy, the Port of Prince Rupert nearing its maximum design capacity, and operational decisions by ocean carriers to utilize U.S. west coast ports.

On the Congressional front, S. 601, the Water Resources Development Act (WRDA), gained Senate approval in May 2013 and included moderate HMT reform by mandating that more, but not all, annual HMT collections be spent on port dredging and maintenance. A House version of WRDA had yet to be introduced. The update further noted that continued congressional

consideration of a revised HMT plan for the future was likely, given ongoing assessments of domestic and global transportation developments, the general economic environment, and industry conditions.

Second Anniversary Update

Over the past year, the Federal Maritime Commission unanimously approved a discussion agreement between the ports of Seattle and Tacoma in Washington State, and Congress passed the Water Resources Reform and Redevelopment Act of 2014.

FMC approves cooperative agreement between the Ports of Tacoma & Seattle

On March 5, 2014, the FMC unanimously voted to allow the ports of Seattle and Tacoma to move forward on a cooperative agreement to exchange information and combine efforts to find synergies which will allow them to compete more effectively against international ports.

The Port of Seattle/Port of Tacoma Discussion Agreement (“Agreement”) is an agreement between the Port of Seattle and the Port of Tacoma (“the Ports”) that authorizes the Ports to discuss, collect and share information on all matters concerning the operation of container terminal facilities at the Ports.

The Ports of Tacoma and Seattle are separate port districts governed by locally-elected port commissioners. The Ports are located 30 miles apart in Washington State and collectively support tens of thousands of jobs. Puget Sound is considered the third largest container gateway in the U.S.¹

The Agreement was filed with the Commission on January 22, 2014. On January 29, 2014, a notice of its filing was placed in the *Federal Register*.²

The Ports sought authority from the Commission to discuss, collect and share information on the following:

- container facility planning and development;
- management and operational efficiencies and operational costs at port container facilities;
- federal, state, and local cooperation in enhancing existing or developing new regional port-related transportation infrastructure;
- seeking legislation, regulations, and funding from local, state, and federal governments regarding any matter within the Agreement scope;
- container business rates of return for port-owned terminals, including all terminal rates, charges, rules and regulations;
- utilization of port facilities; and
- expenditure of funds for the purposes described in the Agreement.

1 <http://portoftacoma.com/news-releases/2014-01-17/ports-tacoma-and-seattle-discuss-response-shipping-industry-changes>

2 Port of Seattle/Port of Tacoma Discussion Agreement, Fed.Reg. Doc. 2014-01735, Filed January 28, 2014, FMC Agreement No. 201222.

The Ports would also be authorized to discuss, collect, and share information and agree on hiring a consultant to provide input, information, or expertise on subjects within the Agreement's purposes.

The Commission determined in part that due to the Ports' size, location, and population factors, the Ports of Seattle and Tacoma face a number of significant threats to the long-term viability of their container operations. As a consequence of their relatively small local populations, both Ports are heavily reliant on discretionary cargo bound for inland destinations, and the Ports face fierce competition from other North American ports. Discretionary cargo is so named because it can move through virtually any deepwater port with the transportation infrastructure to move cargo inland. Non-discretionary cargo generally refers to cargo bound for destinations close to the port, and therefore cannot arrive in the country at another location.

The Canadian Ports of Vancouver and Prince Rupert actively compete with Seattle and Tacoma for container imports destined to the U.S. Midwest. The Ports of Seattle and Tacoma contend that the HMT places them at a competitive disadvantage with the two Canadian ports. The tax is paid by shippers based on the value of goods being imported through U.S. ports. However, U.S.-bound container cargo imported through Canadian ports are not subject to the tax.

Rather than trying to divert business from each other, Seattle and Tacoma sought approval from the Commission to collaborate in an effort to compete more successfully in an increasingly challenging competitive environment. The Commission unanimously voted to allow the Port of Seattle/Port of Tacoma Discussion Agreement to move forward, effective March 8, 2014.

It appears that the Agreement is working as intended. Last month, Stephanie Bowman, a Commissioner for the Port of Seattle, commented on the historically competitive posture of the Ports: "In the past 60 years we've truly been cutthroat," said Ms. Bowman. "We've been able to work together and put aside our historical competition."³

In addition, Westwood Shipping Lines is scheduled to move its major Puget Sound port of call back to the Port of Tacoma in late July 2014 after an absence of 31 years. Westwood is moving its service to Tacoma because the Port of Seattle needs to shut down its Terminal 5 in order to modernize and upgrade the facility. Westwood has called on Terminal 5 since 1983 when it left Tacoma.

Westwood's decision was announced in joint statements from the ports of Tacoma and Seattle. This joint announcement is a result of the cooperative relationship that has arisen between the Ports after entering into the Agreement that is filed with the FMC. In a joint statement the port officials commented:

"We are pleased Westwood Shipping, when faced with the need to find a new terminal, has opted to remain in the Puget Sound gateway," said Tacoma Commission President Clare

³ Dionne Searcey, Making Everything Shipshape, New York Times, June 27, 2014.

Petrich.⁴ “We appreciate the important role of Westwood Shipping as a leading ocean carrier in our state. The ongoing conversations between commissioners at the ports of Tacoma and Seattle, under a Federal Maritime [Commission] Discussion Agreement, are focused on this exact situation – ensuring valued shipping lines remain in Puget Sound and that we work together to attract new services.”⁵

Port of Seattle Commission Co-President Stephanie Bowman said, “Competition between private terminal operators to offer the best service to shipping lines is the natural course of business in this industry. The opportunity the two ports are exploring under the FMC Discussion Agreement is how to best ensure these common moves of shipping lines between ports in the same region occur within a larger unified strategy to increase our overall container market share in the Puget Sound gateway, to leverage infrastructure investments and to produce statewide economic benefits. I am optimistic we will reach this shared vision.”⁶

Recent Analysis of North America’s West Coast Gateways

There has been much discussion regarding ports on the West Coast, with particular emphasis on the Pacific Northwest (PNW). Indeed, a recent analysis⁷ was conducted using data derived from the Intermodal Association of North America’s (IANA) detailed examination of the competitive pressures PNW ports face from Canada in the North and California in the South.

Based on findings derived from IANA data, in 2009 Seattle, Tacoma, and Portland held a 12% market share of the inbound container cargo destined for the U.S. Midwest. Canadian ports had a 12.5% share, and California ports had a 75.4% share. By April 2014, Seattle and Portland’s share decreased to 10.9%, while cargo transiting through Canadian ports climbed to 14.1% and California ports went to 75%.

In mid-2011, the Canadian railroads began competitive intermodal services to the U.S.-Midwest from its seaports. However, PNW’s market share remained in-tact until about the latter part of 2012. The market share for the PNW appears to have slid and then stabilized in 2014.⁸ According to IANA data, the primary shift in PNW cargo went to California.

Water Resources Reform and Development Act of 2014

On June 10, 2014, President Barack Obama signed H.R. 3080, the Water Resources Reform and Development Act of 2014 (WRRDA). WRRDA addresses the Harbor Maintenance Trust Fund

4 John Gillie, Another Seattle shipping line is heading to the Port of Tacoma, The News Tribune, July 9, 2014.

5 Id.

6 Id.

7 Lawrence Gross, Who’s really eating the PNW’s lunch? Journal of Commerce, July 8, 2014.

8 The first anniversary update on the FMC’s “Study of U.S. Inland Containerized Cargo Moving Through Canadian and Mexican Seaports” contained statistics on the Port of Prince Rupert that were compiled by the Surface Transportation Board covering the year 2012. When statistics for the year 2013 are completed, this report will be updated.

(HMTF) and reaffirms HMTF's original purpose to provide funding for the maintenance and dredging of U.S. ports and harbors.⁹

The newly signed law specifically sets annual HMTF target percentage expenditures, increasing each year until Fiscal Year 2025 and thereafter, when 100% of the collected funds will go towards operation and maintenance (O&M) activities.¹⁰

The law also allocates 10% of HMTF expenditures for emerging harbors. For funds appropriated to address O&M harbor needs above the Fiscal Year 2012 baseline, the Secretary of the Army is directed to meet the priorities of high-use harbor projects, underserved harbors, emerging harbors, and the Great Lakes. This law requires an assessment of the O&M needs of U.S. harbors and prioritizes future O&M expenditures on an equitable basis.¹¹

WRRDA addresses the issue of donor ports. Donor ports are ports that: (1) have collected at least \$15 million in HMT dollars annually; (2) received less than 25% of the total amount of HMT collected at that port in the previous five fiscal years; and (3) handled more than two million twenty-foot equivalent units (TEUs) in fiscal year 2012. These ports are authorized to use HMT funds for expanded uses including berths and the dredging of contaminated sediments, environmental remediation, or payments to importers or shippers transporting cargo through that port. The law also maximizes the ability of non-federal project sponsors to contribute their own funds to move studies and projects forward and expands opportunities for non-federal interests to carry out feasibility studies.

Addressing the 2014 WRRDA, Washington **Senator Patty Murray** (WA) cited in her May 15, 2014 Senate floor remarks the crucial role played by the FMC and its 2012 *Study of U.S. Inland Containerized Cargo Moving through Canadian and Mexican Seaports*. Senators Patty Murray and **Maria Cantwell** (WA) requested the aforementioned study. The FMC Study found that although many factors have a bearing on cargo routing, cost is always a key issue, and the HMT clearly disadvantages U.S. ports against Canadian Ports. The FMC Study suggested U.S. ports work more closely together and presented Congress with a list of options solicited by the FMC from the industry to assist in remedying the competitive disadvantage at a number of U.S. ports under the current HMT. A joint statement released on behalf of Senators Patty Murray and Maria Cantwell on May 15, 2014, stated:

“Today the [Senators] announced that a critical provision they authored to reform the Harbor Maintenance Trust Fund (HMTF) and significantly benefit the Ports of Seattle and Tacoma was included in the bipartisan, bicameral deal on the Water Resources Reform and Development Act (WRRDA) released this afternoon. As “donor ports,” the Ports of Seattle and Tacoma currently receive just pennies for each dollar they contribute to the HMTF through collected shipping taxes, while other ports around the country disproportionately receive millions more. The provision included in the WRRDA deal today reforms the HMTF, for the first time in history to

⁹ Act of June 10, 2014, Pub. L. No. 113-121.

¹⁰ *Id.* § 2101.

¹¹ *Id.* §2102.

address the system's inequities towards "donor ports" and cargo diversion by authorizing \$25 million for "donor ports" to use for port infrastructure improvements and rebates to importers and shippers in order to even the playing field for the Ports of Seattle, Tacoma, and others. The provision included in WRRDA builds on existing efforts from Senators Murray and Cantwell to overhaul the outdated Harbor Maintenance Tax and Trust Fund and keep American ports like Seattle and Tacoma, who currently see millions of dollars in shipments each year diverted to ports in Canada and Mexico, competitive in the global marketplace."

Senate and House Members Show Bi-partisan Support for WRRDA

WRRDA has been met with strong bipartisan support and approval. To highlight some of this bipartisan support, the following Congressional leaders spoke in favor of the legislation.

Senator Barbara Boxer (CA), in a Senate floor speech on May 21, 2014, stated:

"I am so pleased that the bipartisan conference agreement on the Water Resources Reform and Development Act of 2014 (WRRDA) is before the Senate today following yesterday's overwhelming and bipartisan approval in the House of Representatives by a vote of 412-4. The bill will allow construction of vital port projects across the country. In addition to authorizing crucial port projects, the bill reforms the Harbor Maintenance Trust Fund to increase port investment. Despite significant maintenance needs at our nation's ports, only roughly half of the taxes collected in the Harbor Maintenance Trust Fund each year are actually used for port maintenance activities. This conference report calls for full expenditure of all revenues collected in the Trust Fund by 2025. This will improve the flow of commerce at the approximately 360 ports around the country. We set priorities that make sense for the larger ports, the smaller ports, the Great Lakes, and the sea ports that are large donors to the fund, such as the Ports of Los Angeles and Long Beach."

Senator David Vitter (LA) echoed Senator Boxer's sentiments in a statement released on June 10, 2014:

"It's not every day that Congress will come together and agree on legislation affecting Americans across the country – especially on a bill that is so beneficial to Louisiana. I'm extremely proud of this final result. The final legislation passed overwhelmingly in the House (412-4) and the Senate (91-7) in May 2014, and it contains many of the top priorities and new initiatives from the Senate-passed bill. The Bill includes an increase in Harbor Maintenance Trust Fund expenditures, prioritization for funding for high-and medium-use ports, and an increase in the threshold for 100% Corps operations and management responsibility from 45-ft to 50-ft."

Likewise, **Senator Carl Levin** (MI) in a Senate floor statement on May 22, 2014, commented:

"The report makes progress on increasing funding for harbor maintenance, with the goal of aligning revenues collected in the Harbor Maintenance Trust fund with those expended for this purpose. Over five years have passed since I led a bipartisan and multi-regional group of Senators to call to the attention of the Senate Environment and Public Works Committee the imbalance in collections and spending for harbor maintenance. I am pleased the committee worked with us to reduce this disparity. This conference report aims to increase spending on

harbor maintenance so that it is more in line with the fees collected for maintaining our nation's navigation infrastructure.”

On May 20, 2014, House Members also championed the passing of this bicameral bill. The following statements are from the Congressional Record, pages H4487-4496. **Congressman Bill Shuster** (PA), Chairman of the House Transportation and Infrastructure Committee, stated:

“Today we are on the floor passing the Water Resources Reform and Development Act's conference report. I am very proud it is a bipartisan bill. We have worked this out through the Senate, and I think what we have here is a jobs bill, a good jobs bill that is going to create not just construction jobs, but it is going to keep America competitive by investing in and upgrading our water infrastructure to keep us competitive in the world so that our companies and industries can go out into the world economies, gain market share, and then hire people on the factory floor in America. That is what this bill is all about. I would like to thank the original cosponsors of the bill, Ranking Member Rahall for his efforts, Water Subcommittee Chairman Gibbs from Ohio, and the Water Subcommittee ranking member, Mr. Bishop of New York. Thank you all for your hard work. I would also like to thank my Senate counterparts, the chair of the conference for the Senate Environment and Public Works Committee, Senator Boxer, and Ranking Member David Vitter.”

“Aging locks and dams hinder the efficient movement of waterborne commerce, and many of our coastal ports are ill-prepared to take advantage of the expansion of the Panama Canal because their harbors need to be dredged and, in some cases, deepened,” voiced **Congressman Nick Rahall** (WV). “The pending legislation will revitalize our inland waterway system, so that bulk commodities such as coal can be transported more efficiently, and it provides a path forward to spending down the funds currently being held hostage in the Harbor Maintenance Trust Fund.”

“Too often, resources from the Harbor Maintenance Trust Fund are diverted to activities unrelated to keeping U.S. ports competitive in a global marketplace. This conference report creates the incentive to spend the funds for their intended purpose,” stated **Congressman Bob Gibbs** (OH).

“This bill takes a long overdue step to ensure that the revenues in the Harbor Maintenance Trust Fund are eventually fully spent on their intended purpose, upgrading our harbors,” voiced **Congressman Richard Hanna** (NY).

Congressman Peter DeFazio (OR) stated:

“Well, we are off to a good start. We are finally recognizing that the Federal Government has a critical interest in our harbors, our ports, our inland waterways, and we are actually going to begin to spend taxes collected to maintain those things on those things. That is tough in Washington, to tell the truth.”

“Let's actually put our money into building infrastructure, not on studying things to death and ultimately never getting anything done.” said **Congressman Steve Scalise** (LA). “This bill really ushers in some important reforms on that front. The critical reforms to the Harbor Maintenance

Trust Fund that the Speaker talked about are very important--long, long overdue--things that I think people all across the country will see great benefits from.”

According to **Congresswoman Eddie Bernice Johnson (TX)**, “It has been 6 years since Congress last passed a water resources bill, and the state of our water infrastructure has continued to decline. I am pleased, however, with this final product, as it provides for maintenance of our ports and waterways as well as critical flood control projects around the country. We have addressed many important policy reforms in this bill, including reforming the Harbor Maintenance Trust Fund, encouraging the creation of jobs through targeted water resources infrastructure, and it goes on.”

Congresswoman Grace Napolitano (CA) expressed her strong support for WRRDA, stating:

“It prioritizes Harbor Maintenance donor regions, allowing expanded use of funding, which is something I had fought for, for many years.”

Congresswoman Janice Hahn (CA) also cited the importance of the Harbor Maintenance Trust Fund:

“I am most happy, of course, with the language in this bill that will finally allow us to fully utilize our Harbor Maintenance Trust Fund so that the ports across this country can be invested in with the taxes that we collect at the port, and that also, because of the leadership of Chairman Shuster and Ranking Member Rahall, these ports will also be able to use this money for some expanded uses. I believe with all my heart that when our ports are strong in this country, our country is strong. This bill does more to ensure the investment, the so important investment, in the critical infrastructure in our Nation’s ports.”

Representing the Port of Boston, **Congressman Stephen Lynch (MA)** reflected:

“I was an ironworker before I came to Congress, and I worked in the Port of Boston. So I know firsthand how important the ports and waterways are to our economy in this country. I have the opportunity to jointly represent the Port of Boston with Mike Capuano, my colleague. The Port of Boston generates \$2.4 billion in economic benefits annually and 34,000 jobs are connected with port activities. With the expected 2015 completion of the Panama Canal expansion project, those numbers will only increase as larger container ships utilize our ports on both coasts. Mr. Speaker, the Boston Harbor Navigation Improvement Project, recommended and approved by the U.S. Army Corps of Engineers and supported by this bill, is very important.”

Congresswoman Shelia Jackson Lee (TX) stated:

“This bill takes an important first step in addressing an issue of key concern to not only the Port of Houston and Galveston in Texas, but to all of our nations' ports, the collection and use of the federal Harbor Maintenance Tax. Specifically, the Conference Report provides for increased expenditures from the Harbor Maintenance Trust Fund (HMTF) for harbor maintenance activities each year. Under the agreement, the target expenditure for Fiscal Year 2015 is 67 percent of the funds collected in 2014, with the rate rising to 100 percent of the funds collected in 2024. The conference report also requires the Army Corps of Engineers to assess the operation and maintenance needs of U.S. harbors and, to the maximum extent practicable, to prioritize

future trust fund spending on an equitable allocation among all harbor types. The Conference Report also requires that any increase in annual corps project operation and maintenance expenditures, which come from the HMTF, be accompanied by an equal increase in total appropriations provided for the corps' civil works program. Mr. Speaker, I am particularly pleased that the Conference Report retains the provision inserted by an amendment I offered and which was accepted during the initial House consideration of this legislation.”

Congresswoman Corrine Brown (FL) recognized the efforts of her colleagues, thanking “Senators Boxer and Vitter and Congressmen Shuster, Gibbs, Rahall and Bishop for their commitment to producing a comprehensive and bi-partisan bill supported by all stakeholders. I also want to thank President Obama for his leadership in improving and expediting the process for completing projects at the Corps of Engineers and encouraging Congress to complete the WRDA Conference. The bill also allows for federal assumption of Operations and Maintenance for projects paid for by non-federal sponsors, includes a provision that will allow ports to utilize more of the Harbor Maintenance Tax, and allows local sponsors to fund and seek future reimbursement for any project that receives its Chief's Report.”

Statements given independently from these May 20, 2014 House speeches were provided by **Congressman David Reichert** (WA), **Congressman Joseph Courtney** (CT) and **Congresswoman Suzanne Bonamici** (OR) on May 20, May 21 and May 28, respectively.

“Washington State is positioned as America’s gateway to the Pacific Rim region,” stated Congressman David Reichert. “Washington ports not only provide for the export of goods from, and import of goods into, the state, but the overwhelming majority of these goods make their way to other parts of the country. Not only that, but our success in a global economy also depends on good, reliable infrastructure that leads to more jobs and efficient movement of goods. The legislation we passed today helps us do that by recognizing the needs of ports like the Port of Seattle and Port of Tacoma through expanded uses of the Harbor Maintenance Trust Fund.”

Courtney stated, “I am particularly proud that the bill includes a long-sought goal of mine, the increased utilization of the Harbor Maintenance Trust Fund. Given the economic importance of our ports and harbors and the growing backlog of work that is needed in our state and across the country, increasing the use of the trust fund makes perfect sense as we look ahead to new opportunities in maritime commerce and global trade.”

“The conference report also takes an important step toward full allocation of the Harbor Maintenance Trust Fund, which has for too long seen its dedicated funds diverted for uses beyond its intended purpose,” expressed Bonamici. “In addition, the conference report includes a set-aside for small ports and emerging harbors, which will include many ports in Oregon that are located in areas where the economy has taken the toughest hit over the last five years. These ports can't compete for Harbor Maintenance funding alongside the large, deep-draft ports, but the legislation before us today gives them a chance to access vital Army Corps maintenance funding. This was a priority for the Oregon delegation, and we are grateful that Representative DeFazio was able to include it in the House-passed WRRDA bill and succeed in having it be part of the conference report.”

Conclusion

There have been significant developments over the past year with respect to our ports. The Federal Maritime Commission is pleased to offer its expertise and assistance on matters affecting our nation's ports. The Administration and Congress have taken action with respect to the Harbor Maintenance Trust Fund. Commissioner Lidinsky will continue to update the 2012 *Study of U.S. Inland Containerized Cargo Moving through Canadian and Mexican Seaports*.

References

To view the Federal Maritime Commission's original 2012 Study, click:

http://www.fmc.gov/assets/1/News/Study_of_US_Inland_Containerized_Cargo_Moving_Through_Canadian_and_Mexican_Seaports_Final.pdf

To view Commissioner Lidinsky's 2013 update to the 2012 Study, click:

http://www.fmc.gov/2013_update_study_of_u.s._inland_containerized_cargo_moving_through_canadian_and_mexican_seaports_one_year_later/