



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

CECW-P

OCT 05 2018

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 2002(a) of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), Integrating Section 1103 and Section 1107 of the Water Resources Development Act (WRDA) of 2016, Operation and Maintenance of Harbor Projects

1. Section 2002(a) of WRRDA 2014 was completed and signed on 19 September 2018. The implementation guidance is posted in the U.S. Army Corps of Engineers website: <http://www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/>.
2. All questions regarding this implementation guidance shall be directed to Rick Granados, Acting Chief, Navigation and Operations Branch, at (202) 761-8648 or Rick.D.Granados@usace.army.mil.

A handwritten signature in black ink, appearing to read "J. Dalton", written over a horizontal line.

JAMES C. DALTON, P.E.
Director of Civil Works

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DEPARTMENT OF THE ARMY
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SEP 19 2018

MEMORANDUM FOR COMMANDING GENERAL U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Implementation Guidance for Section 2102(a) of the Water Resources Reform and Development Act of 2014 and Sections 1103 and 1107 of the Water Resources Development Act of 2016

1. Section 2102(a) of WRRDA 2014 amended section 210 of the Water Resources Development Act of 1986 (WRDA 86), 33 U.S.C. 2238, by adding several new subsections, designated as subsections (c) through (f), to, inter alia, direct the Secretary to make expenditures to pay for operation and maintenance costs of harbors and inland harbors within the United States, including expenditures of funds appropriated from the Harbor Maintenance Trust Fund (HMTF), based on an equitable allocation of funds among all such harbors and inland harbors to the maximum extent practicable; and, to specify how funds are to be allocated for emerging harbors; high and moderate commercial use harbors; underserved harbors; projects located within the Great Lakes Navigation System; and for expanded uses, all as defined in the amendments made by section 2102(a), at 33 U.S.C. 2238(f). Sections 1103 and 1107 of WRDA 2016 further amended section 210 to indefinitely extend direction to the Secretary regarding the allocation of HMTF amounts made available for operation and maintenance costs to emerging harbors and underserved harbors, and to projects located within the Great Lakes Navigation System, respectively, (33 U.S.C. 2238(d)(1)(A) and (B)). Section 210 of WRDA 86, as amended, is enclosed.

2. Guidance.

a. Districts shall continue to submit and prioritize work packages for annual budget development in accordance with direction provided by the Assistant Secretary of the Army for Civil Works (ASA(CW)) annual budget guidance and the annual budget guidance: EC 11-2-2XX, U.S. Army Corps of Engineers (Corps) Civil Works Direct Program Development Policy Guidance For Fiscal Year 20YY, and the accompanying Civil Works Program and Policy Manual for Navigation. Districts shall continue to submit and prioritize work packages for annual work plan development in accordance with the direction provided by the ASA(CW) and the annual budget guidance.

b. Major Subordinate Commands (MSC) will continue to prioritize annual budget and work packages within their area of responsibility in accordance with the direction provided by the ASA(CW) and the annual budget guidance.

c. Section 210(f)(8) defines priority funds. For reference purposes, the Joint

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Explanatory Statement accompanying the Water Resources, Reform, and Development Act of 2014 (WRRDA 2014) refers to the 2012 HMTF baseline as \$898 million, and therefore, any funds allocated up to \$898 million will be considered "baseline" funds and any funds allocated above \$898 million will be considered "priority" funds.

d. Section 210 (c)(3) requires for each fiscal year the Secretary to allocate for operation and maintenance costs of emerging harbor projects at least 10 percent of the funds made available under this section for fiscal year 2012 (\$898 million). Section 210(d) establishes how priority funds, as defined in Section 210(f)(8), if available, are to be allocated. Section 210(d)(1)(A) requires the Secretary to allocate at least 10 percent of priority funds for emerging harbor projects. Section 210(d)(1)(B) requires the Secretary to allocate at least 5 percent of available priority funds for underserved harbor projects and at least 10 percent of available priority funds for projects that are located within the Great Lakes Navigation System. Headquarters will be responsible for developing a recommendation for prioritizing work packages for the Corps to meet the 10 percent HMTF target for emerging harbors, the 10 percent target of available priority funds for Great Lakes projects as defined in Section 210(f)(8), and the 5 percent target of available priority funds for underserved projects as defined in Section 210(f)(8), in accordance with guidance provided for annual budget development. Headquarters will be responsible for developing a recommendation for prioritizing work packages for the ASA(CW) to consider to meet the 5 percent and 10 percent HMTF targets of the total HMTF amount for annual work plan development, and demonstrating the accompanying performance basis for prioritization, in accordance with ASA(CW) guidance.

e. Expanded uses are defined as:

(1) Maintenance dredging of a berth in a harbor that is accessible to a federal navigation project and that benefits commercial navigation at the harbor.

(2) Maintenance dredging and placement of legacy contaminated sediment, and sediment unsuitable for open water disposal, if:

(a) Such dredging and placement benefits commercial navigation at the harbor;
and

(b) Such sediment is located in and affects the maintenance of a federal navigation project or is located in a berth that is accessible to a federal navigation project.

f. Expanded uses involve the provision of funds to ports for work that is traditionally a non-federal responsibility. Funds for expanded uses will not be included in either the President's annual budget or annual workplans unless specific guidance is provided by the Office of Management and Budget.

Section 210(d)(2)(B) requires the Secretary to allocate at least 10 percent of priority funds for expanded uses carried out at an eligible harbor or inland harbor for each of

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fiscal years 2015 through 2024 and for fiscal year 2025 and each fiscal year thereafter. Section 210(d)(2)(A) defines “eligible harbor or inland harbor” to mean a harbor or inland harbor at which the total amount of harbor maintenance taxes collected in the immediately preceding 3 fiscal years exceeds the value of the work carried out for the harbor or inland harbor using amounts from the HMTF during those 3 fiscal years. Districts should coordinate with their respective non-Federal sponsors each year during development of the annual budget and annual work plan to obtain information from the sponsors on what work/activities the sponsors would accomplish if funds were to be allocated for expanded uses. The district will then enter work packages in the Corps of Engineers Civil Works Integrated Funding Database under the Civil Works maintenance project associated with the port, using Category/Class/Subclass (CCS) Code “11D”, Work Category Code “61123,” and Phase Activity Code “EU”. In developing a recommendation for allocating funds for expanded uses, Headquarters will give priority to projects at eligible harbors or inland harbors where there is the greatest difference between the total amount of funding made available for projects at the eligible harbor or inland harbor from the HMTF in the immediately preceding 3 fiscal years and the total amount of harbor maintenance taxes collected at that harbor or inland harbor in the immediately preceding 3 fiscal years.

g. For fiscal years 2015 through 2024, if any priority funds made available for underserved harbor projects, projects that are located within the Great Lakes Navigation System, or expanded uses remain unobligated after fully funding all eligible projects, the Corps will use those remaining funds to pay for operation and maintenance costs of any harbor or inland harbor based on an equitable allocation of those funds in accordance with Section 210(d)(3).

h. The Secretary retains the authority to make expenditures to pay for the operation and maintenance costs of specific harbors or inland harbors for emergency purposes if the Secretary determines that the action is necessary to address the navigation needs of a harbor or inland harbor where safe navigation has been severely restricted due to an unforeseen event; and the Secretary provides within 90 days of the action, notice and information on the need for the action to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives.

i. The Great Lakes and Ohio River Division and respective districts shall continue to treat the Great Lakes as a system when developing the annual budgets and work plans.

j. Section 2102(a) requires the Secretary to conduct regular assessments of the operation and maintenance needs and uses of the harbors identified in section 210; however, no funding has been provided to conduct such assessments. No specific work will be undertaken to conduct the assessments or to prepare biennial reports to

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Congress (see 33 U.S.C. 2238(e)) until such time that funds are specifically appropriated to conduct the assessments and prepare the reports under this authority.

3. Questions regarding this implementation guidance may be directed to Gib Owen, Office of the Assistant Secretary of the Army for Civil Works at gib.a.owen.civ@mail.mil or 703-695-4641. Technical questions may be directed to Chief, Navigation and Operations Branch at 202-761-8648.



R. D. JAMES
Assistant Secretary of the Army
(Civil Works)

Encls

Section 210 of WRDA 1986, as amended (33 USC § 2238)

§2238. Authorization of appropriations

(a) Trust Fund - There are authorized to be appropriated out of the Harbor Maintenance Trust Fund, established by section 9505 of title 26, for each fiscal year such sums as may be necessary to pay

(1) 100 percent of the eligible operations and maintenance costs of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation for such fiscal year; and

(2) up to 100 percent of the eligible operations and maintenance costs assigned to commercial navigation of all harbors and inland harbors within the United States.

(b) General Fund - There are authorized to be appropriated out of the general fund of the Treasury of the United States for each fiscal year such sums as may be necessary to pay the balance of all eligible operations and maintenance costs not provided by payments from the Harbor Maintenance Trust Fund under this section.

(c) Operation and maintenance of harbor projects

(1) In general, To the maximum extent practicable, the Secretary shall make expenditures to pay for operation and maintenance costs of the harbors and inland harbors referred to in subsection (a)(2), including expenditures of funds appropriated from the Harbor Maintenance Trust Fund, based on an equitable allocation of funds among all such harbors and inland harbors.

(2) Criteria

(A) In general - In determining an equitable allocation of funds under paragraph (1), the Secretary shall

(i) consider the information obtained in the assessment conducted under subsection (e);

(ii) consider the national and regional significance of harbor operations and maintenance; and

(iii) as appropriate, consider national security and military readiness needs.

(B) Limitation - The Secretary shall not allocate funds under paragraph (1) based solely on the tonnage transiting through a harbor.

(3) Emerging harbor projects - Notwithstanding any other provision of this subsection, in making expenditures under paragraph (1) for each fiscal year, the Secretary shall allocate for operation and maintenance costs of emerging harbor projects an amount that is not less than 10 percent of the funds made available under this section for fiscal year 2012 to pay the costs described in subsection (a)(2).

(4) Management of Great Lakes Navigation System - To sustain effective and efficient operation and maintenance of the Great Lakes Navigation System, including any navigation feature in the Great Lakes that is a Federal responsibility with respect to operation and maintenance, the Secretary shall manage all of the individually authorized projects in the Great Lakes Navigation System as components of a single, comprehensive system, recognizing the interdependence of the projects.

(d) Prioritization

(1) Priority

(A) In general - For each fiscal year, if priority funds are available, the Secretary shall use at least 10 percent of such funds for emerging harbor projects.

(B) Additional considerations - For each fiscal year, of the priority funds available, the Secretary shall use

- (i) not less than 5 percent of such funds for underserved harbor projects; and
- (ii) not less than 10 percent of such funds for projects that are located within the Great Lakes Navigation System.

(C) Underserved harbors

In determining which underserved harbor projects shall receive funds under this paragraph, the Secretary shall consider-

- (i) the total quantity of commerce supported by the water body on which the project is located; and
- (ii) the minimum width and depth that
 - (I) would be necessary at the underserved harbor project to provide sufficient clearance for fully loaded commercial vessels using the underserved harbor project to maneuver safely; and
 - (II) does not exceed the constructed width and depth of the authorized navigation project.

(2) Expanded uses

(A) Definition of eligible harbor or inland harbor defined - In this paragraph, the term "eligible harbor or inland harbor" means a harbor or inland harbor at which the total amount of harbor maintenance taxes collected in the immediately preceding 3 fiscal years exceeds the value of the work carried out for the harbor or inland harbor using amounts from the Harbor Maintenance Trust Fund during those 3 fiscal years.

(B) Use of expanded uses funds

(i) Fiscal years 2015 through 2024

For each of fiscal years 2015 through 2024, of the priority funds available, the Secretary shall use not less than 10 percent of such funds for expanded uses carried out at an eligible harbor or inland harbor.

(ii) Subsequent fiscal years - For fiscal year 2025 and each fiscal year thereafter, the Secretary shall use not less than 10 percent of the priority funds available for expanded uses carried out at an eligible harbor or inland harbor.

(C) Prioritization - In allocating funds under this paragraph, the Secretary shall give priority to projects at eligible harbors or inland harbors for which the difference, calculated in dollars, is greatest between-

- (i) the total amount of funding made available for projects at that eligible harbor or inland harbor from the Harbor Maintenance Trust Fund in the immediately preceding 3 fiscal years; and
- (ii) the total amount of harbor maintenance taxes collected at that harbor or inland harbor in the immediately preceding 3 fiscal years.

(3) Remaining funds

(A) In general - For each of fiscal years 2015 through 2024, if after fully funding all projects eligible for funding under paragraphs (1)(B) and (2)(B)(i), priority

funds made available under those paragraphs remain unobligated, the Secretary shall use those remaining funds to pay for operation and maintenance costs of any harbor or inland harbor referred to in subsection (a)(2) based on an equitable allocation of those funds among the harbors and inland harbors.

(B) Criteria - In determining an equitable allocation of funds under subparagraph (A), the Secretary shall

- (i) use the criteria specified in subsection (c)(2)(A); and
- (ii) make amounts available in accordance with the requirements of paragraph (1)(A).

(4) Emergency expenditures - Nothing in this subsection prohibits the Secretary from making an expenditure to pay for the operation and maintenance costs of a specific harbor or inland harbor, including the transfer of funding from the operation and maintenance of a separate project, if

(A) the Secretary determines that the action is necessary to address the navigation needs of a harbor or inland harbor where safe navigation has been severely restricted due to an unforeseen event; and

(B) the Secretary provides within 90 days of the action notice and information on the need for the action to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives.

(e) Assessment of harbors and inland harbors

(1) In general - Not later than 270 days after June 10, 2014, and biennially thereafter, the Secretary shall assess the operation and maintenance needs and uses of the harbors and inland harbors referred to in subsection (a)(2).

(2) Assessment of harbor needs and activities

(A) Total operation and maintenance needs of harbors - In carrying out paragraph (1), the Secretary shall identify

- (i) the total future costs required to achieve and maintain the constructed width and depth for the harbors and inland harbors referred to in subsection (a)(2); and
- (ii) the total expected costs for expanded uses at eligible harbors or inland harbors referred to in subsection (d)(2).

(B) Uses of harbors and inland harbors - In carrying out paragraph (1), the Secretary shall identify current uses (and, to the extent practicable, assess the national, regional, and local benefits of such uses) of harbors and inland harbors referred to in subsection (a)(2), including the use of those harbors for

- (i) commercial navigation, including the movement of goods;
- (ii) domestic trade;
- (iii) international trade;
- (iv) commercial fishing;
- (v) subsistence, including use by Indian tribes (as defined in section 5304 of title 25) for subsistence and ceremonial purposes;
- (vi) use as a harbor of refuge;
- (vii) transportation of persons;

- (viii) purposes relating to domestic energy production, including the fabrication, servicing, or supply of domestic offshore energy production facilities;
- (ix) activities of the Secretary of the department in which the Coast Guard is operating;
- (x) activities of the Secretary of the Navy;
- (xi) public health and safety related equipment for responding to coastal and inland emergencies;
- (xii) recreation purposes; and
- (xiii) other authorized purposes.

(3) Report to Congress

(A) In general - For fiscal year 2016, and biennially thereafter, in conjunction with the President's annual budget submission to Congress under section 1105(a) of title 31, the Secretary shall submit to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives a report that, with respect to harbors and inland harbors referred to in subsection (a)(2)

(i) identifies the operation and maintenance costs associated with the harbors and inland harbors, including those costs required to achieve and maintain the constructed width and depth for the harbors and inland harbors and the costs for expanded uses at eligible harbors and inland harbors, on a project-by-project basis;

(ii) identifies the amount of funding requested in the President's budget for the operation and maintenance costs associated with the harbors and inland harbors, on a project-by-project basis;

(iii) identifies the unmet operation and maintenance needs associated with the harbors and inland harbors, on a project-by-project basis; and

(iv) identifies the harbors and inland harbors for which the President will allocate funding over the subsequent 5 fiscal years for operation and maintenance activities, on a project-by-project basis, including the amounts to be allocated for such purposes.

(B) Additional requirement - In the first report submitted under subparagraph (A) following December 16, 2016, the Secretary shall identify, to the maximum extent practicable, transportation cost savings realized by achieving and maintaining the constructed width and depth for the harbors and inland harbors referred to in subsection (a)(2), on a project-by-project basis.

(C) Public availability - The Secretary shall make the report submitted under subparagraph (A) available to the public, including on the Internet.

(f) Definitions - In this section:

(1) Constructed width and depth - The term "constructed width and depth" means the width and depth to which a project has been constructed, which may not exceed the authorized width and depth of the project.

(2) Emerging harbor project

The term "emerging harbor project" means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2) that transits less than 1,000,000 tons of cargo annually.

(3) Expanded uses

The term "expanded uses" means the following activities:

(A) The maintenance dredging of a berth in a harbor that is accessible to a Federal navigation project and that benefits commercial navigation at the harbor.

(B) The maintenance dredging and disposal of legacy-contaminated sediment, and sediment unsuitable for open water disposal, if

(i) such dredging and disposal benefits commercial navigation at the harbor; and

(ii) such sediment is located in and affects the maintenance of a Federal navigation project or is located in a berth that is accessible to a Federal navigation project.

(4) Great Lakes Navigation System - The term "Great Lakes Navigation System" includes

(A)

(i) Lake Superior;

(ii) Lake Huron;

(iii) Lake Michigan;

(iv) Lake Erie; and

(v) Lake Ontario;

(B) all connecting waters between the lakes referred to in subparagraph (A) used for commercial navigation;

(C) any navigation features in the lakes referred to in subparagraph (A) or waters described in subparagraph (B) that are a Federal operation or maintenance responsibility; and

(D) areas of the Saint Lawrence River that are operated or maintained by the Federal Government for commercial navigation.

(5) Harbor maintenance tax - The term "harbor maintenance tax" means the amounts collected under section 4461 of title 26.

(6) High-use harbor project - The term "high-use harbor project" means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2) that transits not less than 10,000,000 tons of cargo annually.

(7) Moderate-use harbor project - The term "moderate-use harbor project" means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2) that transits annually-

(A) more than 1,000,000 tons of cargo; but

(B) less than 10,000,000 tons of cargo.

(8) Priority funds - The term "priority funds" means the difference between-

(A) the total funds that are made available under this section to pay the costs described in subsection (a)(2) for a fiscal year; and

(B) the total funds made available under this section to pay the costs described in subsection (a)(2) in fiscal year 2012.

(9) Underserved harbor project

- (A) In general - The term "underserved harbor project" means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2)
- (i) that is a moderate-use harbor project or an emerging harbor project;
 - (ii) that has been maintained at less than the constructed width and depth of the project during each of the preceding 6 fiscal years; and
 - (iii) for which State and local investments in infrastructure have been made at those projects during the preceding 6 fiscal years.
- (B) Administration - For purposes of this paragraph, State and local investments in infrastructure shall include infrastructure investments made using amounts made available for activities under section 5305(a)(9) of title 42.

WRRDA 2014

SEC. 2102(a). OPERATION AND MAINTENANCE OF HARBOR PROJECTS.

(a) IN GENERAL. -Section 210 of the Water Resources Development Act of 1986 (33 U.S. C. 2238) is amended by adding at the end the following

(c) OPERATION AND MAINTENANCE OF HARBOR PROJECTS

(1) IN GENERAL - To the maximum extent practicable, the Secretary shall make expenditures to pay for operation and maintenance costs of the harbors and inland harbors referred to in subsection (a)(2), including expenditures of funds appropriated from the Harbor Maintenance Trust Fund, based on an equitable allocation of funds among all such harbors and inland harbors.

(2) CRITERIA –

(A) IN GENERAL- In determining an equitable allocation of funds under paragraph (1), the Secretary shall

- (i) consider the information obtained in the assessment conducted under subsection (e);
- (ii) consider the national and regional significance of harbor operations and maintenance; and
- (iii) as appropriate, consider national security and military readiness needs.

(B) LIMITATION -The Secretary shall not allocate funds under paragraph (1) based solely on the tonnage transiting through a harbor.

(3) EMERGING HARBOR PROJECTS - Notwithstanding any other provision of this subsection, in making expenditures under paragraph (1) for each of fiscal years 2015 through 2022, the Secretary shall allocate for operation and maintenance costs of emerging harbor projects an amount that is not less than 10 percent of the funds made available under this section for fiscal year 2012 to pay the costs described in subsection (a)(2).

(4) MANAGEMENT OF GREAT LAKES NAVIGATION SYSTEM – To sustain effective and efficient operation and maintenance of the Great Lakes Navigation System, including any navigation feature in the Great Lakes that is a Federal responsibility with respect to operation and maintenance, the Secretary shall manage all of the individually authorized projects in the Great Lakes Navigation System as components of a single, comprehensive system, recognizing the interdependence of the projects.

(d) PRIORITIZATION

(1) PRIORITY

(A) IN GENERAL - For each of fiscal years 2015 through 2024, if priority funds are available, the Secretary shall use the priority funds as follows:

- (i) 90 percent of the priority funds shall be used for high- and moderate-use harbor projects.
- (ii) 10 percent of the priority funds shall be used for emerging harbor projects.

(B) ADDITIONAL CONSIDERATIONS.-For each of fiscal years 2015 through 2024, of the priority funds available, the Secretary shall use

- (i) not less than 5 percent of such funds for underserved harbor projects; and

- (ii) not less than 10 percent of such funds for projects that are located within the Great Lakes Navigation System.
- (C) **UNDERSERVED HARBORS** - In determining which underserved harbor projects shall receive funds under this paragraph, the Secretary shall consider
 - (i) the total quantity of commerce supported by the water body on which the project is located; and
 - (ii) the minimum width and depth that
 - (I) would be necessary at the underserved harbor project to provide sufficient clearance for fully loaded commercial vessels using the underserved harbor project to maneuver safely; and
 - (II) does not exceed the constructed width and depth of the authorized navigation project.
- (2) **EXPANDED USES**
 - (A) **DEFINITION OF ELIGIBLE HARBOR OR INLAND HARBOR**
DEFINED - In this paragraph, the term 'eligible harbor or inland harbor' means a harbor or inland harbor at which the total amount of harbor maintenance taxes collected in the immediately preceding 3 fiscal years exceeds the value of the work carried out for the harbor or inland harbor using amounts from the Harbor Maintenance Trust Fund during those 3 fiscal years.
 - (B) **USE OF EXPANDED USES FUNDS.**-
 - (i) **FISCAL YEARS 2015 THROUGH 2024.**-For each of fiscal years 2015 through 2024, of the priority funds available, the Secretary shall use not less than 10 percent of such funds for expanded uses carried out at an eligible harbor or inland harbor.
 - (ii) **SUBSEQUENT FISCAL YEARS.**-For fiscal year 2025 and each fiscal year thereafter, the Secretary shall use not less than 10 percent of the priority funds available for expanded uses carried out at an eligible harbor or inland harbor.
 - (C) **PRIORITIZATION.**-In allocating funds under this paragraph, the Secretary shall give priority to projects at eligible harbors or inland harbors for which the difference, calculated in dollars, is greatest between
 - (i) the total amount of funding made available for projects at that eligible harbor or inland harbor from the Harbor Maintenance Trust Fund in the immediately preceding 3 fiscal years; and
 - (ii) the total amount of harbor maintenance taxes collected at that harbor or inland harbor in the immediately preceding 3 fiscal years.
- (3) **REMAINING FUNDS**
 - (A) **IN GENERAL** - For each of fiscal years 2015 through 2024, if after fully funding all projects eligible for funding under paragraphs (1)(B) and (2)(B)(i), priority funds made available under those paragraphs remain unobligated, the Secretary shall use those remaining funds to pay for operation and maintenance costs of any harbor or inland harbor referred to in subsection (a)(2) based on an equitable allocation of those funds among the harbors and inland harbors.
 - (B) **CRITERIA** - In determining an equitable allocation of funds under subparagraph (A), the Secretary shall
 - (i) use the criteria specified in subsection (c)(2)(A); and

(ii) make amounts available in accordance with the requirements of paragraph (1)(A).

(4) EMERGENCY EXPENDITURES - Nothing in this subsection prohibits the Secretary from making an expenditure to pay for the operation and maintenance costs of a specific harbor or inland harbor, including the transfer of funding from the operation and maintenance of a separate project, if-

(A) the Secretary determines that the action is necessary to address the navigation needs of a harbor or inland harbor where safe navigation has been severely restricted due to an unforeseen event; and

(B) the Secretary provides within 90 days of the action notice and information on the need for the action to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives.

(e) ASSESSMENT OF HARBORS AND INLAND HARBORS

(1) IN GENERAL.-Not later than 270 days after the date of enactment of this subsection, and biennially thereafter, the Secretary shall assess the operation and maintenance needs and uses of the harbors and inland harbors referred to in subsection (a)(2).

(2) ASSESSMENT OF HARBOR NEEDS AND ACTIVITIES

(A) TOTAL OPERATION AND MAINTENANCE NEEDS OF HARBORS - In carrying out paragraph (1), the Secretary shall identify

(i) the total future costs required to achieve and maintain the constructed width and depth for the harbors and inland harbors referred to in subsection (a)(2); and

(ii) the total expected costs for expanded uses at eligible harbors or inland harbors referred to in subsection (d)(2).

(B) USES OF HARBORS AND INLAND HARBORS.-In carrying out paragraph (1), the Secretary shall identify current uses (and, to the extent practicable, assess the national, regional, and local benefits of such uses) of harbors and inland harbors referred to in subsection (a)(2), including the use of those harbors for

(i) commercial navigation, including the movement of goods;

(ii) domestic trade;

(iii) international trade;

(iv) commercial fishing;

(v) subsistence, including use by Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S. C. 450b)) for subsistence and ceremonial purposes;

(vi) use as a harbor of refuge;

(vii) transportation of persons;

(viii) purposes relating to domestic energy production, including the fabrication, servicing, or supply of domestic offshore energy production facilities;

(ix) activities of the Secretary of the department in which the Coast Guard is operating;

(x) activities of the Secretary of the Navy;

- (xi) public health and safety related equipment for responding to coastal and inland emergencies;
 - (xii) recreation purposes; and
 - (xiii) other authorized purposes.
- (3) REPORT TO CONGRESS
- (A) IN GENERAL - For fiscal year 2016, and biennially thereafter, in conjunction with the President's annual budget submission to Congress under section 1105(a) of title 31, United States Code, the Secretary shall submit to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives a report that, with respect to harbors and inland harbors referred to in subsection (a)(2)

- (i) identifies the operation and maintenance costs associated with the harbors and inland harbors, including those costs required to achieve and maintain the constructed width and depth for the harbors and inland harbors and the costs for expanded uses at eligible harbors and inland harbors, on a project-by-project basis;
- (ii) identifies the amount of funding requested in the President's budget for the operation and maintenance costs associated with the harbors and inland harbors, on a project-by-project basis;
- (iii) identifies the unmet operation and maintenance needs associated with the harbors and inland harbors, on a project-by-project basis; and
- (iv) identifies the harbors and inland harbors for which the President will allocate funding over the subsequent 5 fiscal years for operation and maintenance activities, on a project-by-project basis, including the amounts to be allocated for such purposes.

(B) PUBLIC AVAILABILITY - The Secretary shall make the report submitted under subparagraph (A) available to the public, including on the Internet.

(f) DEFINITIONS - In this section:

- (1) CONSTRUCTED WIDTH AND DEPTH - The term 'constructed width and depth' means the width and depth to which a project has been constructed, which may not exceed the authorized width and depth of the project.
- (2) EMERGING HARBOR PROJECT - The term 'emerging harbor project' means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2) that transits less than 1,000,000 tons of cargo annually.
- (3) EXPANDED USES - The term 'expanded uses' means the following activities:
 - (A) The maintenance dredging of a berth in a harbor that is accessible to a Federal navigation project and that benefits commercial navigation at the harbor.
 - (B) The maintenance dredging and disposal of legacy contaminated sediment, and sediment unsuitable for open water disposal, if
 - (i) such dredging and disposal benefits commercial navigation at the harbor; and
 - (ii) such sediment is located in and affects the maintenance of a Federal navigation project or is located in a berth that is accessible to a Federal navigation project.

(4) GREAT LAKES NAVIGATION SYSTEM - The term 'Great Lakes Navigation System' includes

(A)

- (i) Lake Superior;
- (ii) Lake Huron;
- (iii) Lake Michigan;
- (iv) Lake Erie; and
- (v) Lake Ontario;

(B) all connecting waters between the lakes referred to in subparagraph (A) used for commercial navigation;

(C) any navigation features in the lakes referred to in subparagraph (A) or waters described in subparagraph (B) that are a Federal operation or maintenance responsibility; and

(D) areas of the Saint Lawrence River that are operated or maintained by the Federal Government for commercial navigation.

(5) HARBOR MAINTENANCE TAX - The term 'harbor maintenance tax' means the amounts collected under section 4461 of the Internal Revenue Code of 1986.

(6) HIGH-USE HARBOR PROJECT - The term 'high-use harbor project' means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2) that transits not less than 10,000,000 tons of cargo annually.

(7) MODERATE-USE HARBOR PROJECT - The term 'moderate-use harbor project' means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2) that transits annually

(A) more than 1,000,000 tons of cargo; but

(B) less than 10,000,000 tons of cargo.

(8) PRIORITY FUNDS - The term 'priority funds' means the difference between

(A) the total funds that are made available under this section to pay the costs described in subsection (a)(2) for a fiscal year; and

(B) the total funds made available under this section to pay the costs described in subsection (a)(2) in fiscal year 2012.

(9) UNDERSERVED HARBOR PROJECT -

(A) IN GENERAL - The term 'underserved harbor project' means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2)

(i) that is a moderate-use harbor project or an emerging harbor project;

(ii) that has been maintained at less than the constructed width and depth of the project during each of the preceding 6 fiscal years; and

(iii) for which State and local investments in infrastructure have been made at those projects during the preceding 6 fiscal years.

(B) ADMINISTRATION - For purposes of this paragraph, State and local investments in infrastructure shall include infrastructure investments made using amounts made available for activities under section 105(a)(9) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(9)).

WRDA 2016

SEC. 1103. EMERGING HARBORS.

Section 210 of the Water Resources Development Act of 1986 (33 U.S.C. 2238) is amended

- (1) in subsection (c)(3) by striking "for each of fiscal years 2015 through 2022" and inserting "for each fiscal year"; and
- (2) by striking subsection (d)(1)(A) and inserting the following: (A) IN GENERAL. For each fiscal year, if priority funds are available, the Secretary shall use at least 10 percent of such funds for emerging harbor projects.

SEC. 1107. GREAT LAKES NAVIGATION SYSTEM.

Section 210(d)(1)(B) of the Water Resources Development Act of 1986 (33 U.S.C. 2238(d)(1)(B)) is amended in the matter preceding clause (i) by striking "For each of fiscal years 2015 through 2024" and inserting "For each fiscal year".