

**Testimony of Colonel Thomas L. Koning  
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**The U.S. Commission on Ocean Policy  
Boston, Massachusetts  
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Good morning. I'm delighted to be here this morning to discuss with you our perspectives on ocean policy and issues in the waters of the United States. I am Tom Koning, and I command the New England District of the United States Army Corps of Engineers. The New England District area covers 6100 miles of coastline in New England from Maine to Connecticut, including 11 deep-water ports and 102 recreation and smaller commercial harbors.

Today, I would like to discuss the following six topics. I have one slide on each topic that I hope will provide food for thought on specific policy and/or broad areas where new policy needs to be developed.

I think a goal of this Commission should be to help the nation spend its tax dollars wisely by outlining what our ports and harbors should look like into the future. There are not enough resources to meet every federal, state and local good idea that comes along. I think our ocean policy must continue to envision looking forward to 50 to 100 years in the future to address the tough issues in navigation, commercial development and environmental stewardship.

Healthy competition between our major ports in each region needs to be examined to allow a national strategy for future port deepening. The questions we need to answer are questions such as: Can we best allocate federal dollars with a system where every level of government competes against one another and at the end of every year you have a hodgepodge of winners and losers? Or should we have a national vision which empowers national and/or regional forums to discuss whether all ports in that region compete equally? Or whether we should have alliances or regionalization where we have a cooperatives system of main ports and feeder ports. And this might, in turn, drive navigation infrastructure needs, development for deep versus more shallow development and a prioritization of where the federal dollars can get the most bang for the buck.

Currently, in the area of disposal, the Clean Water Act and the Marine Protection Research Sanctuaries Act are inconsistent with one another within the area of approval requirements for disposal of dredged materials. One of the differences, as an example, is the requirement for bioaccumulation testing for any and all deep-ocean disposal. This can particularly hamstring small dredging operations. We had this situation recently in Rhode Island where a small marina needed to be dredged. Because the community did not have access to a shallow-water disposal area, they were required to look offshore. This drove them into the

requirement for bioaccumulation testing that was going to cost them at a minimum \$40,000. That testing exceeded the cost of the dredging. It put it outside the reach of that community. And as a result, the community has not had its harbor dredged.

There are other examples I could bring out. In the interest of time, I won't. But they involve the area of new advances in technology that can supercede the tight testing requirements as in the current statutes. Through screening tests, we then only need to go to those more stringent requirements when the results dictate that. New dredged disposal techniques, specifically confined capping techniques, should be allowed. The bottom line is I think that this Commission should look at creating a new statute that combines the two existing statutes that allows prudent, flexible of advanced technologies in evaluation of dredged materials from our nation's ports..

The writers of the statutes that govern how we, as the Corps, permit activities in the waters of the United States when the statutes were written did not envision the technological advances that now allow permanent structures well into outer ocean waters. There exists regulatory boundaries that regulate in the United States almost any industry: fishing, oil, gas and minerals, that extracts something from the ocean and the seabed. There is not the same body of rules and regulations to oversee non-extraction technologies that we see coming up today. Wind energy projects, ocean energy projects and some of you from this area might even remember the idea for an ocean casino. We believe that those also need a body of rule and regulation to oversee those activities. So therefore, I think that ocean policy should be comprehensive for both extraction and non-extraction ocean energy and commercial ventures.

Restoration of the aquatic ecosystem is a priority for many federal agencies. And Coastal America has been one of the success stories in New England. The partnership has encouraged federal and state agencies to collaborate on aquatic ecosystem restoration. As you know, Coastal America is a voluntary organization. We think you should consider having that codified. In New England, we have restored significant salt marsh, fisheries and eel grass habitat through the federal and state partnering of the agencies here. I think the ocean policy should look at building upon the Coastal America partnership in many ways to foster execution of good government.

You heard in detail from my counterpart, the Los Angeles commander, about shore protection policy needs in response to sea-level rise. I think a comprehensive national policy should be developed now with a vision looking forward 50 to 100 years into the future to develop management plans for anticipated shoreline profile changes. That course of action will allow us to maximize the use of our federal resources in shoreline protection as we respond to sea-level rise.

We need a specific policy to address an issue nationwide of contaminated sediments in our rivers and estuaries. In numerous harbors, the existing sea floor sediments are contaminated above the level where the Clean Water Act or the Marine Protection Research of Sanctuaries Act would allow for unconfined aquatic disposal. But they are generally not to the level where the human health risks determine them to qualify for Superfund support. Therefore, there is a gap. And the sediments that fall in this gap degrade the aquatic productivity of our rivers and estuaries. I think the Commission should consider the ability to encourage people to fill that gap with dedicated funding or program authority to take these sediments that are degrading the aquatic quality, but still don't qualify for other federal programs.

Although this slide appears to be common sense, a few years ago when I was in the United States Pacific command, we had an issue where a policy prevented the United States navy from executing its missions in the ocean. As one of the uniformed members here, I would ask that when the policy is complete that you please review it and such that there is not an element of that that would prevent the armed forces of our nation from completing its homeland security or its national defense mission in the waters of the continental United States and Alaska, Hawaii or any possession or territory.

And in conclusion, again, I want to say thank you for the time that you've given me, representing the Corps, to address this Commission. And I encourage you to take bold steps to deliver a new federal management strategy for our nations and coastal areas. Thank you.



New England District  
US Army Corps of Engineers  
Report to the US Commission on Ocean Policy  
Northeast Meeting  
Boston, MA – 24 July 2002

The New England District of the US Army Corps of Engineers has identified six priority issues that require a national policy review. These issues include port development; evaluation of dredged material for aquatic disposal; siting issues with non-extraction (e.g. wind/wave turbines) energy structures; the need for prioritization of ecological restoration projects; shore protection planning for sea level rise; and environmental restoration of degraded urban estuaries that have highly contaminated sediments.

**Maintenance of our harbors and ports: priorities and the issue of competition.**

A national port and harbor 2050 and 3000 vision is needed. The healthy competition between major ports in each region needs to be examined to allow a national strategy for future port deepening. Currently all ports want to attract the deepest draft vessels possible. One philosophy is to allow economic efficiency and competition to attract each port's shipping lines. This places the federal government in the position of justifying multi-million dollar improvement dredging projects based on each individual port's future growth projection. The nation would benefit if a port alliance could be established in each region. The alliance would define the best navigation depth in each harbor. Allowing only a few ports to dredge to 50 feet and balancing the fleet mix of the others could make US ports more effective in delivering goods and services.

In states with numerous smaller ports, the long-term harbor management is usually left to individual cities and towns. The fleet mix that uses these facilities is only considered in the short term. Long-term statewide port management planning needs to be conducted. This should include dredged material disposal planning, shore side infrastructure and links to transportation corridors.

*Action: Establish a state champion for navigation issues and have them intercompare efforts with neighboring states and then at a regional (e.g. eastern seaboard) and international level. (CZM or DOT?).*

**The two existing laws regulating dredged material disposal create inconsistencies and do not adequately accommodate implementation of new technical advances.**

Authority for dredged material disposal site selection and designation is shared between USACE and EPA. This is a healthy system of checks and balances, but it does not have a clear appropriation or budget line item.

Bioassay and bioaccumulation testing required for ocean disposal of dredged material is very expensive. These analyses can cost a small marina \$40-100K or a major port \$4 million. It currently takes several years to analyze the sediments proposed for dredging, complete NEPA documents, and finalize permitting. Decades of monitoring of dredged material disposal sites has produced a lot of good science that should be used to reduce time and costs for allowing dredged material to be disposed.

Complicating this, our own statutes governing aquatic disposal need improvement. Specifically, the Marine Protection, Research, and Sanctuaries Act needs updating, it lacks an open evaluation framework for dredged sediments, and does not allow incorporation of new scientific advances. Further, it needs new provisions to allow consideration of the full range of management alternatives for dredged material (e.g. capping of contaminated sediments in ocean waters), and create better consistency with the Clean Water Act.

*Action: Replace the existing statutes with a single statute that addresses the regulation of dredged material placement in both inland and ocean waters of the United States. Incorporate flexibility in the evaluation approach and include the ability to incorporate the full range of management techniques and future technical advances.*

**Lack of "land use" policy for licensing or permitting non-extraction energy facilities (like wind or wave turbines) in waters of the US.**

Non-extraction energy projects in US waters need a complete policy formulation. Wind and wave energy projects in ocean waters are currently not subject to lease. This allows long term "ownership" of seafloor real estate to build the structures at no cost to the developer. The permitting of these structures currently only exists in ocean waters under Section 10 of the Rivers and Harbors Acts. This makes the USACE the lead federal agency for the NEPA process. Historically the Department of the Interior would have authority to lease federal lands to private developers. If MMS becomes lead in ocean waters then they should also be given NEPA lead in state waters. Otherwise in state waters USACE would be the federal (NEPA) lead agency, requiring the federal government to have two agencies with staff trained for these EIS processes.

*Action: Define a national policy for non-extraction energy projects in ocean and coastal waters.*

### **Need to establish coordinated interagency priorities on ecosystem restoration.**

Numerous agencies (USACE, NOAA, NRCS, EPA and others) all have ecological restoration programs. Numerous states have restoration priorities. Currently local ecological restoration projects are accomplished without an overall evaluation of the ecological deficits. Regional ecological restoration priorities of federal interest are seldom defined. The Coastal America partnership has defined the priority federal resource restoration opportunities in the New England region and we see tangible results. This type of partnership among federal agencies needs to be required in statute (not the currently voluntary program). The creation of the Coastal Zone Management Program decades ago was an attempt at organizing the federal and state coastal programs. We need to take this collaborative approach to the new field of ecological restoration to find the best ecological value (output) per federal expenditures. This will allow each region of the nation to define the types of ecological restoration that will provide the best return on the federal investments. These returns could then be given a metric (e.g. acres of wetlands restored or river miles opened to anadromous fisheries migration) to gauge federal program efficiencies.

*Action: Provide a metric to quantify goals and accomplishments of ecological restoration for resources of national interest (e.g. wetlands, anadromous fisheries migratory corridors, submerged aquatic vegetation, etc.) that is shared (partnered) across all federal programs.*

### **Shoreline Protection / Sea Level Rise.**

Our nation needs a policy to address shoreline protection and sea level rise. We need to develop long-term regional plans to address this potential problem. We also need to change our policy to recognize and allow environmental benefits as well as economic benefits in our planning process.

*Action: Create a federal 2050 and 3000 shoreline profile and institute management plans accordingly.*

### **Environmental Restoration of Urban Rivers and Harbors with Contaminated Sediments.**

We need a specific policy to address the nation-wide problem of contaminated sediments in our urban rivers and estuaries. In numerous harbors the existing seafloor sediments are contaminated well above levels that the Clean Water Act and Marine Protection, Research and Sanctuaries Act would allow for unconfined aquatic disposal. Some harbor bottom sediments (e.g. New Bedford, Massachusetts) are even above human health risk action levels. These sediments continue to degrade the aquatic productivity of our rivers and estuaries, threaten human health and pose a long-term economic liability. Current government programs have failed to adequately address this problem.

*Action: Establish a dedicated fund and program authority for the evaluation and remediation of contaminated sediments in our coastal watersheds.*