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**TESTIMONY OF REAR ADMIRAL RICHARD M. LARRABEE (USCG-Ret.)
DIRECTOR, PORT COMMERCE DEPARTMENT
PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**BEFORE THE HOUSE TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEES ON COAST GUARD AND MARITIME TRANSPORTATION AND
WATER RESOURCES AND ENVIRONMENT**

APRIL 30, 2003

Introduction

Good morning. I am Rear Admiral Richard M. Larrabee, United States Coast Guard Retired. I am currently Director of Port Commerce at the Port Authority of New York and New Jersey. I am testifying today on behalf of the American Association of Port Authorities. Founded in 1912, AAPA represents virtually every U.S. public port agency, as well as the major port agencies in Canada, Latin America and the Caribbean. Our Association members are public entities mandated by law to serve public purposes — primarily the facilitation of waterborne commerce and the generation of local and regional economic growth. My testimony today reflects the views of AAPA's United States delegation.

Mr. Chairman, AAPA commends you for convening today's hearing. We are extremely interested in issues that affect the ability of ports and the Corps of Engineers to construct and maintain the nation's navigation channels in a cost effective manner. Navigation channels are critical to the nation's economic health and the ability of our military to mobilize during emergencies.

If I leave one message with you today, it is that we must ensure that this country has access to adequate dredge capacity that is available when needed, is cost-effective, and is technically appropriate for the job. A wide range of policies established by the Congress and the U.S. Army Corps of Engineers influences whether such dredge capacity is available. Before Congress considers changes to existing ownership requirements for U.S. flag dredges, we respectfully request that you direct the General Accounting Office to study how all existing policies, including ownership requirements, are affecting our ability to maintain and construct navigation channels in a timely and cost-effective manner. (See attached AAPA Membership Resolution E-21, Capacity and Availability of Dredging Equipment.)

Scope and Importance of Navigation Channel Dredging

Each year, Corps of Engineers and contractor owned dredges remove on the order of 250 to 300 million cubic yards (mcy) of material from Congressionally authorized navigation channels. In 2002, the Corps directed the dredging of 250 mcy of material at a cost of \$923 million. Maintenance dredging generally accounts for almost 80% of the quantity dredged and 64% of the cost. The average cost per cubic yard for maintenance dredging is on the order of \$3.00 per cubic yard while the average cost for new work dredging is about \$7.00 per cubic yard. Approximately 90 percent of Corps dredging dollars were paid to private dredging contractors.

The nation's navigation channels convey over 2 billion tons of cargo every year. Over 95 percent of the volume and 75 percent of the value of cargo of U.S. foreign trade moves through navigation channels. These channels facilitate substantial economic and trade benefits for the nation, as well as for the local port community and regional economies. The following statistics highlight how critical our navigation channels are in facilitating national economic activity¹:

- U.S. Customs duty revenues totaling approximately \$15.6 billion were paid into the general treasury in fiscal year 1996 on cargo moved through ports.

¹ Source: U.S. Maritime Administration.

- Our nation's commercial deep draft ports annually handle in excess of \$600 billion in international trade.
- Foreign trade is an increasingly important part of the U.S. economy, currently accounting for over 30 percent of our Gross Domestic Product. U.S. exports and imports are projected to increase in value from \$454 billion in 1990 to \$1.6 trillion in 2010. The volume of cargo is projected to increase from 875 million to 1.5 billion metric tons in 2010.
- The overall national economic impact of port activities in 1996 generated:
 - 13 million jobs;
 - \$743 billion to the Gross Domestic Product; and
 - \$200 billion in taxes at all levels of government.

Currently, the Corps of Engineers has a portfolio of almost \$4 billion worth of Congressionally authorized deep-draft navigation channel construction projects and a backlog of maintenance needs of several hundred million dollars. AAPA member port authorities cost share these dredging projects at between 35 and 60% depending on the depth of the project. Without a highly competitive dredging industry and adequate dredge capacity to meet these critical dredging needs, AAPA is extremely concerned that benefits of international trade to this nation will be lost.

Existing Ownership Requirements for U.S. Flag Dredges

Federal law provides that vessels engaged in coast-wise trade must conform with certain eligibility requirements (i.e., U.S.-build, ownership and manning), which are commonly referred to as “Jones Act” requirements. While foreign interests are generally permitted to charter “Jones Act” qualified vessels for coast-wise trade activities, in 1992 Congress prohibited such foreign chartering for vessels engaged in dredging activities, subject to certain exemptions.

AAPA understands that there is currently disagreement within the U.S. dredging industry regarding the interpretation and implementation of the 1992 exemptions to the foreign chartering prohibitions. It is our understanding that the U.S. Customs Service has reviewed the controversy and has ruled that the current chartering activities within the U.S. dredging market comply with the 1992 legislation. AAPA does not have any independent expertise to offer an opinion on legal aspects of this issue or on the legislative history.

AAPA is aware that the Dredging Contractors of America (DCA) is promoting legislation to amend part of the 1992 exemption in a way that would severely restrict the foreign chartering activity that has been found permissible by the Customs Service. DCA argues that the foreign company involved in chartering “Jones Act” compliant dredges is exploiting the 1992 exemption and could potentially come to dominate the U.S. dredging market. DCA’s concern appears to be that, if left unchecked, the 1992 exemption could be used to charter all of the U.S. Jones-Act compliant dredges. Even in this most extreme and unlikely event, AAPA fails to see the damage that would result, since these dredges would still have to meet Jones Act requirements (i.e., ownership, U.S.- build, and manning). AAPA does not see how such an outcome could be abused to eventually raise costs, as might be expected if monopoly control were to exist, if a key cost factor is the cost of chartering the vessel from a U.S. firm -- firms that are members of DCA. AAPA has a greater concern that any amendments to restrict the 1992 exemption at issue would likely restrict competition on dredging projects, which can already be viewed as limited, and may increase the cost of dredging.

Other Requirements on Dredging Projects

In addition to the ownership requirements on dredges, there are a wide range of other operational, legal, and policy considerations that bear on individual dredging projects. We are very concerned that, in aggregate, these constraints act to limit the availability of dredging equipment, increase costs, or extend the time needed to conduct dredging.

The operational requirements of dredging projects vary widely and directly affect the availability of dredging equipment that can be used on a project. These requirements are related to geographic location of the project, the demand for dredging equipment by other projects, and weather conditions. For example, whether a project is maintenance or construction dredging, or whether it is in the open sea or a confined waterway, will dictate whether a hopper dredge or a mechanical (e.g., bucket or backhoe) dredge must be used.

A variety of laws and policies can also affect the availability of dredging equipment for dredging projects. Environmental requirements can greatly limit the times of year when dredging can occur or require the use of only certain types of dredging equipment. Policies intended to promote the development of a private dredging industry in the U.S. limit the use of the Corps-owned dredge fleet. Other policies serve to promote the small business sector. In an effort to promote competition within the private dredging industry, the Corps of Engineers often breaks a project into a number of smaller contracts rather than one large contract. In addition, the Corps is increasingly awarding contracts that permit the work to be finished within a time period that may be 3 to 5 times longer than would be needed under an efficient schedule. This allows contractors to bid on work that they may not be able to perform right away but will be able to do when they finish existing work.

While each of these requirements may make sense on its own, AAPA is becoming increasingly concerned that the cumulative effect of these requirements is to increase the cost and time needed to accomplish critical dredging, and may not be adequately addressing the desire to stimulate competition in the dredging market.

Attached are a series of tables describing the Corps' contract dredging program.² The tables compare the three-year periods 1990-92 and 2000-02, and they highlight the number of bids received on each contract during the three-year periods for maintenance and new work dredging and for set-aside and non-set-aside contracts. In all cases, the proportion of contracts receiving 3 or fewer bids increased considerably over the 10-year. The proportion of non-set-aside

² This analysis of Corps contract information is based on data from <http://www.iwr.usace.army.mil/ndc/>

maintenance dredging contracts receiving three or fewer bids increased by 12.5% over the 10-year period, while the proportion of such new work contracts increased by 25%. For the 2000-02 period, 25% of new work set-aside contracts and 20% of new work non-set-aside contracts were awarded based on only one bid.

While the number of firms winning maintenance dredging contracts has remained the same over the 10-year period reviewed, the total number of firms winning new work non-set-aside construction contracts has declined by one-third, from 24 firms to 16. In 1990-92, eight firms each won more than two contracts, which together represented 70% of all such contracts. However, by 2000-02, three firms together captured more than 70% of all new work non-set-aside contracts.

As this information illustrates, we believe the aggregate effect of the increasing operational, legal and policy influences affecting dredging projects has been decreased competition, increased costs, and delayed projects. A recent General Accounting Office (GAO) report on the Corps of Engineers' program to place government-owned dredges into "ready reserve" status raised concerns that the program has, in the short term, likely resulted in increased costs for dredging and diminished competition.³ While GAO determined the ready-reserve program carries with it additional costs to the Corps of Engineers, its review could not substantiate the benefits to the government. In addition, GAO identified several data management and analysis deficiencies in the Corps management of the dredging program, including deficiencies in the procedures for developing government cost estimates, which make it very difficult to assess the costs and benefits of various policy changes.

³ Effects of Restrictions on Corps' Hopper Dredges Should Be Comprehensively Analyzed, General Accounting Office, GAO-03-382, March 2003.

Conclusion

AAPA is deeply appreciative of this committee's leadership in convening this hearing. We urge you to not only consider the effect of ownership on the dredging market, but how changes to the ownership requirements in combination with the other requirements on the dredging program also affect the important national goal of constructing and maintaining navigation channels in a timely and cost-effective manner.

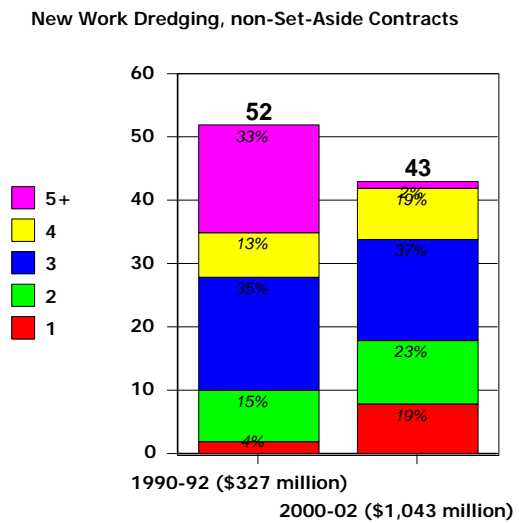
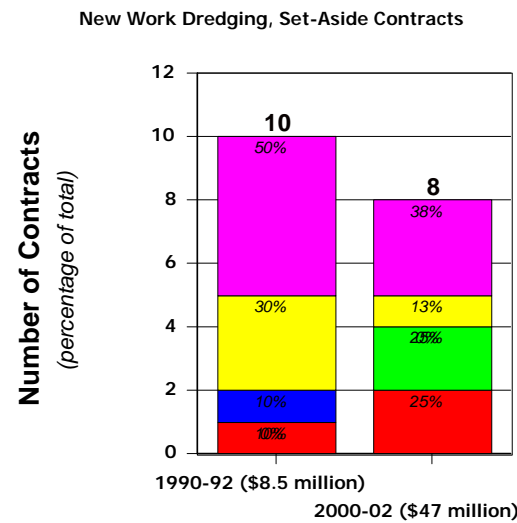
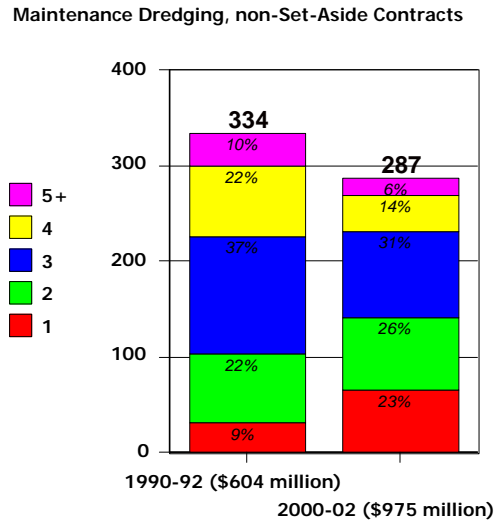
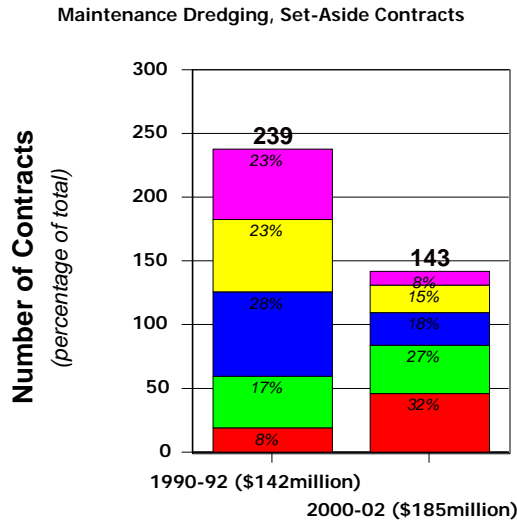
As we've discussed, we are concerned that any legislation to alter the ownership or chartering requirements for dredges in the U.S. may have serious unintended consequences on the nation's ability to adequately maintain and construct navigation channels. We, therefore, urge Congress to direct the General Accounting Office to review how changes in ownership and/or chartering requirements, in combination with other dredging laws and policies, are likely to affect the nation's ability to construct and maintain navigation channels.

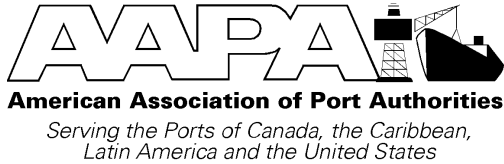
Thank you, Mr. Chairman. I look forward to answering any questions you or other committee members may have.

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BID HISTORY FOR CORPS OF ENGINEERS DREDGING CONTRACTS

(Column Segments Represent Number of Bids per Contract)





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Resolution E-21

CAPACITY AND AVAILABILITY OF DREDGING EQUIPMENT

WHEREAS, port authorities depend upon adequately maintained federal navigation channels and harbors to serve commercial and recreational traffic, and as non-Federal sponsors of Federal navigation projects, have invested significant public dollars in channel construction and have a fiduciary responsibility to support the regular maintenance of these projects in the most cost-effective manner;

WHEREAS, federal navigation channels and harbors also serve this country's national defense needs, both at home and overseas;

WHEREAS, the viability of the domestic and international maritime industry, the competitiveness of U.S. ports, the fishing industry, recreational boating and tourism, marine and maritime labor, importers, exporters, U.S. agriculture, U.S. manufacturing, and U.S. consumers depends on adequately maintained and regularly improved federal navigation channels and harbors;

WHEREAS, it is the responsibility of the U.S. Army Corps of Engineers to ensure the construction and maintenance of federal navigation channels to meet these needs, by contracting with private industry dredging companies as well as the use of Corps owned hopper dredges;

WHEREAS, it is in the interest of public port authorities to have a financially viable private sector dredging industry with the ability to reinvest and modernize equipment;

WHEREAS, it is also in the interest of public port authorities to have sufficient capacity and healthy competition in the private dredging industry to ensure reasonable and fair pricing for channel maintenance as well as improvement projects;

WHEREAS, at times private dredge capability does not exist to perform certain Corps dredging requirements, due to geographic location, peak demand, extreme conditions, difficult physical sites, and frequency of required dredging;

E-21 (continued)

CAPACITY AND AVAILABILITY OF DREDGING EQUIPMENT

WHEREAS, in certain parts of the country unpredictable safety hazards and navigation constraints require immediate response to protect life, property and commercial navigation, and private dredging mobilization time and distance constraints often do not allow for timely emergency response.

WHEREAS, national emergencies such as terrorist attacks on harbors and channels do not allow for mobilization delay;

WHEREAS, the federal hopper dredge fleet has provided essential services to the maritime community generally and to port authorities specifically;

WHEREAS, the American private sector dredging industry has few companies with the capability of undertaking very large construction contracts;

NOW THEREFORE BE IT RESOLVED that the American Association of Port Authorities urges Congress and the Corps of Engineers to adopt policies to ensure adequate capacity, and the availability of dredging equipment to meet dredging needs;

BE IT FURTHER RESOLVED that the American Association of Port Authorities urges that Congress direct the General Accounting Office to study the issue of competition in the U.S. dredging industry and that Congress and the Corps of Engineers should not take any action that would inhibit competition, but should promote increased competition in the dredging industry.

**New Resolution
Recommended for Adoption by the U.S. Legislative Policy Council.
Approved 09/02**

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