



Lake Carriers' Association

The Greatest Ships on the Great Lakes

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Via e-mail to Fern Gibbons@commerce.senate.gov

Senator John Thune

Chairman

Senate Committee on Commerce, Science and Transportation

227 Hart Senate Office Building

Washington, DC 20510

c/o Ms. Fern Gibbons

Re: Written testimony for February 5, 2015 hearing on impacts of vessel discharge regulations on shipping and fishing industries

Executive Summary

Lake Carriers' Association believes a uniform, national ballast water discharge standard is critical to waterborne commerce. Ships sailing the Great Lakes transit many States' and Canadian waters on a single voyage. Inflexible, inconsistent and sometimes conflicting regulations have the ability to shut down shipping and the industries we support. Adding to the current patchwork quilt of U.S. regulations (eight Great Lakes States and two Federal Agencies) both the Government of Canada and the Province of Ontario have proposed invasive species regulations on vessel operators. Canada has even proposed a "transit standard," which they opposed when offered by the State of New York. Canada's transit standard would put in place a regulatory embargo preventing our ships from calling on Canadian Great Lakes ports and impose a regulatory blockade preventing U.S.-flag vessels from trading between American Great Lakes ports. Vessels - such as lakers - that confine their operations to a "geographically limited area" should not need to treat their ballast water, as they do not introduce aquatic nuisance species (ANS) by moving from one ecosystem to another. The Great Lakes are a single interconnected body of freshwater; ANS introduced by oceangoing vessels move freely about. After ten years of studying the problem, both the U.S. Coast Guard and U.S. Environmental Protection Agency have concluded that there are no treatment systems capable of operating in the Great Lakes environment (wide temperature variations, very fresh, heavy sediment, strong tannins...), nor are there system meeting lakers' operational requirements (high flow rates, limited space, short voyages, icing conditions...). Best Management Practices remain the most appropriate way to regulate lakers' ballast water discharges.

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The Association Representing Operators of U.S.-Flag Vessels on the Great Lakes Since 1880

AMERICAN STEAMSHIP COMPANY ♦ ANDRIE INC. ♦ ARMSTRONG STEAMSHIP COMPANY ♦ BELL STEAMSHIP COMPANY
CENTRAL MARINE LOGISTICS, INC. ♦ GRAND RIVER NAVIGATION COMPANY, INC. ♦ GREAT LAKES FLEET/KEY LAKES, INC.
INLAND LAKES MANAGEMENT, INC. ♦ THE INTERLAKE STEAMSHIP COMPANY ♦ LAKES SHIPPING COMPANY
LAKE MICHIGAN CARFERRY SERVICE ♦ PERE MARQUETTE SHIPPING ♦ PORT CITY MARINE SERVICES ♦ PORT CITY STEAMSHIP SERVICES
SOO MARINE SUPPLY, INC. ♦ UPPER LAKES TOWING COMPANY, INC. ♦ VANENKEVORT TUG & BARGE INC.

Written Testimony

I am James H.I. Weakley, President of Lake Carriers' Association (LCA), the trade association that has represented U.S.-flag vessels operating exclusively on the Great Lakes since 1880. Last year, my members moved more than 90 million tons of cargo on the Great Lakes. Those cargos are the very foundation of America's industrial economy:

- Michigan and Minnesota iron ore for steel production in Indiana, Ohio, Pennsylvania and Michigan;
- Limestone and cement for construction throughout the Great Lakes basin;
- Coal from Wisconsin and Ohio docks for power generation basin-wide;
- Salt to de-ice wintry roads throughout the region; and
- Midwest grain from Wisconsin and Minnesota docks for New York flour mills.

The vessels my members operate were built in the United States, are crewed by American mariners, and are owned by American corporations. Those are, of course, the tenants of the Jones Act, the foundation of America's domestic maritime policy since 1920. The U.S. Army Corps of Engineers has estimated that my members annually save their customers billions of dollars in freight costs compared to the next least costly mode of transportation, so clearly the Jones Act has achieved its goal of a vibrant American merchant marine.¹

Waterborne commerce, particularly that on the Great Lakes, desperately needs a uniform, Federal standard for the regulation of ballast water and other vessel discharges. No disrespect to the eight Great Lakes states is intended, but shipping cannot operate efficiently while trying to comply with inflexible, inconsistent and sometimes conflicting state regulations.

Let me give you a couple of examples. An iron ore cargo mined in Minnesota and destined for a steel mill in Pennsylvania starts out in Minnesota waters, then passes through Wisconsin, Michigan, and is offloaded to an Ohio railhead. A cargo of Midwest grain loaded in Minnesota and bound for Buffalo adds Pennsylvania and New York waters to that list. While transiting the Detroit-St. Clair River on those voyages our sailors cross the international border seventeen times, in addition to many border crossings in the St. Marys River, which connects Lake Superior to Lake Huron.

¹ Great Lakes Navigation System: Economic Strength to the Nation, February 2009.

Now, imagine having to comply with a different set of regulations each time the vessel enters a State's waters, not to mention all of the times we crisscross between U.S. and Canadian waters during a single voyage. Assuming the regulatory requirements were achievable, and many State regimes are not, the additional expense would surely drive cargo to our already crowded rail lines and highways, or worse, bring an end to some mining and manufacturing in the Great Lakes states.

The regulatory process is mindboggling. Every five years, the Environmental Protection Agency (EPA) and each Great Lakes state (in addition to other states and jurisdictions delegated authority under the Clean Water Act) commence a full rulemaking process to reissue the Vessel General Permit (VGP). Although many of these rulemakings take place simultaneously, the process and duration varies for each jurisdiction. Perhaps the most frustrating process took place in Illinois. After months of being told that the state would not be conducting a VGP rulemaking process, we were informed that it was the Wednesday before Thanksgiving when the proposed rule was published that they were issuing state requirements. The comment period for the Illinois proposed rule ended the Monday after Thanksgiving.

Each VGP rulemaking, at both the state and Federal level, is also subject to legal challenges. In some cases, we have challenged state and Federal requirements. In other instances we have intervened and defended the regulatory agencies against challenges filed by environmental organizations. Currently, the Canadian Shipowners Association is simultaneously challenging the EPA on some of its VGP II requirements and has joined LCA in its defense of the EPA in a suit brought by an environmental group. After the first VGP, we defended the decisions made by the States of Wisconsin, Minnesota and Michigan. We also challenged the EPA's final rule and supported the legal challenge to the State of New York. Currently, we are defending New York's VGP II decisions after our successful defense of Minnesota's decision.

The Canadian government has further muddied the waters by proposing ballast water regulations that include vessels merely transiting their waters. This is puzzling, as Canada vehemently opposed a "transit standard" when it was proposed by the State of New York. To New York's credit, they have since dropped their requirement for vessels simply transiting their waters to have ballast water treatment systems installed. In Attachment C, the Canadian Transport Minister cites the Boundary Waters Treaty of 1909 in Canada's opposition to the New York transit standard proposal and notes "that neither the Canadian nor US domestic fleet is a likely vector for

the introduction of invasive species.” The Canadian Foreign Minister, in Attachment D, states “further, as currently proposed, the state of New York’s amendments to the EPA’s National Pollutant Discharge Elimination System are contrary to the Canada-U.S. Boundary Waters Treaty of 1909.” He then goes on to point out that “New York’s proposed rules inappropriately classify Canadian ships operating in the St. Lawrence Seaway as foreign shippers, categorizing them with shippers operating outside of North America.”

Please keep in mind that the International Maritime Organization (IMO) has developed a ballast water discharge standard, as have the EPA and U.S. Coast Guard (USCG), not a transit standard. We believe Canada is the only country in the world to require vessels that have no intention of discharging ballast water in that country’s waters to require ballast water treatment systems to be installed to meet a numeric discharge standard. Knowing full well that U.S.-flag lakers don’t currently have the ability to meet the Canadian requirement, nor will our vessels in the near future, Transport Canada proposed their transit standard in a 2012 discussion paper. This would have the practical impact of denying our vessels entry into Canadian ports or waters on the Great Lakes, even for voyages when our vessels are not discharging ballast water in Canadian waters. In essence, the Canadian Government is proposing a regulatory embargo on U.S.-flag lakers sailing the Great Lakes. Since Great Lakes navigation channels straddle the international border, it is physically impossible for our vessels to make a domestic voyage without entering Canadian waters. We would not be able to deliver iron ore from Duluth to the steel mills of Indiana Harbor. We would not even be able to transport Michigan iron ore from Marquette to Detroit. Through its regulatory blockade, the Canadian government would claim the authority to control cargo movements not only between U.S. states, but also to halt commerce within a single state.

Any ballast water legislation needs to make a critically important distinction, namely that vessels – such as “lakers” – that confine their operations to a “geographically limited area” need not treat their ballast, since they do not move between ecosystems. The Great Lakes are interconnected and ANS introduced by oceangoing vessels can and do migrate independent of commercial navigation. For example, the ruffe, first discovered in Duluth/Superior Harbor at the western end of Lake Superior in late 1980s, is slowly migrating along Superior’s southern shore. This range expansion will continue even if no commercial vessels ever sail Lake Superior again. That’s why it’s appropriate that the USCG and EPA regulations governing lakers’ ballast water require Best Management Practices (BMPs) rather than treatment of ballast water for our vessels. LCA supports these USCG regulations.

The Great Lakes need protection from oceangoing vessels' ballast water, not from lakers. More than half of our fleet is too large to transit from Lake Erie to Lake Ontario via the Welland Canal and all of our vessels are prohibited by the USCG from sailing beyond Anticosti Island in the Gulf of St. Lawrence. As demonstrated in Attachment B, U.S.-flag lakers trade primarily in the upper four Great Lakes (Superior, Michigan, Huron and Erie) from the port of Duluth/Superior to Indiana Harbor or Buffalo and all points in between. On occasion, the smaller LCA vessels venture into Lake Ontario and the St. Lawrence River. Canadian-flag lakers trade between the St. Lawrence River and all five Great Lakes. Oceangoing vessels or "salties" enter the St. Lawrence River and Great Lakes from the Atlantic Ocean and hail from ports throughout the world.

There has been an intensive effort worldwide to develop treatment systems that will end the introduction of ANS via vessels' ballast water. I am proud to say that LCA was among the pioneers in such efforts. Back in the late 1990s, we partnered with the Northeast Midwest Institute to test a ballast water treatment system that employed filtration and ultraviolet (UV) light and could be installed on the oceangoing vessels that trade to and from the Great Lakes. That research helped lay the groundwork for the ballast water treatment systems that are now coming into the global market and being installed on vessels sailing the oceans.

The USCG and EPA have independently concluded, however, that if regulations were to require lakers to treat their ballast water to IMO discharge standards, our vessels would be unable to comply, and thus, waterborne commerce on the Great Lakes would cease to exist. There is no ballast water treatment system that has been proven capable of meeting U.S. lakers' operational requirements. U.S. lakers' ballast water must be pumped out at rates that approach 80,000 gallons per minute when loading cargo. No ballast water treatment system is effective at that flow rate. Our vessels lack the electrical capacity to simultaneously handle cargo, operate ballast pumps and treat the ballast water. Nor do they have the machinery space necessary to install enough treatment systems and additional electrical generators to treat our ballast water.

Another obstacle is that the voyages on the Great Lakes are of very short duration compared to the ocean trades. A vessel hauling iron ore from Two Harbors, Minnesota, to Gary, Indiana, is underway for 62 hours. A vessel moving limestone from Marblehead, Ohio, to Cleveland, Ohio, is underway for 6 hours. The ballast water treatment systems that use biocides are effective on an ocean voyage that stretches for weeks or a month or more, but not on the short hauls that characterize Great Lakes shipping. There is not sufficient "contact time" for the biocide to sterilize

the water and then be rendered safe with a neutralizing agent prior to discharge. Many ballast water treatment systems designed for oceangoing vessels require saltwater as a catalyst to create the biocide. Our freshwater is significantly fresher than the IMO definition, so even systems certified for use in freshwater may not work in the Great Lakes.

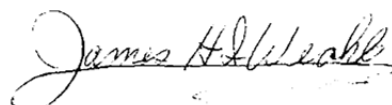
Other problems that would need to be solved before lakers could treat their ballast water include the frigid water temperatures and filter-destroying ice chunks at the opening and close of the shipping season and the high level of sediment suspended in the water at many Great Lakes ports. The levels of tannins in the Great Lakes impede the effectiveness of ballast water treatment systems using UV light.

The preceding comments are largely academic because the need to treat lakers' ballast water is questionable at best. Most LCA vessels confine their operations to Lakes Superior, Michigan, Huron, and Erie. Only a few LCA vessels occasionally transit the Welland Canal and trade to a Lake Ontario port. By law, none may sail on the oceans, so their ballast water originates in the Great Lakes. Add the fact that ballast water is but one of 64 vectors identified by the U.S. Geological Survey for introduction of ANS into the Great Lakes and there is even less reason to treat lakers' ballast water.

My members implement BMPs to lessen the risk that their ballast water might spread an ANS introduced by oceangoing vessels. In fact, LCA implemented those BMPs before they were required by USCG and EPA regulations.

In summary, LCA shares everyone's desire that vessel ballast water introduction of ANS be a thing of the past. On the Great Lakes, that goal will be best met with uniform Federal regulations that recognize that lakers, operating in a "geographically defined route," need not treat their ballast water, as it is oceangoing vessels, not lakers, which introduce ANS to the Great Lakes. We ask Congress to unravel the patchwork quilt of ballast water regulations while recognizing the technological impracticability of environmentally unnecessary laker ballast water treatment.

Very respectfully,



James H. I. Weakley
President

Attachments:

- (A) U.S.-Flag Carriage on the Great Lakes: 2009-2014 and Long-Term Average
- (B) Graphic of Great Lakes/St. Lawrence Seaway vessel trades
- (C) Canadian Transport Minister Baird letter to New York Governor Patterson of December 4, 2008
- (D) Canadian Foreign Affairs Minister Cannon letter to Secretary of State Rice of December 11, 2008

Attachment A

U.S.-Flag Carriage on the Great Lakes: 2009-2014 and Long-Term Average
(net tons)

Commodity	2009	2010	2011	2012	2013	2014	Average 2009-2013*
Iron Ore							
Direct Shipments	23,271,702	39,663,547	44,443,975	42,700,840	41,218,215	41,924,590	42,006,644
Transshipments	759,385	2,364,871	2,780,768	2,488,187	2,633,826	3,699,617	2,566,913
Total - Iron Ore	24,031,087	42,028,418	47,224,743	45,189,027	43,852,041	45,624,207	44,573,557
Coal							
Lake Superior	15,427,708	15,847,574	12,954,188	11,947,617	12,216,668	11,325,509	13,241,512
Lake Michigan	1,996,793	2,017,395	3,166,372	2,654,506	2,314,161	1,870,773	2,538,109
Lake Erie	3,250,387	3,674,897	4,118,767	2,977,825	3,706,811	4,576,207	3,619,575
Total - Coal	20,674,888	21,539,866	20,239,327	17,579,948	18,237,640	17,772,489	19,399,195
Limestone	17,067,232	20,410,266	21,434,839	21,794,394	22,111,494	21,459,429	21,437,748
Cement	2,865,323	2,782,259	2,817,846	3,183,388	3,129,748	3,248,033	2,978,310
Salt	1,260,901	1,391,239	1,452,134	1,020,157	1,004,837	1,400,068	1,217,092
Sand	262,805	225,593	332,172	336,316	371,279	376,456	316,340
Grain	304,507	306,872	283,200	371,406	447,653	259,461	352,283
Totals	66,466,743	88,684,513	93,784,261	89,474,636	89,154,692	90,140,143	90,274,526

* Excludes 2009.