



LAKE MICHIGAN FEDERATION



*an international coalition to protect and restore
the Great Lakes / St. Lawrence River ecosystem*

July 22, 2004

Admiral Thomas H. Collins, Commandant
c/o Executive Secretary
Marine Safety and Security Council (G-LRA)
United States Coast Guard Headquarters
2100 Second Street, SW
Washington DC 20593-0001

Via facsimile (202-267-4158) and US Mail

Re: Petition for Reconsideration and 2nd Correction, Ballast Water Management Reporting Penalty Regulation USCG-2002-13147 published at 69 Fed. Reg. 32864 (June 14, 2004)

Dear Admiral Collins:

The Lake Michigan Federation (LMF) and Great Lakes United (GLU) hereby petition you, pursuant to the Administrative Procedure Act at 5 U.S.C. §553(e) and 33 CFR 1.05-20(a) (Petitions for Rulemaking), to reconsider your refusal, in the above cited regulation, to bar vessels from outside of U.S. waters from entry into the Great Lakes while they remain in violation of mandatory Ballast Water Management (BWM) reporting requirements. We urgently request that you issue a second correction to the Coast Guard's new regulation that includes denial of entry to the Great Lakes as a penalty for violation of BWM reporting requirements before the new rules take effect on August 13, 2004.

LMF and GLU are citizens' organizations devoted to the restoration of the Great Lakes, with a keen interest in overcoming the problems with nonindigenous invasive species that have plagued the Great Lakes for over 50 years. We believe that the recent petition served upon USCG by NY Attorney General Spitzer, 6 other Great Lakes states, and Great Lakes United underscores the importance of the Coast Guard reaffirming its commitment to do everything possible under the National Invasive Species Act (NISA) to keep new invasives from entering the Great Lakes basin.

LMF and GLU each submitted formal comments on April 7, 2003, to your new rule on Penalties for Non-Submittal of Ballast Water Management Reports, Docket no. USCG-2002-13147; see documents 18 (LMF comment letter), and 19 (GLU comment letter.)

Both of these comment letters provided arguments in support of barring entry into the Great Lakes as an effective and reasonable penalty for vessels while they remain in violation of this NISA regulation.

The Coast Guard's Response to Comments, published in its Federal Register notice of promulgation of the final regulations, declined to bar entry to violating vessels, or even delay them for the forty minutes it takes to fill out the form. The sole justification that the Coast Guard provides for refusing to even delay entry into the Great Lakes for vessels that are in violation of this regulation is illogical, as follows:

Two commenters asked that vessels be denied entry into the Great Lakes if they do not submit a ballast water reporting form.

The Coast Guard disagrees with this comment. Compliance for submission of ballast water reporting forms in the Great Lakes is quite high, and therefore, the Coast Guard does not intend to deny vessels entry into the Great Lakes, or delay their voyages.

see final rule, 69 Fed. Reg. 32864-32871 at 32866 (June 14, 2004); see also, final rule-correction, 69 Fed. Reg. 40767 (July 7, 2004.)

This justification is in direct opposition to the Coast Guard's own ballast water management regulations as stated in 33 CFR 151.1506, "No vessel subject to the requirements of this subpart may be operated in the Great Lakes or the Hudson River, north of the George Washington Bridge, unless the master of the vessel has certified, in accordance with Sec. 151.1516, that the requirements of this subpart have been met." Since USCG is using its authority under Subpart C to enforce BWM reporting requirements for all ships that wish to enter the Great Lakes, the only reasonable interpretation of 33 CFR 151.1506 is that ships that do not comply with these BWM reporting requirements be denied entry. Subpart C must be applied evenly to all vessels desiring entry into the Great Lakes. The existing regulations cannot be satisfied unless ships, regardless of classification, report and certify their ballast water prior to entering the Great Lakes. Simply put, ships that fail to report and certify cannot enter.

The Coast Guard claim that the vast majority of vessels entering the Great Lakes comply with BWM reporting requirements is no justification for allowing entry without compliance to a small number of violators. To the contrary, were this the case, it would be evidence that barring entry to those violators would impose a relatively minor burden upon the regulated industry. However, according to an affidavit submitted with NY Attorney General Spitzer's aforementioned petition, there are no BWM reports available for nearly 75% of the ships that entered the Great Lakes in 2003. It is thus impossible to accurately determine compliance rates, as there is no written record of whether these unaccounted ships did not have ballast on board or were simply in violation of BWM reporting requirements.

The importance of making this correction, and barring entry to violating vessels, is greatly increased by the nature of the invasive species problem in the Great Lakes. Unlike chemical pollutants, the nonindigenous invasive species discharged in the ballast from a few violating vessels can literally grow into a severe problem throughout the entire Great Lakes. If compliance with these NISA requirements by vessels entering the Great Lakes is actually quite high, as the Coast Guard claims, then action to effectively enforce compliance by barring the last few violating vessels from entry into the Great Lakes is the critical next step to achieving NISA's purposes. We implore you to reconsider relying solely upon a \$27,500 fine to stop invasives from reaching the Great Lakes, and ask that you issue a second correction to the Ballast Water Management Reporting Penalty Regulation USCG-2002-13147 published at 69 Fed. Reg. 32864 (June 14, 2004) adding denial of entry as a penalty for failure to submit a BWM report before your new regulation takes effect.

We also request that you add this request for reconsideration to the administrative record on Docket No. USCG-2002-13147. We further request that you supplement the administrative record by adding all comments (written or oral) received subsequent to the Coast Guard's promulgation of the initial final rule that led the Coast Guard to publish its first corrections to that final rule on July 7, 2004.

Sincerely,

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cc: Docket Management Facility (USCG 2002-13147)
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