



## **National Sea Grant Law Center**

### **Legislative Announcement**

**August 2005**



### **Michigan Passes Ballast Water Laws**

In June 2005, Michigan's governor signed two bills into law, House Bill 4603 and Senate Bill 332, to reduce the number of non-native, invasive species introductions from ship ballast water. Beginning in 2007, oceangoing ships will be required to obtain a permit from the state in order to use its ports. The permit will be issued only to those able to demonstrate that they will not discharge aquatic invasive species (AIS) into state waters.

#### **Background**

A ship takes in and discharges millions of gallons of water from its ballast tanks in order to increase the vessel's stability when freight is loaded and unloaded. Ballast water is known to harbor many species of aquatic plants and animals and is often loaded hundreds or thousands of miles from the site where it is discharged. This can spread non-native species into areas where they have never before been found. Particularly aggressive species, termed "invasive," can damage the surrounding environment and compete with native species for food and habitat. The Great Lakes are now home to more than 160 non-native species, with approximately ten percent of these, including the zebra mussel, causing billions of dollars in damages.

#### **The New Michigan Laws**

Michigan bans the discharge of substances into its waters when the discharge could cause injury to: public health; commercial, recreational, and agricultural uses of the water; the value of waterfront land; the health of livestock and wild animals; or the value of fish and game. With the passage of House Bill 4603, oceangoing ships are forbidden from discharging ballast water into Michigan's state waters without a permit, order, or rule from the Michigan Department of Environmental Quality (DEQ). Discharging ballast water without such approval will subject the person responsible for the vessel to possible civil fines and imprisonment.

Senate Bill 332 designates the DEQ as the lead agency in the prevention and control of AIS. (The legislation refers to "aquatic nuisance species." ANS is often used interchangeably with AIS, but AIS is the preferred term of federal and state managers.) The bill amended several existing Michigan laws to implement the provisions in House Bill 4603 that require oceangoing ships to obtain a permit from DEQ. To receive a permit, the vessel must demonstrate that it will not discharge AIS into Michigan waters. If a vessel's operator wants to discharge his or her ballast water or waste in state waters, the operator must use "environmentally sound technology and methods" to prevent the discharge of AIS. The bill also directs DEQ to enter into agreements with neighboring states for the creation of a "Great Lakes aquatic nuisance species coalition." The coalition, which must be in place by January 1, 2007, is charged with generating basin-wide laws to prevent the discharge of AIS from seafaring ships in the Great Lakes.

#### **Federal Law**

The Coast Guard maintains a separate ballast water management program, which requires vessels traveling in the Great Lakes to maintain onboard ballast water records. Under the program, ships must either discharge their ballast water more than 200 nautical miles from the U.S. shore (outside the Exclusive Economic Zone, or EEZ); refrain from discharging ballast water while in

waters of the U.S.; or discharge the ship's ballast water pursuant to an "environmentally sound method" approved by the Coast Guard prior to the vessel's voyage (33 CFR § 151.1510). In addition, federal law requires vessels operating in the Great Lakes to provide the Coast Guard with the name of the vessel and its owner, to state whether ballast water is being carried, and to give the time and place of previous ballast water exchanges.

Earlier this year, a federal district court instructed the Environmental Protection Agency (EPA) to regulate ship ballast water discharges in U.S. waters. The lawsuit stemmed from an EPA exemption which allowed ships to discharge their ballast water into waters of the U.S. without obtaining a National Pollutant Discharge Elimination System (NPDES) permit. Unless Congress passes one of the ballast water bills mentioned below, EPA will have to develop a ballast water permitting program to comply with the court's order.

Several ballast water bills are currently pending in Congress, including Senate Bill 363 and Senate Bill 770. S. 363 is limited to ballast water regulation and if passed, the Act would require operators of vessels sailing from outside the U.S. EEZ to U.S. ports on the Great Lakes to exchange their ballast water outside of the EEZ or in other areas where the discharged water will not introduce aquatic nuisance species into U.S. waters. S. 770 is a comprehensive aquatic invasive species prevention and control act that, if passed, would require ballast water treatment to a specific discharge standard, as well as provide support for other actions.

### **The Commerce Clause**

The U.S. Constitution gives Congress the power to regulate interstate commerce. State laws that conflict with federal commerce laws are usually preempted by federal law. In addition, state laws that unduly burden interstate commerce can be struck down as unconstitutional. If challenged, a court would likely uphold the new Michigan laws, since they are not discriminatory and they promote the state's legitimate interest of preventing the introduction of invasive species into its waters. However, if shipping companies decided to stop using Michigan ports in order to avoid the permit requirement, thereby significantly increasing transport costs for Michigan companies traditionally using Michigan ports, interstate commerce could be greatly burdened and the laws might be invalidated. In addition, the DEQ will have to take care not to unduly burden interstate commerce when enacting future rules to further Michigan's plans to prevent the introduction of aquatic invasive species.

### **Where can I find the Michigan bills?**

Senate Bill 332 - [www.legislature.mi.gov/documents/2005-2006/publicact/pdf/2005-PA-0033.pdf](http://www.legislature.mi.gov/documents/2005-2006/publicact/pdf/2005-PA-0033.pdf)

House Bill 4603 - [www.legislature.mi.gov/documents/2005-2006/publicact/pdf/2005-PA-0032.pdf](http://www.legislature.mi.gov/documents/2005-2006/publicact/pdf/2005-PA-0032.pdf)

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