

Sinking states' role in ballast water rules

As differences surface among governors, bill passes in U.S. House to take away permitting authority from Great Lakes states

by Tim Anderson (tanderson@csg.org)

The political, environmental and economic battle over the future of rules governing ballast water discharges took some new twists and turns during the latter half of 2011.

In this region, a dispute has surfaced among some governors over how stringent state-level permitting programs can and should be.

Meanwhile, in the nation's capital, moves were made to take such decisions out of the hands of governors and legislatures. A proposal passed by the U.S. House in November would strip states of the authority to establish ballast water standards more stringent than those set at the federal level. It would also set a new national treatment standard in line with that of the International Maritime Organization (IMO).

The ballast water provisions in HR 2838, the Coast Guard & Maritime Transportation Authorization Act, have been criticized by several key Great Lakes conservation groups, including the Alliance for the Great Lakes.

"To my mind, it makes very little sense for Congress to be stepping in at a time when we're actually seeing the most progress among federal agencies in the last decade," says Joel Brammeier, president and CEO of the Alliance, noting that tougher new regulatory programs are being established by the U.S. Coast Guard and Environmental Protection Agency.

"Congress is proposing something less protective than what we expect the agencies to put into place and less protective than what some of the Great Lakes states are doing."

An amendment to HR 2838 (proposed by U.S. Democratic Rep. Tim Bishop of New York) would have preserved states' rights to impose more-stringent ballast water standards.

Ballast water, invasive species and the Great Lakes

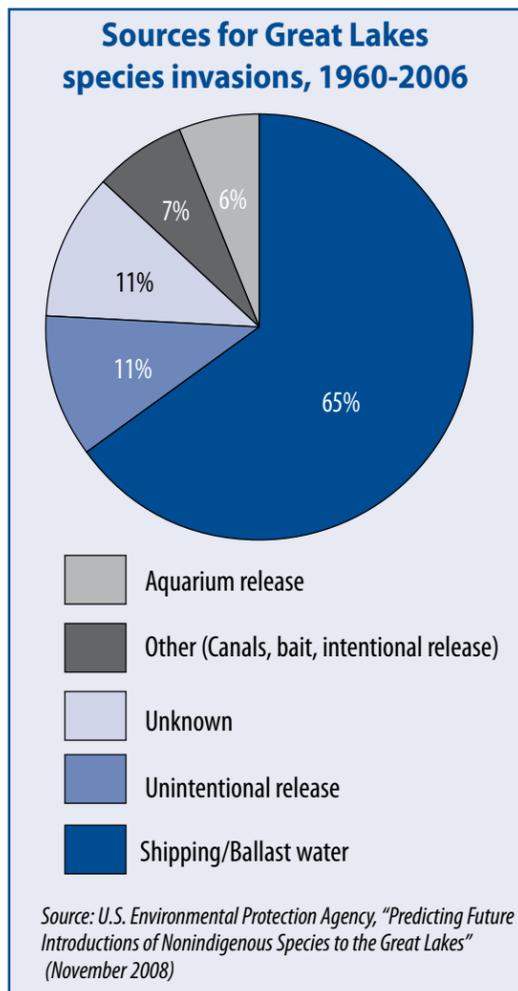
There are an estimated 180 invasive species in the Great Lakes, an ecological and economic problem that costs an estimated \$200 million a year.

Over the last half-century, the leading source of these invasions has been the ballast water of ocean-going ships.

Beginning in 2006, all overseas vessels entering the Great Lakes were required to conduct saltwater flushing and ballast water exchanges. Since then, there have been no reports of invasive species entering the Great Lakes via ocean-going vessels. However, there are limits to the efficacy of exchanges and flushing. For example, some species may be able to tolerate high salinity levels, and there are other variables such as weather conditions and the knowledge of the crew on board.

As a result, there is an ongoing push for tougher standards as well as for advances in treatment technologies. Pending U.S. Coast Guard and U.S. Environmental Protection rules, as well as federal legislation, would set a numeric ballast water standard based on one already established by the International Maritime Organization (IMO).

Great Lakes advocacy groups say this standard is not protective enough and are supporting New York's plan to implement tougher rules. The Great Lakes shipping industry has said the treatment technologies needed to meet standards tougher than the IMO's are not available.



That amendment, though, was defeated largely along partisan lines; only 15 Republicans supported it and 15 Democrats opposed it. Many of the exceptions to that party-line voting came from the Great Lakes congressional delegation.

For example, all nine of Michigan's House Republicans voted in favor of the amendment to retain state authority. (Michigan was the first state in the nation to adopt a state-level permitting program for ballast water discharges.) In contrast, five of the Democratic votes against Bishop's proposal came from Great Lakes states — two from Indiana and one each from Ohio, Illinois and Pennsylvania.

Those votes illustrate the differences in how individual Great Lakes states view ballast water regulations and the shipping industry.

States such as Michigan and New York tend to want tougher standards and permitting programs, Brammeier says, while states with more ocean-going ship traffic and activity such as Indiana, Minnesota and Ohio tend to share industry concerns about the impact of new rules on waterborne commerce.

Differences among Great Lakes states

In September, the governors of Indiana, Ohio and Wisconsin sent a letter to New York Democratic Gov. Andrew Cuomo asking him to ease ballast water rules set to take effect in his state in August 2013.

If not changed, the governors wrote, New York's regulations would "possibly force the closure of the St. Lawrence Seaway and imperil thousands of maritime-related jobs in the Great Lakes states and Canada."

In response to the governors' letter, Wisconsin Democratic Rep. Cory Mason circulated a letter among his legislative colleagues in support of New York's efforts. The letter, sent in September to Gov. Cuomo, urged New York to "hold fast on its ballast water standards to prevent dangerous invasives from entering the Great Lakes basin." It was signed by 22 Wisconsin state representatives and senators. In Michigan, a resolution was introduced in November (SR 98) urging the state of New York to "reject appeals to weaken its ballast water standards."

Three Great Lakes states — Michigan, Minnesota and Wisconsin — already have ballast water permitting programs up and running. But New York's rules would be the region's most stringent, with discharge standards exceeding those of the International Maritime Organization — 100 times more stringent than the IMO standard for existing vessels and 1,000 times more stringent for ships built after 2013.

In developing its own permitting program, Wisconsin had considered implementing tougher-than-IMO requirements but decided against it after a state feasibility study determined that treatment technologies did not exist to meet the 100-times standard. Wisconsin instead settled on requiring ships to meet the IMO standard.

In U.S. House debate over the Bishop amendment, New York's proposed rules were cited by U.S. Rep. Steve LaTourette, a Republican from Ohio, as a reason not to give states regulatory leeway.

In his effort to stop the New York regulations, LaTourette also proposed an amendment to a Department of Interior spending bill prohibiting any state from receiving Environmental Protection Agency funding if it adopts ballast water requirements more stringent than federal regulations.

The erosion of state authority is only one reason groups such as the Alliance for the Great Lakes, the National Wildlife Federation and Great Lakes United oppose HR 2838. They also say the measure limits the ability of federal regulators to address the ecological and economic threats posed by invasive species.

The bill, for example, explicitly exempts ballast water discharges from the federal Clean Water Act. This exemption would strip the U.S. EPA of its authority to regulate ballast water discharges under the National Pollutant Discharge Elimination System (NPDES) permit program. The EPA already has a Vessel General Permit in place, and in November, it proposed a new, more stringent regulatory program. Under the new permit, standards would be tied to the IMO's. The Vessel General Permit would be eliminated if HR 2838 becomes law.

The U.S. Coast Guard is also expected to soon finalize its new rule on ballast water discharges. Under its proposed rule, the initial standard would be the same as the IMO's but could be raised upon completion of a "practicability review."

HR 2838 calls for use of the IMO standard as well, but according to Brammeier, language in the legislation would make it more difficult to raise the standard as treatment technologies advance and become available for use. ★