

## Should a permit be required for ballast water discharges?

**Deborah Sivas, director, Earthjustice Environmental Law Clinic at Stanford**

The spread of invasive species is one of the greatest threats facing our aquatic environments. In addition to wreaking havoc on the functioning of native ecosystems, invasives cause billions of dollars of economic damage each year and threaten public health through widespread dispersal of bacteria and viruses. Nowhere is the problem more evident than in the Great Lakes, where the proliferation of non-native zebra mussels has literally choked vital water systems and power plants.

The primary vector for aquatic invasive species in the Great Lakes, San Francisco Bay, the Columbia River Basin and elsewhere is the annual discharge of billions of gallons of ships' ballast water. Although some states or regions have imposed ballast water exchange-at-sea requirements, such programs cannot solve the problem. Even with a reported 97 percent compliance rate, the mandatory federal ballast water exchange program for the Great Lakes has not prevented new invasions. Indeed, studies of

exchange programs reveal inconsistent efficacy rates of 25 to 90 percent. Clearly more is needed to stem the rising tide of invading species.

Regulation of ballast water discharges through the Clean Water Act permit program is both required by law and sound policy. A uniform national permit system will eliminate the legal uncertainties that currently stymie technological innovation and hamper effective state-by-state regulatory efforts. Permits with performance standards and discharge conditions will facilitate monitoring and data gathering, spur the development of treatment technology, and allow for public participation and citizen enforcement of discharge limitations.

The success story of the Clean Water Act over the last three decades lies in its "point source" permit program. It is long past time to bring ballast water point sources into that permit system. Otherwise, individual state attempts to control invasive species will continue to founder.

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*Deborah Sivas runs the Environmental Law Clinic at Stanford Law School, which represents conservation groups in litigation seeking to rescind the regulatory permit exemption for ballast water discharges.*

**Helen Brohl, executive director, U.S. Great Lakes Shipping Association**

The contribution of ship ballast water to the introduction of unwanted, foreign aquatic species is a serious issue for the maritime community. The international Great Lakes maritime industry was the first in the United States to voluntarily exchange ballast water before entering the system. It was the first to voluntarily implement "whole voyage" ballast management techniques. Its cargo vessels sailing the Great Lakes have offered up their ballast tanks so scientists could better understand the dynamics of ballast on ships.

The U.S. Great Lakes Shipping Association (USGLSA) has always opposed using the permitting authority of the Clean Water Act to address ballast water concerns. This tactic fundamentally fails to recognize how ships and shipping work. There were 91,400 vessel calls on the United States last year. We know this number because - unlike the guy who dumps his bait overboard - commercial maritime is a highly regulated industry. The time, money

and bureaucracy associated with arranging and monitoring permits for these vessels would be staggering.

Ballast water is in no way a passive issue without the Clean Water Act initiative. The U.S. Coast Guard is now determining a standard for ballast treatment technologies and the International Maritime Organization (IMO) will begin negotiating a worldwide policy in February 2004. The USGLSA supports a national invasive species act, preferably in response to the IMO negotiations. Requiring permits for ballast water will not deal with the issue any sooner. It will only create another hurdle to trade with the United States without addressing the shared waters in Mexico and Canada.

Lastly, we should continue to explore the science of ballast water and tanks, such as is being done at NOAA's Great Lakes Environmental Research Lab. It may be that ballast exchange is highly effective in certain circumstances, which could lower the risk of new invasions now while we work toward ballast treatment technologies.

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*Helen Brohl is executive director of the U.S. Great Lakes Shipping Association, a member of the Great Lakes Panel on Aquatic Nuisance Species, and president of the National Association of Maritime Organizations.*