

# New York's 401 Certification of EPA's Vessel General Permit (VGP)

## Great Lakes ANS Panel Meeting

June 25, 2009



# Legal basis for NY Certification

- Under section 401 of the Clean Water Act, states must *certify* that the permit conditions of EPA-issued NPDES permits will meet state water quality standards and other applicable standards.
- If EPA-issued permit conditions will not achieve this purpose, states must add more stringent *limitations* or *conditions* to the federal permit.
- According to 40 CFR 124.53(e), State Certification must include conditions that “are necessary to assure compliance with the applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law . . .”



# Technical basis for NY Certification

- IMO Study Group on Ballast Water and Other Ship Vectors (MEPC 49/2/21, 2003)
- U.S. government recommendation to IMO (BWM/CONF/14, 2004)
- CA Advisory Panel on Ballast Water Performance Standards (incl. G. Ruiz of SERC, other federal/state agency staff, environmental NGOs, shipping interests, etc. – 2005 report)
- CA State Lands Commission Advisory Panel (incl. R. Albert of EPA, R. Everett of USCG, E. Lemieux of Naval Research Laboratory, G. Ruiz of SERC, other federal/state agency staff, environmental NGOs, shipping interests, etc. – 2007 report)



# Effective Immediately

- Vessels entering NY waters from outside EEZ: Exchange/flush to meet VGP requirements
- Vessel entering NY waters from within the EEZ: Exchange/flush to meet 401 WQC requirements
- Exemptions
  - Great Lakes/St Lawrence Seaway system
  - NY Harbor and LI Sound
  - entering NY waters from ports of call within New Jersey or Connecticut
  - have ballast water treatment already installed



# NYS Certification Conditions

Standards	Condition #2 By 2012, existing vessels operating in NY shall have ballast water treatment systems that meet the following standards	Condition #3 Vessels constructed on or after 2013 operating in NY shall have ballast water treatment systems that meet the following standards
Organisms $\geq$ 50 micrometers	<1 living organism/ 10 cubic meters	0 detectable living organisms
Organisms <50 and >10 micrometers	< 1 living organism/ 10 milliliters	< 0.01 living organisms per milliliter
Indicator microbes	<ul style="list-style-type: none"> <li>• <i>Vibrio cholera</i> &lt;1 cfu/ 100 ml . . . or &lt;1 cfu/ g wet weight</li> <li>• <i>E. coli</i> &lt;126 cfu/ 100 ml</li> <li>• Entrococci &lt;33 cfu/ 100 ml</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Vibrio cholera</i> &lt;1 cfu/ 100 ml . . . or &lt;1 cfu/ g wet weight</li> <li>• <i>E. coli</i> &lt;126 cfu/ 100 ml</li> <li>• Entrococci &lt;33 cfu/ 100 ml</li> </ul>
Bacteria		< 1,000 per 100 ml
Viruses		<10,000 per 100 ml



# Numeric Limits for Indicator Microbes

	IMO Convention	NYS Conditions #2 & #3
<i>Vibrio cholera</i>	<1 cfu/ 100 ml Or <1 cfu/ g wet weight	<1 cfu/ 100 ml Or <1 cfu/ g wet weight
<i>Escherichia coli</i>	<250 cfu/ 100 ml	<126 cfu/ 100 ml
Intestinal enterococci	<100 cfu/ 100 ml	<33 cfu/ 100 ml



# Exclusions

- Vessels that can't meet the 1/1/2012 or 1/1/2013 deadlines may apply for time extensions:
  - shortage of supply
  - unavailability of supply
  - exhausted all other options
- Extensions may be applied for up to 18 months prior to the deadline
- Also: Safety exemption for ballast water exchange/flushing



# Vessels operating in NY waters en route to upstream states

- Under Section 401 of the CWA, vessel activities permitted under the VGP must meet water quality standards of *all states affected by vessel discharges*.
- This requirement authorizes *downstream* states such as New York, through their Certifications, to condition the VGP with water quality-based limits for AIS.
- Such limits are enforceable provisions of the VGP that EPA can enforce against *upstream* vessel discharges to protect New York's waters. See *Arkansas v. Oklahoma*, 503 U.S. 91 (1992).



# Vessels operating in NY waters en route to Canada

- No doubt that discharges in upstream Canadian waters affect NY waters
- Under Article IV of the Boundary Waters Treaty between the U.S. and Canada (1909), “. . . the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.”

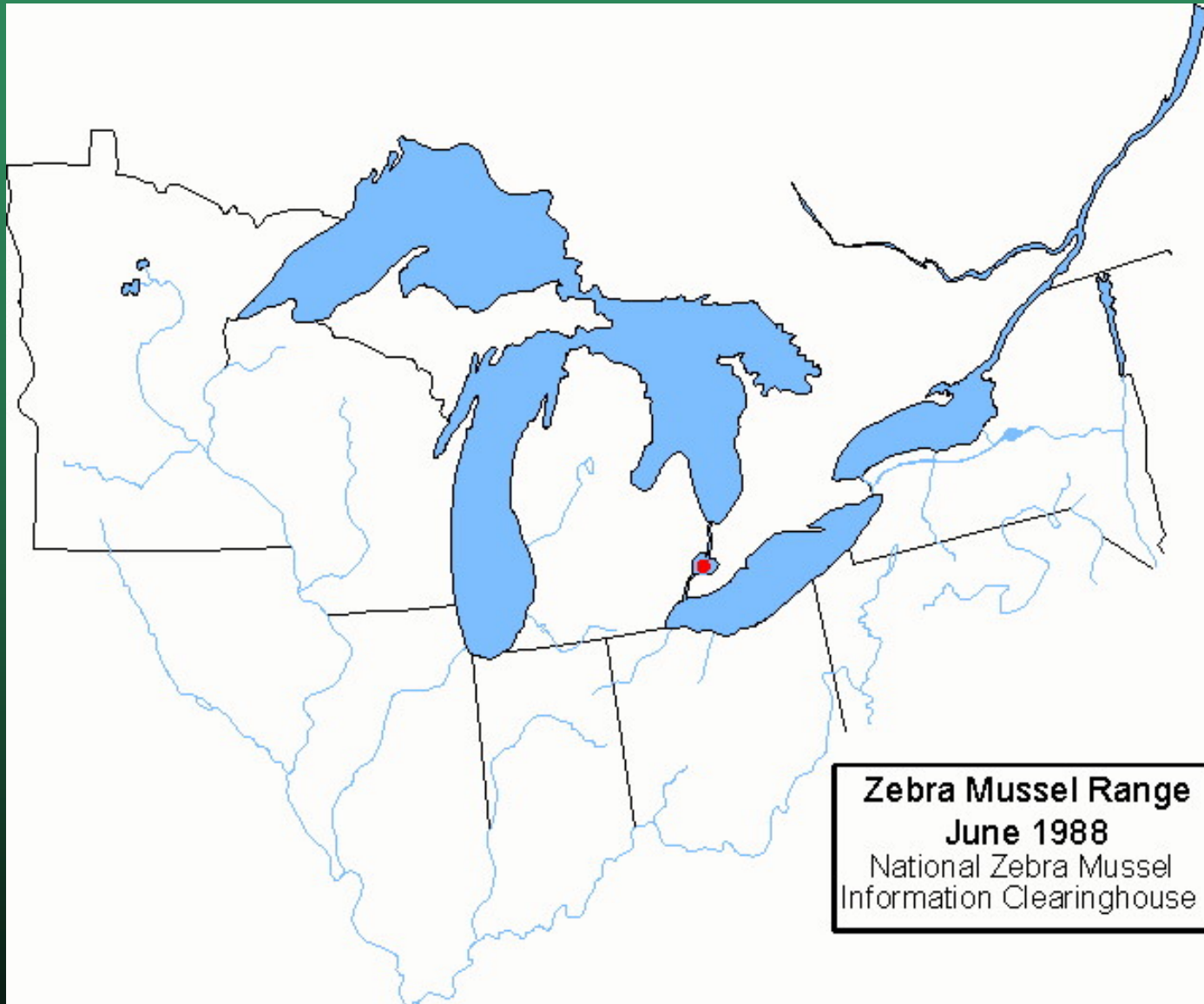


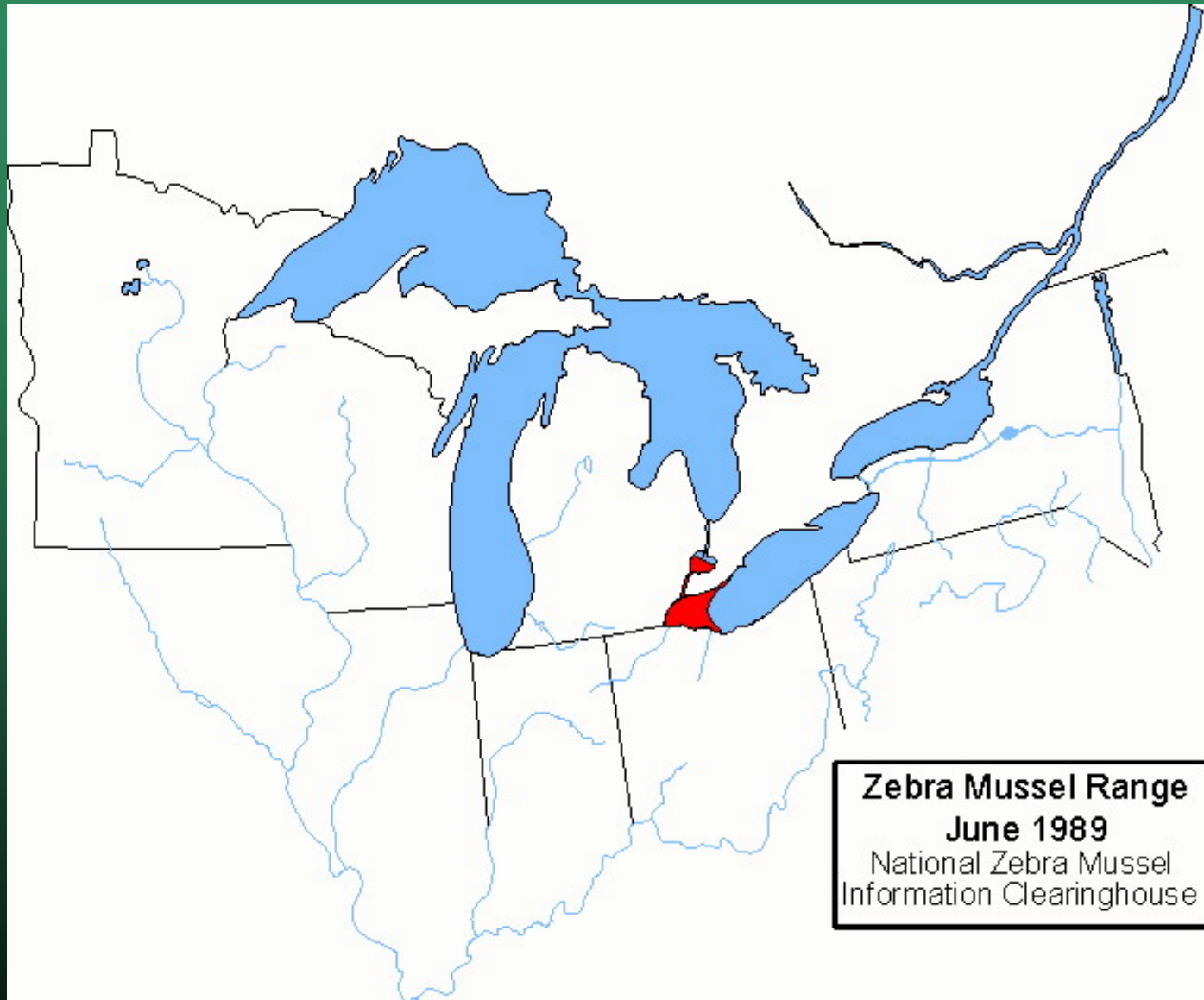
No doubt that discharges in  
upstream waters affect NY waters

- Spiny water flea, Lake Huron, 1984
- Zebra mussel, Lake St. Clair, 1988
- Round goby, St. Clair River, 1990

All quickly spread into NY waters.









# Contact Information

Francis Zagorski

NYSDEC

(518) 402 – 8168

[fgzagors@gw.dec.state.ny.us](mailto:fgzagors@gw.dec.state.ny.us)

