

United States Coast Guard  
Docket Management Facility (M-30)  
U.S. Department of Transportation  
West Building, Ground Floor, Room W12-140  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590-0001

Docket Number USGC-2004-19621, Notice of Proposed Rulemaking and  
Availability of Draft EIS

September 22, 2008

Dear U.S. Coast Guard:

Alliance for the Great Lakes, Great Lakes United, Lake Ontario Waterkeeper, and the National Wildlife Federation, in consultation with the Conservation Law Center, Inc., respectfully submit these comments in response to the Final Environmental Impact Statement: U.S. Coast Guard Rulemaking for Dry Cargo Residue Discharges in the Great Lakes, USCG-2004-19621 (“Final EIS”). As we noted in our comments<sup>1</sup> of July 22, 2008 on the draft EIS and notice of proposed rulemaking (which are considered to be incorporated by reference into these comments), a shared priority of our four groups is to ensure that commercial navigation practices in the Great Lakes and St. Lawrence River do not have a deleterious impact on the basin freshwater ecosystem and dependant communities and economies.

We opposed the U.S. Coast Guard (USCG) draft EIS and rulemaking to codify the practice of discharging dry cargo residues (DCR) into the Great Lakes, St. Lawrence River and all inland navigable waterways, and recommended the Coast Guard develop more appropriate regulations to improve management of cargo residues with the goal of bringing dry cargo dumping in the Great Lakes to an end. We believe that ending dry cargo dumping is the only alternative that is consistent with federal and international law.<sup>2</sup>

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<sup>1</sup> Alliance for the Great Lakes et al., Public Submission USCG-2004-19621-0114, Draft Environmental Impact Statement: U.S. Coast Guard Rulemaking for Dry Cargo Residue Discharges in the Great Lakes, USCG-2004-19621, July 22, 2008.

<sup>2</sup> As we stated in our comments on the Draft EIS, the Coast Guard and Maritime Transportation Act of 2004 that the USCG cites as its authority does not require the USCG to allow dry cargo dumping, and therefore the USCG is not prevented from giving effect to both MARPOL and the 2004 law. Additionally, as we stated, Congress did not clearly state its intention to ignore MARPOL, either in the language of the 2004 law or its legislative history. Moreover, we noted that the new USCG rule should be consistent – rather than conflict – with both MARPOL and the 1987 Act to Prevent Pollution from Ships.

While we maintain the above positions, and remain concerned about a full accounting of environmental impacts (including interacting and cumulative) of DCR discharges in the Great Lakes, we do acknowledge two improvements in the Final EIS:

- Recognizing that adverse impacts to sediment habitat in protected and sensitive areas could occur with DCR discharges, and thus changing to “significant” the level of impact for Alternatives 2, 3 and 4.
- Consideration of mitigation options for protected and sensitive areas for Alternatives 2, 3, 4, and 5, including prohibitions on DCR discharges within 3 miles of five land-based protected and sensitive areas.<sup>3</sup>

In addition, while we did not support the USCG preferred alternative (Alternative 2) in our comments on the draft EIS, we do recognize the strengthening of the USCG position concerning protected and sensitive areas in the Final EIS, whereby the preferred alternative would include all of the following:

- Bans on DCR discharges within the boundaries of four protected areas.
- Restrictions on DCR discharges within Green Bay and the Western Basin of Lake Erie.
- Bans on DCR discharges within three miles of the shore of five land-based protected areas.<sup>4</sup>

However, while we recognize these improvements to the USCG preferred alternative, DCR discharges under this policy would still be occurring in numerous other areas in the lakes (including some nearshore areas), adding to other ongoing stresses, including habitat degradation, nutrient enrichment, releases of toxic chemicals, and introduction and/or spread of invasive species.

Our groups maintain that the USCG can do much better. In the preferred alternative the USCG recognizes that additional policies may be needed to address the DCR problem, in noting: “It is possible that the Coast Guard would continue considering additional steps or other regulatory methods for addressing the long-term impact of continued DCR discharges.”<sup>5</sup> We believe that the USCG should commit in this rulemaking to aggressively pursue additional steps and regulatory methods to reach the goal of eliminating deleterious DCR discharges in the Great Lakes.

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<sup>3</sup> U.S. Coast Guard, Final Environmental Impact Statement: U.S. Coast Guard Rulemaking for Dry Cargo Residue Discharges in the Great Lakes, USCG-2004-19621, August 2008, pp. 1-5 – 1-6.

<sup>4</sup> U.S. Coast Guard, Final Environmental Impact Statement: U.S. Coast Guard Rulemaking for Dry Cargo Residue Discharges in the Great Lakes, USCG-2004-19621, August 2008, pp. 5-12 – 5-13.

<sup>5</sup> U.S. Coast Guard, Final Environmental Impact Statement: U.S. Coast Guard Rulemaking for Dry Cargo Residue Discharges in the Great Lakes, USCG-2004-19621, August 2008, pp. 5-13.

In summary, we believe that, consistent with domestic law and international agreements, the overall goal should be elimination of DCR discharges in the Great Lakes. While the changes in the Final EIS reflect improvements in the U.S. Coast Guard preferred alternative policy, we maintain that a more aggressive policy that commits to developing steps and regulations that would eliminate dry cargo discharges in the Great Lakes should be pursued in the near-term. We believe such a policy can be adopted in a way that is both effective in preventing discharges and does not cause significant economic impacts.

Please feel free to contact any of the following organizational contacts if you have questions or need any clarification.

Sincerely,

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*The Alliance for the Great Lakes is an organization that has existed in one form or another since 1970. The Alliance works to conserve and restore the world's largest freshwater resource through policy, education and local efforts aimed at preserving the Great Lakes region as a national treasure. It also works with the region's residents, enhancing their understanding of how they can help, too. The mission of the Alliance is one of conservancy and restoration of the world's largest fresh water resource and the preservation of clean water for generations to come.*

*The Conservation Law Center is a non-profit organization established as a Midwest-based advocate for natural resource conservation. The Clinic serves its clients using all of the tools and approaches that law firms use, but it accepts as clients only those whose issues involve advocacy (in the broadest sense of the word) for natural resources and who are non-profit or governmental organizations.*

*Great Lakes United is an international coalition of groups and individuals in the United States, Canada, First Nations and tribes dedicated to the protection and restoration of the Great Lakes-St. Lawrence River basin. A priority of the coalition is to ensure that commercial navigation practices in the Great Lakes and St. Lawrence River do not have a deleterious impact on the basin freshwater ecosystem and dependant communities and economies.*

*Lake Ontario Waterkeeper fulfills its mission by educating the public about Lake Ontario and the Great Lakes Basin and by conducting research and public education activities on behalf of the watershed. Our goal is to restore and protect Lake Ontario's natural resources, as well as contribute to its aesthetic, social recreational and economic values. We are a licensed member of the New York-based Waterkeeper Alliance, led by Robert F. Kennedy Jr.*

*National Wildlife Federation inspires Americans to protect wildlife for our children's future. We work with over 4 million members, partners, and supporters to actively educate, inspire, and promote achievable solutions to everyday Americans in communities from coast-to-coast.*