

Saint Lawrence Seaway Development Corporation
Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Ave., SE
West Building Ground Floor, Room W12-140
Washington, D.C. 20590-001

Docket No. SLSDC 2007-0005
RIN 2135-AA27
Seaway Regulations and Rules

Dear Saint Lawrence Seaway Development Corporation:

Great Lakes United (GLU), Save the River (STR), and the Alliance for the Great Lakes (Alliance), in consultation with the Conservation Law Center and the Daggett Law Firm, respectfully submit these comments on the proposed changes to 33 CFR 401.30, Ballast water and trim, as found in 72 FR 74247 (December 31, 2007).

We support the proposed changes to the ballast regulations to reduce the risk of introducing new aquatic invasive species transported in residual ballast of vessels entering the Lakes and River from outside the EEZ, and attempt to harmonize the Canadian requirements for saltwater flushing of ballast water tanks containing residual amounts of ballast water. We recognize that the Saint Lawrence Seaway Development Corporation (SLSDC) is attempting to improve measures to prevent invasive species introduced by ballast water, and better harmonize management of the Seaway with Canada, and support this goal.

We submit the following comments, followed by a marked-up version of the proposed rule and a clean version incorporating our comments:

1. First, we believe it is important to close an apparent loophole. As drafted, the proposed rule appears to allow any Canadian or U.S. flagged vessel to travel anywhere outside the EEZ and not have to comply with the rule. If a Canadian or U.S. flagged vessel has traveled outside the U.S. jurisdiction and returns to the Seaway, it should meet the same requirements as a foreign vessel. The registry of the vessel makes no difference in the species that could be picked up by a ship in its travels. We note that the Canadian regulation does not distinguish based on foreign or Canadian registration. *See* Ballast Water Control and Management Regulations § 2(1)(P.C. 2006-495 June 8, 2006)(Regulations).

The U.S. Department of Transportation's (U.S. DOT) January 16, 2008 press release states: "Regulations proposed by the U.S. Saint Lawrence Seaway Development Corporation (SLSDC) would require **all** ocean-going ships entering the U.S. sector of the St. Lawrence Seaway ...to take new measures to prevent the introduction of invasive species..." (emphasis added). We request the striking of all references to "foreign flagged vessels" from the proposed rule so that it actually does apply to all NOBOB vessels, as U.S. DOT has represented to the public.

2. Second, the applicability of the proposed rule is not harmonized with Canadian law. The “Application” section of the Canadian Regulations reads: “These Regulations apply to **every ship** in waters under Canadian jurisdiction that is designed or constructed to carry ballast water, unless (exceptions follow). . . .” Regulations §2(1) (emphasis added). However, the proposed rules only apply to “those vessels that carry only residual amounts of ballast water” We propose striking references to residual ballast water and inserting language consistent with the Canadian regulations so that the proposed rule applies to all ships entering U.S. waters designed or constructed to carry ballast, unless those ships are subject to the Coast Guard exchange requirements that apply to ballasted vessels in 33 CFR Part 151. This change, ensuring that all ships are covered by either the Coast Guard regulations for ballasted vessels, or the proposed SLSDC regulations for NOBOB vessels, also ensures consistency between the new SLSDC rule and the above-quoted press release.

3. Third, proposed §401.30(f)(1) regarding saltwater flushing contains two advisory provisions that should be mandatory. Specifically, §401.30(f)(1)(emphasis added) states:

The vessel **should** take on as much mid-ocean water into each tank as is safe (for the vessel and crew) in order to conduct saltwater flushing. . . . Vessels reporting only residual ballast water onboard **should** take particular care to conduct saltwater flushing on the transit to the Great Lakes so as to eliminate fresh and or brackish water residuals in ballast tanks;

We propose striking “should” and replacing it with “shall.” This change makes these provisions required, rather than advisory. Given the limitation for safety, there is no reason not to require as much water as is safe, rather than recommend it. Additionally, there is no reason not to require taking care to eliminate fresh or brackish water.

In addition to the recommendations above, we note the following:

4. There is an error in proposed §401.30(f)(1) regarding the definition of “saltwater flushing.” The proposed rule refers to mixing “freshwater” with ballast water, when it should say either “saltwater” or “flush water” (which is the term used by Canada’s Regulations §5(2)).

5. Proposed §401.30(g) regarding retaining ballast water requires any noncompliant vessel shall retain ballast water **taken aboard** in the St. Lawrence River or Great Lakes. We propose changing “taken aboard” to “while” to ensure that noncompliant ballast could not be released in the St. Lawrence River or Great Lakes even if no additional water is taken on.

6. We request confirmation on reporting, inspection, and enforcement requirements applicable to the new residual ballast requirements, and public access to information generated from the reporting and enforcement.

We would also like to comment on the scope of the proposed rulemaking. Even with the changes above, the proposed rule does not apply to vessels that operate solely within the EEZ. Vessels entering the Great Lakes from coastal voyages that are limited to U.S. and Canadian waters can also transport invasive species in their tanks. Further, a recent report by the U.S. Geological Survey - Western Fisheries Research Centre suggest that the strain of viral hemorrhagic

septicemia virus (VHS) that is currently attacking Great Lakes fisheries was not from Europe, but rather originated from marine or estuarine fish of the Atlantic seaboard of North America. While the vector of introduction may never be proven, it is alarming that there are no enhanced ballast controls on coastal voyages entering the Seaway. We believe that it is important to develop regulations to prevent invasive species from entering the Great Lakes and River via coastal voyages and strongly recommend the SLSDC, USCG and Transport Canada to develop regulations to control this pathway.

Finally, while we appreciate that this proposed rule is an improvement to the ballast water regulations, it is important to recognize that not all invasive species in ballast tanks are killed by saltwater flushing and that some invasive species are transported by attaching to hulls (“biofouling”). Therefore, while we work towards new U.S. federal legislation that would effectively and comprehensively regulate commercial vessels operating in U.S. waters, we again strongly recommend the SLSDC and USCG continue to improve regulations under their current authority, and that Transport Canada enforce ballast discharge standards currently articulated in the Canada Shipping Act, to further reduce invasive species introductions into the Great Lakes and St. Lawrence River.

Thank you for your consideration of these comments.

Sincerely,

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Great Lakes United is an international coalition dedicated to preserving and restoring the Great Lakes-St. Lawrence River ecosystem. GLU is comprised of member organizations representing environmentalists, conservationists, hunters and anglers, labor unions, community groups, and citizens of the United States, Canada, and First Nations and Tribes.

Save The River is a non-profit, member-based environmental organization whose mission is to preserve and protect the ecological integrity of the Upper St. Lawrence River through advocacy, education and research.

Alliance for the Great Lakes is the oldest citizens’ Great Lakes organization in North America. It works to restore habitat, conserve land and water, and eliminate pollution in the Great Lakes watershed. The Conservation Law Center and the Daggett Law Firm are providing legal assistance to these organizations on Great Lakes and invasive species issues.

GLU, STR, Alliance Proposed Changes to 33 CFR 401.30, Ballast water and trim, as found in 72 FR 74247 (December 31, 2007).

(f) As a condition of transit of the Seaway after having operated outside the Canadian ~~and~~ or U.S. exclusive economic zone (EEZ) every ~~foreign flagged vessel (a non-Canadian or U.S. flagged vessel) that carries only residual amounts of ballast water and/or sediment that were taken onboard the vessel outside waters under Canadian or U.S. jurisdiction~~ **vessel entering waters under U.S. jurisdiction that is designed or constructed to carry ballast water** shall:

(1) Conduct a saltwater flushing of their ballast water tanks ~~that contain the residual amounts of ballast water and/or sediment~~ in an area 200 nautical miles from any shore before entering waters of the Seaway. Saltwater flushing is defined as the addition of midocean water to ballast water tanks: The mixing of the ~~freshwater~~ **flush water** with residual water and sediment through the motion of the vessel; and the discharge of the mixed water, such that the resultant residual water remaining in the tank has as high salinity as possible, and is at least 30 parts per thousand (ppt). The vessel ~~should~~ **shall** take on as much mid-ocean water into each tank as is safe (for the vessel and crew) in order to conduct saltwater flushing. And adequate flushing may require more than one fill-mix-empty sequence, particularly if only small amounts of water can be safely taken onboard at one time. The master of the vessel is responsible for ensuring the safety of the vessel, crew, and passengers. Vessels ~~reporting only residual ballast water onboard should~~ **shall** take particular care to conduct saltwater flushing on the transit to the **Seaway or** Great Lakes so as to eliminate fresh and or brackish water residuals in ballast tanks; and

(2) Maintain the ability to measure salinity levels in each tank onboard the vessel so that final salinities of at least 30 ppt can be ensured.

(3) This paragraph, (f), does not apply to vessels already subject to the ballast water exchange requirements in 33 CFR Part 151.

(g) Every ~~foreign flagged vessel that is found~~ not in compliance with §401.30(f) shall retain any ballast water ~~taken aboard~~ **while** in the St. Lawrence River or Great Lakes.

GLU, STR, Alliance Proposed Changes to 33 CFR 401.30, Ballast water and trim, as found in 72 FR 74247 (December 31, 2007).

(f) As a condition of transit of the Seaway after having operated outside the Canadian and or U.S. exclusive economic zone (EEZ) vessel entering waters under U.S. jurisdiction that is designed or constructed to carry ballast water shall:

(1) Conduct a saltwater flushing of their ballast water tanks in an area 200 nautical miles from any shore before entering waters of the Seaway. Saltwater flushing is defined as the addition of midocean water to ballast water tanks: The mixing of the flush water with residual water and sediment through the motion of the vessel; and the discharge of the mixed water, such that the resultant residual water remaining in the tank has as high salinity as possible, and is at least 30 parts per thousand (ppt). The vessel shall take on as much mid-ocean water into each tank as is safe (for the vessel and crew) in order to conduct saltwater flushing. And adequate flushing may require more than one fill-mix-empty sequence, particularly if only small amounts of water can be safely taken onboard at one time. The master of the vessel is responsible for ensuring the safety of the vessel, crew, and passengers. Vessels shall take particular care to conduct saltwater flushing on the transit to the Seaway or Great Lakes so as to eliminate fresh and or brackish water residuals in ballast tanks; and

(2) Maintain the ability to measure salinity levels in each tank onboard the vessel so that final salinities of at least 30 ppt can be ensured.

(3) This paragraph, (f), does not apply to vessels already subject to the ballast water exchange requirements in 33 CFR Part 151.

(g) Every vessel that is not in compliance with §401.30(f) shall retain any ballast while in the St. Lawrence River or Great Lakes.