



# Lake Carriers' Association

*The Greatest Ships on the Great Lakes*

**JAMES H. I. WEAKLEY, PRESIDENT**

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January 15, 2016

Ellen Brody  
Great Lakes Regional Coordinator  
National Oceanic and Atmospheric Administration, Office of National Marine Sanctuaries  
4840 South State Road  
Ann Arbor, Michigan 48108

Re: Proposed Wisconsin – Lake Michigan National Marine Sanctuary, Notice of Intent to Conduct Scoping and to Prepare a Draft Environmental Impact Statement, Docket ID: NOAA-NOS-2015-0112

Dear Ms. Brody:

Lake Carriers' Association represents 15 American companies that operate 56 U.S.-flag vessels on the Great Lakes and carry the raw materials that drive the nation's economy: iron ore and fluxstone for the steel industry, aggregate and cement for the construction industry, coal for power generation, as well as salt, sand and grain. Collectively, these vessels can transport more than 100 million tons of cargo per year. Our members help drive 227,000 jobs, \$3.6 billion in transportation savings, and 3.2 percent of the Nation's gross domestic product.

Lake Carriers' applauds and supports Governor Scott Walker's sponsorship of the nomination of the proposed Wisconsin-Lake Michigan National Marine Sanctuary. It will celebrate Wisconsin's integral part in the maritime heritage of the Great Lakes. This effort, as supported wholeheartedly by businesses, community groups, elected officials, and others, to protect and preserve dozens of shipwrecks, respects the many lives lost and the sailors still plying these waters. ***Lake Carriers' welcomes the recreational and educational opportunities the Sanctuary may bring to the region.***

The Wisconsin-Lake Michigan National Marine Sanctuary is being proposed based upon the wealth of shipwrecks, as a valuable cultural asset. ***The proposed Sanctuary, as a cultural asset, should not encumber critical commercial activity related to maritime transportation into Wisconsin ports and through Wisconsin waters. What is currently a legal navigational practice should continue to be allowed once the sanctuary is established.***

Three issues are of paramount concern to LCA members: dredging, washdown of *de minimis* amounts of dry cargo residue (DCR), and ballasting. Dredging of federal navigation channels in ports, rivers, and their approaches is essential for our ships' access to dockside customers. Removal of DCR from a ship's deck is critical for the safety of crew members working on deck. Ballasting is crucial to maintain trim, draft, stability, and structural integrity of a vessel. It is essential that all of these activities, which contribute to the safe, secure, and efficient operation of vessels, should not be undermined by the

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***The Association Representing Operators of U.S.-Flag Vessels on the Great Lakes Since 1880***

AMERICAN STEAMSHIP COMPANY ♦ ANDRIE INC. ♦ ARMSTRONG STEAMSHIP COMPANY ♦ BELL STEAMSHIP COMPANY ♦ CENTRAL MARINE LOGISTICS, INC  
GRAND RIVER NAVIGATION COMPANY, INC. ♦ GREAT LAKES FLEET/KEY LAKES, INC. ♦ INLAND LAKES MANAGEMENT, INC.  
THE INTERLAKE STEAMSHIP COMPANY ♦ LAKE MICHIGAN CARFERRY SERVICE ♦ PERE MARQUETTE SHIPPING ♦ PORT CITY MARINE SERVICES  
PORT CITY STEAMSHIP HOLDING COMPANY INC. ♦ SOO MARINE SUPPLY, INC. ♦ VANENKEVORT TUG & BARGE INC.

Sanctuary designation. Our overriding request, and the request of many other shippers, land owners, recreational users, and others, is that activities that are currently lawful should not suddenly become unlawful because of the Sanctuary designation.

#### **Dredging –**

Dredging is critical to the economic viability of Great Lakes shipping. Vessels lose anywhere from 50 to 270 tons of cargo for each inch of loaded draft they forfeit when a port or waterway is not dredged to project dimensions. In some ports, lack of dredging has forced vessels to “light load” by feet, not just inches. The United States Army Corps of Engineers (Corps) estimates 17 million cubic yards of sediment clog the Great Lakes Navigation System.

Two federal agencies regulate or manage the removal and placement of dredged material in National Marine Sanctuaries: National Oceanic and Atmospheric Administration (NOAA) and the Corps. NOAA, as the trustee for the marine Sanctuary, regulates and conserves the cultural resources. The Corps is the permitting authority for removal and placement of dredged material.

The establishment of the National Marine Sanctuary would have direct and potentially deleterious impacts to commercial shipping and the ports they serve because within the boundaries of a Sanctuary, NOAA typically prohibits discharging material or other matter and the disturbance of, construction on, or alteration of the lakebed. The Corps, under Section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, can prohibit or severely limit placement of dredged material into the Great Lakes.

The Corps permits dredging operations under two other federal statutes: Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Sanctuary status has the potential to negate the Corps' ability to maintain federal navigation channels if ports are included within the boundaries of the proposed Wisconsin-Lake Michigan National Marine Sanctuary. This includes not only the removal of material from federal navigation channels but also the subsequent placement of those same dredged materials. Within the proposed boundaries of the Sanctuary the Corps uses this material for beneficial reuse as beach nourishment along Wisconsin's adjacent shores. Any interruption of these activities could close ports to ship traffic.

The Corps applies United States Environmental Protection Agency's (U.S. EPA's) placement criteria under Section 102 of MPRSA to determine whether to authorize disposal of dredged material under MPRSA permits (or, in the case of federal projects, to dispose of dredged material in the Great Lakes itself). MPRSA permits for federal projects involving disposal of dredged material are subject to U.S. EPA review and concurrence.

***Federal navigation channels and ports within the new Sanctuary must continue to be maintained unencumbered so vessels' carrying capacity can be maximized and dredged material should continue to be used for beach nourishment and other beneficial uses. The Sanctuary designation must allow for the continuation of dredging and other legal practices within the Sanctuary boundaries.***

#### **Dry Cargo Residue –**

On January 31, 2014, the United States Coast Guard (USCG) published final federal requirements that govern the discharge of bulk DCR into United States waters of the Great Lakes (33 Code of Federal Regulations [CFR] Part 151). The rule allows the discharge of *de minimis* amounts of non-toxic and non-hazardous substances into specific areas of the Great Lakes. It includes limestone and other clean stone, iron ore, coal, salt, and cement. Specifically, DCR discharge has already been

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geographically restricted as described in 33 CFR Table 151.66(b)(3), *Bulk Dry Cargo Residue Discharges Allowed on the Great Lakes*.

Under Section 102 of MPRSA, U.S. EPA is the primary agency that is in-charge of regulating the disposal of all substances into the Great Lakes within the proposed Sanctuary except dredged materials which is regulated by the Corps, and as discussed above. USCG is in charge of the surveillance aspects of implementation.

LCA members make provisions for and take every precaution to minimize any DCR on a ships' deck. In accordance with the provisions of 33 CFR 151.66 our members ensure that their decks are maintained in a "broom clean" fashion for the safety of crew members working on deck. "Broom clean" is defined in 33 CFR 151.66(b)(2) as a condition in which deck residues "consist only of dust, powder, or isolated and random pieces, none of which exceeds 1 inch in diameter." USCG requirements are to minimize and reduce, to the greatest extent practicable, any bulk DCR discharge from the vessel. USCG, in its comments on the finalization of 33 CFR 151 further stated, "We continue to believe, as we did when we issued the interim rule, that a 'zero discharge' requirement would be more costly than necessary to protect the environment against adverse impacts, and because the adverse impacts that can be associated with DCR discharges are only minor and indirect." The Coast Guard reached this conclusion after exhausting millions of dollars and decades of research, including a full environmental impact statement.

***We request that provisions be made in the final rule establishing the Wisconsin-Lake Michigan National Marine Sanctuary to maintain de minimis DCR discharges as currently enforced, without further amendment to the geographic scope described in 33 CFR Table 151.66(b)(3).***

#### **Ballasting –**

USCG regulates commercial shipping in or transiting marine sanctuaries under 33 CFR Part 151.2050, Section (a), "Avoid the discharge or uptake of ballast water in areas within, or that may directly affect, marine sanctuaries . . ." This can impact the safety of crew and ship by preventing ballasting operations while transiting the Sanctuary or dockside loading and unloading cargoes. Ballasting is a lawful and essential commercial vessel operation that could be prohibited in the proposed Sanctuary.

As previously stated, ballasting maintains trim, draft, stability, and the structural integrity of a ship. Depending on the size of the vessel entering Wisconsin ports or transiting the proposed Sanctuary, it can have anywhere from 279,000 to 16.4 million gallons of ballast water on board. Vessels must be able to ballast when and where conditions dictate. Without it, our members could not serve the businesses within the proposed Sanctuary boundary.

Ballast water must be pumped out as the ship takes on cargo in order to maintain ship stability. When the vessel unloads cargo, ballast water must be pumped back for the same reason. When not carrying cargo, vessels must take on ballast water to avoid stresses on the hull that could cause it to fracture or suffer a catastrophic failure. Vessels also must take on ballast water to submerge the propeller and rudder deep enough to maintain propulsion and steerage.

Weather concerns can require ballasting while the vessel is underway. If heavy weather is approaching additional ballast water must be taken on so the vessel will ride better in heavy seas. This can result in a situation where the vessel is now too deep in the water to safely enter its next port of call so some ballast is pumped off as the vessel nears harbor.

Any prohibition on ballasting in the Sanctuary will make it unsafe for these vessels and the tens of millions of tons of cargo they carry each year to operate in these waters.

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***Ballasting for the safety of crew and vessels must be allowed to continue for vessels transiting the proposed Wisconsin-Lake Michigan National Marine Sanctuary and while in ports unloading or loading cargoes.***

**Other Activities Incidental to the Normal Operation of Vessels –**

Under the Vessel General Permit, U.S. EPA regulates discharges that are incidental to the normal operation of a vessel, such as cooling water. These discharges should not be further restricted or controlled during vessel transits of the sanctuary. Anchoring, with the exception of the immediate vicinity of known wrecks, should also not be further restricted within the boundaries of the proposed sanctuary. Only those vessel operations that can be shown to have a direct impact on the resources being protected should be further restricted within the geographical boundaries of the proposed sanctuary.

**Boundary –**

While we have no objections to the preliminary boundary of the proposed Sanctuary as shown in Wisconsin's nomination documentation, LCA requests two specific modifications.

1. To address potential deleterious impacts to local commercial vessel traffic, NOAA's final rule in 15 CFR 922.190(b) in expanding the boundaries of the Thunder Bay National Marine Sanctuary in Alpena excluded the three commercial ports of Rogers City, Presque Isle, and Alpena, Michigan from the designated boundary of Thunder Bay National Marine Sanctuary to allow their continued use vital to the local economies. We need that same regulatory exemption for the ports of Two Rivers, Manitowoc, Sheboygan, and Port Washington, Wisconsin from within the final boundary.
2. Lake Carriers' asks NOAA to reexamine its selection of the high water mark as the preliminary landward boundary for the proposed Sanctuary. The 1958 United Nations Convention on the Territorial Sea and the Contiguous Zone and the 1982 United Nations Convention on the Law of the Sea set the ocean/land baseline to the low water line along the coast. The U.S. definition was further refined based on federal court decisions to the mean lower low water line. To ensure that the current beneficial use practice of beach nourishment from dredged materials is continued, Lake Carriers' further asks that the landward boundary of the proposed Sanctuary be located 10 feet below low water datum.

**Summary –**

As set forth in Executive Order 13547 – Stewardship of the Ocean, Our Coasts, and the Great Lakes (July 19, 2010), it is the policy of the federal government to, among other objectives:

- Support sustainable, safe, secure, and productive access to, and uses of the ocean, our coasts, and the Great Lakes
- Respect and preserve our Nation's maritime heritage, including our social, cultural, recreational, and historical values

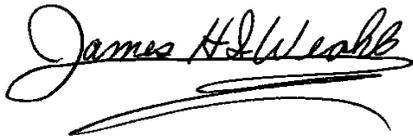
This is critical to commercial waterborne transportation, the many businesses served by our members, and the unencumbered sharing of the collective Great Lakes resources. There is no reason to believe that normal, lawful operations will have any negative impact on the proposed Sanctuary and, in fact, the presence of regular commercial shipping operations in the region are entirely consistent with this Sanctuary's purpose of celebrating maritime heritage.

Lake Carriers', representing the U.S.-flag commercial carriers on the Great Lakes, has a vested interest in the continuing operations and future direction of the proposed Sanctuary. We believe our participation in the Wisconsin-Lake Michigan National Marine Sanctuary Advisory Council (SAC), when formed, will be a valuable and crucial component of the SAC for the stewardship of this important asset.

The opportunities this Sanctuary designation can provide through recreational, educational, and economic impacts are significant and important to the region. Again, ***Lake Carriers' wholly supports the establishment of the Wisconsin-Lake Michigan National Marine Sanctuary provided the issues addressed in this submission are resolved as requested. We believe it will then be a win-win situation for everyone if what is now a legal navigational practice continues to be allowed once the Sanctuary is established.***

If you have any questions, comments, or require further clarification, please contact me at your earliest convenience.

Sincerely,

A handwritten signature in black ink, reading "James H. I. Weakley". The signature is written in a cursive style with a prominent flourish at the end.

James H. I. Weakley  
President  
Lake Carriers' Association