

 **07hr_SC-ENR_sb0119_pt04**



(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on ... Environment and Natural
Resources (SC-ENR)**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... **HR** ... **bills and resolutions** (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (August 2012)

June 2014

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- ▶ Lobbying in Wisconsin
- ▶ Organizations employing lobbyists
- ▶ Lobbyists



as of Thursday, May 17, 2007

2007-2008 legislative session
Legislative bills and resolutions

(search for another legislative bill or resolution at the bottom of this page)

Senate Bill 119

ballast water management, making an appropriation, and providing a penalty. (FE)

TEXT
sponsors
LBR analysis

STATUS
committee actions
and votes
text of amendments

COST & HOURS
of lobbying efforts
directed at this
proposal

Organization		These organizations have reported lobbying on this proposal:	Place pointer on icon to display comment click icon to display prior comments		
Profile	Interests		Date Notified	Position	Comm
●	●	City of Milwaukee	5/1/2007	↔	
●	●	Development Association Inc, The	4/19/2007	↓	
●	●	Wisconsin Economic Development Association	5/1/2007	?	
●	●	Wisconsin League of Conservation Voters (WLCV)	4/24/2007	↑	
●	●	Wisconsin Manufacturers & Commerce	3/30/2007	?	

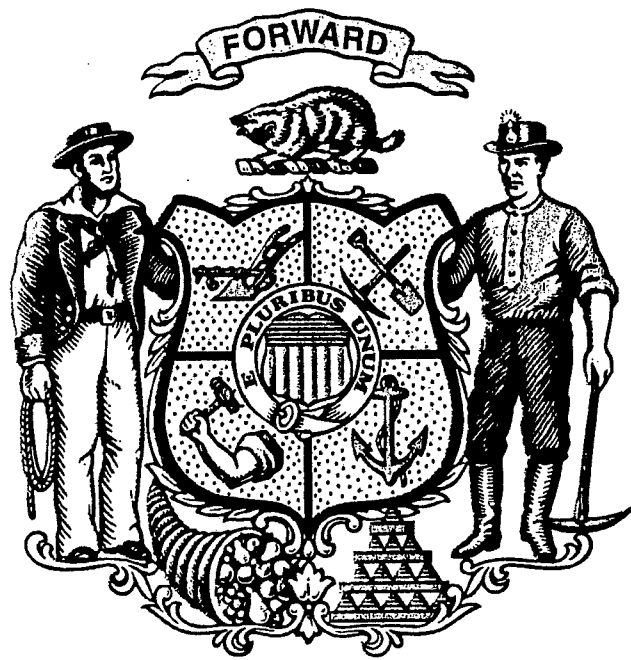
Select a legislative proposal and click "go"

House

Proposal Type

Proposal Number 119 (enter proposal number)

Legislative Session 2007 Regular Session





SB 119
Folder

P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

J.B. VAN HOLLEN
ATTORNEY GENERAL

NEWS RELEASE

For Immediate Release
September 25, 2007

For More Information Contact:
Kevin St. John 608/266-1221

ATTORNEY GENERAL VAN HOLLEN ASKS CONGRESSIONAL COMMITTEE TO ENABLE WISCONSIN TO PROTECT GREAT LAKES FROM AQUATIC INVASIVE SPECIES

GREAT LAKES STATES ATTORNEYS GENERAL JOIN LETTER SEEKING REASONABLE CONTROLS ON BALLAST WATER

MADISON – Wisconsin Attorney General J.B. Van Hollen, along with legal officers responsible for the enforcement of environmental laws in the Great Lakes States, joined together to ask the members of the United States Senate Committee on Commerce, Science and Transportation to oppose three aspects of the proposed Ballast Water Management Act, Senate Bill 1578. The bipartisan letter, signed by Attorney General Van Hollen, Attorneys General of Illinois, Michigan, Minnesota, and New York, and Pennsylvania's Chief Counsel of the Pennsylvania Department of Environmental Protection, states that the bill as currently comprised would unacceptably:

- Exempt discharges of pollutants in ballast water from regulation under the Clean Water Act;
- Preempt states' ability to enforce their own laws that protect against harmful pollutants; and
- Allow unwarranted delays in the actual enforcement of the new discharge standards proposed in the bill.

Ballast water discharges from oceangoing vessels, including those that travel in the Great Lakes, are the primary pathway through which aquatic invasive species enter the nation's waters.

The letter argues that the Clean Water Act provides for superior controls over vessel discharges, including the discharge of aquatic invasive species contained in ballast water. The letter

indicates that because much of the implementation of the Clean Water Act is delegated to the states, exempting ballast-water discharge from the Clean Water Act would remove a significant regulatory tool available to the states to protect waters from environmental harm. Ships' ballast water discharge is currently within the regulatory jurisdiction of the Clean Water Act.

The letter also argues that the proposed legislation unacceptably preempts traditional state legal authority to regulate ballast water discharges, and would allow the unnecessary delay of any ballast water regulation.

Van Hollen's request that federal legislation not displace the Clean Water Act and state enforcement of that act and other traditional state regulation follows Van Hollen's August 6, 2007 letter to EPA that urged it not to over-regulate boating in the name of invasive species control.

On June 21, 2007, the federal Environmental Protection Agency (EPA) issued an early notice announcing the federal agency's intent to begin development of National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act for discharges incidental to the normal operation of vessels and soliciting comments. EPA's notice indicated that discharge permits potentially could cover vessels without ballast water tanks, including millions of recreational boats and tens of thousands of commercial fishing vessels. According to the EPA's notice, this action followed a federal court's decision in *Northwest Environmental Advocates, et al., v. EPA*, holding the EPA was not necessarily limited to vessels with ballast water tanks.

Van Hollen's filed comments sharply disagreeing with EPA's implication that it must require permits for discharges from all vessels without ballast water tanks. "In my view," Van Hollen wrote in August, "if [individual permits are to be required for recreational boats and other vessels without ballast water tanks,] it is because EPA would make it so – not because the court decision in *Northwest* makes it so." After legally analyzing the *Northwest* court's decision and recognizing the integral part boating plays in Wisconsin's recreation, tourist, fishing, and water-related industries, Van Hollen's letter concluded that "I do not believe that EPA is legally bound (nor is compelled from a policy perspective) to require individual permits for discharges from recreational vehicles for the control of invasive species."

Wisconsin was one of the prevailing parties in the *Northwest* case, which is currently being appealed by the United States.

A copy of the September 24, 2007 letter to members of the United States Senate Committee on Commerce, Science and Transportation can be found here:



Inouye-Stevens
Letter 9.24.07.pdf

A copy of Van Hollen's August 6, 2007 comments on EPA's early notice to develop NPDES permits for discharges incidental to the normal operation of vessels can be found here:

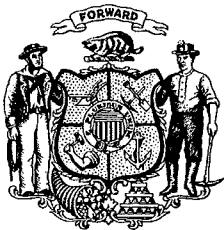


Water Docket EPA
8-6-07.pdf

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WISCONSIN STATE LEGISLATURE



Resolution

Support for Strong State and Federal Legislation on Great Lakes Ballast Water Treatment

WHEREAS, Lake Michigan and Lake Superior are critically important bodies of water that provide outstanding fishing, hunting and other recreational opportunities for the hunters anglers and trappers which make up the membership of the Wisconsin Wildlife Federation; and

WHEREAS, as a result of these recreational pursuits, Lake Superior and Lake Michigan are extremely valuable to the citizens of Wisconsin and the state's economy; and

WHEREAS, internationally based ships enter the these waters and discharge their untreated ballast water into the Great Lakes and as a result many exotic invasive species have been introduced into Lake Michigan and Lake Superior; and

WHEREAS, over 186 damaging invasive species have been introduced into the Great Lakes through ballast water discharge including zebra mussels, white perch, the round goby and the spiny water flea; and

WHEREAS, a seriously damaging rhabdovirus known as Viral Hemorrhagic Septicemia (VHS) has been found in the Great Lakes and will enter into the Mississippi River drainage and causes severe loss to a wide variety of fish species; and

WHEREAS, the presence of these invasive organisms in Lake Michigan, Lake Superior and the Mississippi River also pose serious threats to Wisconsin's valuable inland water fisheries due to the transfer of these species accidentally by recreational boaters, including anglers; and

WHEREAS, there are treatment methods available to treat ship ballast water from international ships so as to prevent future discharges of exotic invasive species into the waters of the Great Lakes; and

WHEREAS, the State of Michigan has adopted stringent treatment requirements applicable to ballast water discharges from international ships; and

WHEREAS, legislation has been introduced in the U. S. Congress and the Wisconsin Legislature to require the treatment of ballast water from international ships sailing on the Great Lakes.

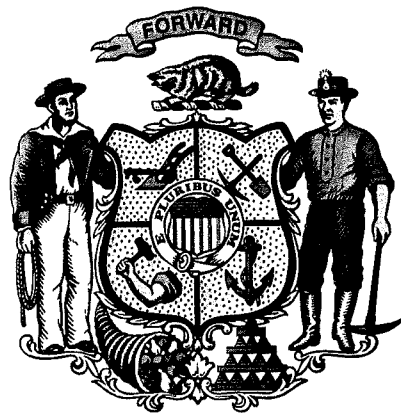
NOW THEREFORE BE IT RESOLVED that the Wisconsin Wildlife Federation, in its annual meeting assembled April 13-15, 2007 in Stevens Point, Wisconsin, hereby urges the President of the United States, the U.S. House of Representatives, the U. S. Senate, the Governor of Wisconsin, the Wisconsin Assembly and the Wisconsin Senate to enact regulations requiring the treatment of ballast water from international ships into the Great Lakes so as to prevent the future discharge of exotic invasive species into these waters; and

NOW THEREFORE BE IT RESOLVED that the Wisconsin Wildlife Federation request the Governor, the Attorney General and Secretary of the Department Natural Resources intervene on the side of the State of Michigan in the lawsuit challenging the State of Michigan's ballast water treatment regulations.

NOW THEREFORE BE IT FURTHER RESOLVED that the Wisconsin Wildlife Federation deliver copies of this resolution to the President, the Governor, the Attorney General, the DNR Secretary, the Wisconsin Congressional delegation and the Members of the Wisconsin Legislature.

Submitted to the Annual Meeting by the Great Lakes Committee of the Wisconsin Wildlife Federation.

Committee Chair Larry Freitag

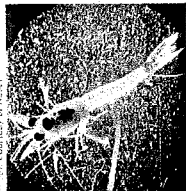


The Lake Effect

ALLIANCE FOR THE GREAT LAKES

Summer 2007

Great Lakes States Rush to Beat Back Invasives



The bloody red shrimp is one of the latest invasives to enter the Great Lakes.

The Great Lakes can count the bloody red shrimp among the latest unwanted guests to drop by — joining the ranks of the notorious New Zealand mudsnail, round goby and zebra mussel.

Non-native diseases also spread readily throughout the Great Lakes. The most recent: viral hemorrhagic septicemia, or VHS — a pathogen causing massive fatal bleeding in

popular game fish that has been described as an ebola-like virus for fish.

Invasive species remain public enemy No. 1 in the Great Lakes, wreaking havoc with the Lakes' delicate ecology while interfering with the region's economy and the public's enjoyment of the water.

Though much of the damage occurs well below the water's surface, the source of the problem comes from above — borne of the ballast tanks of unregulated oceangoing ships, or "salties," plying their trade on Great Lakes waters.

"Every ship that enters the Great Lakes is a potential invasion waiting to happen," said Joel Brammeier, Alliance associate director for policy.

The federal government's inability to effectively regulate the ships that give these invaders a free pass into the Great Lakes has prompted states to rush to fill the void.

Michigan last year became the first state to require that salties either certify they won't discharge invasives to the Great Lakes, or install and use ballast treatment technology before discharging polluted water. Similar legislation has been introduced this year in Wisconsin, New York and Minnesota.

The response from the shipping industry has been to delay and challenge the new regulations. In March, a coalition of shipping groups sued Michigan in an effort to repeal the law and prevent the state from enforcing pollution discharge standards against salties.

The Alliance in April joined the National Wildlife Federation and

Michigan United Conservation Clubs in petitioning the court to intervene on Michigan's behalf and support the state's sovereign right to protect its natural resources.

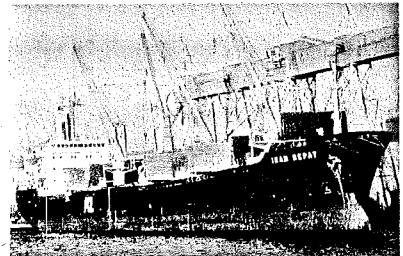
"Michigan's law is the only tool we have right now to stop the onslaught of new invaders from around the world," said Brammeier. "Other states shouldn't wait another day to stop dirty ballast water from being discharged into the Great Lakes."

More than 160 invasive species were documented in the Great Lakes by 2000, representing fish, invertebrates, aquatic plants, algae and pathogens. Scientists say ships' ballast tanks have been the major source of non-native species introductions since the opening of the St. Lawrence Seaway in 1959.

The first reproducing population of bloody red shrimp was found last November in Michigan's Muskegon Lake, and has since been recorded in Lake Ontario — suggesting it is already widespread throughout the Great Lakes. Preferring warmer coastal zones, the shrimp are at high risk of spreading along Great Lakes shorelines and to inland waters. Once established, the shrimp out-compete native fish for food and may concentrate pollutants further up the food chain.

Meanwhile, VHS has prompted states to ban the movement of many live fish and bait species across state borders. Evidence exists that the virus has been in the Great Lakes since at least 2003, making its way into the St. Lawrence River, Lake St. Clair, and Lakes Erie, Ontario and Huron.

Now Wisconsin regulators say it's almost certain the pathogen has reached Lake Michigan. Like the invaders that came before, experts say the problem will likely worsen before it gets better.



Great Lakes ocean vessel loads grain in Superior, Wis.

Get Your Feet Wet

May 19–Sept. 15, (various dates); North Avenue Beach Cleanups, Chicago Coastal Allies Network (C.A.N.) Join us near the boathouse restaurant at North Avenue Beach May 19, 10 a.m.–noon; June 24, 2 p.m.–4 p.m.; July 17, 6 p.m.–8 p.m.; Aug. 14, 6 p.m.–8 p.m.; and Sept. 15, 9 a.m.–noon. Contact coastalallies@greatlakes.org or Frances Canonizado, fcanonizado@greatlakes.org.

May 23, noon–1 p.m.: Brown Bag Luncheon, Chicago Coastal Allies Network (C.A.N.) Jonah Smith, Alliance sustainable business manager, leads a discussion about the Chicago-area Metropolitan Water Reclamation District's new waste disinfection standards. Location: 17 N. State Street, Suite 1390, Chicago. To RSVP, contact coastalallies@greatlakes.org, or 312-939-0838 x 221.

June 7, 6 p.m.–9 p.m.: Taste of the Great Lakes. (See ad for details, p. 4)

July 18, 5:30 p.m.–9 p.m.: Sunset Sail '07 (Rain date: July 19). Annual Alliance Lake Michigan sailing event, complete with food, music and more. Location: Sheridan Shore Yacht Club, Wilmette Harbor. Donation: \$50 members, \$65 non-members. Space is limited. Contact Martha Borie Wood, 312-939-0838 ext. 227, or mboriewood@greatlakes.org.

See Get Your Feet Wet, page 4

Putting a Stop to Invasives
Michigan is the first Great Lakes state to regulate ballast water discharge from oceangoing ships. Some states continue to give invasive species a green light.

Status of ballast discharge legislation as of May 1, 2007
 RED: Ballast discharge law adopted.
 GREEN: Ballast discharge legislation introduced.
 GREY: No current ballast discharge legislation.

Graphic: Janice Entes

Water Facts

Did you know?

Non-point runoff is the leading cause of water pollution in the Great Lakes. It is the leading cause of hypoxia in the western Lake Erie basin. It is the leading cause of sedimentation in the western Lake Erie basin.

ALLIANCE FOR THE GREAT LAKES
Protecting Future Generations
FOR ALL GREAT LAKES

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Making Waves

Alliance: Congress Must Act on Great Lakes Restoration



The Alliance's Joel Brammeier (left) with U.S. Rep. Mark Kirk (R-Ill.) at a hearing kicking off Great Lakes Day.

Testifying before a congressional committee in Chicago, the Alliance endorsed the strategy for restoring Great Lakes health put forth by the Great Lakes Regional Collaboration.

Joel Brammeier, Alliance associate director, likened the Lakes' sagging health to deferred maintenance on a home at the March hearing — held the same week that the Alliance joined more than 200 regional delegates in Washington for the annual Great Lakes Day.

"From decisions to allow invasive species to repeatedly and severely impact our way of life to an inability to confront the regular discharge of sewage into our Great Lakes, we have consistently avoided making tough decisions to combat today's problems," he said.

Congress would give the region the support it needs to fix a legacy of damage if it enacted the sweeping restoration plan put forth in 2005 by the Collaboration, Brammeier said.

Alliance, Teachers Think "Inside the Box"

Imagine putting the most essential parts of the Great Lakes in a box. Sound impossible?

This summer the Alliance will attempt to do just that, teaming up with the John G. Shedd Aquarium in Chicago to create a "Discovery Box" for educators.

Based on the Alliance's *Great Lakes in My World* curriculum, the box will contain essential teaching elements and hands-on activities and is expected to be available for rental by educators this fall.

"Teachers will now have an accessible and affordable resource connecting their classrooms to the Lakes," said Joy Kubarek-Sandor, Shedd coordinator of teacher programs. "The Great Lakes are an integral part of our well-being — locally and globally — and it's time to bring them to the forefront of education."

The Alliance's K-8 curriculum includes 80 hands-on activities and is aligned to state learning standards in Illinois, Indiana, Michigan and Wisconsin.

"The Discovery Box will offer educators additional resources to expand the ways they can use *Great Lakes in My World*, an educational kit that's receiving a warm welcome in the region," said Stephanie Smith, Alliance education program manager.

For more information, contact Stephanie Smith at ssmith@greatlakes.org, or 312-939-0838.

Minnesota First to Endorse Compact; Illinois May Follow

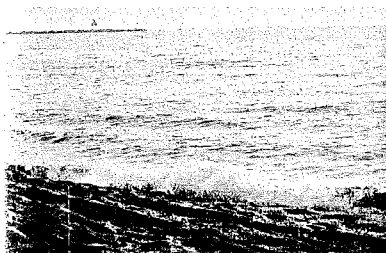
Illinois is poised to follow Minnesota as the second Great Lakes state to adopt the landmark water use compact signed by Great Lakes governors nearly 1 1/2 years ago.

The Illinois House and Senate unanimously endorsed identical versions of the Compact legislation in March and April, and both bills now await consideration by the other house. Rep. Harry Osterman (D-Chicago) and Sen. John Cullerton (D-Chicago) are sponsors of the legislation.

"This is a monumental step forward for protecting the Great Lakes waters we all revere," said Joel Brammeier, Alliance associate director for policy. "The longer other states delay, the more they invite Congress to step in and establish water use standards for them."

Illinois' efforts to protect the waters of the Great Lakes — a vast yet vulnerable resource that supplies 40 million people in the region with clean drinking water — come after Minnesota became the first state in the region to endorse the Great Lakes Compact earlier this year.

Signed by the governors of the eight Great Lakes states in December 2005, the Great Lakes and Saint Lawrence River Basin Water Resources Compact will provide a set of uniform, binding water use standards for the region. The Compact must be endorsed by the legislatures of all the Great Lakes states before it can be ratified by the U.S. Congress.



Minnesota was the first Great Lakes state to pass the landmark Great Lakes Compact.

Photo: Kate Rehmus



Adopt-a-Beach '07 Sparks Smoking Bans, Wider Reach

The Alliance's Adopt-a-Beach Spring Kickoff was one of the biggest yet, with more than 60 groups from Michigan, Illinois, Wisconsin and Indiana joining cleanups and recording findings on beach litter and water quality.

As the popular citizen stewardship program continues to raise awareness about beach litter, its influence is moving inland — affecting policy at the local and county levels and attracting new corporate participation as well.

Adopt-a-Beach litter cleanup efforts, for example, led the Michigan counties of Ottawa and Muskegon to suggest that their beach parks be smoke free to reduce smoking-related litter. In Muskegon, Mich., the Adopt-a-Beach group Muskegon Save Our Shoreline is partnering with community groups and individuals to encourage city leaders to ban smoking at Pere Marquette Park, after volunteers picked up more than 4,530 cigarette butts during a three-hour event there last year.

Meanwhile, a new Adopt-a-Beach participant — Aveda Corporation — involved representatives from Aveda Salons in Ludington, Grand Rapids, Lansing, Saugatuck, Grand Haven and Muskegon in a Muskegon cleanup.

"Our local Aveda Salons are eager to participate by cleaning up our beaches and giving back to their communities," said Stacy Postama, Aveda West Michigan representative.

High Water-Marks



Treasurer Has Passion for Lakes, Results

As treasurer for six years, Nick Bothfeld has led the Alliance through a period of unprecedented growth. During his two terms on the board, he's hosted lunches for prospective friends of the organization, led development campaigns, and assisted the Alliance's marketing efforts. Nick has also enlisted the help of many qualified friends and colleagues to work on the Alliance's behalf. In 2006 the Alliance named him "Board Member of the Year."

Q: Why did you join the Alliance?

A: For just about my entire life, except for college, I've lived within 10 blocks of the lake. I've always had an affinity for this special resource that no one seemed to be taking care of. There's nothing better than water.

Q: What motivates your continuing work with the Alliance?

A: The Alliance is known for prudent action — for not being rabid. Dale (Bryson, board chairman and EPA veteran) says the EPA always liked the Alliance because they're pragmatists, but are also very firm in wanting to work toward an equitable solution for all. We're also willing to bare our teeth when you get something as unreasonable as the Milwaukee sanitary sewage situation. The board is action-oriented; not a lot of fluff. It's a working board with brown bag meetings — it's not one of those things where it's black-tie socialite stuff. These are people who are concerned about issues and want to get something done.

Q: Where should the Alliance be heading?

A: My biggest frustration is that it's not better known. Why are we not one of those groups they're throwing money at when we do what we do? There's nothing more critical. My hope is the importance of the Great Lakes will be recognized and people will step up and help the Alliance do great things.

Q: Talk about the Alliance's financial health.

A: Our financial position is really excellent. Now we need to get to the next stage: getting support from major donors — \$25,000, \$50,000 and \$100,000 — so we have the flexibility to set our own agenda...and the freedom to go out there and pursue it.



Welcome aboard to Oscar Marerro, who begins a legal fellowship with the Alliance this summer, generously sponsored by Jenner & Block through the Public Interest Law Initiative. Welcome also to Ned Bothfeld, who joins the Alliance this summer as a communications and membership intern.

Bon Voyage to Sabine Johnson-Sachers, the administrative assistant in our Grand Haven office.

Natural Features

Porcupine Mountains: Michigan's "Forest Primeval"

Few places remain in this country where we can get a sense of how small we are in this big world. Fewer still are the places that remain untouched by human hands.

The Grand Canyon, the giant sequoias and redwood forests of the West all come to mind. But another place, closer to home for those who live within the Great Lakes region, affords the same opportunity: Porcupine Mountains Wilderness State Park.

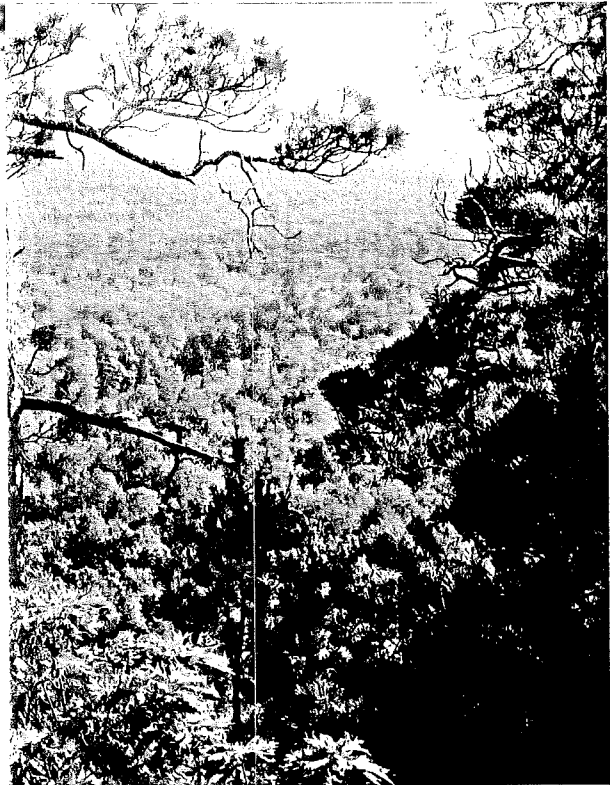
Located in Michigan's Upper Peninsula, the park holds several claims to fame. At 60,000 acres, it is Michigan's largest state park and is home to a trail system so vast that backpacking enthusiasts deem it one of the most loved and coveted destinations in the Midwest.

Indeed, only one road takes you from the east end of the park, near Ontonagon, to the west end, near Ironwood. Most of the beauty of this wilderness area remains as it was when the park was established in 1945, and can be explored only on foot. Hikers and backpackers have lovingly nicknamed this haven from civilization the "Porkies."

Ninety miles of hiking trails within the Porkies take travelers into the largest remaining old-growth forest east of the Mississippi River. The shade from the dense canopy above keeps the forest floor bare of underbrush, and serves to transport the visitor into a dark and mysterious solitude. It is the type of forest captured so eloquently in Longfellow's epic poem, "Evangeline," where he writes: "This is the forest primeval. The murmuring pines and hemlocks...stand like druids of old." This is the heart of wilderness.

Towering pines and hemlocks, beautiful vistas, inland lakes and rivers, secluded beaches along Lake Superior, and more than 30 waterfalls all combine to form a nature lover's dream.

— By Kate Rehmus, contributor



Most of the park remains as it was when established in 1945, and can be explored only on foot. Photos: Kate Rehmus



Park Details

Park entrance: Three miles west of Silver City on M-107. Vehicle permit required for entrance. The Wilderness Visitor Center is located near the junction of South Boundary Road and Highway M-107. It is open daily from late May through mid-October, from 10 a.m.–6 p.m.

Park activities include hunting, fishing, swimming, paddling (canoe and kayak rentals available in season), picnicking, hiking, mountain biking, cross-country skiing, downhill skiing, snowmobiling and metal detecting. Lodging options within the park include rentals of the Kaug Wudjoo Lodge, 19 rustic cabins ranging in size from 2–8 bunks, and 3 yurts (tent-like structures). The park also offers one modern and three rustic campsites, as well as backcountry camping (permit required). All visitors must adhere to "Leave No Trace" ethics.

For more information, including park and trail maps, visit the park website at: <http://www.michigandnr.com/parksandtrails/ParksandTrailsInfo.aspx?id=426>

Thank You for Your Support

The following individuals, organizations, foundations, and businesses have provided financial support from January 1 through March 31, 2007. We sincerely thank each and every one. We would be unable to protect the Great Lakes without their continued support. If your name should appear on this list, but does not, please accept our apology and contact Kimberly Vantrease at 312-939-0838.

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& Vanessa Asher
Elizabeth Jump,
In Memory of Herbert
J. Licht
Birth
Alliance Staff,
On the Birth of Lando &
Lukus Mendoza
Cam Davis & Katelyn
Varhely, On the Birth of
Ellie Sol Davis Gomez
Vehicle Donation Program
Gary & Janice Enloe



Keeping the Great Lakes Dry

There was a time when more than water flowed through some of the major tributaries connecting the United States and Canada. The time was Prohibition, and alcohol was being ferried into the Great Lakes by the bootlegged boatload.

The sale of liquor in the United States was banned in 1920 after Congress enacted the Eighteenth Amendment and the Volstead Act. Those unwilling to take the new measure lying down looked north to Canada — the unpatrolled, watered border between the two countries providing an ideal corridor to keep liquor flowing into the United States.

Storied Chicago mob boss Al Capone purportedly partied on his own boats along the city's lakefront and the southern coast of Lake Michigan. Legend maintains that "Scarface" Capone would make trips to the Lakeside Inn, located on the other side of the lake in Berrien County, to drink and gamble. Boasting 32 rooms the lodge today is the Village of Lakeside's largest; the ghosts of Canadian bootleggers who once pulled ashore cases and boatloads of whiskey still frequent the sleepy town's beaches.

Despite Chicago's reputation for rum running, the real action was at the "Detroit-Windsor Funnel." With the Detroit River easy enough to row across, the St. Clair River, Lake St. Clair and Lake Erie together provided for some 75 percent of Canada's liquor traffic to the United States, according to *The Times* magazine of Walkerville, Ontario. Detroit was ripe to be on the receiving end — becoming the first major U.S. city to enact Prohibition locally, in 1918. Just a stone's throw from Canada, it was little wonder Detroit got a jump on Chicago with its "Purple Gang" and other colorful characters getting into the illicit beer and whiskey game.

But the tap wouldn't remain open forever. The then-relatively unknown U.S. Coast Guard, renamed in 1915 from the former Life-Saving Service and Revenue Cutter Service, swung into action, doubling station crews and sending a new 75-foot picket boat class to patrol the boundary waters.

Soon, supplies were slowing to a trickle of the heyday in 1927 and 1928. At the end of federal Prohibition in 1934, the borders opened and liquor flowed legally once again.

— By Cameron Davis

Get Your Feet Wet

From page 1

Sept. 6-8: Third Annual Great Lakes Restoration Conference, sponsored by Healing Our Waters Great Lakes Coalition. Enjoy the Shedd Aquarium, a sunset cruise, dynamic speakers and more! Location: Palmer House Hilton, Chicago, Ill. Contact Martha Borie Wood, 312-939-0838 ext. 227, or mboriewood@greatlakes.org.

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Who we are... Formed in 1970, the Alliance for the Great Lakes is the oldest citizens' Great Lakes organization in North America. Our mission is to conserve and restore the world's largest freshwater resource using policy, education and local efforts, ensuring a healthy Great Lakes and clean water for generations of people and wildlife. *The Lake Effect* is a quarterly publication of the Alliance for the Great Lakes.

Chicago
17 North State Street, Suite 1390, Chicago, IL 60602
P 312-939-0838 F 312-939-2708 E chicago@greatlakes.org
Grand Haven
700 Fulton Street, Suite A, Grand Haven, Michigan 49417
P 616-850-0745 F 616-850-0765 E michigan@greatlakes.org

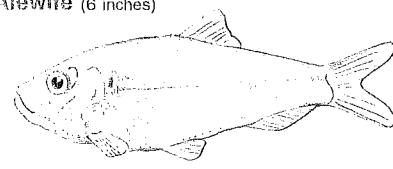
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THE RIPPLE EFFECT

GREAT LAKES INVADERS

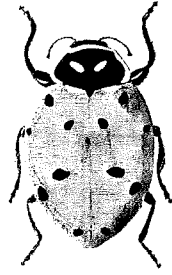
Hey kids! Did you know invaders from other parts of the world are living right here in our Great Lakes? Chances are you've seen some of them when you've visited the shoreline, but just didn't recognize them. Clip out these cards and put them in your pocket for the next time you visit one of the Great Lakes and try to identify these aliens among us!

Alewife (6 inches)




Typically a saltwater fish that spawns in freshwater, dies after egg-laying and washes ashore in spring and summer. Entered the Great Lakes through the Welland Canal.

Asian lady beetle (up to 1/2 inch)




Native to Asia, but made its way into the United States through accidental and planned releases meant to control insect pests.

Eurasian milfoil (up to 3 feet)



Brought to North America from Europe in the 1940s, it competes with native plants and harms water quality.

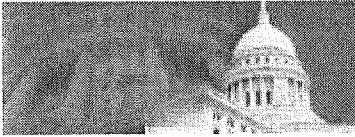
Zebra mussel (1/2 inch)



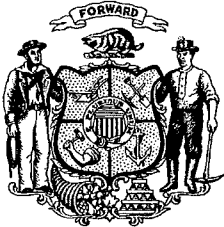
Filter feeders accidentally introduced into the Great Lakes in the ballast water of oceangoing ships traversing the St. Lawrence Seaway.

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WISCONSIN STATE LEGISLATURE



UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FEDNAV LIMITED,
CANADIAN FOREST NAVIGATION CO. LTD.,
NICHOLSON TERMINAL AND DOCK CO.,
THE SHIPPING FEDERATION OF CANADA,
THE AMERICAN GREAT LAKES PORT ASSOCIATION,
SEAWAY GREAT LAKES TRADE ASSOCIATION,
THE UNITED STATES GREAT LAKES SHIPPING ASSOCIATION,
BAFFIN INVESTMENTS LTD. and CANFORNAV INC.,

Plaintiffs,

v.

Case No.: 2:07-CV-11116
Hon. John Feikens

STEVEN E. CHESTER,
Director of the Michigan Department of Environmental Quality,
and MICHAEL COX, Attorney General for the State of Michigan,

Defendants,

NATURAL RESOURCES DEFENSE COUNCIL, INC.,
MICHIGAN UNITED CONSERVATION CLUBS,
ALLIANCE FOR THE GREAT LAKES,
and NATIONAL WILDLIFE FEDERATION,

Defendants-Intervenors.

**AMICI BRIEF OF MICHIGAN STATE SENATOR PATRICIA L. BIRKHOZ,
MINNESOTA STATE SENATOR ANN H. REST,
ILLINOIS REPRESENTATIVE KAREN MAY,
WISCONSIN SENATOR ROBERT L. COWLES,
AND WISCONSIN REPRESENTATIVE JON RICHARDS
IN SUPPORT OF DEFENDANTS AND DEFENDANTS-INTERVENORS**

Respectfully submitted,

Noah D. Hall (P66735)
Assistant Professor, Wayne State University Law School
Visiting Professor, University of Michigan Law School
1402 Culver Road
Ann Arbor, MI 48103
noah_hall@hotmail.com

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CONCISE STATEMENT OF THE ISSUES PRESENTED

- I. Whether Plaintiffs fail to state a claim for violation of the Supremacy Clause?
Amici state lawmakers answer: Yes
- II. Whether Plaintiffs fail to state a claim for violation of the Commerce Clause?
Amici state lawmakers answer: Yes
- III. If the Court finds that Plaintiffs have stated a claim for violation of the Supremacy Clause, whether summary judgment in favor of Plaintiffs is appropriate?
Amici state lawmakers answer: No
- IV. If the Court finds that Plaintiffs have stated a claim for violation of the Commerce Clause, whether summary judgment in favor of Plaintiffs is appropriate?
Amici state lawmakers answer: No

CONTROLLING OR MOST APPROPRIATE AUTHORITY

I. Plaintiffs' claim for violation of the Supremacy Clause:

Hillsborough County v. Automated Med. Labs., 471 U.S. 707 (1985).
Chevron v. Hammond, 726 F.2d 483 (9th Cir. 1984).

II. Plaintiffs' claim for violation of the Commerce Clause:

Maine v. Taylor, 477 U.S. 131 (1986).
Ferndale Labs., Inc. v. Cavendish, 79 F.3d 488 (6th Cir. 1996).

INTRODUCTION

Michigan State Senator Patricia L. Birkholz,¹ Minnesota State Senator Ann H. Rest,² Illinois Representative Karen May,³ Wisconsin Senator Robert L. Cowles,⁴ and Wisconsin Representative Jon Richards⁵ (collectively “state lawmakers”) respectfully

¹ Michigan State Senator Patricia L. Birkholz (Republican, Saugatuck Township) represents Michigan’s 24th Senate District (Allegan, Barry and Eaton Counties in western Michigan). Senator Birkholz is Chair of the Michigan Senate’s Natural Resources and Environmental Affairs Committee. Senator Birkholz is one of the state of the Michigan’s representatives to the Great Lakes Commission, is the current chair of the Midwestern Legislative Conference of The Council of State Governments, and founded and currently chairs the Great Lakes Legislative Caucus. Senator Birkholz was the primary sponsor of Michigan Public Act 33 of 2005, the state legislation that is the focus of this litigation.

² Minnesota State Senator Ann H. Rest (Democratic-Farmer-Labor, New Hope) represents Minnesota’s 45th Senate District (Crystal, Golden Valley, New Hope, Plymouth, and Robbinsdale). Senator Rest is Chair of the Minnesota Senate’s Committee on State and Local Government Operations and Oversight and Chair of the Minnesota Senate’s Subdivision on Airways, Railways and Waterways (Transportation Policy). Senator Rest has been an active member of the Great Lakes Legislative Caucus since its inception. Senator Rest is the primary sponsor of Minnesota Senate File 53, which is currently pending before the Minnesota legislature and is modeled after Michigan Public Act 33 of 2005.

³ Illinois State Representative Karen May (Democrat, Highland Park) represents Illinois’ 58th Assembly District (Bannockburn, Deerfield, Glencoe, Highland Park, Highwood, Lake Bluff, Lake Forest, Northbrook and Riverwoods in the Chicago metropolitan area by Lake Michigan). Representative May serves as Chair of the General Assembly Environmental Caucus and Chair of the House Environmental Health Committee.

⁴ Wisconsin State Senator Robert L. Cowles (Republican, Green Bay) represents Wisconsin’s 2nd Senate District (parts of Brown, Oconto, Shawano, Outagamie and Waupaca counties in northeastern Wisconsin). Senator Cowles currently serves on the Senate Utilities, Commerce and Rail Committee, the Joint Audit Committee, and the Senate Public Health, Senior Issues, Long Term Care and Privacy Committee. He is also a member of National Conference of State Legislatures and serves on the Science, Energy, and Environmental Resources Committee. Senator Cowles is the primary sponsor of Wisconsin Senate Bill 119, which is intended to address ballast water discharges in the Great Lakes to prevent the spread of aquatic nuisance species.

⁵ Wisconsin State Representative Jon Richards (Democrat, Milwaukee) represents Wisconsin’s 19th Assembly District (Milwaukee’s East Side, Downtown and Bay View neighborhoods). Representative Richards has been the Assistant Minority Leader since

submit this amici brief in support of the Defendants Steven E. Chester and Michael Cox (“State Defendants”) and Defendants-Intervenors Natural Resources Defense Council, Inc., Michigan United Conservation Clubs, Alliance for the Great Lakes, and National Wildlife Federation (collectively “Intervenors”).

The State Defendants and Intervenors have thoroughly presented to this Court information regarding the devastation that aquatic nuisance species cause to the Great Lakes and their fisheries and wildlife. Aquatic nuisance species like the zebra mussel, the round goby, and Eurasian ruffe, are causing unacceptable environmental and economic damage. The cause of this problem can often be traced to ballast water discharges. The problem is both historic and ongoing, as the Great Lakes are now infested with over 180 aquatic nuisance species and a new aquatic nuisance species comes into the Great Lakes, on average, about once every six months. The costs of aquatic nuisance species to the Great Lakes region are staggering, as the region is spending tens of millions of dollars to combat the billions of dollars in damage they cause.

Obviously the problem of aquatic nuisance species has not been adequately addressed by the federal government. The State Defendants and Intervenors detail the shortcomings of the federal government’s response to this devastating regional problem.

2003. He currently serves on the Committee on Assembly Organization, Committee on Financial Institutions, Committee on Rules, Joint Committee on Legislative Organization, and the Special Committee on the Great Lakes Water Resources Compact. Representative Richards is a sponsor of Wisconsin Assembly Bill 86, which is intended to address ballast water discharges in the Great Lakes to prevent the spread of aquatic nuisance species.

State lawmakers, just a few of whom are before this Court as amici,⁶ have responded by proposing and enacting coordinated state programs. They have done so as the elected representatives of their states' citizens, as stewards of their states' natural resources, and as concerned citizens themselves. The state lawmakers' obligation to protect their states' natural resources is not merely rhetorical. For example, Michigan state lawmakers have a Constitutional obligation to protect Michigan's natural resources. Article IV, section 52 of the Michigan Constitution (1963) provides: "The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction."

The Plaintiffs now challenge the results of the state lawmakers' efforts to protect their states' natural resources with a sound, coordinated regional policy response. The State Defendants and Intervenors have provided the Court with ample authority to reject the Plaintiffs' claims. Mindful of the thorough briefing before the Court,⁷ the state lawmakers will avoid presenting duplicative arguments and incorporate by reference the statements of facts and arguments presented by the State Defendants and Intervenors. The state lawmakers will simply offer three additional points for the Court's consideration. First, the state legislative efforts are consistent with (and certainly not

⁶ The state lawmakers before the court as amici are merely representative of the broad bipartisan support among state lawmakers for addressing the problem of aquatic nuisance species from ballast water discharges. For example, while Michigan State Senator Patricia Birkholz was the primary sponsor of Michigan Public Act 33 of 2005 (the state legislation that is the focus of this litigation), the legislation was passed unanimously by the Michigan Senate (38-0) and nearly unanimously by the Michigan House (109-1). See Michigan Votes Report on Senate Bill 332 of 2005, available at <http://www.michiganvotes.org/Legislation.aspx?ID=37825>.

⁷ In addition to the briefing before the Court, amici would respectfully refer the Court to a recent law review note that directly addresses the claims being made in this litigation. See Joel T. Bowers, Note, "Little Leviathans: Michigan's Battles Against Invasive Species in the Great Lakes," 52 *Wayne Law Review* 1249 (2007).

preempted by) the federal-regional-state collaborative approach provided by federal law for addressing aquatic nuisance species in the Great Lakes. Second, while Plaintiffs claim that the Michigan state law and similar bills under consideration in other Great Lakes states create the potential for conflicting compliance requirements, the Michigan statute and other bills actually provide for a cooperative process among Great Lakes states, specifically calling for the formation of the Great Lakes Aquatic Nuisance Species Coalition. Finally, while the focus of this litigation is Michigan Public Act 33 of 2005, there are numerous other state laws in every Great Lakes state that are threatened by Plaintiffs' commerce clause and federal preemption claims.

ARGUMENT

I. STATE LEGISLATIVE EFFORTS ARE CONSISTENT WITH THE COLLABORATIVE APPROACH PROVIDED BY FEDERAL LAW FOR ADDRESSING AQUATIC NUISANCE SPECIES IN THE GREAT LAKES.

Plaintiffs' federal preemption and commerce clause claims fail to recognize that federal law provides for a collaborative regional process between state and federal governments to address aquatic nuisance species in the Great Lakes. The state lawmakers' response to the problem of aquatic nuisance species is consistent with these federal statutory provisions, and thus certainly not preempted by federal law. Further, Congress' sanctioning and encouragement of state programs to address aquatic nuisance species undermines Plaintiffs' commerce clause claims.

Congress has authorized and even encouraged individual states to implement ballast water management programs to control aquatic nuisance species. The federal Non-Indigenous Aquatic Nuisance Prevention and Control Act of 1990 ("NANPCA"), as amended by the National Invasives Species Act of 1996 ("NISA"), 16 U.S.C. §§ 4701-4751, includes numerous provisions allowing for state efforts to prevent aquatic nuisance species. Congress recognized that addressing aquatic nuisance species requires efforts at

the federal, regional and state level. In NANPCA/NISA, Congress put the Great Lakes at the forefront of this federal-regional-state approach.

The Great Lakes Panel was the first regional aquatic nuisance species panel to be established under NANPCA, with multi-jurisdictional representation from the geographic region of the Great Lakes states including Illinois, Indiana, Ohio, Michigan, Minnesota, New York, Pennsylvania and Wisconsin. *See* 16 U.S.C. § 4723. The Great Lakes Panel on Aquatic Nuisance Species is staffed and coordinated by the Great Lakes Commission, a regional entity established through the Congressionally-approved Great Lakes Basin Compact, Pub. L. No. 90-419, 82 Stat. 414 (1968). Pursuant to the Congressionally-approved Great Lakes Basin Compact, the Great Lakes Commission can offer recommendations for state “laws, ordinances, or regulations relating to the development, use and conservation of the Basin’s water resources.” Great Lakes Basin Compact, art. VI(G), 82 Stat. at 417. The Great Lakes Commission is itself comprised of many state lawmakers, including amici Michigan State Senator Birkholz. The Great Lakes Panel further includes representatives from “federal, state and local agencies and from private environmental and commercial interests.” 42 U.S.C. § 4723(a)(1).

Complementing this federal-regional-state cooperative approach is a provision in NANPCA/NISA that clearly and unambiguously preserves state authority to prevent of aquatic nuisance species: “Nothing in this chapter shall affect the authority of any State or political subdivision thereof to adopt or enforce control measures for aquatic nuisance species, or diminish or affect the jurisdiction of any State over species of fish and wildlife.” 16 U.S.C. § 4725. Both this clear language and the statutory provisions for cooperative federal-regional-state governance demonstrate that Congress anticipated ongoing state efforts to prevent aquatic nuisance species. Congress sought to encourage – certainly not preempt – innovative and cooperative state aquatic nuisance species prevention measures in the Great Lakes region.

It is also noteworthy that just last year, Congress considered but ultimately declined to pass statutory amendments to expressly preempt state efforts to address aquatic nuisance species from ballast water discharges. Bills in both the United States Senate and House of Representatives (S. 363 and H.R. 5030) included the following draft provision:

[The subsections on treatment standards and best management practices] supersede any provision of State or local law that is inconsistent with the requirements of those subsections or that conflicts with the requirements of those subsections. The imposition, by State or local law, of greater penalties or fees for acts or omissions that are violations of such law and also violations of this Act shall not be considered to be inconsistent with, or to conflict with, the requirements of those subsections. Nothing in the preceding sentence limits the scope of state or local law provisions that are not to be considered to be inconsistent with, or to conflict with, the requirements of those subsections.

S. 363 section (r)(2) and H.R. 5030 section (t)(1). Instead of preempting state efforts, Congress chose to leave in place the federal-regional-state cooperative approach that allows states to protect their natural resources from aquatic nuisance species.

II. THE MICHIGAN STATUTE AND BILLS PENDING IN OTHER STATES SEEK TO AVOID CONFLICTING STATE REQUIREMENTS THROUGH FORMATION OF THE GREAT LAKES AQUATIC NUISANCE SPECIES COALITION.

Plaintiffs claim that the Michigan state law and similar bills under consideration in other Great Lakes states create the potential for conflicting compliance requirements for ships discharging ballast water throughout the Great Lakes. (Pls. Mot. Summ. J. at 22). However, the Michigan statute and other bills actually provide for a Great Lakes basin-wide cooperative process among Great Lakes states, specifically calling for the formation of the Great Lakes Aquatic Nuisance Species Coalition. Michigan Public Act 33 of 2005, MCL 324.3104(2) provides:

In order to address discharges of aquatic nuisance species from oceangoing vessels that damage water quality, aquatic habitat, or fish or wildlife, the [Michigan Department of Environmental Quality] shall facilitate the formation of a Great Lakes aquatic nuisance species coalition. The Great Lakes aquatic nuisance species coalition shall be formed through an agreement entered into with other states in the Great Lakes basin to implement on a basin-wide basis water pollution laws that prohibit the discharge of aquatic nuisance species into the Great Lakes from oceangoing vessels.

Similarly, Minnesota Senate File 53 and Minnesota House File 145 (Pls. Mot.

Summ. J. Exhibit 4 at 3) provide:

The commissioner [of the Minnesota Department of Natural Resources] shall facilitate and participate in the formation of a Great Lakes invasive species coalition with other states in the Great Lakes basin to address discharges of invasive species from oceangoing vessels. The commissioner shall facilitate and participate in the formation of this coalition to promote the implementation, on a Great Lakes basinwide basis, of water pollution laws that prohibit the discharge of invasive species into the Great Lakes from oceangoing vessels.

State lawmakers do not want create a patchwork of conflicting state requirements, and instead are striving to provide a cooperative state-based approach to protecting the Great Lakes. This cooperative state-based approach to regional resource management builds on similar recent regional governance efforts in the Great Lakes region.⁸ It is an ongoing effort that is obviously not yet complete, but progress is being made. State

⁸ In addition to the Great Lakes Aquatic Nuisance Species Coalition, the Great Lakes states are also currently considering a proposed Great Lakes-St. Lawrence River Basin Water Resources Compact. The proposed compact would protect and manage the world's largest freshwater resource pursuant to common minimum standards administered primarily under the authority of individual states. This new model for interstate governance can be described as "cooperative horizontal federalism," in which states jointly develop common minimum legal standards to manage a shared resource, but have the individual states with the flexibility and autonomy to administer those standards under state law. See Noah D. Hall, "Toward a New Horizontal Federalism: Interstate Water Management in the Great Lakes Region," 77 *University of Colorado Law Review* 405, 406, 448-456 (2006).

lawmakers are currently working through the Great Lakes Legislative Caucus to address aquatic nuisance species with coordinated state efforts.⁹

III. PLAINTIFFS' COMMERCE CLAUSE AND FEDERAL PREEMPTION CLAIMS THREATEN NUMEROUS OTHER STATE LAWS IN EVERY GREAT LAKES STATE.

While the focus of this litigation is Michigan Public Act 33 of 2005, there are many other state laws in every Great Lakes state that may apply to the discharge and intake of ballast water containing aquatic nuisance species or other biota¹⁰ and are thus threatened by Plaintiffs' commerce clause and federal preemption claims. These include fisheries conservation laws, water pollution and littering laws, and general water management laws. The many potentially preempted state laws are far too numerous to list in this amici brief, but the following are some examples specific to Michigan:

- Michigan's fishing law requires licenses for taking any aquatic species and makes it a misdemeanor for adults to take or possess an aquatic species without a license. *See* Mich. Comp. Laws §§ 324.43532, 324.43533, and 324.43558. This prohibition could thus include the removal or killing of fish when they are pulled into a ship's ballast tank.

⁹ The Great Lakes Legislative Caucus is a nonpartisan group of state (and provincial) lawmakers from the eight Great Lakes states (and two Canadian Great Lakes provinces). It has three primary goals: (1) facilitate the regional exchange of ideas and information on key Great Lakes issues, (2) strengthen the role of state and provincial legislators in the policymaking process, and (3) promote the restoration and protection of the Great Lakes. Michigan Senator Birkholz serves as chair of the Great Lakes Legislative Caucus, and all state legislators are welcome to participate. It is staffed by the Council of State Governments. *See* <http://www.csgmidwest.org/About/GLLC.htm>.

¹⁰ While Plaintiffs assert that they have "cooperated and continue to cooperate with ... state authorities (principally the State of Michigan)" (Pls. Mot. Summ. J. at 2), they offer no evidence of compliance with these state laws to support this factual assertion.

- Michigan law prohibits littering on land or in the water and from motor vehicles or vessels. *See Mich. Comp. Laws* § 324.8901 to 324.8904.
- Michigan law similarly prohibits littering of infectious or pathological waste, with sanctions that include reimbursing the state for the cost of damages to any land, water, wildlife, or other natural resources and impoundment of the vessel or vehicle involved in the violation. *See Mich. Comp. Laws* §§ 324.8905, 324.8905a, 324.8950b, and 324.8905c.
- Michigan's laws for protecting wilderness and natural areas and its endangered species law may also apply to ballast water intakes or releases in the event that such actions remove vegetation, extract minerals, or otherwise disturb or transport endangered or threatened plants or fish that are so designated either on state or federal lists of such species. *See Mich. Comp. Laws* §§ 324.35101 and 324.5105, 324.6105 to 324.4507.
- Michigan's Fish and Game law further protects fish in its waters, including the Great Lakes, from taking or killing unless authorized by state regulation. *See Mich. Comp. Laws* §§ 324.41101 to 324.41104.
- Moreover, possessing any aquatic species or taking them from any state waters without a license is explicitly prohibited. *See Mich. Comp. Laws* § 324.43509. All fish found in the portions of the Great Lakes within Michigan's jurisdiction are declared to be the property of the state. *See Mich. Comp. Laws* § 324.47301. As a result, the state has adopted ... prohibitions on operation of vessels in a manner likely to alter the behavior of aquatic species, and protections from interfering with

spawning or propagation of fish. *See* Mich. Comp. Laws §§ 324.47301, 324.37301a, 324.37302, and 324.47311 to 324.47319

CONCLUSION

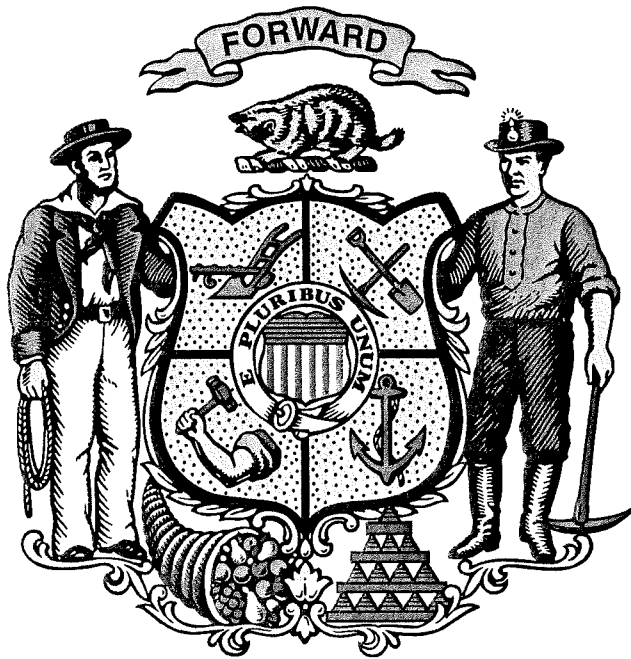
For the reasons stated in this brief and the briefs of State Defendants and Intervenors, amici curiae state lawmakers respectfully request that Defendants' Motion to Dismiss be granted, or, in the alternative, that Plaintiffs' Motion for Summary Judgment be denied.

Date: May 11, 2007

Respectfully submitted,
/s/ Noah D. Hall

Noah D. Hall (P66735)
Assistant Professor, Wayne State University Law School
Visiting Professor, University of Michigan Law School
1402 Culver Road
Ann Arbor, MI 48103
noah_hall@hotmail.com

Attorney for Michigan State Senator Patricia L. Birkholz,
Minnesota State Senator Ann H. Rest,
Illinois Representative Karen May,
Wisconsin Senator Robert L. Cowles, and
Wisconsin Representative Jon Richards



UNITED STATES DISTRICT COURT
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NICHOLSON TERMINAL AND DOCK CO.,
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THE AMERICAN GREAT LAKES PORT ASSOCIATION,
SEAWAY GREAT LAKES TRADE ASSOCIATION,
THE UNITED STATES GREAT LAKES SHIPPING ASSOCIATION,
BAFFIN INVESTMENTS LTD. and CANFORNAV INC.,

Plaintiffs,

v.

Case No.: 2:07-CV-11116
Hon. John Feikens

STEVEN E. CHESTER,
Director of the Michigan Department of Environmental Quality,
and MICHAEL COX, Attorney General for the State of Michigan,

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ALLIANCE FOR THE GREAT LAKES,
and NATIONAL WILDLIFE FEDERATION,

Defendants-Intervenors.

**MOTION OF MICHIGAN STATE SENATOR PATRICIA L. BIRKHOLZ,
MINNESOTA STATE SENATOR ANN H. REST,
ILLINOIS STATE REPRESENTATIVE KAREN MAY,
WISCONSIN STATE SENATOR ROBERT L. COWLES,
AND WISCONSIN STATE REPRESENTATIVE JON RICHARDS
FOR LEAVE TO APPEAR AS AMICI CURIAE**

Michigan State Senator Patricia L. Birkholz, Minnesota State Senator Ann H. Rest, Illinois State Representative Karen May, Wisconsin State Senator Robert L. Cowles, and Wisconsin State Representative Jon Richards (collectively “state lawmakers”) respectfully submit this Motion for Leave to Appear as Amici Curiae in the

above matter. In support of their Motion, the state lawmakers respectfully refer the Court to the attached Memorandum of Points and Authorities. Pursuant to E.D. Mich. L.R. 7.1(a), counsel for state lawmakers sought the concurrence of all parties prior to filing this motion. Counsel for Plaintiffs, counsel for Defendants, and counsel for Defendants-Intervenors consent to amicus participation by the state lawmakers. The proposed amici brief is attached as an exhibit to this motion.

State lawmakers request that this Court grant its Motion for Leave to Participate as Amici Curiae.

Date: May 11, 2007

Respectfully submitted,

/s/ Noah D. Hall

Noah D. Hall (P66735)
Assistant Professor, Wayne State University Law School
Visiting Professor, University of Michigan Law School
1402 Culver Road
Ann Arbor, MI 48103
noah_hall@hotmail.com

Attorney for Michigan State Senator Patricia L. Birkholz,
Minnesota State Senator Ann H. Rest,
Illinois State Representative Karen May,
Wisconsin State Senator Robert L. Cowles, and
Wisconsin State Representative Jon Richards

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
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CANADIAN FOREST NAVIGATION CO. LTD.,
NICHOLSON TERMINAL AND DOCK CO.,
THE SHIPPING FEDERATION OF CANADA,
THE AMERICAN GREAT LAKES PORT ASSOCIATION,
SEAWAY GREAT LAKES TRADE ASSOCIATION,
THE UNITED STATES GREAT LAKES SHIPPING ASSOCIATION,
BAFFIN INVESTMENTS LTD. and CANFORNAV INC.,

Plaintiffs,

v.

Case No.: 2:07-CV-11116
Hon. John Feikens

STEVEN E. CHESTER,
Director of the Michigan Department of Environmental Quality,
and MICHAEL COX, Attorney General for the State of Michigan,

Defendants,

NATURAL RESOURCES DEFENSE COUNCIL, INC.,
MICHIGAN UNITED CONSERVATION CLUBS,
ALLIANCE FOR THE GREAT LAKES,
and NATIONAL WILDLIFE FEDERATION,

Defendants-Intervenors.

**MEMORANDUM OF POINTS AND AUTHORITIES OF
MICHIGAN STATE SENATOR PATRICIA L. BIRKHOLZ,
MINNESOTA STATE SENATOR ANN H. REST,
ILLINOIS STATE REPRESENTATIVE KAREN MAY,
WISCONSIN STATE SENATOR ROBERT L. COWLES,
AND WISCONSIN STATE REPRESENTATIVE JON RICHARDS
IN SUPPORT OF THEIR MOTION FOR LEAVE TO PARTICIPATE AS
AMICUS CURIAE**

Michigan State Senator Patricia L. Birkholz, Minnesota State Senator Ann H. Rest, Illinois State Representative Karen May, Wisconsin State Senator Robert L. Cowles, and Wisconsin State Representative Jon Richards (collectively "state

lawmakers”) respectfully submit this Memorandum in support of their Motion for Leave to Appear as Amici Curiae in this litigation. The state lawmakers have submitted, concurrently with this Motion and Memorandum, a proposed amici brief in support of the Defendants Steven E. Chester and Michael Cox (“State Defendants”) and Defendants-Intervenors Natural Resources Defense Council, Inc., Michigan United Conservation Clubs, Alliance for the Great Lakes, and National Wildlife Federation (collectively “Intervenors”) (the proposed brief is attached as Exhibit A). Pursuant to E.D. Mich. L.R. 7.1(a), counsel for state lawmakers sought the concurrence of all parties prior to filing this motion. Counsel for Plaintiffs, counsel for Defendants, and counsel for Defendants-Intervenors consent to amicus participation by the state lawmakers.

Michigan State Senator Patricia L. Birkholz (Republican, Saugatuck Township) represents Michigan’s 24th Senate District (Allegan, Barry and Eaton Counties in western Michigan). Senator Birkholz is Chair of the Michigan Senate’s Natural Resources and Environmental Affairs Committee. She is Vice Chair the Michigan Senate’s Local, Urban and State Affairs Committee and also serves on the Michigan Senate’s Agriculture Committee and the Michigan Senate’s Energy Policy Committee. Senator Birkholz is one of the state of the Michigan’s representatives to the Great Lakes Commission, is the current chair of the Midwestern Legislative Conference of The Council of State Governments, and founded and currently chairs the Great Lakes Legislative Caucus. Senator Birkholz was the primary sponsor of Michigan Public Act 33 of 2005, the state legislation that is the focus of this litigation.

Minnesota State Senator Ann H. Rest (Democratic-Farmer-Labor, New Hope) represents Minnesota’s 45th Senate District (Crystal, Golden Valley, New Hope,

Plymouth, and Robbinsdale in the Minneapolis metropolitan area). Senator Rest is Chair of the Minnesota Senate's Committee on State and Local Government Operations and Oversight and Chair of the Minnesota Senate's Subdivision on Airways, Railways and Waterways (Transportation Policy). She also serves on the Minnesota Senate's Transportation Policy Committee and Budget Division; the State Government Budget Division; and the Energy, Utilities, Technology and Communications Committee. Senator Rest has been an active member of the Great Lakes Legislative Caucus since its inception. Senator Rest is the primary sponsor of Minnesota Senate File 53, which is currently pending before the Minnesota legislature and is modeled after Michigan Public Act 33 of 2005.

Illinois State Representative Karen May (Democrat, Highland Park) represents Illinois' 58th Assembly District (Bannockburn, Deerfield, Glencoe, Highland Park, Highwood, Lake Bluff, Lake Forest, Northbrook and Riverwoods in the Chicago metropolitan area by Lake Michigan). Representative May serves as Chair of the General Assembly Environmental Caucus and Chair of the House Environmental Health Committee. She also serves on the Health Care Availability and Access, Environment and Energy, Telecommunications, Pension Funds Management, and Electric Utility Oversight committees. She was recently elected Co-Chair of the Conference of Women Legislators.

Wisconsin State Senator Robert L. Cowles (Republican, Green Bay) represents Wisconsin's 2nd Senate District (parts of Brown, Oconto, Shawano, Outagamie and Waupaca counties in northeastern Wisconsin). Senator Cowles currently serves on the Senate Utilities, Commerce and Rail Committee, the Joint Audit Committee, and the

Senate Public Health, Senior Issues, Long Term Care and Privacy Committee. He is also a member of National Conference of State Legislatures and serves on the Science, Energy, and Environmental Resources Committee. Senator Cowles is the primary sponsor of Wisconsin Senate Bill 119, which is intended to address ballast water discharges in the Great Lakes to prevent the spread of aquatic nuisance species.

Wisconsin State Representative Jon Richards (Democrat, Milwaukee) represents Wisconsin's 19th Assembly District (Milwaukee's East Side, Downtown and Bay View neighborhoods). Representative Richards has been the Assistant Minority Leader since 2003. He currently serves on the Committee on Assembly Organization, Committee on Financial Institutions, Committee on Rules, Joint Committee on Legislative Organization, and the Special Committee on the Great Lakes Water Resources Compact. Representative Richards is a sponsor of Wisconsin Assembly Bill 86, which is intended to address ballast water discharges in the Great Lakes to prevent the spread of aquatic nuisance species.

The state lawmakers have an interest in this litigation, and their participation would assist the Court in resolving the issues presented by the parties. Accordingly, the state lawmakers respectfully request that this Court grant their uncontested Motion for Leave to Participate as Amici Curiae.

I. THIS COURT SHOULD EXERCISE ITS BROAD DISCRETION TO ALLOW AMICI PARTICIPATION BY THE STATE LAWMAKERS.

It is well established that U.S. District Courts have broad discretion to allow participation of amici curiae. *See, e.g., Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982) ("The district court has broad discretion to appoint amici curiae"); *Harris v. Champion*, 938 F.2d 1062, 1071 (10th Cir. 1991); *Ellsworth Associates, Inc. v. United*

States, 917 F. Supp. 841, 846 (D.D.C. 1996); *Firestone Tire & Rubber Co. v. Pension Benefit Guar. Corp.*, 695 F. Supp. 43, 44 (D.D.C. 1988).

II. THE STATE LAWMAKERS HAVE A SIGNIFICANT INTEREST IN THE RESOLUTION OF THIS LITIGATION.

The state lawmakers have a significant interest in this lawsuit and in the effective implementation of state water and fisheries protections. Michigan state lawmakers have a Constitutional obligation to protect Michigan's natural resources. Article IV, section 52 of the Michigan Constitution (1963) provides: "The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction."

The individual state lawmakers seeking leave to file an amici curiae brief have demonstrated a particular commitment to addressing the problem of aquatic nuisance species. Michigan State Senator Birkholz was the primary sponsor of Michigan Public Act 33 of 2005, the state legislation that is the focus of this litigation. Minnesota State Senator Rest is the primary sponsor of Minnesota Senate Bill 53, which is currently pending before the Minnesota legislature and is modeled after Michigan Public Act 33 of 2005. Illinois State Representative May serves as Chair of the General Assembly Environmental Caucus and Chair of the House Environmental Health Committee. Wisconsin State Senator Cowles is the primary sponsor of Wisconsin Senate Bill 119, which is intended to address ballast water discharges in the Great Lakes to prevent the spread of aquatic nuisance species. Wisconsin State Representative Richards is a sponsor of Wisconsin Assembly Bill 86, which is similarly intended to address ballast water discharges in the Great Lakes to prevent the spread of aquatic nuisance species. The state

lawmakers also have leadership positions within both their state legislative bodies and various collaborative regional legislative organizations, such as the Great Lakes Legislative Caucus.

III. THE STATE LAWMAKERS PARTICIPATION AS AMICI CURIAE WOULD ASSIST THE COURT IN UNDERSTANDING THE INTERESTS AND ISSUES INVOLVED IN THIS LITIGATION.

The state lawmakers will provide in their amici brief information helpful to the Court in deciding this case. State lawmakers will explain the collaborative approach provided by state and federal law for addressing aquatic nuisance species in the Great Lakes; the ongoing process to form a Great Lakes Aquatic Nuisance Species Coalition; and the range of other state laws that could be potentially affected by the plaintiffs' claims. Further, while supporting the positions of the State Defendants and Intervenors, state lawmakers will provide a perspective from the elected representatives of the citizens of Great Lakes states concerned with the ongoing problem of aquatic nuisance species.

CONCLUSION

For all the reasons stated above, state lawmakers respectfully submit that their uncontested motion for leave to participate as an amici curiae be granted.

Date: May 11, 2007

Respectfully submitted,

/s/ Noah D. Hall

Noah D. Hall (P66735)
Assistant Professor, Wayne State University Law School
Visiting Professor, University of Michigan Law School
1402 Culver Road
Ann Arbor, MI 48103
noah_hall@hotmail.com

Attorney for Michigan State Senator Patricia L. Birkholz,
Minnesota State Senator Ann H. Rest,
Illinois State Representative Karen May,
Wisconsin State Senator Robert L. Cowles, and
Wisconsin State Representative Jon Richards

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2007, I electronically filed the foregoing Motion for Leave to Appear as Amici Curiae along with the supporting memorandum and proposed brief with the Clerk of the Court using the ECF system, which will send notification of such filing to Norman C. Ankers, Robert P. Reichel, Neil S. Kagan, Christopher E. Tracy, and Randal M. Brown. I also sent copies by email to Shannon Fisk and Sara R. Gosman.

Date: May 11, 2007

Respectfully submitted,

/s/ Noah D. Hall

Noah D. Hall (P66735)
Assistant Professor, Wayne State University Law School
Visiting Professor, University of Michigan Law School
1402 Culver Road
Ann Arbor, MI 48103
noah_hall@hotmail.com

Attorney for Michigan State Senator Patricia L. Birkholz,
Minnesota State Senator Ann H. Rest,
Illinois State Representative Karen May,
Wisconsin State Senator Robert L. Cowles, and
Wisconsin State Representative Jon Richards