



*“The mission of the Council is to represent the citizens of Cook Inlet in promoting environmentally safe marine transportation and oil facility operations in Cook Inlet.”*

**Members**

*Alaska State Chamber of Commerce*

*Alaska Native Groups*

*Environmental Groups*

*Recreational Groups*

*Aquaculture Associations*

*Fishing Organizations*

*City of Kodiak*

*City of Kenai*

*City of Seldovia*

*City of Homer*

*Kodiak Island Borough*

*Kenai Peninsula Borough*

*Municipality of Anchorage*

October 27, 2003

Docket Management Facility  
(USCG-2003-14273)  
U.S. Dept. of Transportation, Room PL-401  
400 Seventh Street SW  
Washington, D.C. 20590-0001

Dear Sir or Madam,

The Cook Inlet Regional Citizens Advisory Council (CIRCAC) would like to comment on the proposed rulemaking that would revise 33 CFR part 151 to implement the requirements of the National Invasive Species Act of 1996 (NISA). CIRCAC is a citizen's oversight council for oil industry operations in the Cook Inlet region, and was established according to Section 5002 of the Oil Pollution Act of 1990 (OPA 90). Through this act, CIRCAC represents 13 communities and organizations in promoting environmentally safe marine transportation and oil facility operations in Cook Inlet.

Although this proposed rulemaking significantly strengthens the oversight capabilities of the USCG by requiring mandatory ballast water management for all vessels equipped with ballast water tanks entering US waters, there are additional issues that need to be considered. We have provided comments and recommendations as outlined below.

**Background**

Alaska recently produced a DRAFT Aquatic Nuisance Species Management Plan<sup>1</sup> and hired a state Aquatic Nuisance Species (ANS) Coordinator to begin implementing the plan. Although the plan identifies as one of its management action goals to “Prevent the introduction of new ANS into Alaska waters,” it does not clearly identify plans for developing Alaska Ballast Water Management regulations other than identifying the task of reviewing “existing state laws and regulations to identify gaps and help develop statutes and rules that serve to protect State waters from invasive species introductions.” Thus, for the time being, we have to rely on the USCG federal authority to help us protect Alaska’s incredibly rich marine environment from ANS. A unified ballast water management program along the entire west coast, including Alaska, would limit transport of invasive species via interstate shipping. We look to you, the USCG, to implement a program at the national level that will address the many states’ concerns.

On June 17<sup>th</sup>, 2003, Alaska Senator Lisa Murkowski testified at the Senate Subcommittee on Fish, Wildlife, and Water saying that Prince William Sound is especially vulnerable to invasions due to the potential introduction of huge volumes of ballast water. She emphasized that many of these ships are arriving from other west coast ports which are known to be heavily invaded by aquatic non-indigenous species.

<sup>1</sup> Faye, G. 2002. DRAFT *Aquatic Nuisance Species Management Plan*. Prepared for Alaska Department of Fish and Game, Juneau, AK.

The history of marine introductions into some of Alaska's coastal waters was recently studied<sup>2</sup> showing that a number of non-native species have been introduced in Prince William Sound and Kachemak Bay (although not necessarily by ballast water). Some species (e.g. the soft shell clam *Mya arenaria*) have become well established. Although this species is most likely benign, there are several species that pose a very real threat to ecological or economically significant native species in Alaskan coastal waters. It has been reported that the European Green Crab (*Carcinus maenas*), a species that is predicted to eventually extend north to Alaska<sup>3</sup> can have significant impacts on North American commercial shellfish, including the economically-important Dungeness Crab (*Cancer magister*) in Alaska. The Green Crab has been shown to impact invertebrate communities and shorebird populations. Other areas of Alaska's coast would, in turn, also be threatened if invasive species can become established in Prince William Sound. If expanded outside of Prince William Sound, they could become entrained in the Alaska Coastal Current, especially in larval form, and subsequently settle into areas downstream, such as Cook Inlet.

### **Proposed Rulemaking 33 CFR 151; Mandatory Ballast Water Reporting**

The low compliance under the interim rule 33 CFR 151 draws our attention to the need for "penalties for non-submission of ballast water management reports," as currently being reviewed by the USCG under a separate rulemaking. This causes us to be concerned that the USCG will not have the resources to ensure compliance with the provisions in the current proposed rule. Because there are reports<sup>4</sup> of attempts to falsify records required under Annex I of MARPOL, we are concerned about the potential to falsify ballast water management activities. Thus, the final regulations should have clear monitoring and enforcement strategies as well as funding to ensure maximum compliance.

Recently, CIRCAC's Environmental Monitoring Committee undertook a project to assess risks from ballast water discharge from marine vessels<sup>5</sup> into the waters of Cook Inlet. The lack of complete, consistent, and reliable data on ballast water made available to us from the National Ballast Water Information Clearinghouse (NBIC) and other sources leads us to strongly agree with the findings of the USCG and the Secretary of Transportation that the "consistently low rate of vessel reporting makes it impossible to accurately assess compliance with the voluntary Ballast Water Management guidelines, or assess the effectiveness for reducing the introduction."

The reporting requirements in 33 CFR 151 Subpart D should more clearly reflect the need for information on *all* locations where ballast water is discharged into U.S. waters. Currently, the reporting requirements require that shippers report the "expected date, location, volume, and salinity of any ballast water to be discharged into the waters of the United States or a reception facility." A subsequent section provides for how to submit changes to previously submitted information but is not clear on whether it is a requirement to file reports on changes to the data provided for "expected" dates, locations, volumes, and salinities. A requirement for recording

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<sup>2</sup> Hines, A. H. and G. M. Ruiz. 2000. Invasions of Cold-Water Coastal Ecosystems: Ballast-Mediated Introductions in Port Valdez/Prince William Sound, Alaska. Final Project Report to Prince William Sound Regional Citizens Advisory Council, Valdez, AK.

<sup>3</sup> Ruiz, G.M., A. W. Miller, and W.C. Walton. 1998. *The Bi-Coastal Invasion of North America by the European Green crab: Impacts and Management Strategies*. Report by Smithsonian Environmental Research Center to the Aquatic Nuisance Species Task Force,

<sup>4</sup> Pacific Ballast Water Group, "Report and Recommendations," July 28, 1999 (DRAFT).

<sup>5</sup> Robertson, T. and L. Crew. 2003. Gross estimates of ballast water discharges into Cook Inlet, Alaska. DRAFT report to Cook Inlet Regional Citizens Advisory Council, Kenai, AK.

actual discharge locations, etc...for *all* discharges is an absolute necessity for evaluating potential threats of NIS from ballast water that is legally discharged in U.S. waters.

### **Proposed Rulemaking 33 CFR 151; Mandatory Ballast Water Management**

The proposed mandatory ballast water management program, as written, will not significantly change the threats to Alaskan waters unless the language significantly is expanded to include mandatory exchange for ships transiting between domestic ports.

The removal of the language in the interim rule (33 CFR 151) that granted exemptions for “a crude oil tanker engaged in the coastwise trade” would protect Alaska’s coastal waters from NIS introductions via ballast water. However, the proposed 33 CFR 151 rulemaking focuses the mandatory ballast water management requirements on ships arriving into U.S. waters from outside of the Exclusive Economic Zone (EEZ). This, in effect, provides an “exemption by default” for the crude oil and other coastwise trade between U.S. west coast ports and Alaska. This exemption needs to be addressed.

Language should be added to this proposed rulemaking to require vessels operating exclusively within the EEZ to conduct open exchange at least a certain distance offshore. This is not unprecedented, as a requirement is currently in place in the state of Washington<sup>6</sup> that requires open ocean exchange by all ships discharging ballast into their state waters, including the coastwise trade. This exchange must take place outside of 50 nm or at a distance required by the USCG, whichever is greater. We recognize the complexity of developing a standardized “distance rule” for the coastwise trade, yet believe added protection above what this proposed rule provides will be provided by mandatory exchange, even if within the 200 mile limit. A full evaluation of the relative environmental risks of the various options is in order. This evaluation should take into account the potential risks of ANS associated with the coastwise trade from discharges allowed directly into ports (as currently proposed) versus some required distance offshore, yet within the 200 mile limit. For the Gulf of Alaska, this minimum distance should be based on the prevailing physical oceanography and at a bare minimum be outside of the Alaska Coastal Current.

There are potential increasing risks over time; as these ships become faster and reduce their transit time, they reduce the time available for processing or exchanging ballast in transit, yet they increase the chance of non-indigenous species surviving the trip. A continued emphasis on developing faster and more efficient treatments is needed.

The USCG should develop agreements with the EPA and individual states to ensure that there is a substantial education and outreach program for all shippers. In a test for compliance with Australia’s mandatory ballast management program, a ballast exchange verification method was applied to ships that had reported conducting at least 95% exchange<sup>7</sup>. The results from the “Newcastle” tests indicated that a significant degree of inaccurate reporting had taken place. Further evaluation revealed that a significant proportion of the inaccurate reporting resulted from a misunderstanding by mariners of what constituted a “full exchange.” During the trial it was observed that a number of ships’ masters and engineers believed that replacing one full tank volume of ballast water using the flow-through method was a full exchange, whereas the Australian and IMO guidelines make it clear that the equivalent of at least three tank volumes needs to be flowed-through to achieve full exchange. One conclusion of that evaluation was

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<sup>6</sup> Washington Administrative Code WAC 220-77-090.

<sup>7</sup> Pacific Ballast Water Group, "Report and Recommendations," July 28, 1999 (DRAFT).

that there was a definite need for a comprehensive maritime awareness program to achieve full compliance.

In conclusion, we hope that the final version of this rulemaking will constitute a significant step forward in protecting U.S. coastal waters from future NIS invasions, especially in the context of the USCG's four-pronged approach (mandatory ballast water management, penalties for non-compliance, setting treatment standards, and establishing an approval program for experimental ballast water treatment systems). We appreciate this opportunity to submit public comment on this important issue. If you have any questions on our submission, please contact me or our Director of Science and Research, Susan Saupe, at (907) 283-7222 or [circac@circac.org](mailto:circac@circac.org).

Sincerely,

A handwritten signature in black ink, appearing to read "MLM", is positioned above the typed name.

Michael L. Munger  
Executive Director