



Lake Carriers' Association

The Greatest Ships on the Great Lakes

JAMES H. I. WEAKLEY, PRESIDENT

440-333-9995 • weakley@lcaships.com

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Ms. Meredith Walz

Office of National Marine Sanctuaries

1305 East-West Highway, 11th Floor

Silver Springs, MD 20910

Dear Ms. Walz:

Amendments to National Marine Sanctuary Regulations

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Lake Carriers' Association ("LCA") represents 17 American companies that operate 57 U.S.-flag vessels ("lakers") 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, our members can transport more than 115 million tons of dry-bulk cargo per year and employ more than 1,600 men and women, all of whom are U.S. citizens or legally admitted aliens, and provide annual wages and benefits of approximately \$125 million. In turn, the cargoes our members carry generate and sustain more than 103,000 jobs in the eight Great Lakes and have an economic impact of more than \$20 billion.

We applaud the efforts of the Office of National Marine Sanctuaries ("ONMS") to protect areas of the marine environment that are of special national significance, but do have one concern with the proposed rule. Specifically, we must oppose moving the definition of "oceangoing ship," which is currently applied only to the Channel Island National Marine Sanctuary, to the main definitional section applicable to all of Part 922 (per proposed 15 CFR §922.11). The result would be that ships and vessels that 1) never leave the Great Lakes; 2) are generally too large to exit the Great Lakes via the Welland Canal and St. Lawrence Seaway; and 3) are by law forbidden to operate on the oceans would be defined as an "oceangoing ship."

The definition in question reads as follows:

Oceangoing ship means a private, commercial, government, or military vessel of 300 gross registered tons or more, not including cruise ships.

That definition captures all the self-propelled vessels and tug/barge units registered with LCA, but it is impossible to consider any of them oceangoing. The vast majority of our members' vessels confine their operations between Duluth/Superior at the western end of Lake Superior and Conneaut, Ohio near the Ohio/Pennsylvania border. A few vessels deliver dry-bulk cargoes to Erie, Pennsylvania, and Buffalo, New York. One member loads cement in Bath, Ontario once or twice per month. Last year two vessels collectively carried 10 iron ore cargoes to Quebec City, but that is not a normal trade pattern for U.S.-flag lakers.

Many of the vessels registered with LCA are too large to transit the Welland Canal and St. Lawrence Seaway and gain access to the Atlantic Ocean. And most importantly, none are certificated by the U.S. Coast Guard or American Bureau of Shipping to operate on the oceans. The farthest east any LCA vessel can legally operate is Anticosti Island, which is at the outlet of the Saint Lawrence River into the Gulf of Saint Lawrence.

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20325 Center Ridge Rd., Ste. 720 ♦ Rocky River, OH 44116 ♦ www.lcaships.com

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 ♦ LAKES SHIPPING COMPANY
LAKE MICHIGAN CARFERRY SERVICE ♦ PERE MARQUETTE SHIPPING ♦ PORT CITY MARINE SERVICES ♦ PORT CITY STEAMSHIP SERVICES
SOO MARINE SUPPLY, INC. ♦ UPPER LAKES TOWING COMPANY, INC. ♦ VANENKEVORT TUG & BARGE INC.

In short then, the proposed definition is contrary to the common understanding of the meaning of oceangoing. Further, it is contrary to the definition of "oceangoing ship" established by the federal agency primarily charged by Congress with regulating the operation of vessels, and with which vessel operators have the most contact – the U.S. Coast Guard.

The Coast Guard has defined "oceangoing ship" in 33 CFR § 151.05 in a common sense meaning of the term, including an explanatory note that the term does not apply to ships operated exclusively on the Great Lakes (emphasis added):

Oceangoing ship means a ship that-

- (1) Is operated under the authority of the United States and engages in international voyages;
- (2) Is operated under the authority of the United States and is certificated for ocean service;
- (3) Is operated under the authority of the United States and is certificated for coastwise service beyond three miles from land;
- (4) Is operated under the authority of the United States and **operates at any time seaward of the outermost boundary of the territorial sea of the United States as defined in §2.22 of this chapter**; or
- (5) Is operated under the authority of a country other than the United States.

NOTE: A Canadian or U.S. ship being operated exclusively on the Great Lakes of North America or their connecting and tributary waters, or exclusively on the internal waters of the United States and Canada, is not an "oceangoing" ship.

The foregoing definition of "oceangoing ship" in 33 CFR § 151.05 is used repeatedly by the Coast Guard, being incorporated by reference in 33 CFR §154.1020, 33 CFR § 155.10, 46 CFR § 98.31-5, 46 CFR § 151.01-1(a), and 46 CFR § 153.2. Because vessels that are oceangoing have different legal requirements from vessels that are non-oceangoing (such as Great Lakes vessels), the Coast Guard repeatedly uses the term "oceangoing" throughout its regulations as a distinguishing term for different categories of vessels. According to a LEXIS search of the 2012 Code of Federal Regulations, the Coast Guard used the term "oceangoing" 39 times in Title 33, CFR, and 23 times in Title 46, CFR. Further, some Coast Guard regulations specifically distinguish between "non-oceangoing" ships and "oceangoing" ships. Compare 33 CFR § 155.330 (non-oceangoing ships) with 33 CFR § 155.350 (oceangoing ships); see also 46 CFR § 174.005(e) (regarding special rules pertaining to "oceangoing ships of 500 gross tons and over"), and 46 CFR § 56.50-30(d)(1) (recognizing a distinction between "oceangoing and Great Lakes steam vessels").

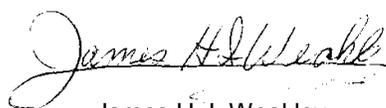
Other federal agencies' regulations also use the term oceangoing according to the common understanding of the term – 7 CFR § 318.13-8 ("oceangoing craft", Animal and Plant Health Inspection Service, Department of Agriculture); 19 CFR § 4.66c ("oceangoing vessels", U.S. Customs & Border Protection, Department of Homeland Security); 46 CFR § 307.1 ("U.S.-flag oceangoing vessels in foreign trade," Maritime Administration, Department of Transportation).

The Office of National Marine Sanctuaries should not move the definition of "oceangoing ship" from its current location in the regulations, applicable only to the Channel Islands NMS, to a location applicable to all marine sanctuaries unless an exception is inserted in the definition as to ships operated exclusively on the Great Lakes, comparable to the Note in 33 CFR § 151.05. The agency should not introduce regulatory confusion by defining Great Lakes vessels as "oceangoing ships" contrary to the common understanding of the term "oceangoing," contrary to the regulatory definition used repeatedly by the Coast Guard (the agency most involved with regulating vessels), and contrary to the historic understanding that such term has no application to the Great Lakes. The agency has not given any biological or cultural justification to move the definition and broaden its scope. We are particularly concerned with regard to unintended consequences of applying the term oceangoing ship to include lakers.

Many rules and regulations are written for National Marine Sanctuaries to protect the biological integrity of the Sanctuary. This is certainly appropriate, since all but one are biologically based. The one exception is the Thunder Bay National Marine Sanctuary located in northern Lake Huron. Its purpose is to protect and respect 160 shipwrecks, spanning over a century of Great Lakes shipping and maritime history. We embrace the concept and support its expansion to other parts of the country. However, the concept is ripe for the misapplication of well meaning regulations that are appropriate for biologically based sanctuaries. In fact, the proposed expansion of the oceangoing vessel definition is an excellent example of the unintended consequences that concern us.

One way of solving this problem would be to create two classes of National Marine Sanctuaries: biologically and culturally based. This approach allows NOAA, the Coast Guard and other regulatory bodies to issue and enforce regulations that are appropriate to each type of sanctuary. This approach, however, does not remove our objection to inappropriate and perhaps unintentional expansion of the definition of oceangoing vessel.

Very Respectfully,


James H. I. Weakley
President