

TESTIMONY

OF

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TRIBAL CHAIRMAN

OF THE

WAGANAKISING ODAWAK

(LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS)

Before the

**HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON WATER RESOURCES AND THE ENVIRONMENT**

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**Testimony of Frank Ettawageshik, Tribal Chairman
Little Traverse Bay Bands of Odawa Indians**

INTRODUCTION

Mr. Chairman and members of the Committee, my name is Frank Ettawageshik, Tribal Chairman for the Waganakising Odawak otherwise known as the Little Traverse Bay Bands of Odawa Indians (LTBB). As chairman, I also serve as the LTBB representative to the Chippewa/Ottawa Resource Authority (CORA), which is a coalition of five Michigan tribes that oversees the management and regulation of treaty-based fishing rights in the upper Great Lakes. CORA also oversees implementation of a Consent Decree entered in the year 2000, a negotiated settlement of a longstanding federal court case among the five tribes, State of Michigan, and the federal government, which governs allocation and management of the fishery resources in the 1836 Treaty-ceded waters of the upper Great Lakes.

With the approval of the CORA board, I speak on their behalf today with respect to the issue of Aquatic Invasive Species (AIS), an issue of grave importance to the Tribes' Treaty-based fishing rights, as well as the continued successful implementation of the federal-court ordered Consent Decree. Our ancestors, who signed the 1836 Treaty of Washington with the U.S. government, had the wisdom to insure that future generations could continue utilizing the fish resources of the Great Lakes for sustenance and income, and many tribal families continue to depend on fishing today.

While preparing for this testimony we consulted with the staff at the Great Lakes Indian Fish and Wildlife Commission and the Haudenosaunee Environmental Task Force. Together with CORA these three organizations represent Tribal Nations from one end to the other of the Great Lakes Region.

As Tribal Nations we often speak of being taught to consider the impact of our decisions on through to the coming seventh generation. While this teaching causes us to take the long view in our planning, there are times within this long view that we find ourselves needing immediate action in order to protect the needs of those coming generations, in order to meet our sacred duty in working to protect all of creation and those beings with whom we share it. **Today is one of those times we call for immediate action.**

Commercial fishing is one of the oldest industries in the Great Lakes, if not the nation. Historically, the Great Lakes supported a vast, vibrant, and profitable commercial fishing industry. However, due to many and various forces, the commercial fishery on the Great Lakes is but a fraction of its historical presence, giving way in many cases to governmental policies that

favor recreational fisheries. Today, the tribal treaty-based fishery remains one of the most significant commercial fisheries on all of the Great Lakes.

Sadly, however, commercial fishing on the Great Lakes, particularly Tribal fishing, is on the **verge of collapse**. Out of the various environmental and market forces, the direct and indirect impacts of **Aquatic Invasive Species (AIS)** stand out as the leading cause for the precipitous decline in Treaty-based commercial and subsistence fishing activity. I also note that AIS have resulted in major negative impacts to the recreational fishery among all the Great Lakes States.

Remediation of damages by existing AIS, and prevention of additional invasions is essential to the future of: 1) the Treaty-based fishery, 2) implementation of the 2000 Consent Decree, and 3) many other water-related industries and activities throughout the Great Lakes – and the nation. Our primary concern is the continued, steady, and destructive invasion of AIS into the Great Lakes, with their **primary vector** for entry being **ballast water discharge from transoceanic shipping**.

I. ECONOMIC AND ENVIRONMENTAL IMPACTS OF AQUATIC INVASIVE SPECIES

Despite the Tribes' strong involvement at all levels of inter-governmental resource management and related processes in the Great Lakes for nearly three decades, the Tribes have been forced to helplessly watch the Great Lakes resource, and their treaty-based fishing industry being shamefully attacked, eroded, and diminished by AIS, particularly species that entered via the ballast water vector. We are appalled as to how such an obvious and destructive activity is allowed to continue, virtually unabated, **while the federal government stands idle**.

The Tribes understand that foreign shipping into the Great Lakes provides economic benefits to the United States. However, we submit to you, that any economic benefits derived from Great Lakes foreign shipping, pale in comparison to the **economic costs resulting from damages caused by AIS!** We also stress the fact that economic damage and remediation costs are cumulative and indefinite. That is, each time an AIS becomes established, the costs associated with minimizing the impacts of that AIS become an annual expense – forever. Probably the most renowned example of remediation for an AIS is the predatory sea lamprey, which invaded the upper Great Lakes through shipping canals in the 1930's. **Controlling sea lamprey, a responsibility of the Great Lakes Fishery Commission, currently costs the U.S. government \$12.4 million per year – for a single AIS, with no end in sight.** Despite this control effort, sea lamprey damages to commercial and sport fisheries remain substantial, as are the impacts on inter-governmental management processes. Left uncontrolled, sea lamprey would essentially eliminate both commercial and sport fisheries throughout the Great Lakes in a very short time.

Numerous studies are ongoing to compare the economic benefits of transoceanic shipping into the Great Lakes, with the past and future costs associated with the AIS already in the basin, as well as those that undoubtedly will be dumped here. For example, anecdotal reports of the costs associated with removing zebra mussels from municipal water intake pipes throughout the Great Lakes range in the hundreds of millions per year – with no end in sight. Furthermore, AIS that have invaded the U.S. via the Great Lakes have already expanded into inland waterways, and as this expansion spreads across the nation, the costs and damages will continue to mount.

II. DIRECT AND INDIRECT IMPACTS OF AIS

AIS impacts are wide ranging including both direct and indirect impacts on the environment and management processes in the Great Lakes. Direct impacts include reduced fish abundance due to predation or competition from AIS (e.g. sea lamprey), damage to fishing gear requiring expensive repairs or destruction of the gear (e.g. zebra mussels), loss of income due to fouling of fishing nets that results in reduced fish harvests, and so on. Indirect, but equally as important, effects include altered lake ecology that results in changes in water clarity (fish distribution), expansive growth of net fouling algae (reduced harvests, damaged gear), loss of market value due to vastly reduced growth/condition of fish, and so on.

The combined direct and indirect impacts of AIS on the Great Lakes resource is resulting in **rapidly increasing costs to tribal fishing businesses**, coupled with declining marketability of fish that have been devalued due to AIS. Further exacerbating the plight facing the Treaty fishery industry is the increasingly contentious political and regulatory climate that arises between governments charged with managing a shared resource. **Ironically, nearly all the major points of inter-governmental contention involving the Tribes and State and Federal governments can be traced back to one or more of the cascading impacts of AIS introductions.** Even the 2000 Consent Decree recently required modification due to excessive sea lamprey abundance. Governments have continuously been required to re-negotiate and rewrite joint management plans, and change fishing regulations – not as a result of their own behavior – but rather due to the drastic ecological changes caused by a seemingly unending invasion of AIS.

To state it bluntly, **the transoceanic shipping industry, through ballast water exchange practices and construction of canals, has severely impaired, and threatens to destroy, the Treaty-based commercial and subsistence fishing industry.** We find it unacceptable that one industry has been allowed to erode, and threaten to destroy, another industry, particularly an industry that was presumed protected by the federal government through the 1836 Treaty of

Washington, and more recently in the 2000 Consent Decree - to which the federal government is signatory!

III. IMMINENT THREAT OF INTRODUCTION OF DANGEROUS PATHOGENS SUCH AS VIRAL HEMORRHAGIC SEPTICEMIA

Until recently, the Tribes, along with state and federal governments, have been mostly focused on invading plant and animal species. However, the recent discovery of a serious **new fish virus** in Lakes Ontario, Erie, and Huron, which is believed responsible for large fish die-offs in the spring of 2005, has greatly raised the level of concern. While it has not yet been determined how **Viral Hemorrhagic Septicemia (VHS)** found its way into the Great Lakes, ballast water discharge is implicated. Regardless of whether ballast exchange is the culprit with specific regard to VHS introduction, the discovery of VHS clearly and undeniably raises the concern that serious pathogens could find their way to the Great Lakes and U.S. via ballast water, **both fish and human pathogens**. We question how such a serious threat can be allowed to continue!

VHS provides yet another example of the **costs associated with AIS**. Since its discovery less than a year ago, governments across the Great Lakes have been scrambling to decide what actions should be taken within their respective jurisdictions, and in cooperation with other agencies. Many fish stocking programs are now threatened, included those conducted by the Tribes. Agency hatcheries now have to implement additional protections to prevent the virus from infesting the hatcheries. Governments, including the federal government (USDA-APHIS) are preparing to implement controversial policies to restrict the movement of certain fish species in an effort to slow the spread of the virus. Agencies have implemented VHS monitoring programs within their jurisdictions. All these costs, in money and time, are a consequence of a single new AIS, in this case a pathogen. We are asking that you address this situation immediately, before we must suffer from the introduction of another pathogen that results in a fish, wildlife, or human epidemic.

IV. PREVENTION IS IMPERATIVE, WITH THE BALLAST WATER VECTOR BEING THE FIRST PRIORITY

Unfortunately, history has proven that once an AIS is introduced in the Great Lakes, even in a geographically isolated area, its future spread cannot be stopped – it is too late. Therefore, **prevention is the only viable approach to combating AIS. The means by which AIS enter the Great Lakes must be stopped, and the ballast water vector should be the first priority!**

It is extremely saddening to realize that most of the costs and environmental damages wrought by AIS **could have been prevented**. Accordingly, all the costs and damages that will inevitably result if **additional AIS** are allowed to be introduced into the Great Lakes **can be prevented**. We believe the ballast water vector could have, and should have, been addressed two decades ago. The transoceanic shipping industry was well aware, as were governments and organizations within the U.S., that ballast water discharge was a "time bomb" regarding AIS. Yet, the federal governments of the U.S. and Canada implemented only weak and virtually meaningless ballast water exchange regulations. The ineffectiveness of these regulations is evidenced by the continued invasion of species that originate in Europe and Asia –major ports for transoceanic shipping to the Great Lakes.

V. FEDERAL LEGISLATION REQUIRED – GREAT LAKES REGIONAL COLLABORATION RECOMMENDATIONS

What can be done to stop the invasion before additional AIS cost our nation and the Treaty fishery even more damages in money, commercial, subsistence and recreational opportunities, and environmental and human health? Foremost, **federal legislation is essential**. This **legislation must be effective**, not simply window-dressing. Remember, the effectiveness of any regulations regarding AIS will be readily evaluated based on whether new AIS find their way into the system. We stress that even one species, such as sea lamprey or zebra mussels, can cost our nation billions, and threaten to destroy affected industries and opportunities – such as the Treaty-fishing industry.

Since the primary objective for AIS legislation must focus on prevention to be meaningful, we only support legislation that effectively meets that objective. House Bills 1591 and 1592 and the companion Senate Bill 770, with the modifications recommended in the final report of the Great Lakes Regional Collaboration (Collaboration) would be acceptable. However, we note that the modifications in the Collaboration recommendations were developed prior to the discovery of the pathogen, VHS, which only further demonstrates the urgent need for even more stringent ballast water discharge restrictions.

A second Bill introduced last year, **Senate bill S.363, would do little or nothing to prevent additional AIS from entering the Great Lakes for the foreseeable future. We do not support that bill!** First, S.363 does not require ship-board ballast technology for the majority of ships entering the Great Lakes until the year 2016. **That is far too late.** Effective regulation and control of ballast water should have been accomplished decades ago. Putting off effective measures for another decade will result in additional irreversible economic and environmental catastrophes. Based on the current rate of AIS invasion, there is every reason to

believe that the Great Lakes, and thus the entire nation, would be subjected to many damaging AIS by 2016. **All vessels entering the Great Lakes must meet an environmentally protective standard *immediately*.**

The Tribes applaud the State of Michigan for recently enacting a permitting system for ocean-going vessels that enter Michigan ports. While we greatly appreciate Michigan's legislation for ballast water regulation, Michigan is just a single Great Lakes state. A strong federal law is absolutely essential; however, the federal government has been completely ineffective in addressing this issue, and the "clock is ticking" for the Treaty fishery industry.

The Chippewa Ottawa Resource Authority was a signatory to a petition in a federal lawsuit intended to require EPA to issue and enforce ballast water discharge permits pursuant to the Clean Water Act. This lawsuit was successful, and EPA was ordered to implement the ballast water discharge permits as indicated in the Clean Water Act. However, Senate bill S. 363 would preempt any State laws regarding ballast water, and prevent regulation of ballast water through the Clean Water Act. With no immediately effective federal standards, S. 363 would thus actually exacerbate the AIS disaster.

SUMMARY OF THE AIS ISSUE AND TRIBAL CONCERNS

- 1) **Federal Responsibility.** We view the problem of AIS to be the responsibility of the federal governments of the U.S. and Canada. Only the federal governments could have prevented the economic and environmental damage that has been inflicted on the Treaty fishery and the respective nations. Only the federal governments can effectively eliminate future damages.
- 2) **Treaty fishing industry already severely damaged, and its very existence greatly threatened.** AIS, and particularly AIS introduced through ballast water, have severely damaged the Treaty commercial and subsistence fishing industry, and if left unregulated, threatens to completely destroy it. Similarly, non-treaty fishing activities (e.g. recreational fishing) have also been severely impacted. In both cases, the governing bodies for the commercial and recreational fisheries have to increase their expenditures to remediate impacts.
- 3) **Transoceanic shipping irresponsibility.** We find it shocking and appalling that the transoceanic shippers are allowed to enter the heartland of the U.S. (Great Lakes), dump their AIS infested trash from ballast tanks, and return home – thereby leaving U.S. governments and citizens to deal with the economic and environmental consequences.

- 4) **Economic and Environmental damages.** AIS issue is a profound problem with interrelated economic and environmental components. The economic costs to industry and governments inflicted by AIS already in the system are staggering – and more AIS enter each year. The environmental damage is just as large, and will continue to grow as AIS dumped in the Great Lakes eventually spread across the country.
- 5) **Pathogen introduction.** Whether the fault of ballast discharges or not, the recent introduction of a pathogen (VHS) clearly illustrates the urgent need for action in regulating transoceanic shipping and ballast water. On any given day, foreign pathogens, which could impact animal or human health, are being discharged into the waters of the Great Lakes. Most are likely benign, but it only takes one.
- 6) **Priority focus on prevention.** We stress the need to focus immediate attention on the transoceanic shipping industry, rather than sidetrack the discussion to the Great Lakes Fleet (freighters), or rapid response strategies. History has shown that once an AIS enters the Great Lakes system, it will spread throughout pursuant to its habitat requirements – and there is little governments can do to stop the spread.
- 7) **Ballast water vector is fixable.** The ballast water vector is readily curable; it will simply require ocean-going ships to spend the necessary funds to fix their problem. Unfortunately the shipping industry has stubbornly and shamefully refused to act, despite two decades of damage awareness. We believe they have had ample time to meet their responsibilities.
- 8) **Federal Trust Responsibility.** The federal government has a trust responsibility to the Tribes, which includes protecting the rights retained in the 1836 Treaty of Washington, and as signatory to the mutually negotiated 2000 Consent Decree.
- 9) **Other vectors for AIS introduction.** While we focused on the ballast water vector for AIS introduction, the federal government also needs to immediately address other vectors. Once an AIS is established, it doesn't matter how it was introduced. Currently, a vector of great concern to the Tribes is the potential invasion of Asian Carp through the Chicago Sanitary Ship Canal. Only a single electric barrier is preventing Asian Carp from invading the Great Lakes thereby presenting a situation that will be devastating for the native fishes of the Great Lakes. The proposed second barrier must be completed and fully funded on an annual basis.
- 10) **Great Lakes Regional Collaboration.** The Tribes participated fully in the Great Lakes Regional Collaboration, an effort initiated by President Bush in 2005. The final report from this massive Great Lakes-wide collaborative effort provides much detail and

documentation regarding AIS. As evidenced in this report, all governments and impacted user groups acknowledge and concur that AIS have been, and continue to be, one of the most significant threats to the health of the Great Lakes ecosystem, and its associated industries and activities.

- 11) Immediate action required.** History has shown that AIS impacts can be massive, within both the fisheries and non-fisheries realms. The AIS issue can be summarized as simply as this: **on any given day, any given ballast water discharge from a transoceanic vessel can carry an organism that could inflict as much, or even more, economic and environmental damage as sea lamprey, or zebra mussels, or the pathogen VHS.**

CONCLUSION

We urge you, for the reasons discussed above, to immediately begin the process to enact meaningful, effective, and enforceable regulations that will ensure that the uncontrolled invasion of AIS through ballast water of ocean-going ships is stopped. The economic, health, and environmental consequences for all citizens of the nation and the Great Lakes Region are far too great to continue to ignore or downplay this problem. *The need for immediate action is both obvious and essential.*

