



Judge Dismisses VHS Fish Virus Lawsuit

In a cookbook fashion Federal Judge James Rosenbaum ruled to dismiss our complaint against the US Coast Guard and the USDA Animal and Plant Health Inspection Service (APHIS) division. Our suit alleged their failure to enforce federal statutes to prevent the spread of this pathogen into Lake Superior. In the Complaint we asked the Court to rule that the defendants' failure to enforce their own regulations in the National Invasive Species Act and the Animal Health Protection Act as arbitrary and capricious and therefore unlawful.

In response the defendants filed a Motion to dismiss our complaint stating that the Court lacked jurisdiction and that we lacked standing required to bring the case to court.

In retrospect, the cards were stacked against us. In his ruling the Judge called our effort to prevent the spread of VHSV "prophylactic" in an unfortunate choice of words. We do not view Lake Superior as a den of iniquity. Our complaint carefully documented the march of this disease through the lower Great Lakes. It also drew upon the agencies' own acknowledgement of the imminent problem for the lake.

None of our claims met his interpretation of what constitutes jurisdiction for the Court and standing for the plaintiffs in our actions against a federal agency. In his view they have unfettered "sovereign immunity" and may act at their own discretion to enforce federal statutes that do not expressly waive immunity.

On standing, per the Judge, we have none. We have not yet been affected by the virus! The fact that the Lake is full of other invasive species transported by ships' ballast water was conveniently ignored. In other words, we would need to get sick before the doctor gave us an inoculation! In this case we were asking for treatment of ships' ballast water.

The Judge even speculated that there may be an "unknown antiviral component" in the lake preventing the spread of VHSV! If this were true, would not the lower lakes also have been inoculated by these medicinal waters flowing from Lake Superior?

Our co-plaintiffs along with ourselves have decided that an appeal of this ruling is probably not warranted due to the expense involved plus the significant hurdles protecting the USCG and APHIS from taking any effective action in preventing the spread of VHSV. The endless stream of the 90 or so other aquatic invasive species into Lake Superior will continue replenishing our supply. We will press for ballast water treatment as the only effective means of solving this problem and the sooner, the better.

LeRoger Lind

Meet our newest SLSA board member.



We are pleased to introduce you Jim Lind, now a well qualified member of your board of directors. Here are his impressive credentials:

He has a masters' degree in Wildlife Biology from Louisiana State University, and undergraduate degrees from the University of Wisconsin-Stevens Point and Vermilion Community College.

Jim has spent more than 20 years birding and conducting biological research throughout Minnesota, Wisconsin and the southern U.S. He is an active member of the Minnesota Ornithologists' Union, serving as a seasonal reports compiler, records committee member, and the Duluth Rare Bird Alert editor. He is also a dragonfly enthusiast who has recently completed inventory surveys on the Superior and Chippewa National Forests. Jim is a native of Two Harbors, where he lives with his wife, Sharon, and son Charlie.

Passage of Safe Mines Bill Would Protect the Waters of Lake County and Lake Superior

The "Safe Mines to Protect our Water" bill (SF0845/HF0916) was introduced in the Minnesota Legislature this past week. The bill would provide much needed improvements to the existing non-ferrous (copper-nickel) mining rules to protect our waters from mercury and toxic metal pollution. It would also require financial assurance from corporations that would prevent their walking away from polluted mining sites leaving the cleanup cost entirely up to the public.

Copper-nickel mining as currently planned would produce waste, sulfur-laden rock storage deposits that would threaten water quality in streams, lakes and wells in all of Northeastern Minnesota. Lake County would be among the first affected since the first proposed mines are located upstream in our watershed near popular inland lakes.

The legislation would require that a permit to mine will not be issued by the MNDNR if water treatment would be required after the mine's closure. This stipulation would prevent passing pollution problems on to our children and grandchildren who would not be equipped to deal with the financial burden. Mercury and toxic metals are produced as polluted water leaches from the mine waste.

If unborn and infant children are exposed to these pollutants, brain and nervous system damage has been shown to occur. State tax payers would have to fund health and special education costs for developmentally disabled children. Very expensive water treatment plants would be needed for communities fed by these streams and lakes to protect all residents. The need for more assisted living and general health clinics would follow. Preventing this potential calamity is mandatory.

In the event that a copper-nickel mine were permitted, the Bill requires significant improvements in the financial assurance required to guarantee safe closure of the mine. No mining company has ever successfully controlled pollution from this kind of toxic time bomb of waste material from the mining and processing of non-ferrous sulfide rock. Although this bill is a needed improvement in current rules, the proposed financial assurance continues to deal with a public health problem that we would rather see avoided in the first place through first-class mining plans. The need for financial assurance should be limited to the restoration of wetlands, natural habitat and aesthetics to acceptable conditions. It would be impossible to fund perpetual treatment of polluted water escaping from copper-nickel mine waste storage pits.

No such safe mining plan has been presented to date. No mining company large enough to provide adequate financial assurance has stepped forward. Rivers, streams, lakes and private residences are all at risk in Lake County, not to mention St. Louis and Cook Counties. And, of course, the final receiving water for most of the polluted runoff would eventually be Lake Superior. Its water quality would deteriorate further over the decades of pollution from the proposed copper nickel mines.

LeRoger Lind

About Water:

by SLSA member Debbie Ortman

- * Of the 6 billion people on earth, 1.1 billion do not have access to safe, clean drinking water.
- * California's water supply is running out - it has about 20 years of water left in the state.
- * The U.S. Environmental Protection Agency currently does not regulate 51 known water contaminants.
- * While the average American uses 150 gallons of water per day, those in developing countries cannot find five.
- * The water and sanitation crisis claims more lives through disease than any war claims through guns.
- * According to the National Resources Defense Council, in a scientific study in which more than 1,000 bottles of 103 brands of water were tested, about one-third of the bottles contained synthetic organic chemicals, bacteria, and arsenic. www.nrdc.org
- * There are over 116,000 human-made chemicals that are finding their way into public water supply systems.
- * In Bolivia nearly one out of every ten children will die before the age of five. Most of those deaths are related to illnesses that come from a lack of clean drinking water.
- * The cost per person per year for having 10 liters of safe drinking water every day is just \$2.

VHS Fish virus has a long history.

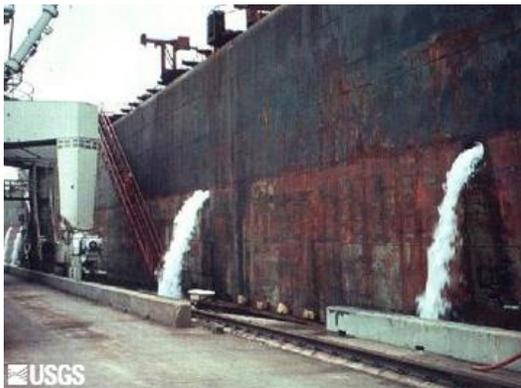
It has now been forty-six years since the deadly (not to humans) viral hemorrhagic septicemia was isolated and identified by scientists. To date, it has taken fish lives in all of the Great Lakes except Lake Superior and we hope "our" lake continues to be the exception. Its first lower lakes infestation was discovered in 2002 in Lake St. Clair, the

waterway connecting lakes Huron and Erie. The Michigan DNR believes that up to 4 percent of the muskies in Lake St. Clair were destroyed at that time. A far bigger die off happened in 2006 when hundreds of sheepshead, a fresh water species of drum, lined the shores of Lake Erie. The virus is transmitted from fish to fish and has been detected on freshly spawned eggs, leading experts to now understand that the hideous disease can be transmitted between generations. Fish can also be infected when exposed to virus-contaminated water.

TAKE ACTION

Please call Congress today to urge your Representative and Senators to make sure Congress matches the President's Great Lakes funding commitment in their own budget. Please Call your Representative and two U.S. Senators. (Still only one in MN) You can reach them through their direct line or by calling the Capitol Switchboard at 202-224-3121 and asking to be connected. If you have a relationship with a legislative aid for the Member of Congress you are calling, ask for that person. If not speak to whomever answers the phone.

President funds ballast research



On March 11th President Obama signed a bill providing nearly \$1 million in new funds toward preventing the introduction of aquatic invasive species in the Great Lakes. The funds go to the Great Ships Initiative (GSI) and will be managed and implemented cooperatively by the Northeast-Midwest Institute and the University of Wisconsin Superior. GSI, says the federal news release, "generates much needed independent evaluations of proposed ballast treatments performance and toxicity in fresh water."

Invasive species cause significant economic and environmental damage to aquatic systems globally including the Great Lakes and virtually all salt water coasts of the United States. Commercial saltwater ships account for the majority of new introductions of aquatic invasive species in the Great Lakes, and all ships which ply the system are potential, though inadvertent,

conveyors spreading invasive organisms. Not yet clarified says the news release, "is the level of performance that would be adequate" to prevent further infestation.

Meanwhile, the International Maritime Organization set a deadline, 2016, for treatment systems to be operated by ships to a numeric performance standard, but there has been little or no testing in fresh water. Proposed treatment systems include ozone, ultra violet irradiation, chemical additives, deoxygenation, and filtration, usually in combination.

The need remains great to have a "one size fits all" set of regulations among the Great Lake states and Canadian Provinces. Unless this is accomplished by the 2016 deadline, ship captains could conceivably face a dilemma of major proportions—how to load or discharge cargoes without violating the regulations of individual states that are mutually complimentary.

Currently, the Superior testing facility is the only ballast water treatment testing facility operating in the United States.

Good news....relatively speaking.

"No new invasive species in Lake Superior since 2006." That's what Doug Jensen of Minnesota Sea Grant told us in mid March. He also said this agency is not totally convinced that the deadly VHS fish disease will not establish itself in Lake Superior. In dismissing the case against the U.S. Department of Agriculture and the Coast Guard, brought by the Save Lake Superior Association, Izaak Walton League, Wisconsin Trout Unlimited and others, Federal Judge James Rosenbaum pointed out that no proof currently exists showing VHS is in Lake Superior.

It was the contention of SLSA and the Ikes that ballast water must be treated so that the virus is not spread beyond the lower Great Lakes as ships move from port to port. The environmental groups initiated the legal action to force the federal government to regulate the discharge of ballast water only after it has been treated to kill foreign marine species. Judge Rosenbaum, in his ruling following the hearing in Federal Court in Minneapolis, maintained that we, the plaintiffs, did not have the "standing" required to bring the suit.

It will be seven years before Minnesota and Wisconsin regulations become enforceable. The Environmental Protection Agency says it would reconsider imposing regulations on ballast water as it develops new rules to curb pollution from ships plying the Great Lakes.

Meantime, SLSA and co-sponsors of the unsuccessful suit against the Department of Agriculture are considering appealing the Rosenbaum decision.

A plea from Fresh Water Future

In the outlines of his Fiscal Year 2010 Budget released late February, President Obama included a \$475 million Great Lakes Restoration initiative - the largest

Great Lakes funding commitment ever made by a President.

While this is a great testament to our new Great Lakes President, Congress ultimately dictates federal funding levels.

The first step in that process is the Congressional Budget Resolution, which is currently being debated in Congress.

The House and Senate plan to pass their budget resolutions by the first week of April.

Annual meeting scheduled

This year's session will be held in Duluth and, we hope, will motivate you to attend on Saturday, August 15th. Coffee and "goodies" will be available. Your board members will welcome you beginning at 8:30 AM. The program starts at 9. Adjournment time is 2:00 PM.

We will meet in a conference room in the Coppertop Church (First Methodist) overlooking Lake Superior. The keynote speaker will be Valerie Brady, an expert in the field of wetland ecology. She will tell us, with the aid of Power Point visuals, what happens on the North Shore from storm water runoff, especially the impact it has on the micro invertebrates sensitive to the types and quality of the stream bottom on which they live. Valerie earned her PhD in aquatic biology from Michigan State University. She is a research associate at the Natural Resources Research Institute of UMD. She also works with state agencies to put stream impairment issues into context.

Current issues in which SLSA is involved will be reviewed and updated including the status of sulfide mining, ballast water and the VHS fish disease.



Your SLSA Board Members

LeRoger Lind (Pres.), Glenn Maxham (VP), Arnold Overby
Alice Pierce (Treasurer), Nancy Paisley, Will Munger Jr.,
Todd Ronning, Jim Lind and Sally Munger
Alison Contos – Member Emeritus

**SLSA membership is still only \$5 per year per person.
The lifetime membership is \$100 per person**

Your renewal date appears on the mailing label
Please send us your change of address when applicable