

Ships dumping ballast water target of ruling

Tuesday, September 19, 2006

By ERIK ROBINSON, Columbian staff writer

A federal judge Monday called invasive species possibly stored aboard the ballast water of ships an "irreparable" degradation to the nation's coastal environment, and ordered federal regulators to take a much tougher stand.

In a ruling on a lawsuit brought by Portland-based Northwest Environmental Advocates and other environmental groups, U.S. District Judge Susan Illston ordered the U.S. Environmental Protection Agency to begin regulating ballast water just as if it were sewage pouring out of a factory. In doing so, the judge threw out an exemption that had been in effect for three decades.

"The EPA regulation is plainly contrary to the congressional intent embodied in the (Clean Water Act)," Illston wrote in a 21-page decision issued Monday in San Francisco.

Emerging ecological threat

The ruling comes as state authorities across the country push to minimize the ecological threat posed by a longtime maritime practice. After unloading cargo, mariners stabilize their ships for ocean voyages by filling ballast tanks with water drawn from local harbors. But that water can contain foreign organisms capable of proliferating in the absence of their natural predators or climate.

More than 1,000 ships call at Columbia River ports annually.

Washington state regulators had been working with federal authorities to tighten regulations under a different law the National Invasive Species Act of 1996 to encourage the development of so-far untested treatment technologies. Regulators pushed for the U.S. Coast Guard to beef up enforcement of a recent requirement for vessels to exchange ballast water in the harsher ocean environment rather than waiting until they arrive at American ports.

Illston's ruling for the first time recognizes the role of the Clean Water Act of 1972 in addressing shipboard discharges.

The judge gave the EPA two years until Sept. 30, 2008 to come up with a new regulation that complies with the landmark environmental law signed by President Richard M. Nixon.

"This is just an astonishing way to look at it," said Pam Meacham, aquatic nuisance species coordinator for the Washington Department of Fish and Wildlife.

The ruling will shift the burden of guarding against invasive species from American taxpayers to the shipping industry where it belongs, said Nina Bell, executive director of Northwest Environmental Advocates. Enforcement under the Clean Water Act assures uniform treatment of vessels calling on all U.S. ports, she said.

"For three decades, the shipping industry has loaded up the nation's waters with invasive species that have caused a tremendous environmental and economic impact, and they have not borne the expense of that impact," Bell said.

An EPA official in Seattle declined to comment on the ruling, saying the agency had not yet had an opportunity to review it.

Attorneys for the Shipping Industry Ballast Water Coalition, which intervened in the lawsuit on the EPA's behalf, did not return calls late Monday afternoon.

"Although EPA and the shipping industry have argued that an injunction will bring catastrophic results to the global shipping industry, the court believes that their concerns are dramatically overstated," Illston wrote.

Grain ships, the most common vessels to call at the Port of Vancouver, often arrive with their holds empty and ballast tanks full.

Besides crowding out native plants and animals, aquatic invaders such as Chinese mitten crabs can be expensive to control once they're here. Already, millions of mitten crabs have clogged pump stations and pipes in San Francisco Bay and the Sacramento River. Local authorities want to prevent mitten crabs and other invaders from gaining a foothold in the Columbia River.

"The broad and significant effects that invasive species have on their new environment, combined with the generally impossible task of removal once those species become established, easily satisfies the threshold requirement of irreparable injury," Illston wrote.