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The Honorable Elijah E. Cummings
2230 Rayburn House Office Building
Washington, DC 20515

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Dear Congressman Cummings:

Thank you for your many years of dedication and hard work on the Coast Guard and Maritime Transportation Subcommittee and for your long-standing support of both local environmental issues and the Maritime Environmental Resource Center (MERC). I would like to bring to your attention significant concerns with existing US ballast water regulations and the reluctance of the US Coast Guard to meet the intent of preventing the large economic, environmental and human health impacts associated with invasive species. One striking example is that the current USCG Type Approval Certification process for ballast water management systems (BWMSs) is so flawed that it would NOT have prevented the zebra mussel invasion of the Great Lakes, and will NOT stop their spread throughout the rest of the US, including the Chesapeake Bay.

My major concerns are with the USCG BWMS Type Approval and Independent Laboratory (IL) certification testing process. Specifically, I am concerned that:

- (A) USCG decisions, recommendations, and communications with ILs and approved sub-laboratories have been ad hoc, ambiguous and inconsistent, and not open or transparent.
- (B) It is well known that there is very little consistency or comparability in testing (and thus probability of success) to the point that the exact same BWMS will "pass" at one IL and "fail" at another. Accordingly, ILs and manufacturers are gaming the system to maximize the likelihood of BWMS passing certification testing (as quickly and inexpensively as possible), rather than obtaining robust, reliable and consistent test results for decisions on Type Approval.
- (C) USCG has already set a precedent by denying the Type Approval of BWMSs because of a specific unacceptable but widely used test method (Most Probable Number analysis of organisms 10 - 50 μm in size). However, the same level of care and scrutiny has not been given to any other critical test methods being used to the point where clearly live organisms are considered "dead" during certification testing simply because the analytical method used is not prohibited by the regulations.
- (D) USCG is also not checking what is actually being done at ILs or sub-laboratories (no comprehensive review of SOPs or audits of testing activities), so the magnitude of these problems in data quality, consistency and comparability are likely far worse than we now know.

I have proposed solutions to the USCG for all of these issues but there has been no effort to address them prior to granting the first BWMS Type Approval. Regulators, researchers and innovators have worked for over 20 years to solve the critical problem of ballast water invasive species and we are close to making a real difference. While the International Maritime Organization Ballast Water Convention is being questioned by many around the world, everyone (especially the shipping industry) is looking to the USCG to be the answer with trustworthy, robust, consistent and transparent Type Approval Certifications of BWMSs. Unfortunately, although the USCG has been well aware of the many problems, their current approach to implementing the regulations falls well short of minimizing the risk of invasive species, and leaves the public with a false sense of security.

I would be very happy to discuss these issues in more detail and thank you for your consideration.

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