

February, 1933

THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

REPORT OF COMMITTEE APPOINTED TO CONSIDER REVISION OF GREAT LAKES RULES

TO THE MARITIME LAW ASSOCIATION:

Following the May, 1932, meeting of this Association which considered the report of the special committee on the Safety Convention (International Convention for Safety of Life at Sea, 1929, which revises the International Rules for the Prevention of Collisions), and in line with the suggestion made at such meeting, special committees were appointed to consider respectively the Great Lakes Rules, the Inland Rules, and the River Rules, "with a view to bringing about their revision, harmonization and modernization, either simultaneously or immediately after the adoption of the revised International Rules" (Document No. 180, p. 1909). To the committee presenting this report was assigned consideration of the Great Lakes Rules. In the notice of appointment received by your committee two objectives were set forth, (1) to bring the Great Lakes Rules into conformance with the changes in the International Rules, (2) a revision of the Great Lakes Rules in any other respects that might be desirable.

The present statutory regulations governing navigation on the Great Lakes (the White Law, so-called, U. S. Code, Title 33, Chapter 4, Sections 241-293), have been in effect, with but slight changes, since March 1, 1895. The present Pilot Rules for the Great Lakes, prescribed by the Board of Supervising Inspectors pursuant to authority granted in the White Law, have been in effect since May 1, 1912.

Prior to the passage of the White Law navigation on the Great Lakes had been governed by the rules contained in R. S. Sec. 4233 and the regulations prescribed by the Board of Supervising Inspectors under authority of R. S. Sec. 4412, together with a considerable body of custom and practice which had grown up on the Lakes.

By the Act of March 3, 1885, the United States adopted the "Revised International Regulations," but apparently it was not considered that this Act superseded R. S. Sec. 4233 so far as the Great Lakes were concerned; navigation on the Lakes continued to be governed by R. S. Sec. 4233, the Inspectors' regulations and local custom and practice.

On the passage and adoption of the Act of August 19, 1890, which superseded the Act of March 3, 1885, a different situation was presented as a result of certain new language contained in the 1890 Act. By its terms the effective date of this Act was to be fixed by proclamation of the President. This proclamation was issued in due course and March 1, 1895, fixed as the effective date. Under date of December 10, 1894, the Secretary of the Treasury requested an opinion from the Attorney General upon a number of questions raised by the 1890 Act which was shortly to go into effect. The Attorney General, Richard Olney, under date of December 22, 1894, replied, in part, as follows:

"Your communication of December 10 asks my official opinion upon certain questions raised by the act of August 19, 1890, chapter 802, entitled 'An Act to adopt regulations for preventing collisions at sea,' which statute is to take effect by proclamation of the President, March 1, 1895.

"This act commences by providing certain regulations which 'shall be followed by all public and private vessels of the United States upon the high seas and in all waters connected therewith navigable by seagoing vessels.' Section 2 repeals all inconsistent regulations 'for the navigation of all public and private vessels of the United States upon the high seas and in all waters connected therewith navigable by seagoing vessels.' This language in both places is new. It very materially differs from the language of the preceding act in *pari materia*, that of March 3, 1885, chapter 354.

"In my opinion the questions asked by you should be answered as follows:

"The Great Lakes are to be regarded as 'high seas' within the meaning of this statute, whatever may have been the case under the act of 1885. (See *United States v. Rodgers*, 150 U. S. 249; *The North Star*, 62 Fed. Rep., 71, 75, 76.) The new regulations are, therefore, applicable to all waters navigable for seagoing vessels and connected either with the ocean or with the Great Lakes. It is immaterial whether such connection is made by a navigable river or a canal. (See *ex parte*

Boyer, 109 U. S. 629.) What the standard seagoing vessel is may be a question of some doubt. (See *Belden v. Chase*, 150 U. S., 674, 695).

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“In addition to the special questions referred to, you ask in general for my ‘opinion as to the scope and force of article 30 and of section 2 of the act of August 19, 1890.’ * * * That article provides as follows:

“Nothing in these rules shall interfere with the operations of a special rule duly made by local authority relative to the navigation of any harbor, river, or inland waters.”

“The ‘local authority’ therein referred to does not, in my opinion, include the Board of Supervising Inspectors of Steam Vessels. I entirely concur in your view that ‘a plain provision of Congress embodying the requisite rules for harbors, rivers, and inland waters is desirable; but in the absence of such legislation it is important that the private persons concerned should know what is required of them.”

It was the view of the vessel owners and the masters on the Great Lakes that the International Rules, particularly in respect to sound signals, and compulsory lights and signals, were not satisfactory from the standpoint of Lakes conditions and experience. As a result of the opinion given by the Attorney General the need of a special code for the Great Lakes became evident if the application of the International Rules as a whole to the Great Lakes was to be avoided. The question was taken up by owners and masters; committees were appointed, and a special code drafted. This code was considered by the Lake Carriers Association and by the various Lodges of Shipmasters on the Lakes, and after thorough discussion and consideration, a bill which represented the joint views of owners and licensed officers was introduced by Mr. White, the Chairman of the House Committee on Merchant Marine and Fisheries. In its report recommending the passage of the bill * the House Committee said, in part:

“This bill is recommended by the masters and pilots of the Great Lakes, and by a very large majority of the lake vessel owners, to meet an opinion of the Attorney General that certain provisions of section 4233 of the Revised Statutes, and of the regulations established by the Board of Supervising

* House Reports 3d Sess., 53d Cong., 1894-95, Vol. 1, Report No. 1682, to which is annexed the opinion of the Attorney General.

Inspectors in pursuance thereof, will be abrogated on March 1, 1895, by the act of August 19, 1890, entitled 'An act to adopt regulations for preventing collisions at sea.' The opinion of the Attorney General is annexed and made part of this report.

"By reason of the many narrow places in the lines of lake navigation, and by reason of the numerous points at which converging lines or courses of commerce turn, such points in navigation are frequently crowded. In the narrow waters of the St. Marys, St. Clair and Detroit Rivers, aggregating approximately 150 miles, the current in many places is rapid and the river tortuous in its course, though generally with low banks.

"It is the unanimous opinion of the practical navigators of the Great Lakes that simplicity in the sound signals and compulsory lights and signals, where any are permitted, conduce to the greatest safety in navigating those waters.

* * * * *

"It is apparent to the committee that the navigators of the Great Lakes have given this subject exhaustive and thoughtful consideration, especially through the various lodges of the masters, which comprise in their membership approximately 90 per cent of the masters of the lakes; and the discussion and explanation of this bill by their representatives before the committee proved conclusively the ability of these gentlemen to deal with the subject, and upon convincing reasons. The universal sentiment among them is that the system, with its complications, would, in the frequently crowded waters of the Great Lakes, invite disaster to life and property instead of warding off danger.

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"A commendable feature of the bill, which is absent from the International Code, is the provision of section 3 giving to the Secretary of the Treasury and to the Board of Supervising Inspectors, with the approval of the Secretary, authority to make all regulations necessary to carry into effect the provisions of the bill, and such additional and supplementary regulations, not inconsistent with its provisions, as may from time to time be necessary. This is also the provision of the present law and is desirable."

The bill was approved on February 8, 1895, and by its terms went into effect on March 1, 1895, the date on which the Act of

August 18, 1890, was originally to become effective. The effective date of the 1890 Act was later postponed to July 1, 1897,* and a proviso added to the enacting clause (U. S. Code, Title 33, Chapter 2, Section 61) specifically excepting the Great Lakes and certain other waters from the coverage of the Act.

The Canadian Rules for the Great Lakes are promulgated by the Governor in Council. By statute [Revised Statutes of Canada, 1927, Vol. 4, Chapter 186, Section 895 (3)] the Governor in Council is authorized to repeal the whole or any part of the Canadian General Regulations so far as they apply to inland waters, or make new regulations to be in force in such inland waters as the Governor in Council may direct. The present Canadian Great Lakes regulations were issued by an order in Council and have been in effect for over twenty-five years. The Canadian Rules include some matters found in the International Rules that are not included in our Lake Rules, but in respect to matters dealt with by both, the Canadian Rules are in substantial harmony with our Lake Rules.

The ratification by Canada of the Safety Convention does not have the effect of the Canadian Lake Rules being superseded by the new International Rules when the latter become effective in Canada. The Act by which Canada ratified the Convention specifically provides that the Act shall not apply to ships while engaged on voyages between Canada and the United States on any lake or river (Statutes of Canada, 1903-1931, 21-22 Geo. V, Chapter 49, Section 3).

While uniformity of rules of navigation is, as a general principle, to be desired, examination of the history of the Great Lakes Rules clearly discloses that the differences which exist between these Rules and the International Rules were the product of long experience under, and the careful study of, Lake conditions, by those most familiar with the problems presented in navigation on the Great Lakes. To the extent to which the Great Lakes Rules departed from the provisions of the International Rules, it was the considered judgment of the interests on the Lakes that uniformity was undesirable, that uniformity would result in the application of rules to the Great Lakes that were less conducive to safe navigation under lake conditions than those which the interests on the Lakes proposed.

In view of the history of the Great Lakes Rules and the reasons which gave rise to their adoption in the first instance, it is the opinion of your committee that the Great Lakes Rules should not be conformed to the revised International Rules simply for the sake

* See historical note under Section 61, Title 33, Chapter 2, U. S. Code.

of uniformity; but rather, unless experience on the Great Lakes indicates that the present rules have proved unsatisfactory or that conforming them to the International Rules would serve some predominantly useful purpose, that a general revision of the Great Lakes Rules would be undesirable and unnecessary.

As a means of aid to the committee in reaching its conclusions on these questions, and in order that its report might also reflect the considered judgment of the shipping interests on the Great Lakes, the views of the Admiralty Bar, the vessel owners and the shipmasters were sought.

Your committee prepared a tabulation setting forth the differences which exist between the Great Lakes Rules and the revised International Rules, both as to their purport and phraseology. A copy of the tabulation was mailed to all of the law firms on the Great Lakes engaged in the practice of Admiralty Law. This tabulation was accompanied by a letter in which the occasion for the appointment of the committee and the purposes underlying its appointment were set forth. Each firm was requested to make a study of the problem from the standpoint of and to furnish the committee with recommendations in respect to (1) any desirable changes in the phraseology of the rules, (2) any desirable changes in the arrangement of the rules as a whole or of the provisions of any particular rule, (3) conforming the provisions of the Great Lakes Rules to those of the revised International Rules so far as the same is desirable in the light of conditions on the Great Lakes, (4) the incorporating in the statutory rules of any desirable provisions in the Inspectors Rules, and eliminating any conflict between the two sets of rules, (5) any additions to the Great Lakes Rules which might be desirable. Conferences were held by members of the committee with vessel owners and masters.

The inquiries made by your committee developed that there is a unanimity of opinion on the Great Lakes that the experience under the present rules has, on the whole, been satisfactory; that no need exists for revising the rules; and that the Great Lakes Rules are more suitable to conditions on the Lakes than are the International Rules. The differences which exist between the two sets of rules it is true are not so marked under the revised International Rules, but the Great Lakes Rules still have greater simplicity. In addition, by virtue of the authority vested in the Board of Supervising Inspectors by the White Law the Great Lakes code has a flexibility which is desirable from the standpoint of adding any new rules which from time to time may be thought desirable, but without the handicap of being required to obtain legislative action in event

any rules so added prove unsatisfactory. The interests on the Lakes are of one mind that the reasons which impelled the original departure from conformance to the International Rules still hold good and that, due to the physical conditions on the Lakes which have not and cannot be materially changed, those reasons will continue to hold good.

It was further the opinion of Lake interests that conforming the Great Lakes Rules to the International Rules will not serve any predominantly useful purpose to shipping as a whole. The Great Lakes, except as connected with the Atlantic Ocean by the St. Lawrence River, are peculiarly isolated. As between ships engaged in purely local commerce on the various bodies of water to which the Great Lakes, the Inland and River Rules respectively apply, any need for uniformity of rules is non-existent. The vessel interests on the Lakes are fully satisfied that as between themselves they will receive no benefit in the way of safer navigation from changing the rules to conform to the International Rules; in fact, that the present Lake Rules are more conducive to safe navigation so far as lake conditions are concerned than would be true if the changes which have been proposed were made.

As the interests on the Lakes view the proposal, the only benefit which would result from revision to effect conformance would be the convenience that ocean-going vessels would enjoy when on the Great Lakes. When compared with the size of the Lake fleet, the ocean vessels which trade on the Great Lakes are negligible in number. Their convenience certainly does not justify changes in the Great Lakes Rules which the owners and the masters on the Great Lakes feel, from the standpoint of safety in navigation, will be undesirable and contrary to sound practice under Lake conditions.

It may be urged, of course, that completion of the St. Lawrence Waterway will witness an increase in the number of ocean-going vessels plying on the Great Lakes, and hence that now is an opportune time to bring the rules into harmony. The St. Lawrence Waterway is still in the future; but when completed we venture to suggest that the tonnage on the Great Lakes engaged in purely local commerce will continue to exceed, and largely so, the tonnage engaged in the Ocean-Lake trade. From the standpoint of numbers, the test of convenience will still favor the owners and masters engaged in purely Lake commerce; and the physical conditions on the Great Lakes which influenced so largely the adoption of the present rules, will continue to exist. When the Waterway is completed, if the number of ocean vessels plying the Great Lakes increases to the extent that it becomes apparent that the benefits to

be derived from uniformity in rules are such that they outweigh the disadvantages which the International Rules have when applied to Lake conditions, there will be time enough to bring the rules into harmony. In the meantime it is the view of the owners and masters on the Great Lakes that the rules should not be changed for the purpose of meeting a situation which may never arise.

Your committee is in entire agreement with the views held by the Lake interests. We therefore recommend against the suggested revision of the Great Lakes Rules as being unnecessary and undesirable at this time and as lacking any real benefit to shipping as a whole.

The first sentence under "Preliminary" in the revised International Rules reads:

"These Rules shall be followed by all vessels upon the high seas and in all waters connected therewith, navigable by seagoing vessels."

Substantially the same language originally constituted the enacting clause of the 1890 Act. Mr. Olney pointed out in his opinion in respect to the coverage of the 1890 Act that the Great Lakes are to be regarded as "high seas," that they are connected with the ocean and that it is immaterial whether the connection is made by a navigable river or a canal. There should be no uncertainty as to which set of rules governs navigation on the Great Lakes. It is evident that, unless the resolution ratifying the Convention contains a provision specifically excepting the Great Lakes from the coverage of the revised International Rules, uncertainty will exist.

We, therefore, recommend that steps be taken to insure the inclusion of an appropriate provision in the resolution whereby the Great Lakes will be specifically excepted from the coverage of the revised International Rules.

Respectfully submitted,

(Sgd.) LEE HINSLEA, Cleveland
 " ROBERT BRANAND, JR., Chicago
 " O. D. DUNCAN, New York,
 " SHERWIN A. HILL, Detroit, *Chairman.*

January 21, 1933.