

**Calendar No. 291**

109TH CONGRESS }  
*1st Session*

SENATE

{ REPORT  
109-181

BALLAST WATER MANAGEMENT ACT OF  
2005

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 363



NOVEMBER 16, 2005.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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### BALLAST WATER MANAGEMENT ACT OF 2005

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Mr. STEVENS, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### R E P O R T

[To accompany S. 363]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 363) to amend the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to establish vessel ballast water management requirements, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

The purpose of S. 363 is to establish a comprehensive Federal program for management of aquatic invasive species in ballast water. The bill provides that the United States Coast Guard, currently the lead agency for the existing Federal program addressing this issue, will continue in this role. The bill authorizes \$20 million in annual appropriations for the Coast Guard for fiscal years 2006 through 2010 to implement its responsibilities under the legislation. The bill also authorizes \$5 million in annual appropriations for the Federal Ballast Water Demonstration Project to support development of innovative ballast water treatment technologies.

#### BACKGROUND AND NEEDS

The United States Commission on Ocean Policy identified ballast water as a major pathway for introduction of aquatic invasive species. Ships carry ballast water to aid in stability and structural integrity. Ships will take on ballast water in one port, and carry such ballast to other ports, where it is discharged into harbors—along with non-native species that are contained in the ballast water.

Some of these organisms may thrive in their new environment, becoming invasive and destructive to local ecosystems. The only practice now required to address this issue—exchanging ballast water in the open ocean—has proven to be ineffective. The Commission recognized that there are other vectors for aquatic invasive species, but made its strongest recommendations on improving the Coast Guard's ballast water management program, including the adoption of uniform, mandatory national standards for ballast water treatment.

It has been estimated that between 7,000 and 10,000 aquatic species travel around the globe each day in the ballast water of cargo ships. Vessels discharge more than 2 billion gallons of ballast water into U.S. waters each year. Invasive species may be introduced to the U.S. from foreign ports, or may be transferred from one U.S. port to another through coastal trade.

Virtually all coastal and Great Lakes States have experienced damage from invasive species. Some of the high profile invasions stemming from ballast water are the zebra mussel in the Great Lakes and the European green crab along the Pacific and Atlantic coasts. Other examples of significant impacts from invasive species from around the U.S. include: (1) the non-native Asian clam altered the ecology of San Francisco Bay in the 1980's due to its efficiency at reproducing and filtering the native plankton, (2) the Asian whelk has established a foothold in the lower Chesapeake Bay and may threaten local oyster populations, and (3) the invasive sea squirt, *Didemnum* spp., has recently been found colonizing Georges Bank off New England and has led to concerns over impacts on the local scallop fishery. Additionally, the black coral populations in Hawaii are showing signs of stress that may be linked to invasive snowflake coral. Even inland States are being impacted by the spread of invasive species. For example, zebra mussels have now been found in 21 States: Alabama, Arkansas, Connecticut, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Vermont, Washington, West Virginia, and Wisconsin.

Damage to the U.S. environment and economy from aquatic invasive species includes the loss of native and commercially important species, significant altering of native ecosystems, interference with industrial operations, and the cost of mitigation and removal efforts. Estimates of the costs to the U.S. economy from these invasions range from millions to billions of dollars per year. Millions of dollars have been spent annually in combating the zebra mussel invasion in the Great Lakes alone, including efforts to unclog intake pipes and prevent further infestation.

While ballast water is regarded as the most significant vector for ships in transporting aquatic invasive species, ships can transfer aquatic invasive species in other ways. These include transport on equipment, such as anchors and propellers, and on the external surfaces of hulls.

#### CURRENT REGULATIONS AND PROGRAMS

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended by the National Invasive Species Act of 1996, requires ships to exchange their ballast water prior to entering the Great Lakes from outside the 200-mile Economic Exclusion

Zone (EEZ). The Coast Guard recently extended the application of these requirements nationally. However, ballast water exchange can be dangerous, and is often not carried out due to safety considerations. In addition, current authority does not address the introduction of non-native species from one U.S. port to another.

Numerous Federal, State and international efforts are now focusing on the need to develop and utilize ballast water treatment technologies. However, the Coast Guard does not currently have the authority to require such treatment technologies, outside of the regulatory scheme which is focused on ballast water exchange.

West Coast and Great Lakes States have passed or are looking at passing their own ballast water laws. The focus of these laws has been on ballast water exchange, but some States have passed or are beginning to consider treatment requirements. The Committee finds that the current patchwork of State laws is inadequate to address this issue effectively. Moreover, continuing to rely on ballast water exchange will not be effective in preventing new invasions. A national program establishing ballast water treatment is needed for these reasons, and to ensure that ships traveling from port to port are not subject to different State laws which would make compliance difficult, if not impossible.

#### INTERNATIONAL MARITIME ORGANIZATION CONVENTION

In February of 2004, the International Maritime Organization (IMO) adopted a new ballast water Convention. This agreement set up a timetable for ships to meet new ballast water performance standards. These standards would prohibit ships from discharging ballast water with a concentration of more than 10 organisms per cubic meter or greater. Until the performance standards are followed, vessels would be required to exchange their ballast water offshore. The Coast Guard has testified that the 10 organisms per cubic meter standard may not be sufficient to adequately treat ballast water, and may be no more effective than ballast water exchange. At the IMO negotiations, the Coast Guard pushed for a standard of 0.01 organisms per cubic meter. The Coast Guard had included in the final IMO agreement a provision allowing countries to adopt more stringent domestic measures and has supported adopting a tougher standard than the IMO Convention in Federal law.

The Convention must be ratified by at least 30 countries representing at least 35 percent of global shipping tonnage before it goes into effect; only 1 country has ratified the agreement.

#### COLUMBIA RIVER AQUATIC NUISANCE SPECIES INITIATIVE

The Committee is interested in the ballast water program implemented in Oregon on the Columbia River and involving Portland State University's Center for Lakes and Reservoirs, the Port of Portland, and the Port of Astoria. This project, also known as the Columbia River Aquatic Nuisance Species Initiative, is focused on developing prevention and management programs for one of the nation's most important shipping and recreational rivers.

## SUMMARY OF PROVISIONS

The bill would amend section 1101 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711, et seq.) to establish a comprehensive national approach for addressing invasive species in ballast water. This new approach closely tracks with the requirements and structure of the ballast water Convention adopted by the IMO.

The provisions of the bill would apply to vessels that are designed, constructed or adapted to carry ballast water. Certain vessels are excluded from the provisions of the bill, including vessels of the Armed Services that comply with a comparable program.

Covered vessels would be required to have an approved ballast water management plan and keep a ballast water record book on board documenting their ballast water operations. Until required to adopt ballast water treatment technology, covered vessels would be required to conduct ballast water exchange in accordance with regulations prescribed by the Secretary of the department in which the Coast Guard is operating (the Secretary). Alternatively, vessels would be able to comply with this requirement by using ballast water treatment technology that is as effective as ballast water exchange, or implement the treatment requirements of the Act in an earlier timeframe. The Coast Guard would be required to establish guidelines within one year of enactment of the bill on what level of treatment would be at least as effective as ballast water exchange. The Committee views the timely completion of these guidelines as a priority.

A number of exceptions are included in the requirements for ballast water exchange. First, the ballast water exchange requirements would not apply to discharges or uptakes of ballast water necessary to ensure the safety or stability of the vessel, its crew or its passengers. This exemption is important for certain vessel classes, such as many tug and barge operations. The Committee intends that the Coast Guard allow this exemption for specific vessels that are routinely unable to conduct exchange due to safety considerations, as opposed to allowing exemptions only on a voyage-by-voyage basis. Second, the provision addresses the problem of requiring ballast water exchange for vessels on short coastal voyages by allowing vessel operators to seek a waiver if conducting exchange would cause the operator substantial business hardship, as determined by the Secretary. Third, an exemption is provided for vessels operating exclusively between certain areas where the risk of introducing aquatic invasive species is insignificant, including vessels operating exclusively within the Great Lakes and between the main Hawaiian islands. Finally, the bill provides that existing regulations in place for the Great Lakes and the Hudson River north of the George Washington Bridge would not be interrupted until the bill's requirements are fully phased in.

Ballast water treatment requirements would be phased in for different vessels beginning in January 2009 depending on the ballast water capacity and age of a vessel. Like the IMO agreement, the bill sets forth performance standards for ballast water treatment. The bill includes a feasibility review process for the Coast Guard to evaluate whether technologies exist that would meet the performance standards. The process is to include specific criteria, in-

cluding the effectiveness of a technology, whether a technology has an adverse impact on the environment, and cost effectiveness. If the Coast Guard determines that compliance with the performance standards is not feasible, the Coast Guard is to extend the date of compliance up to two years and recommend action to ensure compliance with such schedule. If the Coast Guard determines that treatment technology exists that exceeds the performance standards, or that effective technology could be implemented earlier than the phase-in dates, the Coast Guard is to revise the standards and time frame for implementation accordingly.

The Committee expects that the Coast Guard will develop efficient verification methodologies to evaluate the technical capabilities of ballast water treatment technologies, such as monitoring the presence or the lack of certain substances in the ballast water as a surrogate for evaluating the content of ballast water samples.

The bill would require the Secretary, in consultation with States, to develop a list of vessels that pose a relatively high risk of introducing aquatic invasive species into the waters of the United States. In developing this list the Secretary should consider factors such as the origin of their voyages, the volume of ballast water they carry and the fact that they frequently discharge unexchanged or improperly exchanged ballast water pursuant to an exception under subsection (e)(3). The Committee expects that the Coast Guard would, as quickly as possible, develop a process and time-frame for States to submit their proposals for inclusion on the list. The bill further provides that the Secretary would give priority to such vessels for participation in technology pilot programs described in subsection (f)(6), and encourage other Federal and State programs to give incentives to such vessels to more quickly adopt ballast water treatment technologies. Such incentives could include positive incentives, such as expanded privileges or discounted services, or negative incentives, such as financial penalties. The Committee intends that these provisions, in combination with the provision allowing use of treatment technologies in place of ballast water exchange, will provide a means by which interested States could provide incentives for the accelerated use of treatment technologies.

The bill would allow vessels participating in a Coast Guard-approved pilot program to conduct ship-board testing of ballast water treatment technologies. The Coast Guard would allow the vessels to use such technology for ten years, which should encourage more vessel operators to test new technologies in pilot programs. It would also authorize \$5,000,000 annually from FY 2006 through FY 2010 for the existing Federal Ballast Water Demonstration Project, which provides grants for research and development of innovative technologies for the management, treatment, and disposal of ballast water and sediment, ballast water exchange, and other vessel vectors of aquatic invasive species.

The bill would preempt State and local laws with respect to ballast water exchange and ballast water treatment requirements. This section would not preempt States or local governments from levying greater penalties or fees for violations of the provisions of the bill, or other State and local law provisions that do not conflict and are not inconsistent with the requirements of the bill.

The Ballast Water Management Act of 2005 will provide the sole Federal authority to address invasive species in ballast water, and supersedes any other provision of Federal law that conflicts with the bill. Specifically, the bill provides that aquatic invasive species in ballast water are not “pollutants” regulated under other Federal laws. The Committee believes it is important to avoid inconsistencies or duplicative regulations of this issue at the Federal level. However, S. 363 also provides other agencies and States, including the Environmental Protection Agency (EPA), with a significant role. For example, the Coast Guard must consult the EPA in developing a process for reviewing and approving treatment technologies. The Coast Guard must also consult the EPA in identifying additional microbes to be regulated. The Coast Guard may only designate alternative areas for exchange and discharge of ballast water after consultation with both the EPA, NOAA, and affected States. The EPA would be responsible for regulating reception facilities for ballast water and sediment. The bill only relates to aquatic invasive species, and would not impact any existing Federal authority to regulate pollutants that may be contained in ballast water.

The bill would also require the Secretary to submit two reports to Congress on other vessel-related vectors of harmful aquatic species. First, the Secretary would provide a report on vessel-borne vectors of aquatic invasive species other than ballast water, including vessel hulls and equipment. The Secretary would also report on best practices, procedures and/or regulations to reduce the introduction of invasive species from these sources and to further reduce the introduction and spread of aquatic invasive species from ballast water, for example, through designation of geographical locations for uptakes and/or discharges of ballast water. Second, the Secretary would provide a report on potential adverse impacts from discharges of ballast water from vessels transiting through waters subject to the jurisdiction of the United States (but not coming to United States ports or places), and provide recommendations. The bill would authorize \$20,000,000 in annual appropriations for the Coast Guard for FY 2006 through FY 2010 to implement the legislation.

#### LEGISLATIVE HISTORY

S. 363 was introduced in the Senate on February 10, 2005, by Senator Inouye (and co-sponsored by Senator Stevens, Senator Cantwell, Senator Lautenberg, Senator Akaka, and Senator Sarbanes) and referred to the Senate Committee on Commerce, Science, and Transportation. On July 21, 2005, the bill was considered by the Committee in an open Executive Session. Senator Inouye offered an amendment in the nature of a substitute, co-sponsored by Senator Stevens and Senator Sununu. The Committee, without objection, ordered that S. 363 be reported with an amendment in the nature of a substitute.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget



Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

SEPTEMBER 2, 2005.

Hon. TED STEVENS,  
*Chairman, Committee on Commerce, Science, and Transportation,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 363, the Ballast Water Management Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

DOUGLAS HOLTZ-EAKIN,  
*Director.*

Enclosure.

*S. 363—Ballast Water Management Act of 2005*

Summary: S. 363 would amend current law to require the U.S. Coast Guard (USGC) to establish new standards and procedures for controlling the spread of aquatic invasive species through ballast water. Assuming appropriation of the authorized amounts, CBO estimates that implementing the bill would cost \$10 million in 2006 and \$85 million over the 2006–2010 period. S. 363 could increase revenues, but we estimate that any such increases would not exceed \$500,000 in any year.

S. 363 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt some states laws and impose new requirements that may affect some public transportation vessels. CBO estimates that the total cost of complying with these mandates would not exceed the annual threshold established in that act (\$62 million in 2005, adjusted annually for inflation).

S. 363 would impose private-sector mandates, as defined in UMRA, on owners and operators of certain vessels equipped to carry ballast water and manufacturers of such vessels. CBO cannot estimate the aggregate cost of the private-sector mandates in the bill primarily because the technologies to treat ballast water to meet the standards specified in the bill have not been fully developed. Though CBO cannot estimate the cost of each mandate, we expect that the aggregate cost of private-sector mandates in the bill would exceed the annual threshold established in UMRA (\$123 million in 2005, adjusted annually for inflation) sometime during the first five years after the new standards are put into effect. We expect those standards to become effective after 2009. That conclusion is based on the findings of current research that the technology being developed to treat ballast water would cost hundreds of thousands of dollars per vessel.

Estimated cost to the Federal Government: For this estimate, CBO assumes that S. 363 will be enacted near the start of fiscal year 2006 and that funds will be provided as specified in the bill. The estimated budgetary impact of S. 363 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2005	2006	2007	2008	2009	2010
SPENDING SUBJECT TO APPROPRIATION						
Spending under current law:						
Budget authority <sup>1</sup> .....	5	0	0	0	0	0
Estimated outlays .....	5	0	0	0	0	0
Proposed changes:						
Authorization level .....	0	20	20	20	20	20
Estimated outlays .....	0	10	15	20	20	20
Spending under S. 363:						
Authorization level <sup>1</sup> .....	5	20	20	20	20	20
Estimated outlays .....	5	10	15	20	20	20

<sup>1</sup> The 2005 level is the amount appropriated to the USCG for that year for programs related to ballast water.

Basis of estimate: S. 363 would authorize the appropriation of \$20 million a year over the 2006–2010 period for the USCG to establish and implement new regulations aimed at reducing the spread of invasive aquatic species through ballast water. (Ballast water is carried in tanks by some ships to maintain stability.) Under the bill, the USCG would specify standards and procedures that operators of certain U.S. vessels must follow when treating or discharging ballast water and sediment. The bill would establish civil penalties for violations of those standards and procedures.

Based on information from the USCG about spending patterns for existing programs to regulate the use of ballast water, CBO estimates that S. 363 would cost \$10 million in 2006 and \$85 million over the next five years. We also estimate that any increased revenues from civil penalties established under S. 363 would not exceed \$500,000 in any year.

Estimated impact on state, local, and tribal governments: Current regulations require U.S. and foreign vessels, equipped with ballast tanks that operate in the waters of the United States and are bound for ports or places in the United States, to report on and conduct activities relating to ballast water exchange. Enacting S. 363 would place additional requirements on those vessels by requiring the implementation of systems to treat ballast water. Vessels owned by state and local governments that do not meet exemption standards would be required to comply. The duty to comply would be an intergovernmental mandate as defined by UMRA. CBO estimates, however, that the costs to those entities would be small because we expect that few publicly owned vessels would be affected by the regulations.

S. 363 also would preempt state and local laws that would be inconsistent or conflict with the new federal requirements. (The bill would specifically preserve state and local authority to impose greater penalties or fees for acts or omissions that are violations of the act.) This preemption constitutes a mandate as defined by UMRA; however, any costs to state and local governments would be minimal. In total, the costs of the intergovernmental mandates in the bill would fall significantly below the threshold established in that act (\$62 million in 2005, adjusted annually for inflation).

Estimated impact on the private sector: S. 363 would impose private-sector mandates, as defined in UMRA, on owners and operators of certain vessels equipped to carry ballast water and manufacturers of such vessels. Ballast water is held in the ballast tanks and cargo holds of vessels to provide balance and stability during a voyage and is considered one of the major ways in which invasive

species enter U.S. waters. The bill would prohibit certain vessels from discharging ballast water except after conducting ballast water exchange in compliance with federal regulations; or using ballast water treatment that meets the performance standards specified in the bill; or using environmentally sound alternative ballast water treatment approved by the Secretary of Homeland Security. During the period before 2009, most vessels would comply with the mandate by conducting ballast water exchange. Ballast water exchange involves replacing coastal water with open-ocean water during a voyage. This process reduces the density of coastal organisms in ballast tanks that may be able to invade a recipient port, replacing them with oceanic organisms with a lower probability of survival in near-shore waters. Certain exemptions from the requirement—such as for safety of crew, passengers, and vessels—would be allowed.

In general, the bill would require owners and operators of vessels to conduct all ballast water management operations in accordance with a ballast water management plan that meets the requirements prescribed and approved by the Secretary. Currently, vessels are required to have ballast water management plans and follow mandatory ballast water management practices under Coast Guard regulations; those regulations include maintaining a ballast water record book on board the vessel and conducting ballast water exchange. The bill would add two additional requirements: (1) each vessel's ballast water management plan would have to be approved by the Secretary, and (2) vessel operators would be required to maintain the record book on board the vessel for an extended period of time. Because vessels are already in compliance with most of those requirements, CBO expects that the incremental costs to comply with mandates during the period before 2009 would not be large.

Beginning in 2009, the bill would implement, in four phases, a performance standard for the treatment of ballast water. The performance standard contains a series of concentration levels for living organisms and microbes allowed in the discharge of ballast water. Vessels would be scheduled to comply with the performance standard based on their ballast water capacity and date of construction. The first two phases would apply the standard to newly constructed vessels, and phases three and four would apply the standard to vessels currently in operation. Although a number of technologies for ballast water treatment are being tested, none have been proven to effectively reduce invasive species.

According to several industry experts, however, recent research and testing of treatment technologies indicate that the cost to install ballast water treatment technologies could amount to hundreds of thousands of dollars per vessel.

Few vessels of the type that would have to comply with the performance standard are manufactured in the United States. The cost of the mandate for U.S. manufacturers in the first two phases of implementation would not be significant. Vessels equipped to handle ballast water purchased by U.S. entities for use in U.S. waterways would have to comply with the performance standard beginning in the first phase. Depending on the number of vessels purchased, the incremental cost to U.S. entities could be tens of millions of dollars. Beginning in phases three and four, when vessels

in operation must meet the performance standard, the total cost of the capital investment and installation for owners and operators of U.S. vessels and foreign vessels with operations in the United States could be substantial—potentially hundreds of millions of dollars. Consequently, CBO estimates that the cost to comply with the performance standards for treatment of ballast water would likely exceed the threshold for private-sector mandates established by UMRA (\$123 million in 2005, adjusted annually for inflation) sometime during the first five years after the new standards are put into effect. We expect those standards to become effective after 2009.

Estimated prepared by: Federal costs: Megan Carroll and Deborah Reis; impact on state, local, and tribal governments: Lisa Ramirez-Branum; impact on the private sector: Alicia Handy.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

##### NUMBER OF PERSONS COVERED

S. 363 as reported by the Committee would authorize appropriations to establish a national ballast water exchange and treatment program and make a number of changes to current law. The bill would have a large regulatory impact for commercial shippers operating in U.S. waters.

##### ECONOMIC IMPACT

The reported bill would benefit the U.S. economy by reducing damages from aquatic invasive species, now estimated to be in the range of millions to billions of dollars annually. Up to \$20 million per year for FY 2006 through FY 2010 would be authorized for appropriations to the Coast Guard to implement the bill's obligations. The bill would also provide \$5 million annually in support of private sector development of ballast water treatment technologies. Vessels to which the bill applies would bear the costs of implementing the bill's requirements for treatment technologies; however, the purchase of such technologies would also provide a benefit to the U.S. economy.

##### PRIVACY

The reported bill would have little, if any, impact on the personal privacy of U.S. citizens.

##### PAPERWORK

The reported bill would increase paperwork requirements for individuals and businesses conducting commercial shipping operations in U.S. waters by requiring them to keep and maintain accurate logs of their ballast water exchange activities.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

Section 1 would entitle the legislation as the “Ballast Water Management Act of 2005.”

*Section 2. Findings*

Section 2 would include Congressional findings relevant to the issue of aquatic invasive species and ballast water.

*Section 3. Ballast water management*

Section 3 would amend section 1101 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711, et seq.) to establish a stronger national approach to addressing invasive species in ballast water. The new approach set forth in section 3 closely tracks with the requirements and structure of an international agreement on ballast water that was recently negotiated in the IMO.

Section 1101 would be amended as follows:

Subsection (a) would apply the provisions of the bill to U.S. vessels and to foreign vessels that are en route to a U.S. port or place, or have departed from a U.S. port or place and are within waters subject to the jurisdiction of the United States. Several types of vessels are exempted from the requirements of the new section, including vessels of the Armed Forces that follow a comparable program, and small recreational vessels, for which alternative measures may be promulgated.

Subsection (b) would establish a general requirement that vessels to which the legislation applies may only uptake or discharge ballast water or sediment in accordance with the requirements and schedule established in the bill. Certain exceptions would apply, including when the safety of the vessel is in question, in saving a life at sea, and when damage to the vessel results in an accidental discharge.

Subsection (c) would require a vessel to have on board an approved ballast water management plan that meets requirements prescribed by the Secretary. The plan would describe the actions to be taken to implement the ballast water management requirements of the bill. For foreign vessels, the Secretary could approve a plan based on a certificate of compliance issued by the vessel’s country of registration.

Subsection (d) would require a vessel to keep a ballast water record book on board documenting its ballast water operations, in accordance with regulations promulgated by the Secretary.

Subsection (e) would require vessels to use ballast water exchange to reduce the risk of introduction of invasive species until ballast water treatment standards outlined in subsection (f) of this section come into effect. As an alternative, vessels could meet this requirement by using ballast water treatment that meets the performance standards of subsection (f), or by using ballast treatment that does not meet the performance standards in subsection (f) but is at least as effective as ballast water exchange.

For vessels using ballast water exchange, this subsection would require vessels arriving at a U.S. port from outside the U.S. EEZ to conduct exchange at least 200 nautical miles from the nearest

point of land, in water at least 200 meters in depth. Vessels voyaging between ports within 200 nautical miles of the United States would be required to conduct exchange at least 50 nautical miles from the nearest land, in water at least 200 meters in depth.

A number of exceptions are included in this subsection. First, the ballast water exchange requirements would not apply to discharges or uptakes of ballast water necessary to ensure the safety or stability of the vessel, its crew or its passengers. This exemption is important particularly for certain vessel classes, such as many tug and barge operations. Second, the provision addresses the problem of requiring ballast water exchange for vessels on extremely short coastal voyages by allowing vessel operators to seek a waiver if conducting exchange would cause the operator substantial business hardship, as determined by the Secretary. Third, an exemption is provided for vessels operating exclusively between certain areas where the risk of introducing aquatic invasive species is insignificant, including vessels operating in the Great Lakes and between the main Hawaiian islands. Finally, the requirements for ballast water exchange are not applicable to the Great Lakes or the Hudson River north of the George Washington Bridge, for which existing regulations would continue until the ballast water treatment requirements under the bill become applicable. This subsection also provides that unexchanged ballast water discharged pursuant to an exception should be discharged in an area designated by the Secretary, or into a reception facility established under subsection (f).

Subsection (f) would phase-in ballast water treatment requirements beginning in January 2009 depending on the ballast water capacity and age of a vessel. The schedule is the same as that adopted by the IMO agreement.

Subsection (f)(1) would set forth the performance standards for ballast water treatment. Treatment is to achieve less than 1 living organism that is 50 or more micrometers in size per 10 cubic meters, and less than 1 living organism that is less than 50 and more than 10 micrometers in size per 10 milliliters. The standards also include concentrations for three indicator microbes—*Vibrio cholera*, *escherichia coli* and *enterococci*.

Subsection (f)(2) would provide that the performance standards are not applicable to discharges of ballast water into a reception facility designated by the Coast Guard or, in the case of land-based facilities, the EPA.

Subsection (f)(3) would set forth the implementation schedule for phasing-in ballast water treatment. The earliest date, January 1, 2009, would apply to new, smaller vessels, while the latest date, January 1, 2016, would apply to existing vessels that are either very small or large.

Subsection (f)(4) would require the Secretary to establish a process for approval of ballast water treatment technologies.

Subsection (f)(5) would set forth the feasibility review process that the Coast Guard would use to evaluate whether technologies exist that would meet the performance standards. The process would include specific criteria, including the effectiveness of a technology, whether a technology has an adverse impact on the environment, and cost effectiveness. If the Coast Guard determines that compliance with the performance standards is not feasible, the Coast Guard is to extend the date of compliance up to two years

and recommend action to ensure compliance with such schedule. Subsection (f)(5) also provides that if the Coast Guard determines that treatment technology exists that exceeds the performance standards, or that effective technology could be implemented sooner than the phase-in dates, the Coast Guard shall revise the standards and time frame for implementation accordingly.

Subsection (f)(6) would provide that for vessels participating in a pilot program approved by the Coast Guard to conduct ship-board testing of ballast water treatment technologies likely to achieve or exceed the performance standards, the Coast Guard shall allow the vessels to use such technology for ten years. This provision is aimed at encouraging vessel operators to participate in such programs, who to date have not participated at a high rate due to the costs and risks otherwise involved in testing technologies on board.

Subsection (f)(7) would provide that starting in December 2012, and every third year thereafter, the Coast Guard shall review the performance standards to determine if they should be revised to reduce the levels of organisms allowed to be discharged, and if the Coast Guard so determines, it shall develop a schedule for implementing such adjusted standards.

Subsection (f)(8) would require the Secretary to develop a list, in consultation with States, of vessels that due to factors such as the origin of their voyages, the volume of ballast water they carry, and the fact that they frequently discharge unexchanged or improperly exchanged ballast water pursuant to an exception under subsection (e)(3), pose a relatively high risk of introducing aquatic invasive species into the waters of the United States. This paragraph further provides that the Secretary should give priority to such vessels for participation in technology pilot programs described in subsection (f)(6), and that Federal and State programs should give incentives to such vessels to more quickly adopt ballast water treatment technologies.

Subsection (g) would require the Secretary to notify mariners of areas where vessels should not uptake ballast water due to known conditions.

Subsection (h) would require vessels to dispose of sediment from ballast tanks either more than 200 nautical miles from the nearest point of land, or into a reception facility, in accordance with the ballast water plan and regulations to be approved by the Secretary. The Administrator of the EPA is to promulgate regulations for the reception facilities themselves. This subsection also requires new vessels to be designed and constructed in a manner that minimizes the occurrence of sediment in ballast tanks.

Subsection (i) would require the Secretary to inspect vessels and ballast water equipment to ensure compliance with the requirements of the bill.

Subsection (j) would authorize the Secretary to detain a vessel that is in violation of the ballast water management requirements before it gets underway.

Subsection (k) would authorize civil or criminal penalties to be charged to the responsible party if the person or persons are found to be in violation of a regulation prescribed under this section.

Subsection (l) would authorize the Secretary with enforcement authority for violations of the requirements of the bill.

Subsection (m) would encourage the Secretary to consult with the governments of Canada and Mexico, as well as other relevant countries, in implementing the requirements of the bill.

Subsection (n) would encourage the Secretary to enter into negotiations with foreign governments to develop and implement an effective international program for preventing the unintentional introduction and spread of aquatic invasive species.

Subsection (o) would require the Secretary to ensure that vessels registered outside of the U.S. do not receive more favorable treatment than U.S. vessels in implementing the bill.

Subsection (p) would authorize \$5,000,000 annually from FY 2006 through FY 2010 to the Secretary to be provided to the existing Federal Ballast Water Demonstration Project, which provides grants for research and development of innovative technologies for the management, treatment, and disposal of ballast water and sediment, ballast water exchange, and other vessel vectors of aquatic invasive species.

Subsection (q) would require the Secretary to consult with the Aquatic Nuisance Species Task Force, established by the Non-indigenous Nuisance Prevention and Control Act of 1990, in implementing this section.

Subsection (r) would preempt State and local laws with respect to ballast water exchange and ballast water treatment requirements. This section would not preempt the imposition by States or local governments of greater penalties or fees for violations of the provisions of the bill, or other State and local law provisions that do not conflict and are not inconsistent with the requirements of the bill. This subsection also provides that the provisions of this Act establish the Federal authority for aquatic invasive species in ballast water and sediment, and supersede any provision of other Federal laws that conflict with the bill.

Subsection (s) would authorize the Secretary to issue such regulations as necessary to implement this section within one year of the date of enactment, and provides for judicial review of such regulations.

Section 3 of the bill would amend section 1003 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4702) to establish several additional definitions and would make conforming amendments in subsection (c).

#### *Section 4. Authorization of appropriations*

Section 4 of the bill would authorize \$20,000,000 in annual appropriations for the Coast Guard for FY 2006 through FY 2010 to implement the legislation.

#### *Section 5. Coast Guard reports on other sources of vessel-borne invasive species*

Section 5 of the bill would require the Secretary to submit two reports to Congress on other vessel-related vectors of harmful aquatic species.



## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

NONINDIGENOUS AQUATIC NUISANCE PREVENTION AND  
CONTROL ACT OF 1990

TITLE I—AQUATIC NUISANCE PREVENTION AND CONTROL

SUBTITLE A—GENERAL PROVISIONS

**SEC. 1001. SHORT TITLE.**

This title may be cited as the “Nonindigenous [Aquatic Nuisance] *Aquatic Invasive Species* Prevention and Control Act of 1990”.

**SEC. 1002. FINDINGS AND PURPOSES.**

[16 U.S.C. 4701]

(a) FINDINGS.—The Congress finds that—

(1) the discharge of untreated water in the ballast tanks of vessels and through other means results in unintentional introductions of nonindigenous species to fresh, brackish, and saltwater environments;

(2) when environmental conditions are favorable, nonindigenous species become established, may compete with or prey upon native species of plants, fish, and wildlife, may carry diseases or parasites that affect native species, and may disrupt the aquatic environment and economy of affected nearshore areas;

(3) the zebra mussel was unintentionally introduced into the Great Lakes and has infested—

(A) waters south of the Great Lakes, into a good portion of the Mississippi River drainage;

(B) waters west of the Great Lakes, into the Arkansas River in Oklahoma; and

(C) waters east of the Great Lakes, into the Hudson River and Lake Champlain;

(4) the potential economic disruption to communities affected by the zebra mussel due to its colonization of water pipes, boat hulls and other hard surfaces has been estimated at \$5,000,000,000 by the year 2000, and the potential disruption to the diversity and abundance of native fish and other species by the zebra mussel and ruffe, round goby, and other nonindigenous species could be severe;

(5) the zebra mussel was discovered on Lake Champlain during 1993 and the opportunity exists to act quickly to establish zebra mussel controls before Lake Champlain is further infested and management costs escalate;

(6) in 1992, the zebra mussel was discovered at the northernmost reaches of the Chesapeake Bay watershed;

(7) the zebra mussel poses an imminent risk of invasion in the main waters of the Chesapeake Bay;

(8) since the Chesapeake Bay is the largest recipient of foreign ballast water on the East Coast, there is a risk of further invasions of other nonindigenous species;

(9) the zebra mussel is only one example of thousands of nonindigenous species that have become established in waters of the United States and may be causing economic and ecological degradation with respect to the natural resources of waters of the United States;

(10) since their introduction in the early 1980's in ballast water discharges, ruffe—

(A) have caused severe declines in populations of other species of fish in Duluth Harbor (in Minnesota and Wisconsin);

(B) have spread to Lake Huron; and

(C) are likely to spread quickly to most other waters in North America if action is not taken promptly to control their spread;

(11) examples of nonindigenous species that, as of the date of enactment of the National Invasive Species Act of 1996, infest coastal waters of the United States and that have the potential for causing adverse economic and ecological effects include—

(A) the mitten crab (*Eriocheir sinensis*) that has become established on the Pacific Coast;

(B) the green crab (*Carcinus maenas*) that has become established in the coastal waters of the Atlantic Ocean;

(C) the brown mussel (*Perna perna*) that has become established along the Gulf of Mexico; and

(D) certain shellfish pathogens;

(12) many **aquatic nuisance** *aquatic invasive* vegetation species, such as Eurasian watermilfoil, hydrilla, water hyacinth, and water chestnut, have been introduced to waters of the United States from other parts of the world causing or having a potential to cause adverse environmental, ecological, and economic effects;

(13) if preventive management measures are not taken nationwide to prevent and control unintentionally introduced nonindigenous aquatic species in a timely manner, further introductions and infestations of species that are as destructive as, or more destructive than, the zebra mussel or the ruffe infestations may occur;

(14) once introduced into waters of the United States, **aquatic nuisance** *aquatic invasive* species are unintentionally transported and introduced into inland lakes and rivers by recreational boaters, commercial barge traffic, and a variety of other pathways; and

(15) resolving the problems associated with **aquatic nuisance** *aquatic invasive* species will require the participation and cooperation of the Federal Government and State governments, and investment in the development of prevention technologies.

(b) PURPOSES.—The purposes of this Act are—

(1) to prevent unintentional introduction and dispersal of nonindigenous species into waters of the United States through ballast water management and other requirements;

(2) to coordinate federally conducted, funded or authorized research, prevention control, information dissemination and other activities regarding the zebra mussel and other ~~aquatic nuisance~~ *aquatic invasive* species;

(3) to develop and carry out environmentally sound control methods to prevent, monitor and control unintentional introductions of nonindigenous species from pathways other than ballast water exchange;

(4) to understand and minimize economic and ecological impacts of nonindigenous ~~aquatic nuisance~~ *aquatic invasive* species that become established, including the zebra mussel; and

(5) to establish a program of research and technology development and assistance to States in the management and removal of zebra mussels.

#### SEC. 1003. DEFINITIONS.

[16 U.S.C. 4702]

As used in this Act, the term—

(1) “Administrator” means the Administrator of the Environmental Protection Agency;

~~[(1)]~~ (2) “aquatic ~~nuisance~~ *invasive* species” means a non-indigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural or recreational activities dependent on such waters;

~~[(2)]~~ (3) “Assistant Secretary” means the Assistant Secretary of the Army (Civil Works);

~~[(3)]~~ “ballast water” means any water and associated sediments used to manipulate the trim and stability of a vessel;

(4) “ballast water”—

(A) means water taken on board a vessel to control trim, list, draught, stability, or stresses of the vessel, including matter suspended in such water; and

(B) any water placed into a ballast tank during cleaning, maintenance, or other operations; but

(C) does not include water that, at the time of discharge, does not contain aquatic invasive species that was taken on board a vessel and used for a purpose described in subparagraph (A);

(5) “ballast water capacity” means the total volumetric capacity of any tanks, spaces, or compartments on a vessel that is used for carrying, loading, or discharging ballast water, including any multi-use tank, space, or compartment designed to allow carriage of ballast water;

(6) “ballast water management” means mechanical, physical, chemical, and biological processes used, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of harmful aquatic organisms and pathogens within ballast water and sediment;

(7) “constructed” means a state of construction of a vessel at which—

(A) the keel is laid;

(B) construction identifiable with the specific vessel begins;

(C) *assembly of the vessel has begun comprising at least 50 tons or 1 percent of the estimated mass of all structural material of the vessel, whichever is less; or*

(D) *the vessel undergoes a major conversion;*

[(4)] (8) “Director” means the Director of the United States Fish and Wildlife Service;

[(5)] (9) “exclusive economic zone” means the Exclusive Economic Zone of the United States established by Proclamation Number 5030, dated March 10, 1983, and the equivalent zone of Canada;

[(6)] (10) “environmentally sound” methods, efforts, actions or programs means methods, efforts, actions or programs to prevent introductions or control infestations of [aquatic nuisance] *aquatic invasive* species that minimize adverse impacts to the structure and function of an ecosystem and adverse effects on non-target organisms and ecosystems and emphasize integrated pest management techniques and nonchemical measures;

[(7)] (11) “Great Lakes” means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, Lake Superior, and the connecting channels (Saint Mary’s River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border), and includes all other bodies of water within the drainage basin of such lakes and connecting channels.

[(8)] (12) “Great Lakes region” means the 8 States that border on the Great Lakes;

[(9)] (13) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

[(10)] (14) “interstate organization” means an entity—

(A) established by—

(i) an interstate compact that is approved by Congress;

(ii) a Federal statute; or

(iii) a treaty or other international agreement with respect to which the United States is a party; and

(B)(i) that represents 2 or more—

(I) States or political subdivisions thereof; or

(II) Indian tribes; or

(ii) that represents—

(I) 1 or more States or political subdivisions thereof; and

(II) 1 or more Indian tribes; or

(iii) that represents the Federal Government and 1 or more foreign governments; and

(C) has jurisdiction over, serves as forum for coordinating, or otherwise has a role or responsibility for the management of, any land or other natural resource;

(15) “major conversion” means a conversion of a vessel, that—

(A) *changes its ballast water carrying capacity by at least 15 percent;*

(B) *changes the vessel class;*

(C) *is projected to prolong the vessel's life by at least 10 years (as determined by the Secretary); or*

(D) *results in modifications to the vessel's ballast water system, except—*

*(i) component replacement-in-kind; or*

*(ii) conversion of a vessel to meet the requirements of section 1101(e);*

[(11)] (16) “nonindigenous species” means any species or other viable biological material that enters an ecosystem beyond its historic range, including any such organism transferred from one country into another;

[(12)] (17) “Secretary” means the Secretary of the department in which the Coast Guard is operating;

(18) “*sediment*” means *matter that has settled out of ballast water within a vessel;*

[(13)] (19) “Task Force” means the [Aquatic Nuisance] Aquatic Invasive Species Task Force established under section 1201 of this Act;

[(14)] (20) “territorial sea” means the belt of the sea measured from the baseline of the United States determined in accordance with international law, as set forth in Presidential Proclamation Number 5928, dated December 27, 1988;

[(15)] (21) “Under Secretary” means the Under Secretary of Commerce for Oceans and Atmosphere;

[(17)] (22) “unintentional introduction” means an introduction of nonindigenous species that occurs as the result of activities other than the purposeful or intentional introduction of the species involved, such as the transport of nonindigenous species in ballast or in water used to transport fish, mollusks or crustaceans for aquaculture or other purposes.

(23) “*United States port*” means *a port, river, harbor, or offshore terminal under the jurisdiction of the United States, including ports located in Puerto Rico, Guam, the Northern Marianas, and the United States Virgin Islands;*

(24) “*vessel of the Armed Forces*” means—

*(A) any vessel owned or operated by the Department of Defense, other than a time or voyage chartered vessel; and*

*(B) any vessel owned or operated by the Department of Homeland Security that is designated by the Secretary of the department in which the Coast Guard is operating as a vessel equivalent to a vessel described in subparagraph (A);*

[(16)] (25) “waters of the United States” means the navigable waters and the territorial sea of the United States; and

(26) “*waters subject to the jurisdiction of the United States*” means *navigable waters and the territorial sea of the United States, the exclusive economic zone, and the Great Lakes.*

SUBTITLE B—PREVENTION OF UNINTENTIONAL INTRODUCTIONS OF  
AQUATIC NUISANCE SPECIES

[SEC. 1101. AQUATIC NUISANCE SPECIES IN WATERS OF THE UNITED  
STATES.]

[16 U.S.C. 4711]

[(a) GREAT LAKES GUIDELINES.—

[(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary shall issue voluntary guidelines to prevent the introduction and spread of [aquatic nuisance] *aquatic invasive* species into the Great Lakes through the exchange of ballast water of vessels prior to entering those waters.

[(2) CONTENT OF GUIDELINES.—The guidelines issued under this subsection shall—

[(A) ensure to the maximum extent practicable that ballast water containing aquatic nuisance species is not discharged into the Great Lakes;

[(B) protect the safety of—

[(i) each vessel; and

[(ii) the crew and passengers of each vessel;

[(C) take into consideration different vessel operating conditions; and

[(D) be based on the best scientific information available.

[(b) REGULATIONS.—

[(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary, in consultation with the Task Force, shall issue regulations to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the ballast water of vessels.

[(2) CONTENT OF REGULATIONS.—The regulations issued under this subsection shall—

[(A) apply to all vessels equipped with ballast water tanks that enter a United States port on the Great Lakes after operating on the waters beyond the exclusive economic zone;

[(B) require a vessel to—

[(i) carry out exchange of ballast water on the waters beyond the exclusive economic zone prior to entry into any port within the Great Lakes;

[(ii) carry out an exchange of ballast water in other waters where the exchange does not pose a threat of infestation or spread of aquatic nuisance species in the Great Lakes and other waters of the United States, as recommended by the Task Force under section 1102(a)(1); or

[(iii) use environmentally sound alternative ballast water management methods if the Secretary determines that such alternative methods are as effective as ballast water exchange in preventing and controlling infestations of aquatic nuisance species;

[(C) not affect or supersede any requirements or prohibitions pertaining to the discharge of ballast water into wa-

ters of the United States under the Federal Water Pollution Control Act;

[(D) provide for sampling procedures to monitor compliance with the requirements of the regulations;

[(E) prohibit the operation of a vessel in the Great Lakes if the master of the vessel has not certified to the Secretary or the Secretary's designee by not later than the departure of that vessel from the first lock in the St. Lawrence Seaway that the vessel has complied with the requirements of the regulations;

[(F) protect the safety of—

[(i) each vessel; and

[(ii) the crew and passengers of each vessel;

[(G) take into consideration different operating conditions; and

[(H) be based on the best scientific information available.

[(3) ADDITIONAL REGULATIONS.—In addition to promulgating regulations under paragraph (1), the Secretary, in consultation with the Task Force, shall, not later than November 4, 1994, issue regulations to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through ballast water carried on vessels that enter a United States port on the Hudson River north of the George Washington Bridge.

[(4) EDUCATION AND TECHNICAL ASSISTANCE PROGRAMS.—The Secretary may carry out education and technical assistance programs and other measures to promote compliance with the regulations issued under this subsection.

[(c) VOLUNTARY NATIONAL GUIDELINES.—

[(1) IN GENERAL.—Not later than 1 year after the date of enactment of the National Invasive Species Act of 1996, and after providing notice and an opportunity for public comment, the Secretary shall issue voluntary guidelines to prevent the introduction and spread of nonindigenous species in waters of the United States by ballast water operations and other operations of vessels equipped with ballast water tanks.

[(2) CONTENT OF GUIDELINES.—The voluntary guidelines issued under this subsection shall—

[(A) ensure to the maximum extent practicable that aquatic nuisance species are not discharged into waters of the United States from vessels;

[(B) apply to all vessels equipped with ballast water tanks that operate in waters of the United States;

[(C) protect the safety of—

[(i) each vessel; and

[(ii) the crew and passengers of each vessel;

[(D) direct a vessel that is carrying ballast water into waters of the United States after operating beyond the exclusive economic zone to—

[(i) carry out the exchange of ballast water of the vessel in waters beyond the exclusive economic zone;

[(ii) exchange the ballast water of the vessel in other waters where the exchange does not pose a threat of infestation or spread of nonindigenous spe-

cies in waters of the United States, as recommended by the Task Force under section 1102(a)(1); or

[(iii) use environmentally sound alternative ballast water management methods, including modification of the vessel ballast water tanks and intake systems, if the Secretary determines that such alternative methods are at least as effective as ballast water exchange in preventing and controlling infestations of aquatic nuisance species;

[(E) direct vessels to carry out management practices that the Secretary determines to be necessary to reduce the probability of unintentional nonindigenous species transfer resulting from—

[(i) ship operations other than ballast water discharge; and

[(ii) ballasting practices of vessels that enter waters of the United States with no ballast water on board;

[(F) provide for the keeping of records that shall be submitted to the Secretary, as prescribed by the guidelines, and that shall be maintained on board each vessel and made available for inspection, upon request of the Secretary and in a manner consistent with subsection (i), in order to enable the Secretary to determine compliance with the guidelines, including—

[(i) with respect to each ballast water exchange referred to in clause (ii), reporting on the precise location and thoroughness of the exchange; and

[(ii) any other information that the Secretary considers necessary to assess the rate of effective compliance with the guidelines;

[(G) provide for sampling procedures to monitor compliance with the guidelines;

[(H) take into consideration—

[(i) vessel types;

[(ii) variations in the characteristics of point of origin and receiving water bodies;

[(iii) variations in the ecological conditions of waters and coastal areas of the United States; and

[(iv) different operating conditions;

[(I) be based on the best scientific information available;

[(J) not affect or supersede any requirements or prohibitions pertaining to the discharge of ballast water into waters of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and

[(K) provide an exemption from ballast water exchange requirements to passenger vessels with operating ballast water systems that are equipped with treatment systems designed to kill aquatic organisms in ballast water, unless the Secretary determines that such treatment systems are less effective than ballast water exchange at reducing the risk of transfers of invasive species in the ballast water of passenger vessels; and

[(L) not apply to crude oil tankers engaged in the coastwise trade.



[(3) EDUCATION AND TECHNICAL ASSISTANCE PROGRAMS.—Not later than 1 year after the date of enactment of the National Invasive Species Act of 1996, the Secretary shall carry out education and technical assistance programs and other measures to encourage compliance with the guidelines issued under this subsection.

[(d) REPORT TO CONGRESS.—Not sooner than 24 months after the date of issuance of guidelines pursuant to subsection (c) and not later than 30 months after such date, and after consultation with interested and affected persons, the Secretary shall prepare and submit to Congress a report containing the information required pursuant to paragraphs (1) and (2) of subsection (e).

[(e) PERIODIC REVIEW AND REVISION.—

[(1) IN GENERAL.—Not later than 3 years after the date of issuance of guidelines pursuant to subsection (c), and not less frequently than every 3 years thereafter, the Secretary shall, in accordance with criteria developed by the Task Force under paragraph (3)—

[(A) assess the compliance by vessels with the voluntary guidelines issued under subsection (c) and the regulations promulgated under this Act;

[(B) establish the rate of compliance that is based on the assessment under subparagraph (A);

[(C) assess the effectiveness of the voluntary guidelines and regulations referred to in subparagraph (A) in reducing the introduction and spread of aquatic nuisance species by vessels; and

[(D) as necessary, on the basis of the best scientific information available—

[(i) revise the guidelines and regulations referred to in subparagraph (A);

[(ii) promulgate additional regulations pursuant to subsection (f)(1); or

[(iii) carry out each of clauses (i) and (ii).

[(2) SPECIAL REVIEW AND REVISION.—Not later than 90 days after the Task Force makes a request to the Secretary for a special review and revision for coastal and inland waterways designated by the Task Force, the Secretary shall—

[(A) conduct a special review of guidelines and regulations applicable to those waterways in accordance with the review procedures under paragraph (1); and

[(B) as necessary, in the same manner as provided under paragraph (1)(D)—

[(i) revise those guidelines;

[(ii) promulgate additional regulations pursuant to subsection (f)(1); or

[(iii) carry out each of clauses (i) and (ii).

[(3) CRITERIA FOR EFFECTIVENESS.—Not later than 18 months after the date of enactment of the National Invasive Species Act of 1996, the Task Force shall submit to the Secretary criteria for determining the adequacy and effectiveness of the voluntary guidelines issued under subsection (c).

[(f) AUTHORITY OF SECRETARY.—

[(1) GENERAL REGULATIONS.—If, on the basis of a periodic review conducted under subsection (e)(1) or a special review conducted under subsection (e)(2), the Secretary determines that—

[(A) the rate of effective compliance (as determined by the Secretary) with the guidelines issued pursuant to subsection (c) is inadequate; or

[(B) the reporting by vessels pursuant to those guidelines is not adequate for the Secretary to assess the compliance with those guidelines and provide a rate of compliance of vessels, including the assessment of the rate of compliance of vessels under subsection (e)(2), the Secretary shall promptly promulgate regulations that meet the requirements of paragraph (2).

[(2) REQUIREMENTS FOR REGULATIONS.—The regulations promulgated by the Secretary under paragraph (1)—

[(A) shall—

[(i) not be promulgated sooner than 180 days following the issuance of the report to Congress submitted pursuant to subsection (d);

[(ii) make mandatory the requirements included in the voluntary guidelines issued under subsection (c); and

[(iii) provide for the enforcement of the regulations; and

[(B) may be regional in scope.

[(3) INTERNATIONAL REGULATIONS.—The Secretary shall revise regulations promulgated under this subsection to the extent required to make such regulations consistent with the treatment of a particular matter in any international agreement, agreed to by the United States, governing management of the transfer of nonindigenous aquatic species by vessel.

[(g) SANCTIONS.—

[(1) CIVIL PENALTIES.—Any person who violates a regulation promulgated under subsection (b) or (f) shall be liable for a civil penalty in an amount not to exceed \$25,000. Each day of a continuing violation constitutes a separate violation. A vessel operated in violation of the regulations is liable in rem for any civil penalty assessed under this subsection for that violation.

[(2) CRIMINAL PENALTIES.—Any person who knowingly violates the regulations promulgated under subsection (b) or (f) is guilty of a class C felony.

[(3) REVOCATION OF CLEARANCE.—Upon request of the Secretary, the Secretary of the Treasury shall withhold or revoke the clearance of a vessel required by section 4197 of the Revised Statutes (46 U.S.C. App. 91), if the owner or operator of that vessel is in violation of the regulations issued under subsection (b) or (f).

[(4) EXCEPTION TO SANCTIONS.—This subsection does not apply to a failure to exchange ballast water if—

[(A) the master of a vessel, acting in good faith, decides that the exchange of ballast water will threaten the safety or stability of the vessel, its crew, or its passengers; and

[(B) the recordkeeping and reporting requirements of the Act are complied with.

[(h) COORDINATION WITH OTHER AGENCIES.—In carrying out the programs under this section, the Secretary is encouraged to use, to the maximum extent practicable, the expertise, facilities, members, or personnel of established agencies and organizations that have routine contact with vessels, including the Animal and Plant Health Inspection Service of the Department of Agriculture, the National Cargo Bureau, port administrations, and ship pilots' associations.

[(i) CONSULTATION WITH CANADA, MEXICO, AND OTHER FOREIGN GOVERNMENTS.—In developing the guidelines issued and regulations promulgated under this section, the Secretary is encouraged to consult with the Government of Canada, the Government of Mexico, and any other government of a foreign country that the Secretary, in consultation with the Task Force, determines to be necessary to develop and implement an effective international program for preventing the unintentional introduction and spread of nonindigenous species.

[(j) INTERNATIONAL COOPERATION.—The Secretary, in cooperation with the International Maritime Organization of the United Nations and the Commission on Environmental Cooperation established pursuant to the North American Free Trade Agreement, is encouraged to enter into negotiations with the governments of foreign countries to develop and implement an effective international program for preventing the unintentional introduction and spread of nonindigenous species.

[(k) SAFETY EXEMPTION.—

[(1) MASTER DISCRETION.—The master of a vessel is not required to conduct a ballast water exchange if the master decides that the exchange would threaten the safety or stability of the vessel, its crew, or its passengers because of adverse weather, vessel architectural design, equipment failure, or any other extraordinary conditions.

[(2) OTHER REQUIREMENTS.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), a vessel that does not exchange ballast water on the high seas under paragraph (1) shall not be restricted from discharging ballast water in any harbor.

[(B) GREAT LAKES.—Subparagraph (A) shall not apply in a case in which a vessel is subject to the regulations issued by the Secretary under subsection (b).

[(3) CRUDE OIL TANKER BALLAST FACILITY STUDY.—

[(A) Within 60 days of the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating, in consultation with the Under Secretary of Commerce for Oceans and Atmosphere, affected shoreside ballast water facility operators, affected crude oil tanker operators, and interested parties, shall initiate a study of the effectiveness of existing shoreside ballast water facilities used by crude oil tankers in the coastwise trade off Alaska in preventing the introduction of nonindigenous aquatic species into the waters off Alaska, as well as the cost and feasibility of modifying such facilities to improve such effectiveness.

[(B) The study required under subparagraph (A) shall be submitted to the Congress by no later than October 1, 1997.]

[(1) NON-DISCRIMINATION.—The Secretary shall ensure that vessels registered outside of the United States do not receive more favorable treatment than vessels registered in the United States when the Secretary performs studies, reviews compliance, determines effectiveness, establishes requirements, or performs any other responsibilities under this Act.]

**SEC. 1101. BALLAST WATER MANAGEMENT.**

(a) **VESSELS TO WHICH THIS SECTION APPLIES.**—

(1) **IN GENERAL.**—*Except as provided in paragraphs (2), (3), and (4), this section applies to a vessel that is designed, constructed, or adapted to carry ballast water; and*

*(A) is a vessel of United States registry or nationality, or operated under the authority of the United States, wherever located; or*

*(B) is a foreign vessel that—*

*(i) is en route to a United States port or place; or*

*(ii) has departed from a United States port or place and is within waters subject to the jurisdiction of the United States.*

(2) **PERMANENT BALLAST WATER VESSELS.**—*This section does not apply to a vessel that carries all of its permanent ballast water in sealed tanks and is not subject to discharge.*

(3) **ARMED FORCES VESSELS.**—

(A) **EXEMPTION.**—*Except as provided in subparagraph (B), this section does not apply to a vessel of the Armed Forces.*

(B) **BALLAST WATER MANAGEMENT PROGRAM.**—*The Secretary of Defense and the Secretary of Homeland Security, after consultation with the Administrator, the Under Secretary of Commerce for Oceans and Atmosphere, and the Secretary, shall implement a ballast water management program, including the promulgation of standards for ballast water exchange and treatment and for sediment management, for vessels of the Armed Forces under their respective jurisdictions designed, constructed, or adapted to carry ballast water that is—*

*(i) consistent with the requirements of this section, including the deadlines; and*

*(ii) at least as stringent as the requirements promulgated for such vessels under section 312 of the Clean Water Act (33 U.S.C. 1322).*

(4) **SPECIAL RULE FOR SMALL RECREATIONAL VESSELS.**—*In applying this section to recreational vessels less than 50 meters in length that have a maximum ballast water capacity of 8 cubic meters, the Secretary may promulgate alternative measures for managing ballast water in a manner that is consistent with the requirements of this section.*

(b) **UPTAKE AND DISCHARGE OF BALLAST WATER OR SEDIMENT.**—

(1) **PROHIBITION.**—*The operator of a vessel to which this section applies may not conduct the uptake or discharge of ballast water or sediment except as provided in this section.*

(2) *EXCEPTIONS.*—Paragraph (1) does not apply to the uptake or discharge of ballast water or sediment in the following circumstances:

(A) *The uptake or discharge is solely for the purpose of—*  
 (i) *ensuring the safety of the vessel in an emergency situation; or*

(ii) *saving a life at sea.*

(B) *The uptake or discharge is accidental and the result of damage to the vessel or its equipment and—*

(i) *all reasonable precautions to prevent or minimize ballast water and sediment discharge have been taken before and after the damage occurs, the discovery of the damage, and the discharge; and*

(ii) *the owner or officer in charge of the vessel did not willfully or recklessly cause the damage.*

(C) *The uptake or discharge is solely for the purpose of avoiding or minimizing the discharge from the vessel of pollution that would otherwise violate applicable Federal or State law.*

(D) *The uptake or discharge of ballast water and sediment occurs at the same location where the whole of that ballast water and that sediment originated and there is no mixing with ballast water and sediment from another area that has not been managed in accordance with the requirements of this section.*

(c) *VESSEL BALLAST WATER MANAGEMENT PLAN.*—

(1) *IN GENERAL.*—*The operator of a vessel to which this section applies shall conduct all ballast water management operations of that vessel in accordance with a ballast water management plan designed to minimize the discharge of aquatic invasive species that—*

(A) *meets the requirements prescribed by the Secretary by regulation; and*

(B) *is approved by the Secretary.*

(2) *APPROVAL CRITERIA.*—

(A) *IN GENERAL.*—*The Secretary may not approve a ballast water management plan unless the Secretary determines that the plan—*

(i) *describes in detail the actions to be taken to implement the ballast water management requirements established under this section;*

(ii) *describes in detail the procedures to be used for disposal of sediment at sea and on shore in accordance with the requirements of this section;*

(iii) *describes in detail safety procedures for the vessel and crew associated with ballast water management;*

(iv) *designates the officer on board the vessel in charge of ensuring that the plan is properly implemented;*

(v) *contains the reporting requirements for vessels established under this section and a copy of each form necessary to meet those requirements; and*

(vi) *meets all other requirements prescribed by the Secretary.*

(B) *FOREIGN VESSELS.*—The Secretary may approve a ballast water management plan for a foreign vessel (as defined in section 2101(12) of title 46, United States Code) on the basis of a certificate of compliance with the criteria described in subparagraph (A) issued by the vessel's country of registration in accordance with regulations promulgated by the Secretary.

(3) *COPY OF PLAN ON BOARD VESSEL.*—The owner or operator of a vessel to which this section applies shall—

(A) maintain a copy of the vessel's ballast water management plan on board at all times; and

(B) keep the plan readily available for examination by the Secretary at all reasonable times.

(d) *VESSEL BALLAST WATER RECORD BOOK.*—

(1) *IN GENERAL.*—The owner or operator of a vessel to which this section applies shall maintain a ballast water record book in English on board the vessel in which—

(A) each operation involving ballast water or sediment discharge is fully recorded without delay, in accordance with regulations promulgated by the Secretary;

(B) each such operation is described in detail, including the location and circumstances of, and the reason for, the operation; and

(C) the exact nature and circumstances of any situation under which any operation was conducted under an exception set forth in subsection (b)(2) or (e)(3) is described.

(2) *AVAILABILITY.*—The ballast water record book—

(A) shall be kept readily available for examination by the Secretary at all reasonable times; and

(B) notwithstanding paragraph (1), may be kept on the towing vessel in the case of an unmanned vessel under tow.

(3) *RETENTION PERIOD.*—The ballast water record book shall be retained—

(A) on board the vessel for a period of 3 years after the date on which the last entry in the book is made; and

(B) under the control of the vessel's owner for an additional period of 3 years.

(4) *REGULATIONS.*—In the regulations prescribed under this section, the Secretary shall require, at a minimum, that—

(A) each entry in the ballast water record book be signed and dated by the officer in charge of the ballast water operation recorded;

(B) each completed page in the ballast water record book be signed and dated by the master of the vessel; and

(C) the owner or operator of the vessel transmit such information to the Secretary regarding the ballast operations of the vessel as the Secretary may require.

(5) *ALTERNATIVE MEANS OF RECORDKEEPING.*—The Secretary shall provide by regulation for alternative methods of recordkeeping, including electronic recordkeeping, to comply with the requirements of this subsection.

(e) *BALLAST WATER EXCHANGE REQUIREMENTS.*—

(1) *IN GENERAL.*—Until a vessel is required to conduct ballast water treatment in accordance with subsection (f) of this sec-

tion, the operator of a vessel to which this section applies may not discharge ballast water except after —

(A) conducting ballast water exchange, in accordance with regulations prescribed by the Secretary, in a manner that results in an efficiency of at least 95 percent volumetric exchange of the ballast water for each ballast water tank;

(B) using ballast water treatment that meets the performance standards of subsection (f); or

(C) using environmentally-sound alternative ballast water treatment, if the Secretary determines that such treatment is at least as effective as the ballast water exchange required by subparagraph (A) in preventing and controlling infestation of aquatic invasive species.

(1A) GUIDANCE; 5-YEAR USAGE.—

(A) GUIDANCE.—Within 1 year after the date of enactment of the Ballast Water Management Act of 2005, the Secretary shall develop guidance on technology that may be used to under paragraph (1)(C).

(B) 5-YEAR USAGE.—If the Secretary accelerates the schedule under subsection (f)(5)(C) for implementation of the treatment technology required under subsection (f), the Secretary shall allow a vessel using environmentally-sound alternative ballast water treatment under paragraph (1)(C) to continue to use that treatment for 5 years after the date on which the environmentally-sound alternative ballast water treatment was first placed in service on the vessel.

(2) EXCHANGE AREAS.—

(A) VESSELS OUTSIDE THE UNITED STATES EEZ.—The operator of a vessel en route to a United States port or place from a port or place outside the United States exclusive economic zone shall conduct ballast water exchange—

- (i) before arriving at a United States port or place;
- (ii) at least 200 nautical miles from the nearest point of land; and
- (iii) in water at least 200 meters in depth.

(B) COASTAL VOYAGES.—The operator of a vessel originating from a port or place within the United States exclusive economic zone, or from a port within 200 nautical miles of the United States in Canada, Mexico, or other ports designated by the Secretary for purposes of this section, shall conduct ballast water exchange—

- (i) at least 50 nautical miles from the nearest point of land; and
- (ii) in water at least 200 meters in depth.

(3) SAFETY OR STABILITY EXCEPTION.—

(A) IN GENERAL.—Paragraphs (1) and (2) do not apply to the discharge of ballast water if the master of a vessel determines that compliance with those paragraphs would threaten the safety or stability of the vessel, its crew, or its passengers because of adverse weather, equipment failure, or any other relevant condition.

(B) NOTIFICATION REQUIRED.—Whenever the master of a vessel is unable to comply with the requirements of para-

graphs (1) and (2) because of a determination made under subparagraph (A), the master of the vessel shall—

- (i) notify the Secretary as soon as practicable thereafter but no later than 24 hours after making that determination and shall ensure that the determination, the reasons for the determination, and the notice are recorded in the vessel's ballast water record book; and
- (ii) undertake ballast water exchange—

(I) in an alternative area that may be designated by the Secretary, after consultation with the Administrator, the Undersecretary, and representatives of States the waters of which would be affected by the discharge of ballast water; or

(II) undertake discharge of ballast water in accordance with paragraph (5) if safety or stability concerns prevent undertaking ballast water exchange in the alternative area.

(C) REVIEW OF CIRCUMSTANCES.—If the master of a vessel conducts a ballast water discharge under the provisions of this paragraph, the Secretary shall review the circumstances to determine whether the discharge met the requirements of this paragraph. The review under this clause shall be in addition to any other enforcement authority of the Secretary.

(4) DISCHARGE UNDER WAIVER.—

(A) SUBSTANTIAL BUSINESS HARDSHIP WAIVER.—If, because of the short length of a voyage, the operator of a vessel is unable to discharge ballast water in accordance with the requirements of paragraph (2)(B) without substantial business hardship, as determined under regulations prescribed by the Secretary, the operator shall request a waiver from the Secretary and discharge the ballast water in accordance with paragraph (5). A request for a waiver under this subparagraph shall be submitted to the Secretary at such time and in such form and manner as the Secretary may require.

(B) SUBSTANTIAL BUSINESS HARDSHIP.—For purposes of subparagraph (A), the factors taken into account in determining substantial business hardship shall include whether—

- (i) compliance with the requirements of paragraph (2)(B) would require a sufficiently great change in routing or scheduling of service as to compromise the economic or commercial viability of the trade or business in which the vessel is operated; or
- (ii) it is reasonable to expect that the trade or business or service provided will be continued only if a waiver is granted under subparagraph (A).

(5) PERMISSABLE DISCHARGE.—

(A) IN GENERAL.—The discharge of ballast water shall be considered to be carried out in accordance with this paragraph if it is—

- (i) in an area designated for that purpose by the Secretary, after consultation with the Undersecretary and the Administrator and representatives of any State that



may be affected by discharge of ballast water in that area; or

(ii) into a reception facility described in subsection (f)(2).

(B) *LIMITATION ON VOLUME.*—The volume of any ballast water discharged under the provisions of this paragraph may not exceed the volume necessary to ensure the safe operation of the vessel.

(6) *PARTIAL COMPLIANCE.*—The operator of a vessel that is unable to comply fully with the requirements of paragraphs (1) and (2)—

(A) shall nonetheless conduct ballast water exchange to the maximum extent feasible in compliance with those paragraphs; and

(B) may conduct a partial ballast water exchange under this paragraph only to the extent that the ballast water in an individual ballast tank can be completely exchanged in accordance with the provisions of paragraph (1)(B).

(7) *SPECIAL RULES FOR VESSELS IN THE GREAT LAKES.*—Until vessels described in subsection (e)(6) are required to conduct ballast water treatment in accordance with the requirements of subsection (f), the regulations promulgated by the Secretary of Transportation under this section, as such regulations and section were in effect on the day before the date of enactment of the Ballast Water Management Act of 2005, shall remain in full force and effect for, and shall continue to apply to, such vessels.

(8) *CERTAIN GEOGRAPHICALLY LIMITED ROUTES.*—Notwithstanding paragraph (2)(B) of this subsection, the operator of a vessel is not required to comply with the requirements of paragraph (2)(B)—

(A) if the vessel operates exclusively—

(i) within Lake Superior, Lake Michigan, Lake Huron, and Lake Erie and the connecting channels; or

(ii) between or among the main group of the Hawaiian Islands; or

(B) if the vessel operates exclusively within any area with respect to which the Secretary has determined, after consultation with the Undersecretary, the Administrator, and representatives of States the waters of which would be affected by the discharge of ballast water, that the risk of introducing aquatic invasive species through ballast water discharge in the areas in which the vessel operates is insignificant.

(9) *MARINE SANCTUARIES AND OTHER PROHIBITED AREAS.*—A vessel may not conduct ballast water exchange or discharge unexchanged ballast water under this subsection within a marine sanctuary designated under title III of the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) or in any other waters designated by the Secretary after consultation with the Undersecretary and the Administrator.

(10) *REGULATIONS DEADLINE.*—The Secretary shall issue a final rule for regulations required by this subsection within 1 year after the date of enactment of the Ballast Water Management Act of 2005.

(f) *BALLAST WATER TREATMENT REQUIREMENTS.*—

(1) *PERFORMANCE STANDARDS.*—A vessel to which this section applies shall conduct ballast water treatment in accordance with the requirements of this subsection before discharging ballast water so that the ballast water discharged will contain—

(A) less than 1 living organism per 10 cubic meters that is 50 or more micrometers in minimum dimension;

(B) less than 1 living organism per 10 milliliters that is less than 50 micrometers in minimum dimension and more than 10 micrometers in minimum dimension;

(C) concentrations of indicator microbes that are less than—

(i) 1 colony-forming unit of toxicogenic *Vibrio cholera* (serotypes O1 and O139) per 100 milliliters, or less than 1 colony-forming unit of that microbe per gram of wet weight of zoological samples;

(ii) 126 colony-forming units of *escherichia coli* per 100 milliliters; and

(iii) 33 colony-forming units of intestinal enterococci per 100 milliliters; and

(D) concentrations of such additional indicator microbes as may be specified in regulations promulgated by the Secretary, after consultation with the Environmental Protection Agency, that are less than the amount specified in those regulations.

(2) *RECEPTION FACILITY EXCEPTION.*—

(A) *IN GENERAL.*—Paragraph (1) does not apply to a vessel that discharges ballast water into—

(i) a land-based facility for the reception of ballast water that meets standards prescribed by the Administrator; or

(ii) a water-based facility for the reception of ballast water that meets standards prescribed by the Secretary.

(B) *PROMULGATION OF STANDARDS.*—Within 1 year after the date of enactment of the Ballast Water Management Act of 2005, the Administrator and the Secretary, respectively, shall promulgate standards for—

(i) the reception of ballast water in land-based and water-based reception facilities; and

(ii) the disposal or treatment of such ballast water in a way that does not impair or damage the environment, human health, property, or resources.

(3) *IMPLEMENTATION SCHEDULE.*—Paragraph (1) applies to vessels in accordance with the following schedule:

(A) *FIRST PHASE.*—Beginning January 1, 2009, for vessels constructed on or after that date with a ballast water capacity of less than 5,000 cubic meters.

(B) *SECOND PHASE.*—Beginning January 1, 2012, for vessels constructed on or after that date with a ballast water capacity of 5,000 cubic meters or more.

(C) *THIRD PHASE.*—Beginning January 1, 2014, for vessels constructed before January 1, 2009, with a ballast water capacity of 1,500 cubic meters or more but not more than 5,000 cubic meters.

(D) *FOURTH PHASE.*—Beginning January 1, 2016, for vessels constructed—

(i) before January 1, 2009, with a ballast water capacity of less than 1,500 cubic meters or 5,000 cubic meters or more; or

(ii) on or after January 1, 2009, and before January 1, 2012, with a ballast water capacity of 5,000 cubic meters or more.

(4) *TREATMENT SYSTEM APPROVAL REQUIRED.*—The operator of a vessel may not use a ballast water treatment system to comply with the requirements of this subsection unless the system is approved by the Secretary. The Secretary shall promulgate regulations establishing a process for such approval, after consultation with the Administrator, within 1 year after the date of enactment of the Ballast Water Management Act of 2005.

(5) *FEASIBILITY REVIEW.*—

(A) *IN GENERAL.*—Not less than 2 years before the date on which paragraph (1) applies to vessels under each subparagraph of paragraph (3), or as that date may be extended under this paragraph, the Secretary shall complete a review to determine whether appropriate technologies are available to achieve the standards set forth in paragraph (1) for the vessels to which they apply under the schedule set forth in paragraph (3). In reviewing the technologies the Secretary, after consultation with the Administrator, shall consider—

(i) the effectiveness of a technology in achieving the standards;

(ii) feasibility in terms of compatibility with ship design and operations;

(iii) safety considerations;

(iv) whether a technology has an adverse impact on the environment; and

(v) cost effectiveness.

(B) *DELAY IN SCHEDULED APPLICATION.*—If the Secretary determines, on the basis of the review conducted under subparagraph (A), that compliance with the standards set forth in paragraph (1) in accordance with the schedule set forth in any subparagraph of paragraph (3) is not feasible for any class of vessels, the Secretary shall—

(i) extend the date on which that subparagraph first applies to vessels for a period of not more than 24 months; and

(ii) recommend action to ensure that compliance with the extended date schedule for that subparagraph is achieved.

(C) *HIGHER STANDARDS; EARLIER IMPLEMENTATION.*—

(i) *STANDARDS.*—If the Secretary determines that ballast water treatment technology exists that exceeds the performance standards required under this subsection, the Secretary shall, for any class of vessels, revise the performance standards to incorporate the higher performance standards.

(ii) *IMPLEMENTATION.*—If the Secretary determines that technology that achieves the applicable perform-

ance standards required under this subsection can be implemented earlier than required by this subsection, the Secretary shall, for any class of vessels, accelerate the implementation schedule under paragraph (3). If the Secretary accelerates the implementation schedule pursuant to this clause, the Secretary shall provide at least 24 months notice before such accelerated implementation goes into effect.

(iii) DETERMINATIONS NOT MUTUALLY EXCLUSIVE.—The Secretary shall take action under both clause (i) and clause (ii) if the Secretary makes determinations under both clauses.

(6) DELAY OF APPLICATION FOR VESSEL PARTICIPATING IN PROMISING TECHNOLOGY EVALUATIONS.—

(A) IN GENERAL.—If a vessel participates in a program approved by the Secretary to test and evaluate promising ballast water treatment technologies that are likely to result in treatment technologies achieving a standard that is the same as or more stringent than the standard that applies under paragraph (1) before the first date on which paragraph (1) applies to that vessel, the Secretary shall allow the vessel to use that technology for a 10 year period and such vessel shall be deemed to be in compliance with the requirements of paragraph (1) during that 10-year period.

(B) VESSEL DIVERSITY.—The Secretary—

(i) shall seek to ensure that a wide variety of vessel types and voyages are included in the program; but

(ii) may not grant a delay under this paragraph to more than 5 percent of the vessels to which subparagraph (A), (B), (C), or (D) of paragraph (3) applies.

(C) TERMINATION OF GRACE PERIOD.—The Secretary may terminate the 10-year grace period of a vessel under subparagraph (A) if participation of the vessel in the program is terminated without the consent of the Secretary.

(D) ANNUAL RE-EVALUATION; TERMINATION.—The Secretary shall establish an annual evaluation process to determine whether the performance of an approved technology is sufficiently effective and whether it is causing harm to the environment. If the Secretary determines that an approved technology is insufficiently effective or it causing harm to the environment, the Secretary shall revoke the approval granted under subparagraph (D).

(7) REVIEW OF STANDARDS.—

(A) IN GENERAL.—In December, 2012, and in every third year thereafter, the Secretary shall review ballast water treatment standards to determine, after consultation with the Undersecretary and the Administrator, if the standards under this subsection should be revised to reduce the amount of organisms or microbes allowed to be discharged, taking into account improvements in the scientific understanding of biological processes leading to successful invasions of aquatic invasive species and improvements in ballast water treatment technology. The Secretary shall revise by regulation the requirements of this subsection as necessary.

(B) *APPLICATION OF ADJUSTED STANDARDS.*—*In the regulations, the Secretary shall provide for the prospective application of the adjusted standards prescribed under this paragraph to vessels constructed after the date on which the adjusted standards apply and for an orderly phase-in of the adjusted standards to existing vessels.*

(8) *HIGH-RISK VESSELS.*—

(A) *VESSEL LIST.*—*Within 1 year after the date of enactment of the Ballast Water Management Act of 2005, the Secretary shall initiate a list, in consultation with States, of vessels that, due to factors such as the origin of their voyages, the frequency of their voyages, the volume of ballast water they carry, the biological makeup of the ballast water, and the fact that they frequently discharge unexchanged or improperly exchanged ballast water pursuant to an exception under subsection (e), pose a relatively high risk of introducing aquatic invasive species into the waters of those States.*

(B) *INCENTIVE PROGRAMS.*—*The Secretary shall—*

- (i) give priority to vessels on the list for participation in pilot programs described in paragraph (6); and*
- (ii) shall encourage Federal and State technology development programs or other incentives (whether positive or negative) to give priority to such vessels in order to encourage the adoption of ballast water treatment technology by those vessels consistent with the requirements of this section on an expedited basis.*

(g) *WARNINGS CONCERNING BALLAST WATER UPTAKE.*—

(1) *IN GENERAL.*—*The Secretary shall notify vessel owners and operators of any area in waters subject to the jurisdiction of the United States in which vessels should not uptake ballast water due to known conditions.*

(2) *CONTENTS.*—*The notice shall include—*

- (A) the coordinates of the area; and*
- (B) if possible, the location of alternative areas for the uptake of ballast water.*

(h) *SEDIMENT MANAGEMENT.*—

(1) *IN GENERAL.*—*The operator of a vessel to which this section applies may not remove or dispose of sediment from spaces designed to carry ballast water except—*

- (A) in accordance with this subsection and the ballast water management plan required under subsection (c); and*
- (B) more than 200 nautical miles from the nearest point of land or into a reception facility that meets the requirements of paragraph (3).*

(2) *DESIGN REQUIREMENTS.*—

(A) *NEW VESSELS.*—*After December 31, 2008, it shall be unlawful to construct a vessel in the United States to which this section applies unless that vessel is designed and constructed, in accordance with regulations prescribed under subparagraph (C), in a manner that—*

- (i) minimizes the uptake and entrapment of sediment;*
- (ii) facilitates removal of sediment; and*

(iii) provides for safe access for sediment removal and sampling.

(B) *EXISTING VESSELS.*—Every vessel to which this section applies that was constructed before January 1, 2009, shall be modified before January 1, 2009, to the extent practicable, to achieve the objectives described in clauses (i), (ii), and (iii) of subparagraph (A).

(C) *REGULATIONS.*—The Secretary shall promulgate regulations establishing design and construction standards to achieve the objectives of subparagraph (A) and providing guidance for modifications and practices under subparagraph (B). The Secretary shall incorporate the standards and guidance in the regulations governing the ballast water management plan.

(3) *SEDIMENT RECEPTION FACILITIES.*—

(A) *STANDARDS.*—The Administrator, shall promulgate regulations governing facilities for the reception of vessel sediment from spaces designed to carry ballast water that provide for the disposal of such sediment in a way that does not impair or damage the environment, human health, or property or resources of the disposal area. The Administrator may not prescribe standards under this subparagraph that are less stringent than any otherwise applicable Federal, State, or local law requirements.

(B) *DESIGNATION.*—The Administrator shall designate facilities for the reception of vessel sediment that meet the requirements of the regulations promulgated under subparagraph (A) at ports and terminals where ballast tanks are cleaned or repaired.

(i) *EXAMINATIONS AND CERTIFICATIONS.*—

(1) *INITIAL EXAMINATION.*—

(A) *IN GENERAL.*—The Secretary shall examine vessels to which this section applies to determine whether—

- (i) there is a ballast water management plan for the vessel that meets the requirements of this section; and
- (ii) the equipment used for ballast water and sediment management in accordance with the requirements of this section and the regulations promulgated hereunder is installed and functioning properly.

(B) *NEW VESSELS.*—For vessels constructed on or after January 1, 2009, the Secretary shall conduct the examination required by subparagraph (A) before the vessel is placed in service.

(C) *EXISTING VESSELS.*—For vessels constructed before January 1, 2009, the Secretary shall—

- (i) conduct the examination required by subparagraph (A) before the date on which subsection (f)(1) applies to the vessel according to the schedule in subsection (f)(3); and
- (ii) inspect the vessel's ballast water record book required by subsection (d).

(D) *FOREIGN VESSELS.*—In the case of a foreign vessel (as defined in section 2101(12) of title 46, United States Code), the Secretary shall perform the examination required by

*this paragraph the first time the vessel enters a United States port.*

(2) *SUBSEQUENT EXAMINATIONS.*—*The Secretary shall examine vessels no less frequently than once each year to ensure vessel compliance with the requirements of this section.*

(3) *INSPECTION AUTHORITY.*—*The Secretary may carry out such inspections of any vessel to which this section applies at any time, including the taking of ballast water samples, to ensure the vessel's compliance with this Act.*

(4) *REQUIRED CERTIFICATE.*—*If, on the basis of an initial examination under paragraph (1) the Secretary finds that a vessel complies with the requirements of this section and the regulations promulgated hereunder, the Secretary shall issue a certificate under this paragraph as evidence of such compliance. The certificate shall be valid for a period of not more than 5 years, as specified by the Secretary. The certificate or a true copy shall be maintained on board the vessel.*

(5) *NOTIFICATION OF VIOLATIONS.*—*If the Secretary finds, on the basis of an examination under paragraph (1) or (2), sampling under paragraph (3), or any other information, that a vessel is being operated in violation of the requirements of this section and the regulations promulgated hereunder, the Secretary shall—*

*(A) notify—*

*(i) the master of the vessel; and*

*(ii) the captain of the port at the vessel's next port of call; and*

*(B) take such other action as may be appropriate.*

(6) *COMPLIANCE MONITORING.*—*The Secretary shall by regulation establish sampling procedures to monitor compliance with the requirements of this section.*

(7) *EDUCATION AND TECHNICAL ASSISTANCE PROGRAMS.*—*The Secretary may carry out education and technical assistance programs and other measures to promote compliance with the requirements issued under this section.*

(j) *DETENTION OF VESSELS.*—

(1) *IN GENERAL.*—*The Secretary, by notice to the owner, charterer, managing operator, agent, master, or other individual in charge of a vessel, may detain that vessel if the Secretary has reasonable cause to believe that—*

*(A) the vessel is a vessel to which this section applies; and*

*(B) the vessel does not comply with the requirements of this section or of the regulations issued hereunder or is being operated in violation of such requirements.*

(2) *CLEARANCE.*—

(A) *IN GENERAL.*—*A vessel detained under paragraph (1) may obtain clearance under section 4197 of the Revised Statutes (46 U.S.C. App. 91) only if the violation for which it was detained has been corrected.*

(B) *WITHDRAWAL.*—*If the Secretary finds that a vessel detained under paragraph (1) has received a clearance under section 4197 of the Revised Statutes (46 U.S.C. App. 91) before it was detained under paragraph (1), the Secretary shall withdraw, withhold, or revoke the clearance.*

(k) **SANCTIONS.**—

(1) **CIVIL PENALTIES.**—Any person who violates a regulation promulgated under this section shall be liable for a civil penalty in an amount not to exceed \$32,500. Each day of a continuing violation constitutes a separate violation. A vessel operated in violation of the regulations is liable in rem for any civil penalty assessed under this subsection for that violation.

(2) **CRIMINAL PENALTIES.**—Any person who knowingly violates the regulations promulgated under this section is guilty of a class C felony.

(3) **REVOCATION OF CLEARANCE.**—Except as provided in subsection (j)(2), upon request of the Secretary, the Secretary of the Treasury shall withhold or revoke the clearance of a vessel required by section 4197 of the Revised Statutes (46 U.S.C. App. 91), if the owner or operator of that vessel is in violation of the regulations issued under this section.

(4) **EXCEPTION TO SANCTIONS.**—

(A) **IN GENERAL.**—This subsection does not apply to a failure to exchange ballast water if—

(i) the master of a vessel, acting in good faith, decides that the exchange of ballast water will threaten the safety or stability of the vessel, its crew, or its passengers; and

(ii) the recordkeeping and reporting requirements of the Act are complied with.

(B) **GREAT LAKES.**—This paragraph does not apply to vessels operating in the Great Lakes.

(l) **ENFORCEMENT.**—

(1) **ADMINISTRATIVE ACTIONS.**—If the Secretary finds, after notice and an opportunity for a hearing, that a person has violated any provision of this section or any regulation promulgated hereunder, the Secretary may assess a civil penalty for that violation.

(2) **CIVIL ACTIONS.**—At the request of the Secretary, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this section, or any regulation promulgated hereunder. Any court before which such an action is brought may award appropriate relief, including temporary or permanent injunctions and civil penalties.

(m) **CONSULTATION WITH CANADA, MEXICO, AND OTHER FOREIGN GOVERNMENTS.**—In developing the guidelines issued and regulations promulgated under this section, the Secretary is encouraged to consult with the Government of Canada, the Government of Mexico, and any other government of a foreign country that the Secretary, after consultation with the Task Force, determines to be necessary to develop and implement an effective international program for preventing the unintentional introduction and spread of aquatic invasive species.

(n) **INTERNATIONAL COOPERATION.**—The Secretary, in cooperation with the Undersecretary, the Secretary of State, the Administrator, the heads of other relevant Federal agencies, the International Maritime Organization of the United Nations, and the Commission on Environmental Cooperation established pursuant to the North American Free Trade Agreement, is encouraged to enter into negotiations with the governments of foreign countries to develop and



implement an effective international program for preventing the unintentional introduction and spread of aquatic invasive species. The Secretary is particularly encouraged to seek bilateral or multilateral agreements with Canada, Mexico, and other nations in the Wider Caribbean (as defined in the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean (Cartagena Convention)) under this section.

(o) *NON-DISCRIMINATION.*—The Secretary shall ensure that vessels registered outside of the United States do not receive more favorable treatment than vessels registered in the United States when the Secretary performs studies, reviews compliance, determines effectiveness, establishes requirements, or performs any other responsibilities under this Act.

(p) *SUPPORT FOR FEDERAL BALLAST WATER DEMONSTRATION PROJECT.*—In addition to amounts otherwise available to the Maritime Administration, the National Oceanographic and Atmospheric Administration, and the United States Fish and Wildlife Service for the Federal Ballast Water Demonstration Project, the Secretary shall provide support for the conduct and expansion of the project, including grants for research and development of innovative technologies for the management, treatment, and disposal of ballast water and sediment, for ballast water exchange, and for other vessel vectors of aquatic invasive species such as hull-fouling. There are authorized to be appropriated to the Secretary \$5,000,000 for each of fiscal years 2006 through 2010 to carry out this subsection.

(q) *CONSULTATION WITH TASK FORCE.*—The Secretary shall consult with the Task Force in carrying out this section.

(r) *PREEMPTION.*—

(1) *IN GENERAL.*—Except as provided in paragraph (2) but notwithstanding any other provision of law, the provisions of subsections (e) and (f) supersede any provision of State or local law that is inconsistent with the requirements of those subsections or that conflicts with the requirements of those subsections. The imposition, by State or local law, of greater penalties or fees for acts or omissions that are violations of such law and also violations of this Act shall not be considered to be inconsistent with, or to conflict with, the requirements of those subsections. Nothing in the preceding sentence limits the scope of State or local law provisions that are not to be considered to be inconsistent with, or to conflict with, the requirements of those subsections

(2) *RECEPTION FACILITIES.*—The standards prescribed by the Administrator or the Secretary under subsection (f)(2) do not supersede any more stringent standard under any otherwise applicable Federal, State, or local law.

(3) *APPLICATION WITH OTHER STATUTES.*—This section provides the Federal authority for addressing aquatic invasive species in ballast water or sediment. If there is a conflict between any otherwise applicable provision of Federal law and the requirements of this section, the provisions of this section shall control to the extent that such requirements relate to vessels with respect to aquatic invasive species in ballast water or sediment.

(s) *REGULATIONS.*—

(1) *IN GENERAL.*—The Secretary, after consultation with the Administrator, shall issue such regulations as may be necessary initially to carry out this section within 1 year after the date of enactment of the Ballast Water Management Act of 2005.

(2) *JUDICIAL REVIEW.*—

(A) *120-DAY RULE.*—An interested person may bring an action for review of a final regulation promulgated under this section by the Secretary of the department in which the Coast Guard is operating, or by the Administrator, in the United States Circuit Court of Appeals for the Federal judicial district in which that person resides or transacts business which is directly affected by that regulation only if that action is filed within—

(i) 120 days after the date on which the regulation is promulgated; or

(ii) more than 120 days after that date if the action is based on grounds that arose after that 120-day period.

(B) *REVIEW IN ENFORCEMENT PROCEEDINGS.*—A regulation for which review could have been obtained under subparagraph (A) of this paragraph is not subject to judicial review in any civil or criminal proceeding for enforcement.

#### SEC. 1102. NATIONAL BALLAST WATER MANAGEMENT INFORMATION.

[16 U.S.C. 4712]

(a) *STUDIES ON INTRODUCTION OF [AQUATIC NUISANCE] AQUATIC INVASIVE SPECIES BY VESSELS.*—

(1) *BALLAST EXCHANGE STUDY.*—The Task Force, in cooperation with the Secretary, shall conduct a study—

(A) to assess the environmental effects of ballast water exchange on the diversity and abundance of native species in receiving estuarine, marine, and fresh waters of the United States; and

(B) to identify areas within the waters of the United States and the exclusive economic zone, if any, where the exchange of ballast water does not pose a threat of infestation or spread of [aquatic nuisance] *aquatic invasive* species in the Great Lakes and other waters of the United States.

(2) *BIOLOGICAL STUDY.*—The Task Force, in cooperation with the Secretary, shall conduct a study to determine whether [aquatic nuisance] *aquatic invasive* species threaten the ecological characteristics and economic uses of Lake Champlain and other waters of the United States other than the Great Lakes.

(3) *SHIPPING STUDY.*—The Secretary shall conduct a study to determine the need for controls on vessels entering waters of the United States, other than the Great Lakes, to minimize the risk of unintentional introduction and dispersal of [aquatic nuisance] *aquatic invasive* species in those waters. The study shall include an examination of—

(A) the degree to which shipping may be a major pathway of transmission of [aquatic nuisance] *aquatic invasive* species in those waters;

(B) possible alternatives for controlling introduction of those species through shipping; and

- (C) the feasibility of implementing regional versus national control measures.
- (b) ECOLOGICAL AND BALLAST WATER DISCHARGE SURVEYS.—
- (1) ECOLOGICAL SURVEYS.—
- (A) IN GENERAL.—The Task Force, in cooperation with the Secretary, shall conduct ecological surveys of the Chesapeake Bay, San Francisco Bay, and Honolulu Harbor and, as necessary, of other estuaries of national significance and other waters that the Task Force determines—
- (i) to be highly susceptible to invasion by [aquatic nuisance] *aquatic invasive* species resulting from ballast water operations and other operations of vessels; and
  - (ii) to require further study.
- (B) REQUIREMENTS FOR SURVEYS.—In conducting the surveys under this paragraph, the Task Force shall, with respect to each such survey—
- (i) examine the attributes and patterns of invasions of [aquatic nuisance] *aquatic invasive* species; and
  - (ii) provide an estimate of the effectiveness of ballast water management and other vessel management guidelines issued and regulations promulgated under this subtitle in abating invasions of [aquatic nuisance] *aquatic invasive* species in the waters that are the subject of the survey.
- (2) BALLAST WATER DISCHARGE SURVEYS.—
- (A) IN GENERAL.—The Secretary, in cooperation with the Task Force, shall conduct surveys of ballast water discharge rates and practices in the waters referred to in paragraph (1)(A) on the basis of the criteria under clauses (i) and (ii) of such paragraph.
- (B) REQUIREMENTS FOR SURVEYS.—In conducting the surveys under this paragraph, the Secretary shall—
- (i) examine the rate of, and trends in, ballast water discharge in the waters that are the subject of the survey; and
  - (ii) assess the effectiveness of voluntary guidelines issued, and regulations promulgated, under this subtitle in altering ballast water discharge practices to reduce the probability of accidental introductions of [aquatic nuisance] *aquatic invasive* species.
- (3) COLUMBIA RIVER.—The Secretary, in cooperation with the Task Force and academic institutions in each of the States affected, shall conduct an ecological and ballast water discharge survey of the Columbia River system consistent with the requirements of paragraphs (1) and (2).
- (c) REPORTS.—
- (1) BALLAST EXCHANGE.—Not later than 18 months after the date of enactment of this Act and prior to the effective date of the regulations issued under section 1101(b), the Task Force shall submit a report to the Congress that presents the results of the study required under subsection (a)(1) and makes recommendations with respect to such regulations.
- (2) BIOLOGICAL AND SHIPPING STUDIES.—Not later than 18 months after the date of enactment of this Act, the Secretary

and the Task Force shall each submit to the Congress a report on the results of their respective studies under paragraphs (2) and (3) of subsection (a).

(d) NEGOTIATIONS.—The Secretary, working through the International Maritime Organization, is encouraged to enter into negotiations with the governments of foreign countries concerning the planning and implementation of measures aimed at the prevention and control of unintentional introductions of [aquatic nuisance] *aquatic invasive* species in coastal waters.

(e) REGIONAL RESEARCH GRANTS.—Out of amounts appropriated to carry out this subsection for a fiscal year, the Under Secretary may—

(1) make available not to exceed \$750,000 to fund research on [aquatic nuisance] *aquatic invasive* species prevention and control in the Chesapeake Bay through grants, to be competitively awarded and subject to peer review, to universities and research institutions;

(2) make available not to exceed \$500,000 to fund research on [aquatic nuisance] *aquatic invasive* species prevention and control in the Gulf of Mexico through grants, to be competitively awarded and subject to peer review, to universities and research institutions;

(3) make available not to exceed \$500,000 to fund research on [aquatic nuisance] *aquatic invasive* species prevention and control for the Pacific Coast through grants, to be competitively awarded and subject to peer review, to universities and research institutions;

(4) make available not to exceed \$500,000 to fund research on [aquatic nuisance] *aquatic invasive* species prevention and control for the Atlantic Coast through grants, to be competitively awarded and subject to peer review, to universities and research institutions; and

(5) make available not to exceed \$750,000 to fund research on [aquatic nuisance] *aquatic invasive* species prevention and control in the San Francisco Bay-Delta Estuary through grants, to be competitively awarded and subject to peer review, to universities and research institutions.

(f) NATIONAL BALLAST INFORMATION CLEARINGHOUSE.—

(1) IN GENERAL.—The Secretary shall develop and maintain, in consultation and cooperation with the Task Force and the Smithsonian Institution (acting through the Smithsonian Environmental Research Center), a clearinghouse of national data concerning—

(A) ballasting practices;

(B) compliance with the guidelines issued pursuant to section 1101(c); and

(C) any other information obtained by the Task Force under subsection (b).

(2) REPORT.—In consultation and cooperation with the Task Force and the Smithsonian Institution (acting through the Smithsonian Environmental Research Center), the Secretary shall prepare and submit to the Task Force and the Congress, on a biennial basis, a report that synthesizes and analyzes the data referred to in paragraph (1) relating to—

(A) ballast water delivery and management; and

(B) invasions of [aquatic nuisance] *aquatic invasive* species resulting from ballast water.

**[SEC. 1103. ARMED SERVICES BALLAST WATER PROGRAMS.]**

[16 U.S.C. 4713]

[(a) DEPARTMENT OF DEFENSE VESSELS.—Subject to operational conditions, the Secretary of Defense, in consultation with the Secretary, the Task Force, and the International Maritime Organization, shall implement a ballast water management program for seagoing vessels of the Department of Defense to minimize the risk of introduction of nonindigenous species from releases of ballast water.

[(b) COAST GUARD VESSELS.—Subject to operational conditions, the Secretary, in consultation with the Task Force and the International Maritime Organization, shall implement a ballast water management program for seagoing vessels of the Coast Guard to minimize the risk of introduction of nonindigenous species from releases of ballast water.]

**SEC. 1104. BALLAST WATER MANAGEMENT DEMONSTRATION PROGRAM.**

[16 U.S.C. 4714]

(a) TECHNOLOGIES AND PRACTICES DEFINED.—For purposes of this section, the term “technologies and practices” means those technologies and practices that—

(1) may be retrofitted—

(A) on existing vessels or incorporated in new vessel designs; and

(B) on existing land-based ballast water treatment facilities;

(2) may be designed into new water treatment facilities;

(3) are operationally practical;

(4) are safe for a vessel and crew;

(5) are environmentally sound;

(6) are cost-effective;

(7) a vessel operator is capable of monitoring; and

(8) are effective against a broad range of [aquatic nuisance] *aquatic invasive* species.

(b) DEMONSTRATION PROGRAM.—

(1) IN GENERAL.—During the 18-month period beginning on the date that funds are made available by appropriations pursuant to section 1301(e), the Secretary of the Interior and the Secretary of Commerce, with the concurrence of and in cooperation with the Secretary, shall conduct a ballast water management demonstration program to demonstrate technologies and practices to prevent aquatic nonindigenous species from being introduced into and spread through ballast water in the Great Lakes and other waters of the United States.

(2) LOCATION.—The installation and construction of the technologies and practices used in the demonstration program conducted under this subsection shall be performed in the United States.

(3) VESSEL SELECTION.—In demonstrating technologies and practices on vessels under this subsection, the Secretary of the Interior and the Secretary of Commerce, shall—

- (A) use only vessels that—
    - (i) are approved by the Secretary;
    - (ii) have ballast water systems conducive to testing aboard-vessel or land-based technologies and practices applicable to a significant number of merchant vessels; and
    - (iii) are—
      - (I) publicly or privately owned; and
      - (II) in active use for trade or other cargo shipment purposes during the demonstration;
  - (B) select vessels for participation in the program by giving priority consideration—
    - (i) first, to vessels documented under chapter 121 of title 46, United States Code;
    - (ii) second, to vessels that are a majority owned by citizens of the United States, as determined by the Secretary; and
    - (iii) third, to any other vessels that regularly call on ports in the United States; and
  - (C) seek to use a variety of vessel types, including vessels that—
    - (i) call on ports in the United States and on the Great Lakes; and
    - (ii) are operated along major coasts of the United States and inland waterways, including the San Francisco Bay and Chesapeake Bay.
- (4) SELECTION OF TECHNOLOGIES AND PRACTICES.—In selecting technologies and practices for demonstration under this subsection, the Secretary of the Interior and the Secretary of Commerce shall give priority consideration to technologies and practices identified as promising by the National Research Council Marine Board of the National Academy of Sciences in its report on ships' ballast water operations issued in July 1996.
- (5) REPORT.—Not later than 3 years after the date of enactment of the National Invasive Species Act of 1996, the Secretary of the Interior and the Secretary of Commerce shall prepare and submit a report to the Congress on the demonstration program conducted pursuant to this section. The report shall include findings and recommendations of the Secretary of the Interior and the Secretary of Commerce concerning technologies and practices.
- (c) AUTHORITIES; CONSULTATION AND COOPERATION WITH INTERNATIONAL MARITIME ORGANIZATION AND TASK FORCE.—
- (1) AUTHORITIES.—In conducting the demonstration program under subsection (b), the Secretary of the Interior may—
- (A) enter into cooperative agreements with appropriate officials of other agencies of the Federal Government, agencies of States and political subdivisions thereof, and private entities;
  - (B) accept funds, facilities, equipment, or personnel from other Federal agencies; and
  - (C) accept donations of property and services.
- (2) CONSULTATION AND COOPERATION.—The Secretary of the Interior shall consult and cooperate with the International

Maritime Organization and the Task Force in carrying out this section.

SUBTITLE C—PREVENTION AND CONTROL OF AQUATIC NUISANCE SPECIES

SEC. 1201. ESTABLISHMENT OF TASK FORCE.

[16 U.S.C. 4721]

(a) TASK FORCE.—There is hereby established an “[Aquatic Nuisance] *Aquatic Invasive Species Task Force*”.

(b) MEMBERSHIP.—Membership of the Task Force shall consist of—

- (1) the Director;
- (2) the Under Secretary;
- (3) the Administrator of the Environmental Protection Agency;
- (4) the Commandant of the United States Coast Guard;
- (5) the Assistant Secretary;
- (6) the Secretary of Agriculture; and
- (7) the head of any other Federal agency that the chairpersons designated under subsection (d) deem appropriate.

(c) EX OFFICIO MEMBERS.—The chairpersons designated under subsection (d) shall invite representatives of the Great Lakes Commission, the Lake Champlain Basin Program, the Chesapeake Bay Program, the San Francisco Bay-Delta Estuary Program, and State agencies and other governmental entities to participate as ex officio members of the Task Force.

(d) CHAIRPERSONS.—The Director and the Under Secretary shall serve as co-chairpersons of the Task Force and shall be jointly responsible, and are authorized to undertake such activities as may be necessary, for carrying out this subtitle in consultation and cooperation with the other members of the Task Force.

(e) MEMORANDUM OF UNDERSTANDING.—Within six months of the date of enactment of this Act, the Director and the Under Secretary shall develop a memorandum of understanding that describes the role of each in jointly carrying out this subtitle.

(f) COORDINATION.—Each Task Force member shall coordinate any action to carry out this subtitle with any such action by other members of the Task Force, and regional, State and local entities.

[SEC. 1202. AQUATIC NUISANCE SPECIES PROGRAM.]

SEC. 1202. AQUATIC INVASIVE SPECIES PROGRAM.

[16 U.S.C. 4722]

(a) IN GENERAL.—The Task Force shall develop and implement a program for waters of the United States to prevent introduction and dispersal of [aquatic nuisance] *aquatic invasive* species; to monitor, control and study such species; and to disseminate related information.

(b) CONTENT.—The program developed under subsection (a) shall—

- (1) identify the goals, priorities, and approaches for [aquatic nuisance] *aquatic invasive* species prevention, monitoring, control, education and research to be conducted or funded by the Federal Government;

(2) describe the specific prevention, monitoring, control, education and research activities to be conducted by each Task Force member;

(3) coordinate [aquatic nuisance] *aquatic invasive* species programs and activities of Task Force members and affected State agencies;

(4) describe the role of each Task Force member in implementing the elements of the program as set forth in this subtitle;

(5) include recommendations for funding to implement elements of the program; and

(6) develop a demonstration program of prevention, monitoring, control, education and research for the zebra mussel, to be implemented in the Great Lakes and any other waters infested, or likely to become infested in the near future, by the zebra mussel.

(c) PREVENTION.—

(1) IN GENERAL.—The Task Force shall establish and implement measures, within the program developed under subsection (a), to minimize the risk of introduction of [aquatic nuisance] *aquatic invasive* species to waters of the United States, including—

(A) identification of pathways by which aquatic organisms are introduced to waters of the United States;

(B) assessment of the risk that an aquatic organism carried by an identified pathway may become an [aquatic nuisance] *aquatic invasive* species; and

(C) evaluation of whether measures to prevent introductions of [aquatic nuisance] *aquatic invasive* species are effective and environmentally sound.

(2) IMPLEMENTATION.—Whenever the Task Force determines that there is a substantial risk of unintentional introduction of an [aquatic nuisance] *aquatic invasive* species by an identified pathway and that the adverse consequences of such an introduction are likely to be substantial, the Task Force shall, acting through the appropriate Federal agency, and after an opportunity for public comment, carry out cooperative, environmentally sound efforts with regional, State and local entities to minimize the risk of such an introduction.

(d) MONITORING.—The Task Force shall establish and implement monitoring measures, within the program developed under subsection (a), to—

(1) detect unintentional introductions of [aquatic nuisance] *aquatic invasive* species;

(2) determine the dispersal of [aquatic nuisance] *aquatic invasive* species after introduction; and

(3) provide for the early detection and prevention of infestations of [aquatic nuisance] *aquatic invasive* species in unaffected drainage basins.

(e) CONTROL.—

(1) IN GENERAL.—The Task Force may develop cooperative efforts, within the program established under subsection (a), to control established [aquatic nuisance] *aquatic invasive* species to minimize the risk of harm to the environment and the public health and welfare. For purposes of this Act, control efforts



include eradication of infestations, reductions of populations, development of means of adapting human activities and public facilities to accommodate infestations, and prevention of the spread of [aquatic nuisance] *aquatic invasive* species from infested areas. Such control efforts shall be developed in consultation with affected Federal agencies, States, Indian Tribes, local governments, interjurisdictional organizations, and other appropriate entities. Control actions authorized by this section shall be based on the best available scientific information and shall be conducted in an environmentally sound manner.

(2) DECISIONS.—The Task Force or any other affected agency or entity may recommend that the Task Force initiate a control effort. In determining whether a control program is warranted, the Task Force shall evaluate the need for control (including the projected consequences of no control and less than full control); the technical and biological feasibility and cost-effectiveness of alternative control strategies and actions; whether the benefits of control, including costs avoided, exceed the costs of the program; the risk of harm to non-target organisms and ecosystems, public health and welfare; and such other considerations the Task Force determines appropriate. The Task Force shall also determine the nature and extent of control of target [aquatic nuisance] *aquatic invasive* species that is feasible and desirable.

(3) PROGRAMS.—If the Task Force determines in accordance with paragraph (2) that control of an [aquatic nuisance] *aquatic invasive* species is warranted, the Task Force shall develop a proposed control program to achieve the target level of control. A notice summarizing the proposed action and soliciting comments shall be published in the Federal Register, in major newspapers in the region affected, and in principal trade publications of the industries affected. Within 180 days of proposing a control program, and after consultation with affected governmental and other appropriate entities and taking into consideration other comments received, the Task Force shall complete development of the proposed control program.

(f) RESEARCH.—

(1) PRIORITIES.—The Task Force shall, within the program developed under subsection (a), conduct research concerning—

(A) the environmental and economic risks and impacts associated with the introduction of [aquatic nuisance] *aquatic invasive* species into the waters of the United States;

(B) the principal pathways by which [aquatic nuisance] *aquatic invasive* species are introduced and dispersed;

(C) possible methods for the prevention, monitoring and control of [aquatic nuisance] *aquatic invasive* species; and

(D) the assessment of the effectiveness of prevention, monitoring and control methods.

(2) PROTOCOL.—Within 90 days of the date of enactment of this Act, the Task Force shall establish and follow a protocol to ensure that research activities carried out under this subtitle do not result in the introduction of [aquatic nuisance] *aquatic invasive* species to waters of the United States.

(3) GRANTS FOR RESEARCH.—The Task Force shall allocate funds authorized under this Act for competitive research grants to study all aspects of [aquatic nuisance] *aquatic invasive* species, which shall be administered through the National Sea Grant College Program and the Cooperative Fishery and Wildlife Research Units. Grants shall be conditioned to ensure that any recipient of funds follows the protocol established under paragraph (2) of this subsection.

(g) TECHNICAL ASSISTANCE.—The Task Force shall, within the program developed under subsection (a), provide technical assistance to State and local governments and persons to minimize the environmental, public health, and safety risks associated with [aquatic nuisance] *aquatic invasive* species, including an early warning system for advance notice of possible infestations and appropriate responses.

(h) EDUCATION.—The Task Force shall, with the program developed under subsection (a), establish and implement educational programs through Sea Grant Marine Advisory Services and any other available resources that it determines to be appropriate to inform the general public, State governments, governments of political subdivisions of States, and industrial and recreational users of aquatic resources in connection with matters concerning the identification of [aquatic nuisance] *aquatic invasive* species, and control methods for such species, including the prevention of the further distribution of such species.

(i) ZEBRA MUSSEL DEMONSTRATION PROGRAM.—

(1) ZEBRA MUSSEL.—

(A) IN GENERAL.—The Task Force shall, within the program developed under subsection (a), undertake a program of prevention, monitoring, control, education and research for the zebra mussel to be implemented in the Great Lakes and any other waters of the United States infested or likely to become infested by the zebra mussel, including—

(i) research and development concerning the species life history, environmental tolerances and impacts on fisheries and other ecosystem components, and the efficacy of control mechanisms and means of avoiding or minimizing impacts;

(ii) tracking the dispersal of the species and establishment of an early warning system to alert likely areas of future infestations;

(iii) development of control plans in coordination with regional, State and local entities; and

(iv) provision of technical assistance to regional, State and local entities to carry out this section.

(B) PUBLIC FACILITY RESEARCH AND DEVELOPMENT.—The Assistant Secretary, in consultation with the Task Force, shall develop a program of research, technology development, and demonstration for the environmentally sound control of zebra mussels in and around public facilities. The Assistant Secretary shall collect and make available, through publications and other appropriate means, information pertaining to such control methods.

(C) VOLUNTARY GUIDELINES.—Not later than 1 year after the date of enactment of this subparagraph, the Task

Force shall develop and submit to the Secretary voluntary guidelines for controlling the spread of the zebra mussel and, if appropriate, other [aquatic nuisance] *aquatic invasive* species through recreational activities, including boating and fishing. Not later than 4 months after the date of such submission, and after providing notice and an opportunity for public comment, the Secretary shall issue voluntary guidelines that are based on the guidelines developed by the Task Force under this subparagraph.

(2) DISPERSAL CONTAINMENT ANALYSIS.—

(A) RESEARCH.—The Administrator of the Environmental Protection Agency, in cooperation with the National Science Foundation and the Task Force, shall provide research grants on a competitive basis for projects that—

- (i) identify environmentally sound methods for controlling the dispersal of [aquatic nuisance] *aquatic invasive* species, such as the zebra mussel; and
- (ii) adhere to research protocols developed pursuant to subsection (f)(2).

(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Environmental Protection Agency to carry out this paragraph, \$500,000.

(3) DISPERSAL BARRIER DEMONSTRATION.—

(A) IN GENERAL.—The Assistant Secretary, in consultation with the Task Force, shall investigate and identify environmentally sound methods for preventing and reducing the dispersal of [aquatic nuisance] *aquatic invasive* species between the Great Lakes-Saint Lawrence drainage and the Mississippi River drainage through the Chicago River Ship and Sanitary Canal, including any of those methods that could be incorporated into the operation or construction of the lock system of the Chicago River Ship and Sanitary Canal.

(B) REPORT.—Not later than 18 months after the date of enactment of this paragraph, the Assistant Secretary shall issue a report to the Congress that includes recommendations concerning—

- (i) which of the methods that are identified under the study conducted under this paragraph are most promising with respect to preventing and reducing the dispersal of [aquatic nuisance] *aquatic invasive* species; and
- (ii) ways to incorporate those methods into ongoing operations of the United States Army Corps of Engineers that are conducted at the Chicago River Ship and Sanitary Canal.

(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of the Army, to carry out this paragraph, \$750,000.

(4) CONTRIBUTIONS.—To the extent allowable by law, in carrying out the studies under paragraphs (2) and (3), the Administrator of the Environmental Protection Agency and the Secretary of the Army may enter into an agreement with an inter-

ested party under which that party provides in kind or monetary contributions for the study.

(5) TECHNICAL ASSISTANCE.—The Great Lakes Environmental Research Laboratory of the National Oceanic and Atmospheric Administration shall provide technical assistance to appropriate entities to assist in the research conducted pursuant to this subsection.

(j) IMPLEMENTATION.—

(1) REGULATIONS.—The Director, the Secretary, and the Under Secretary may issue such rules and regulations as may be necessary to implement this section.

(2) PARTICIPATION OF OTHERS.—The Task Force shall provide opportunities for affected Federal agencies which are not part of the Task Force, State and local government agencies, and regional and other entities with the necessary expertise to participate in control programs. If these other agencies or entities have sufficient authority or jurisdiction and expertise and where this will be more efficient or effective, responsibility for implementing all or a portion of a control program may be delegated to such agencies or entities.

(k) REPORTS.—

(1) Not later than 12 months after the date of enactment of this Act, the Task Force shall submit a report describing the program developed under subsection (a), including the research protocol required under subsection (f)(2), to the Congress.

(2) On an annual basis after the submission of the report under paragraph (1), the Task Force shall submit a report to the Congress detailing progress in carrying out this section.

**SEC. 1203. REGIONAL COORDINATION.**

[16 U.S.C. 4723]

(a) GREAT LAKES PANEL.—

(1) IN GENERAL.—Not later than 30 days following the date of enactment of this Act, the Task Force shall request that the Great Lakes Commission (established under Article IV of the Great Lakes Compact to which the Congress granted consent in the Act of July 24, 1968, convene a panel of Great Lakes region representatives from Federal, State, and local agencies and from private environmental and commercial interests to—

(A) identify priorities for the Great Lakes region with respect to **[aquatic nuisance]** *aquatic invasive* species;

(B) make recommendations to the Task Force regarding programs to carry out section 1202(i) of this Act;

(C) assist the Task Force in coordinating Federal **[aquatic nuisance]** *aquatic invasive* species program activities in the Great Lakes region;

(D) coordinate, where possible, **[aquatic nuisance]** *aquatic invasive* species program activities in the Great Lakes region that are not conducted pursuant to this Act;

(E) provide advice to public and private individuals and entities concerning methods of controlling **[aquatic nuisance]** *aquatic invasive* species; and

(F) submit annually a report to the Task Force describing activities within the Great Lakes region related to **[aquatic nuisance]** *aquatic invasive* species prevention, research, control.

(2) CONSULTATION.—The Task Force shall request that the Great Lakes Fishery Commission provide information to the panel convened under this subsection on technical and policy matters related to the international fishery resources of the Great Lakes.

(3) CANADIAN PARTICIPATION.—The panel convened under this subsection is encouraged to invite representatives from the Federal, provincial or territorial governments of Canada to participate as observers.

(b) WESTERN REGIONAL PANEL.—Not later than 30 days after the date of enactment of the National Invasive Species Act of 1996, the Task Force shall request a Western regional panel, comprised of Western region representatives from Federal, State, and local agencies and from private environmental and commercial interests, to—

(1) identify priorities for the Western region with respect to **[aquatic nuisance]** *aquatic invasive* species;

(2) make recommendations to the Task Force regarding an education, monitoring (including inspection), prevention, and control program to prevent the spread of the zebra mussel west of the 100th Meridian pursuant to section 1202(i) of this Act;

(3) coordinate, where possible, other **[aquatic nuisance]** *aquatic invasive* species program activities in the Western region that are not conducted pursuant to this Act;

(4) develop an emergency response strategy for Federal, State, and local entities for stemming new invasions of **[aquatic nuisance]** *aquatic invasive* species in the region;

(5) provide advice to public and private individuals and entities concerning methods of preventing and controlling **[aquatic nuisance]** *aquatic invasive* species infestations; and

(6) submit annually a report to the Task Force describing activities within the Western region related to **[aquatic nuisance]** *aquatic invasive* species prevention, research, and control.

(c) ADDITIONAL REGIONAL PANELS.—The Task Force shall—

(1) encourage the development and use of regional panels and other similar entities in regions in addition to the Great Lakes and Western regions (including providing financial assistance for the development and use of such entities) to carry out, with respect to those regions, activities that are similar to the activities described in subsections (a) and (b); and

(2) cooperate with regional panels and similar entities that carry out the activities described in paragraph (1).

**[SEC. 1204. STATE AQUATIC NUISANCE SPECIES MANAGEMENT PLANS.]**

**SEC. 1204. STATE AQUATIC INVASIVE SPECIES MANAGEMENT PLANS.**

[16 U.S.C. 4724]

(a) STATE OR INTERSTATE INVASIVE SPECIES MANAGEMENT PLANS.—

(1) IN GENERAL.—After providing notice and opportunity for public comment, the Governor of each State may prepare and submit, or the Governors of the States and the governments of the Indian tribes involved in an interstate organization, may jointly prepare and submit—

(A) a comprehensive management plan to the Task Force for approval which identifies those areas or activities within the State or within the interstate region involved, other than those related to public facilities, for which technical, enforcement, or financial assistance (or any combination thereof) is needed to eliminate or reduce the environmental, public health, and safety risks associated with **[aquatic nuisance]** *aquatic invasive* species, particularly the zebra mussel; and

(B) a public facility management plan to the Assistant Secretary for approval which is limited solely to identifying those public facilities within the State or within the interstate region involved for which technical and financial assistance is needed to reduce infestations of zebra mussels.

(2) **CONTENT.**—Each plan shall, to the extent possible, identify the management practices and measures that will be undertaken to reduce infestations of **[aquatic nuisance]** *aquatic invasive* species. Each plan shall—

(A) identify and describe State and local programs for environmentally sound prevention and control of the target **[aquatic nuisance]** *aquatic invasive* species;

(B) identify Federal activities that may be needed for environmentally sound prevention and control of **[aquatic nuisance]** *aquatic invasive* species and a description of the manner in which those activities should be coordinated with State and local government activities;

(C) identify any authority that the State (or any State or Indian tribe involved in the interstate organization) does not have at the time of the development of the plan that may be necessary for the State (or any State or Indian tribe involved in the interstate organization) to protect public health, property, and the environment from harm by **[aquatic nuisance]** *aquatic invasive* species; and

(D) a schedule of implementing the plan, including a schedule of annual objectives, and enabling legislation.

(3) **CONSULTATION.**—

(A) In developing and implementing a management plan, the State or interstate organization should, to the maximum extent practicable, involve local governments and regional entities, Indian tribes, and public and private organizations that have expertise in the control of **[aquatic nuisance]** *aquatic invasive* species.

(B) Upon the request of a State or the appropriate official of an interstate organization, the Task Force or the Assistant Secretary, as appropriate under paragraph (1), may provide technical assistance in developing and implementing a management plan.

(4) **PLAN APPROVAL.**—Within 90 days after the submission of a management plan, the Task Force or the Assistant Secretary in consultation with the Task Force, as appropriate under paragraph (1), shall review the proposed plan and approve it if it meets the requirements of this subsection or return the plan to the Governor or the interstate organization with recommended modifications.

## (b) GRANT PROGRAM.—

(1) STATE GRANTS.—The Director may, at the recommendation of the Task Force, make grants to States with management plans approved under subsection (a) for the implementation of those plans.

(2) APPLICATION.—An application for a grant under this subsection shall include an identification and description of the best management practices and measures which the State proposes to utilize in implementing an approved management plan with any Federal assistance to be provided under the grant.

## (3) FEDERAL SHARE.—

(A) The Federal share of the cost of each comprehensive management plan implemented with Federal assistance under this section in any fiscal year shall not exceed 75 percent of the cost incurred by the State in implementing such management program and the non-Federal share of such costs shall be provided from non-Federal sources.

(B) The Federal share of the cost of each public facility management plan implemented with Federal assistance under this section in any fiscal year shall not exceed 50 percent of the cost incurred by the State in implementing such management program and the non-Federal share of such costs shall be provided from non-Federal sources.

(4) ADMINISTRATIVE COSTS.—For the purposes of this section, administrative costs for activities and programs carried out with a grant in any fiscal year shall not exceed 5 percent of the amount of the grant in that year.

(5) IN-KIND CONTRIBUTIONS.—In addition to cash outlays and payments, in-kind contributions of property or personnel services by non-Federal interests for activities under this section may be used for the non-Federal share of the cost of those activities.

(c) ENFORCEMENT ASSISTANCE.—Upon request of a State or Indian tribe, the Director or the Under Secretary, to the extent allowable by law and in a manner consistent with section 141 of title 14, United States Code, may provide assistance to a State or Indian tribe in enforcing an approved State or interstate invasive species management plan.

**SEC. 1205. RELATIONSHIP TO OTHER LAWS.**

[16 U.S.C. 4725]

All actions taken by Federal agencies in implementing the provisions of section 1202 shall be consistent with all applicable Federal, State, and local environmental laws. Nothing in this title shall affect the authority of any State or political subdivision thereof to adopt or enforce control measures for **[aquatic nuisance]** *aquatic invasive* species, or diminish or affect the jurisdiction of any State over species of fish and wildlife. Compliance with the control and eradication measures of any State or political subdivision thereof regarding **[aquatic nuisance]** *aquatic invasive* species shall not relieve any person of the obligation to comply with the provisions of this subtitle.

**SEC. 1206. INTERNATIONAL COOPERATION.**

[16 U.S.C. 4726]

(a) **ADVICE.**—The Task Force shall provide timely advice to the Secretary of State concerning **[aquatic nuisance]** *aquatic invasive* species that infest waters shared with other countries.

(b) **NEGOTIATIONS.**—The Secretary of State, in consultation with the Task Force, is encouraged to initiate negotiations with the governments of foreign countries concerning the planning and implementation of prevention, monitoring, research, education, and control programs related to **[aquatic nuisance]** *aquatic invasive* species infesting shared water resources.

**SEC. 1207. INTENTIONAL INTRODUCTIONS POLICY REVIEW.**

[16 U.S.C. 4727]

Within one year of the date of enactment of this Act, the Task Force shall, in consultation with State fish and wildlife agencies, other regional, State and local entities, potentially affected industries and other interested parties, identify and evaluate approaches for reducing the risk of adverse consequences associated with intentional introduction of aquatic organisms and submit a report of their findings, conclusions and recommendations to the Congress.

**SEC. 1209. BROWN TREE SNAKE CONTROL PROGRAM.**

[16 U.S.C. 4728]

The Task Force shall, within the program developed under subsection (a), undertake a comprehensive, environmentally sound program in coordination with regional, territorial, State and local entities to control the brown tree snake (*Boiga irregularis*) in Guam and other areas where the species is established outside of its historic range.

**SUBTITLE D—AUTHORIZATIONS OF APPROPRIATIONS****SEC. 1301. AUTHORIZATIONS.**

[16 U.S.C. 4741]

(a) **PREVENTION OF UNINTENTIONAL INTRODUCTIONS.**—There are authorized to be appropriated to develop and implement the provisions of subtitle B—

(1) \$500,000 until the end of fiscal year 1992 to the Secretary to carry out sections 1101 and 1102(a)(3);

(2) \$2,000,000 until the end of fiscal year 1992 to the Director and Under Secretary to carry out the studies under sections 1102(a)(1) and 1102(a)(2);

(3) to the Secretary to carry out section 1101—

(A) \$2,000,000 for each of fiscal years 1997 and 1998; and

(B) \$3,000,000 for each of fiscal years 1999 through 2002;

(4) for each of fiscal years 1997 through 2002, to carry out paragraphs (1) and (2) of section 1102(b)—

(A) \$1,000,000 to the Department of the Interior, to be used by the Director; and

(B) \$1,000,000 to the Secretary; **[and]**

(5) for each of fiscal years 1997 through 2002—

(A) \$3,000,000, which shall be made available from funds otherwise authorized to be appropriated if such



funds are so authorized, to the Under Secretary to carry out section 1102(e); and

(B) \$500,000 to the Secretary to carry out section 1102(f).] 1102(f); and

(6) \$20,000,000 for each of fiscal years 2006 through 2010 to the Secretary to carry out section 1101.

(b) TASK FORCE AND [AQUATIC NUISANCE] AQUATIC INVASIVE SPECIES PROGRAM.—There are authorized to be appropriated for each of fiscal years 1997 through 2002 to develop and implement the provisions of subtitle C—

(1) \$6,000,000 to the Department of the Interior, to be used by the Director to carry out sections 1202 and 1209;

(2) \$1,000,000 to the Department of Commerce, to be used by the Under Secretary to carry out section 1202;

(3) \$1,625,000, which shall be made available from funds otherwise authorized to be appropriated if such funds are so authorized, to fund [aquatic nuisance] aquatic invasive species prevention and control research under section 1202(i) at the Great Lakes Environmental Research Laboratory of the National Oceanic and Atmospheric Administration, of which \$500,000 shall be made available for grants, to be competitively awarded and subject to peer review, for research relating to Lake Champlain;

(4) \$5,000,000 for competitive grants for university research on [aquatic nuisance] aquatic invasive species under section 1202(f)(3) as follows:

(A) \$2,800,000, which shall be made available from funds otherwise authorized to be appropriated if such funds are so authorized, to fund grants under section 205 of the National Sea Grant College Program Act (33 U.S.C. 1124);

(B) \$1,200,000 to fund grants to colleges for the benefit of agriculture and the mechanic arts referred to in the first section of the Act of August 30, 1890 (26 Stat. 417, chapter 841; 7 U.S.C. 322); and

(C) \$1,000,000 to fund grants through the Cooperative Fisheries and Wildlife Research Unit Program of the United States Fish and Wildlife Service;

(5) \$3,000,000 to the Department of the Army, to be used by the Assistant Secretary to carry out section 1202(i)(1)(B); and

(6) \$300,000 to the Department of the Interior, to be used by the Director to fund regional panels and similar entities under section 1203, of which \$100,000 shall be used to fund activities of the Great Lakes Commission.

(c) GRANTS FOR STATE MANAGEMENT PROGRAMS.—There are authorized to be appropriated for each of fiscal years 1997 through 2002 \$4,000,000 to the Department of the Interior, to be used by the Director for making grants under section 1204, of which \$1,500,000 shall be used by the Director, in consultation with the Assistant Secretary, for management of [aquatic nuisance] aquatic invasive vegetation species.

(d) INTENTIONAL INTRODUCTIONS POLICY REVIEW.—There are authorized to be appropriated for fiscal year 1991, \$500,000 to the Director and the Under Secretary to conduct the intentional introduction policy review under section 1207.

(e) BALLAST WATER MANAGEMENT DEMONSTRATION PROGRAM.—There are authorized to be appropriated \$2,500,000 to carry out section 1104.

(f) RESEARCH.—There are authorized to be appropriated to the Director \$1,000,000 to carry out research on the prevention, monitoring, and control of [aquatic nuisance] *aquatic invasive* species in Narragansett Bay, Rhode Island. The funds shall be made available for use by the Department of Environmental Management of the State of Rhode Island.

#### SUBTITLE D—COOPERATIVE ENVIRONMENTAL ANALYSES.

##### SEC. 1401. ENVIRONMENTAL IMPACT ANALYSES.

[16 U.S.C. 4751]

The Secretary of State, in consultation with the Council on Environmental Quality, is encouraged to enter into negotiations with the governments of Canada and Mexico to provide for reciprocal cooperative environmental impact analysis of major Federal actions which have significant transboundary effects on the quality of the human environment in the United States, Canada, and Mexico.

