

109TH CONGRESS  
1ST SESSION

# 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.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2005

Mr. INOUE (for himself, Mr. STEVENS, Mr. AKAKA, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to establish vessel ballast water management requirements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ballast Water Manage-  
5 ment Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) The introduction of aquatic invasive species  
9 into the Nation’s waters is one of the most urgent

1 issues facing the marine environment in the United  
2 States.

3 (2) The direct and indirect costs of aquatic  
4 invasive species to the economy of the United States  
5 amount to billions of dollars per year.

6 (3) Invasive species are thought to have been  
7 involved in 70 percent of the last century's  
8 extinctions of native aquatic species.

9 (4) Invasive aquatic species are a significant  
10 problem in all regions of the United States, includ-  
11 ing Hawaii, Alaska, San Francisco Bay, the Great  
12 Lakes, the Southeast, and the Chesapeake Bay.

13 (5) Ballast water from ships is one of the larg-  
14 est pathways for the introduction and spread of  
15 aquatic invasive species.

16 (6) It has been estimated that some 10,000  
17 non-indigenous aquatic organisms travel around the  
18 globe each day in the ballast water of cargo ships.

19 (7) Over 2 billion gallons of ballast water are  
20 discharged in United States waters each year. Bal-  
21 last water may be the source of the largest volume  
22 of foreign organisms released on a daily basis into  
23 American ecosystems.

1           (8) Ballast water has been found to transport  
2 not only invasive plants and animals but human dis-  
3 eases as well, such as cholera.

4           (9) Invasive species may also be introduced by  
5 other vessel conduits, including the hulls of ships.

6           (10) Invasive aquatic species may originate in  
7 other countries, or from distinct regions in the  
8 United States.

9           (11) An average of 72 percent of all fish species  
10 introduced in the Southeast have become estab-  
11 lished, many of which are native to the United  
12 States but transplanted outside their native ranges.

13           (12) The introduction of non-indigenous species  
14 has been closely correlated with the disappearance of  
15 indigenous species in Hawaii and other islands.

16           (13) Despite the efforts of more than 20 State,  
17 Federal, and private agencies, unwanted alien pests  
18 are entering Hawaii at an alarming rate—about 2  
19 million times more rapid than the natural rate.

20           (14) Current Federal programs are insufficient  
21 to effectively address this growing problem.

22           (15) Preventing aquatic invasive species from  
23 being introduced is the most cost-effective approach  
24 for addressing this issue, because once established,  
25 they are costly and sometimes impossible to control.

1 **SEC. 3. BALLAST WATER MANAGEMENT.**

2 (a) IN GENERAL.—Section 1101 of the Nonindige-  
3 nous Aquatic Nuisance Prevention and Control Act of  
4 1990 (16 U.S.C. 4711) is amended to read as follows:

5 **“SEC. 1101. BALLAST WATER MANAGEMENT.**

6 “(a) VESSELS TO WHICH SECTION APPLIES.—

7 “(1) IN GENERAL.—This section applies to a  
8 vessel that is designed or constructed to carry bal-  
9 last water; and

10 “(A) is a vessel of the United States (as  
11 defined in section 2101(46) of title 46, United  
12 States Code); or

13 “(B) is a foreign vessel that—

14 “(i) is en route to a United States  
15 port; or

16 “(ii) has departed from a United  
17 States port and is within the exclusive eco-  
18 nomic zone.

19 “(2) EXCEPTIONS.—Notwithstanding para-  
20 graph (1), this section does not apply to—

21 “(A) permanent ballast water in a sealed  
22 tank on a vessel that is not subject to dis-  
23 charge;

24 “(B) a vessel of the Armed Forces; or

25 “(C) a vessel, or category of vessels, ex-  
26 empted by the Secretary under paragraph (4).

1           “(3) STANDARDS FOR VESSELS OF THE ARMED  
2           FORCES.—With respect to a vessel of the Armed  
3           Forces that is designed or constructed to carry bal-  
4           last water, the Secretary of Defense, after consulta-  
5           tion with the Administrator of the Environmental  
6           Protection Agency and the Secretary, shall promul-  
7           gate ballast water and sediment management stand-  
8           ards for such vessels that, so far as is reasonable  
9           and practicable, achieve environmental results that  
10          are comparable to those achieved by the require-  
11          ments of this section in waters subject to the juris-  
12          diction of the United States. In promulgating those  
13          standards, the Secretary of Defense may take into  
14          account the standards promulgated for such vessels  
15          under section 312 of the Clean Water Act (33  
16          U.S.C. 1322) to the extent that compliance with  
17          those standards would meet the requirements of this  
18          Act.

19          “(4) VESSEL EXEMPTIONS BY SECRETARY.—  
20          The Secretary may exempt a vessel, or category of  
21          vessels, from the application of this section if the  
22          Secretary determines, after consultation with the  
23          Administrator of the Environmental Protection  
24          Agency and the Administrator of the National Oce-  
25          anic and Atmospheric Administration, that ballast

1 water discharge from the vessel or category of ves-  
2 sels will not have an adverse impact (as defined in  
3 section 1003(1) of this Act), based on factors includ-  
4 ing the origin and destination of the voyages under-  
5 taken by such vessel or category of vessels.

6 “(5) COAST GUARD ASSESSMENT AND RE-  
7 PORT.—Within 180 days after the date of enactment  
8 of the Ballast Water Management Act of 2005, the  
9 Commandant of the Coast Guard shall transmit a  
10 report to the Senate Committee on Commerce,  
11 Science, and Transportation and the House of Rep-  
12 resentatives Committee on Transportation and In-  
13 frastructure containing—

14 “(A) an assessment of the magnitude of  
15 ballast water operations from vessels designed  
16 or constructed to carry ballast water that are  
17 not described in paragraph (1) that are  
18 transiting waters subject to the jurisdiction of  
19 the United States; and

20 “(B) recommendations, including legisla-  
21 tive recommendations if appropriate, of options  
22 for addressing such ballast water operations.

23 “(b) UPTAKE AND DISCHARGE OF BALLAST WATER  
24 AND SEDIMENT.—

1           “(1) PROHIBITION.—The operator of a vessel to  
2           which this section applies may not conduct the up-  
3           take or discharge of ballast water and sediment ex-  
4           cept as provided in this section.

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

8                   “(A) The uptake or discharge is solely for  
9                   the purpose of—

10                           “(i) ensuring the safety of vessel in an  
11                           emergency situation; or

12                           “(ii) saving a life at sea.

13                   “(B) The uptake or discharge is accidental  
14                   and the result of damage to the vessel or its  
15                   equipment and—

16                           “(i) all reasonable precautions to pre-  
17                           vent or minimize ballast water and sedi-  
18                           ment discharge have been taken before and  
19                           after the damage occurs, the discovery of  
20                           the damage, and the discharge; and

21                           “(ii) the owner or officer in charge of  
22                           the vessel did not willfully or recklessly  
23                           cause the damage.

1           “(C) The uptake or discharge is solely for  
2           the purpose of avoiding or minimizing the dis-  
3           charge of pollution from the vessel.

4           “(D) The uptake and subsequent discharge  
5           on the high seas of the same ballast water and  
6           sediment.

7           “(E) The uptake or discharge of ballast  
8           water and sediment occurs at the same location  
9           where the whole of the ballast water and sedi-  
10          ment that is discharged was taken up and there  
11          is no mixing with unmanaged ballast water and  
12          sediment from another area.

13          “(3) SPECIAL RULE FOR THE GREAT LAKES.—  
14          Paragraph (2) does not apply to a vessel subject to  
15          the regulations under subsection (e)(2) until the ves-  
16          sel is required to conduct ballast water treatment in  
17          accordance with subsection (f) of this section.

18          “(c) VESSEL BALLAST WATER MANAGEMENT  
19          PLAN.—

20                 “(1) IN GENERAL.—A vessel to which this sec-  
21                 tion applies shall conduct all its ballast water man-  
22                 agement operations in accordance with a ballast  
23                 water management plan that—

24                         “(A) meets the requirements prescribed by  
25                         the Secretary by regulation; and

1           “(B) is approved by the Secretary.

2           “(2) APPROVAL CRITERIA.—The Secretary may  
3 not approve a ballast water management plan unless  
4 the Secretary determines that the plan—

5           “(A) describes in detail safety procedures  
6 for the vessel and crew associated with ballast  
7 water management;

8           “(B) describes in detail the actions to be  
9 taken to implement the ballast water manage-  
10 ment requirements established under this sec-  
11 tion;

12           “(C) describes in detail procedures for dis-  
13 posal of sediment at sea and on shore;

14           “(D) designates the officer on board the  
15 vessel in charge of ensuring that the plan is  
16 properly implemented;

17           “(E) contains the reporting requirements  
18 for vessels established under this section; and

19           “(F) meets all other requirements pre-  
20 scribed by the Secretary.

21           “(3) COPY OF PLAN ON BOARD VESSEL.—The  
22 owner or operator of a vessel to which this section  
23 applies shall maintain a copy of the vessel’s ballast  
24 water management plan on board at all times.

25           “(d) VESSEL BALLAST WATER RECORD BOOK.—

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

5           “(A) each operation involving ballast water  
6 is fully recorded without delay, in accordance  
7 with regulations promulgated by the Secretary;  
8 and

9           “(B) each such operation is described in  
10 detail, including the location and circumstances  
11 of, and the reason for, the operation.

12           “(2) AVAILABILITY.—The ballast water record  
13 book—

14           “(A) shall be kept readily available for ex-  
15 amination by the Secretary at all reasonable  
16 times; and

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

20           “(3) RETENTION PERIOD.—The ballast water  
21 record book shall be retained—

22           “(A) on board the vessel for a period of 2  
23 years after the date on which the last entry in  
24 the book is made; and

1           “(B) under the control of the vessel’s  
2           owner for an additional period of 3 years.

3           “(4) REGULATIONS.—In the regulations pre-  
4           scribed under this section, the Secretary shall re-  
5           quire, at a minimum, that—

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

10           “(B) each completed page in the ballast  
11           water record book be signed and dated by the  
12           master of the vessel.

13           “(5) ALTERNATIVE MEANS OF RECORD-  
14           KEEPING.—The Secretary may provide by regulation  
15           for alternative methods of recordkeeping, including  
16           electronic recordkeeping, to comply with the require-  
17           ments of this subsection.

18           “(e) BALLAST WATER EXCHANGE REQUIRE-  
19           MENTS.—

20           “(1) IN GENERAL.—Until a vessel conducts bal-  
21           last water treatment in accordance with the require-  
22           ments of subsection (f) of this section, the operator  
23           of a vessel to which this section applies may not con-  
24           duct the uptake or discharge of ballast water unless  
25           the operator conducts ballast water exchange, in ac-

1 cordance with regulations prescribed by the Sec-  
2 retary, in a manner that results in an efficiency of  
3 at least 95 percent volumetric exchange of the bal-  
4 last water for each ballast water tank.

5 “(2) SPECIAL RULE FOR VESSELS IN THE  
6 GREAT LAKES.—

7 “(A) IN GENERAL.—Notwithstanding any  
8 other provision of this subsection, under regula-  
9 tions prescribed by the Secretary to prevent the  
10 introduction and spread of aquatic nuisance  
11 species into the Great Lakes through the ballast  
12 water of vessels, operators of vessels equipped  
13 with ballast water tanks that enter a United  
14 States port on the Great Lakes after operating  
15 on the waters beyond the exclusive economic  
16 zone shall—

17 “(i) carry out exchange of ballast  
18 water on the waters beyond the exclusive  
19 economic zone prior to entry into any port  
20 within the Great Lakes; or

21 “(ii) carry out an exchange of ballast  
22 water in other waters where the exchange  
23 does not pose a threat of infestation or  
24 spread of aquatic nuisance species in the  
25 Great Lakes and other waters of the

1 United States, as recommended by the  
2 Task Force under section 1102(a)(1).

3 “(B) ADDITIONAL MATTERS COVERED BY  
4 THE REGULATIONS.—The regulations shall—

5 “(i) not affect or supersede any re-  
6 quirements or prohibitions pertaining to  
7 the discharge of ballast water into waters  
8 of the United States under the Federal  
9 Water Pollution Control Act (33 U.S.C.  
10 1251 et seq.);

11 “(ii) provide for sampling procedures  
12 to monitor compliance with the require-  
13 ments of the regulations;

14 “(iii) prohibit the operation of a vessel  
15 in the Great Lakes if the master of the  
16 vessel has not certified to the Secretary or  
17 the Secretary’s designee by not later than  
18 the departure of that vessel from the first  
19 lock in the St. Lawrence Seaway that the  
20 vessel has complied with the requirements  
21 of the regulations;

22 “(iv) protect the safety of—

23 “(I) each vessel; and

24 “(II) the crew and passengers of  
25 each vessel;

1                   “(v) take into consideration different  
2                   operating conditions; and

3                   “(vi) be based on the best scientific  
4                   information available.

5                   “(C) HUDSON RIVER PORT.—The regula-  
6                   tions under this paragraph also apply to vessels  
7                   that enter a United States port on the Hudson  
8                   River north of the George Washington Bridge.

9                   “(D) EDUCATION AND TECHNICAL ASSIST-  
10                  ANCE PROGRAMS.—The Secretary may carry  
11                  out education and technical assistance pro-  
12                  grams and other measures to promote compli-  
13                  ance with the regulations issued under this  
14                  paragraph.

15                  “(3) EXCHANGE AREAS.—

16                  “(A) IN GENERAL.—Except as provided in  
17                  subparagraphs (B), (C), and (D), the operator  
18                  of a vessel to which this section applies shall  
19                  conduct ballast water exchange in accordance  
20                  with regulations prescribed by the Secretary—

21                         “(i) at least 200 nautical miles from  
22                         the nearest land; and

23                         “(ii) in water at least 200 meters in  
24                         depth.

25                  “(B) MINIMUM DISTANCE AND DEPTH.—

1           “(i) IN GENERAL.—Except as pro-  
2           vided in subparagraph (C), if the operator  
3           of a vessel is unable to conduct ballast  
4           water exchange in accordance with sub-  
5           paragraph (A), the ballast water exchange  
6           shall be conducted in water that is—

7                   “(I) as far as possible from land;

8                   “(II) at least 50 nautical miles  
9                   from land; and

10                  “(III) in water of at least 200  
11                  meters in depth.

12           “(ii) LIMITATION.—The operator of a  
13           vessel may not conduct ballast water ex-  
14           change in accordance with clause (i) in any  
15           area with respect to which the Secretary  
16           has determined, after consultation with the  
17           Administrators of the Environmental Pro-  
18           tection Agency and the National Oceanic  
19           and Atmospheric Administration, that bal-  
20           last water exchange in the area will have  
21           an adverse impact, notwithstanding the  
22           fact that the area meets the distance and  
23           depth criteria of clause (i).

24           “(C) EXCHANGE IN DESIGNATED AREA.—

1           “(i) IN GENERAL.—If the operator of  
2 a vessel is unable to conduct ballast water  
3 exchange in accordance with subparagraph  
4 (B), the operator of the vessel may conduct  
5 ballast water exchange in an area that  
6 does not meet the distance and depth cri-  
7 teria of subparagraph (B) in such areas as  
8 may be designated by the Administrator of  
9 the National Oceanic and Atmospheric Ad-  
10 ministration, determined in consultation  
11 with the Secretary and the Administrator  
12 of the Environmental Protection Agency,  
13 for that purpose.

14           “(ii) CHARTING.—The Administrator  
15 of the National Oceanic and Atmospheric  
16 Administration, in consultation with the  
17 Secretary, shall designate such areas on  
18 nautical charts.

19           “(iii) LIMITATION.—The Adminis-  
20 trator may not designate an area under  
21 clause (i) if a ballast water exchange in  
22 that area could have an adverse impact, as  
23 determined by the Secretary in consulta-  
24 tion with the Administrator of the Envi-  
25 ronmental Protection Agency.

1 “(D) SAFETY OR STABILITY EXCEPTION.—

2 “(i) IN GENERAL.—Subparagraphs  
3 (A), (B), and (C) do not apply to the dis-  
4 charge or uptake of ballast water if the  
5 master of a vessel determines that compli-  
6 ance with subparagraph (A), (B), or (C),  
7 whichever applies, would threaten the safe-  
8 ty or stability of the vessel, its crew, or its  
9 passengers because of adverse weather,  
10 ship design or stress, equipment failure, or  
11 any other relevant condition.

12 “(ii) NOTIFICATION REQUIRED.—  
13 Whenever the master of a vessel conducts  
14 a ballast water discharge or uptake under  
15 the exception described in clause (i), the  
16 master of the vessel shall notify the Sec-  
17 retary as soon as practicable thereafter but  
18 no later than 24 hours after the ballast  
19 water discharge or uptake commenced.

20 “(iii) LIMITATION ON VOLUME.—The  
21 volume of any ballast water taken up or  
22 discharged under the exception described  
23 in clause (i) may not exceed the volume  
24 necessary to ensure the safe operation of  
25 the vessel.

1                   “(iv) REVIEW OF CIRCUMSTANCES.—

2                   If the master of a vessel conducts a ballast  
3                   water discharge or uptake under the excep-  
4                   tion described in clause (i) on more than 2  
5                   out of 6 sequential voyages, the Secretary  
6                   shall review the circumstances to determine  
7                   whether those ballast water discharges or  
8                   uptakes met the requirements of this sub-  
9                   paragraph. The review under this clause  
10                  shall be in addition to any other enforce-  
11                  ment activity by the Secretary.

12                  “(E) INABILITY TO COMPLY WITH EX-  
13                  CHANGE AREA REQUIREMENTS.—

14                  “(i) DEVIATION OR DELAY OF VOY-  
15                  AGE.—In determining the ability of the op-  
16                  erator of a vessel to conduct ballast water  
17                  exchange in accordance with the require-  
18                  ments of subparagraph (A) or (B), a vessel  
19                  is not required to deviate from its intended  
20                  voyage or unduly delay its voyage to com-  
21                  ply with those requirements.

22                  “(ii) PARTIAL COMPLIANCE.—An op-  
23                  erator of a vessel that is unable to comply  
24                  fully with the requirements of subpara-  
25                  graph (A) or (B), shall conduct ballast

1 water exchange to the maximum extent  
2 feasible in compliance with those subpara-  
3 graphs.

4 “(F) SPECIAL RULE FOR THE GREAT  
5 LAKES.—This paragraph does not apply to ves-  
6 sels subject to the regulations under paragraph  
7 (2).

8 “(f) BALLAST WATER TREATMENT REQUIRE-  
9 MENTS.—

10 “(1) IN GENERAL.—Subject to the implementa-  
11 tion schedule in paragraph (3), before discharging  
12 ballast water in waters subject to the jurisdiction of  
13 the United States a vessel to which this section ap-  
14 plies shall conduct ballast water treatment so that  
15 the ballast water discharged will contain—

16 “(A) less than 0.1 living organisms per  
17 cubic meter that are 50 or more micrometers in  
18 minimum dimension;

19 “(B) less than 0.1 living organisms per  
20 milliliter that are less than 50 micrometers in  
21 minimum dimension and more than 10 microm-  
22 eters in minimum dimension;

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

1                   “(i) 1 colony-forming unit of  
2                   Toxicogenic vibrio cholera (O1 and O139)  
3                   per 100 milliliters, or less than 1 colony-  
4                   forming unit of that microbe per gram of  
5                   wet weight of zoological samples;

6                   “(ii) 126 colony-forming units of  
7                   escherichi coli per 100 milliliters; and

8                   “(iii) 33 colony-forming units of intes-  
9                   tinal enterococci per 100 milliliters; and

10                  “(D) concentrations of such indicator mi-  
11                  crobes as may be specified in regulations pro-  
12                  mulgated by the Secretary that are less than  
13                  the amount specified in those regulations.

14                  “(2) RECEPTION FACILITY EXCEPTION.—Para-  
15                  graph (1) does not apply to a vessel that discharges  
16                  ballast water into a reception facility that meets  
17                  standards prescribed by the Secretary, in consulta-  
18                  tion with the Administrator of the Environmental  
19                  Protection Agency, for the reception of ballast water  
20                  that provide for the reception of ballast water and  
21                  its disposal or treatment in a way that does not im-  
22                  pair or damage the environment, human health,  
23                  property, or resources. The Secretary may not pre-  
24                  scribe such standards that are less stringent than

1 any otherwise applicable Federal, State, or local law  
2 requirements.

3 “(3) IMPLEMENTATION SCHEDULE.—Para-  
4 graph (1) applies to vessels in accordance with the  
5 following schedule:

6 “(A) FIRST PHASE.—Beginning January  
7 1, 2009, for vessels constructed on or after that  
8 date with a ballast water capacity of less than  
9 5,000 cubic meters.

10 “(B) SECOND PHASE.—Beginning January  
11 1, 2012, for vessels constructed on or after that  
12 date with a ballast water capacity of 5,000  
13 cubic meters or more.

14 “(C) THIRD PHASE.—Beginning January  
15 1, 2014, for vessels constructed before January  
16 1, 2009, with a ballast water capacity of 1,500  
17 cubic meters or more but not more than 5,000  
18 cubic meters.

19 “(D) FOURTH PHASE.—Beginning Janu-  
20 ary 1, 2016, for vessels constructed—

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

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

5                   “(4) REVIEW OF STANDARDS.—

6                   “(A) IN GENERAL.—In December, 2012,  
7                   and in every third year thereafter, the Secretary  
8                   shall review the treatment standards established  
9                   in paragraph (1) of this subsection to deter-  
10                  mine, in consultation with the Administrator of  
11                  the National Oceanic and Atmospheric Admin-  
12                  istration and the Administrator of the Environ-  
13                  mental Protection Agency, if the standards  
14                  should be revised to reduce the amount of orga-  
15                  nisms or microbes allowed to be discharged  
16                  using the best available technology economically  
17                  available. The Secretary shall revise such stand-  
18                  ards as necessary by regulation.

19                  “(B) APPLICATION OF ADJUSTED STAND-  
20                  ARDS.—In the regulations, the Secretary shall  
21                  provide for the prospective application of the  
22                  adjusted standards prescribed under this para-  
23                  graph to vessels constructed after the date on  
24                  which the adjusted standards apply and for an

1 orderly phase-in of the adjusted standards to  
2 existing vessels.

3 “(5) DELAY OF APPLICATION FOR VESSEL PAR-  
4 TICIPATING IN PROMISING TECHNOLOGY EVALUA-  
5 TIONS.—

6 “(A) IN GENERAL.—If a vessel participates  
7 in a program approved by the Secretary to test  
8 and evaluate promising ballast water treatment  
9 technologies with the potential to result in  
10 treatment technologies achieving a standard  
11 that is the same as or more stringent than the  
12 standard that applies under paragraph (1) be-  
13 fore the first date on which paragraph (1) ap-  
14 plies to that vessel, the Secretary may postpone  
15 the date on which paragraph (1) would other-  
16 wise apply to that vessel for not more than 5  
17 years.

18 “(B) VESSEL DIVERSITY.—The Sec-  
19 retary—

20 “(i) shall seek to ensure that a wide  
21 variety of vessel types and voyages are in-  
22 cluded in the program; but

23 “(ii) may not grant a delay under this  
24 paragraph to more than 1 percent of the

1 vessels to which subparagraph (A), (B),  
2 (C), or (D) of paragraph (3) applies.

3 “(C) TERMINATION OF POSTPONEMENT.—

4 The Secretary may terminate the 5-year post-  
5 ponement period if participation of the vessel in  
6 the program is terminated without the consent  
7 of the Secretary.

8 “(6) FEASIBILITY REVIEW.—

9 “(A) IN GENERAL.—Not less than 2 years  
10 before the date on which paragraph (1) applies  
11 to vessels under each subparagraph of para-  
12 graph (3), the Secretary shall complete a review  
13 to determine whether appropriate technologies  
14 are available to achieve the standards set forth  
15 in paragraph (1) for the vessels to which they  
16 apply under the schedule set forth in paragraph  
17 (3).

18 “(B) DELAY IN SCHEDULED APPLICA-  
19 TION.—If the Secretary determines, on the  
20 basis of the review conducted under subpara-  
21 graph (A), that compliance with the standards  
22 set forth in paragraph (1) in accordance with  
23 the schedule set forth in any subparagraph of  
24 paragraph (3) is not feasible, the Secretary  
25 shall—

1           “(i) extend the date on which that  
2           subparagraph first applies to vessels for a  
3           period of not more than 36 months; and

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

7           “(7) TREATMENT SYSTEM APPROVAL RE-  
8           QUIRED.—The operator of a vessel may not use a  
9           ballast water treatment system to comply with the  
10          requirements of this subsection unless the system is  
11          approved by the Secretary. The Secretary shall pro-  
12          mulgate regulations establishing a process for such  
13          approval.

14          “(g) WARNINGS CONCERNING BALLAST WATER UP-  
15          TAKE.—

16                 “(1) IN GENERAL.—The Secretary shall notify  
17          mariners of any area in waters subject to the juris-  
18          diction of the United States in which vessels should  
19          not uptake ballast water due to known conditions.

20                 “(2) CONTENTS.—The notice shall include—

21                         “(A) the coordinates of the area; and

22                         “(B) if possible, the location of alternative  
23          areas for the uptake of ballast water.

24          “(h) SEDIMENT MANAGEMENT.—

1           “(1) IN GENERAL.—The operator of a vessel to  
2           which this section applies may not remove or dispose  
3           of sediment from spaces designed to carry ballast  
4           water except in accordance with this subsection and  
5           the ballast water management plan required under  
6           subsection (c).

7           “(2) DESIGN REQUIREMENTS.—

8           “(A) NEW VESSELS.—No person may re-  
9           move and dispose of such sediment from a ves-  
10          sel to which this section applies in waters sub-  
11          ject to the jurisdiction of the United States that  
12          is constructed on or after January 1, 2009, un-  
13          less the vessel is designed and constructed in a  
14          manner that—

15                 “(i) minimizes the uptake and entrap-  
16                 ment of sediment;

17                 “(ii) facilitates removal of sediment;  
18                 and

19                 “(iii) provides for safe access for sedi-  
20                 ment removal and sampling.

21          “(B) EXISTING VESSELS.—The operator of  
22          a vessel to which this section applies that was  
23          constructed before January 1, 2009, may not  
24          remove and dispose of such sediment in waters

1 subject to the jurisdiction of the United States  
2 unless—

3 “(i) the vessel has been modified, to  
4 the extent practicable and in accordance  
5 with regulations promulgated by the Sec-  
6 retary, to achieve the objectives described  
7 in clauses (i), (ii), and (iii) of subpara-  
8 graph (A); or

9 “(ii) the removal and disposal of the  
10 sediment is conducted in such a manner as  
11 to achieve those objectives to the greatest  
12 extent practicable and in accordance with  
13 those regulations.

14 “(C) REGULATIONS.—The Secretary shall  
15 promulgate regulations establishing design and  
16 construction standards to achieve the objectives  
17 of subparagraph (A) and providing guidance for  
18 modifications and practices under subparagraph  
19 (B). The Secretary shall incorporate the stand-  
20 ards and guidance in the regulations governing  
21 the ballast water management plan.

22 “(3) SEDIMENT RECEPTION FACILITIES.—

23 “(A) STANDARDS.—The Administrator of  
24 the Environmental Protection Agency in con-  
25 sultation with the Secretary, shall promulgate

1 regulations governing facilities for the reception  
2 of vessel sediment from spaces designed to  
3 carry ballast water that provide for the disposal  
4 of such sediment in a way that does not impair  
5 or damage the environment, human health, or  
6 property or resources of the disposal area. The  
7 Administrator may not prescribe standards  
8 under this subparagraph that are less stringent  
9 than any otherwise applicable Federal, State, or  
10 local law requirements.

11 “(B) DESIGNATION.—The Secretary shall  
12 designate facilities for the reception of vessel  
13 sediment that meet the requirements of the reg-  
14 ulations promulgated under subparagraph (A)  
15 at ports and terminals where ballast tanks are  
16 cleaned or repaired.

17 “(i) EXAMINATIONS AND CERTIFICATIONS.—

18 “(1) INITIAL EXAMINATION.—

19 “(A) IN GENERAL.—The Secretary shall  
20 examine vessels to which this section applies to  
21 determine whether—

22 “(i) there is a ballast water manage-  
23 ment plan for the vessel; and

24 “(ii) the equipment used for ballast  
25 water and sediment management in ac-

1 cordance with the requirements of this sec-  
2 tion and the regulations promulgated here-  
3 under is installed and functioning properly.

4 “(B) NEW VESSELS.—For vessels con-  
5 structed on or after January 1, 2009, the Sec-  
6 retary shall conduct the examination required  
7 by subparagraph (A) before the vessel is placed  
8 in service.

9 “(C) EXISTING VESSELS.—For vessels con-  
10 structed before January 1, 2009, the Secretary  
11 shall—

12 “(i) conduct the examination required  
13 by subparagraph (A) before the date on  
14 which subsection (f)(1) applies to the ves-  
15 sel according to the schedule in subsection  
16 (f)(3); and

17 “(ii) inspect the vessel’s ballast water  
18 record book required by subsection (d).

19 “(2) SUBSEQUENT EXAMINATIONS.—The Sec-  
20 retary shall examine vessels no less frequently than  
21 once each year to ensure vessel compliance with the  
22 requirements of this section.

23 “(3) INSPECTION AUTHORITY.—In order to  
24 carry out the provisions of this section, the Sec-  
25 retary may take ballast water samples at any time

1 on any vessel to which this section applies to ensure  
2 its compliance with this Act.

3 “(4) REQUIRED CERTIFICATE.—

4 “(A) IN GENERAL.—If, on the basis of an  
5 initial examination under paragraph (1) the  
6 Secretary finds that a vessel complies with the  
7 requirements of this section and the regulations  
8 promulgated hereunder, the Secretary shall  
9 issue a certificate under this paragraph as evi-  
10 dence of such compliance. The certificate shall  
11 be valid for a period of not more than 5 years,  
12 as specified by the Secretary. The certificate or  
13 a true copy shall be maintained on board the  
14 vessel.

15 “(B) FOREIGN CERTIFICATES.—The Sec-  
16 retary may treat a certificate issued by a for-  
17 eign government as a certificate issued under  
18 subparagraph (A) if the Secretary determines  
19 that the standards used by the issuing govern-  
20 ment are equivalent to or more stringent than  
21 the standards used by the Secretary under sub-  
22 paragraph (A).

23 “(5) NOTIFICATION OF VIOLATIONS.—If the  
24 Secretary finds, on the basis of an examination  
25 under paragraph (1) or (2), sampling under para-

1 graph (3), or any other information, that a vessel is  
2 being operated in violation of the requirements of  
3 this section and the regulations promulgated here-  
4 under, the Secretary shall—

5 “(A) notify—

6 “(i) the master of the vessel; and

7 “(ii) the captain of the port at the  
8 vessel’s next port of call; and

9 “(B) take such other action as may be ap-  
10 propriate.

11 “(j) DETENTION OF VESSELS.—

12 “(1) IN GENERAL.—The Secretary, by notice to  
13 the owner, charterer, managing operator, agent,  
14 master, or other individual in charge of a vessel,  
15 may detain that vessel if the Secretary has reason-  
16 able cause to believe that—

17 “(A) the vessel is a vessel to which this  
18 section applies;

19 “(B) the vessel does not comply with the  
20 requirements of this section or of the regula-  
21 tions issued hereunder or is being operated in  
22 violation of such requirements; and

23 “(C) the vessel is about to leave a place in  
24 the United States.

25 “(2) CLEARANCE.—

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

6           “(B) WITHDRAWAL.—If the Secretary  
7           finds that a vessel detained under paragraph  
8           (1) has received a clearance under section 4197  
9           of the Revised Statutes (46 U.S.C. App. 91) be-  
10          fore it was detained under paragraph (1), the  
11          Secretary shall request the Secretary of the  
12          Treasury to withdraw the clearance. Upon re-  
13          quest of the Secretary, the Secretary of the  
14          Treasury shall withhold or revoke the clearance.

15          “(k) SANCTIONS.—

16          “(1) CIVIL PENALTIES.—Any person who vio-  
17          lates a regulation promulgated under this section  
18          shall be liable for a civil penalty in an amount not  
19          to exceed \$25,000. Each day of a continuing viola-  
20          tion constitutes a separate violation. A vessel oper-  
21          ated in violation of the regulations is liable in rem  
22          for any civil penalty assessed under this subsection  
23          for that violation.

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

4           “(3) REVOCATION OF CLEARANCE.—Except as  
5 provided in subsection (j)(2), upon request of the  
6 Secretary, the Secretary of the Treasury shall with-  
7 hold or revoke the clearance of a vessel required by  
8 section 4197 of the Revised Statutes (46 U.S.C.  
9 App. 91), if the owner or operator of that vessel is  
10 in violation of the regulations issued under this sec-  
11 tion.

12           “(4) EXCEPTION TO SANCTIONS.—This sub-  
13 section does not apply to a failure to exchange bal-  
14 last water if—

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

19           “(B) the recordkeeping and reporting re-  
20 quirements of the Act are complied with.

21           “(l) CONSULTATION WITH CANADA, MEXICO, AND  
22 OTHER FOREIGN GOVERNMENTS.—In developing the  
23 guidelines issued and regulations promulgated under this  
24 section, the Secretary is encouraged to consult with the  
25 Government of Canada, the Government of Mexico, and

1 any other government of a foreign country that the Sec-  
2 retary, in consultation with the Task Force, determines  
3 to be necessary to develop and implement an effective  
4 international program for preventing the unintentional in-  
5 troduction and spread of nonindigenous species.

6       “(m) INTERNATIONAL COOPERATION.—The Sec-  
7 retary, in cooperation with the International Maritime Or-  
8 ganization of the United Nations and the Commission on  
9 Environmental Cooperation established pursuant to the  
10 North American Free Trade Agreement, is encouraged to  
11 enter into negotiations with the governments of foreign  
12 countries to develop and implement an effective inter-  
13 national program for preventing the unintentional intro-  
14 duction and spread of nonindigenous species. The Sec-  
15 retary is particularly encouraged to seek bilateral or multi-  
16 lateral agreements with Canada, Mexico, and other na-  
17 tions in the Wider Caribbean (as defined in the Conven-  
18 tion for the Protection and Development of the Marine  
19 Environment of the Wider Caribbean (Cartagena Conven-  
20 tion) under this section.

21       “(n) NON-DISCRIMINATION.—The Secretary shall en-  
22 sure that vessels registered outside of the United States  
23 do not receive more favorable treatment than vessels reg-  
24 istered in the United States when the Secretary performs  
25 studies, reviews compliance, determines effectiveness, es-

1 tablishes requirements, or performs any other responsibil-  
2 ities under this Act.

3       “(o) SUPPORT FOR FEDERAL BALLAST WATER DEM-  
4 ONSTRATION PROJECT.—In addition to amounts other-  
5 wise available to the Maritime Administration, the Na-  
6 tional Oceanographic and Atmospheric Administration,  
7 and the United States Fish and Wildlife Service for the  
8 Federal Ballast Water Demonstration Project, the Sec-  
9 retary shall provide support for the conduct and expansion  
10 of the project, including grants for research and develop-  
11 ment of innovative technologies for the management,  
12 treatment, and disposal of ballast water and sediment, for  
13 ballast water exchange, and for other vessel vectors of  
14 invasive aquatic species such as hull fouling. There are  
15 authorized to be appropriated to the Secretary  
16 \$25,000,000 for each fiscal year to carry out this sub-  
17 section.

18       “(p) CONSULTATION WITH TASK FORCE.—The Sec-  
19 retary shall consult with the Task Force in carrying out  
20 this section.

21       “(q) PREEMPTION.—Notwithstanding any other pro-  
22 vision of law, the provisions of subsections (e) and (f)  
23 (other than subsection (f)(2)) supersede any provision of  
24 State or local law determined by the Secretary to be incon-

1 sistent with the requirements of that subsection or to con-  
2 flict with the requirements of that subsection.

3 “(r) REGULATIONS.—The Secretary may issue such  
4 regulations as may be necessary to carry out this section  
5 and the terms defined in section 1003 that are used in  
6 this section.”.

7 (b) DEFINITIONS.—Section 1003 of the Nonindige-  
8 nous Aquatic Nuisance Prevention and Control Act of  
9 1990 (16 U.S.C. 4702) is amended—

10 (1) by redesignating—

11 (A) paragraphs (1), (2), and (3) as para-  
12 graphs (2), (3), and (4), respectively;

13 (B) paragraphs (4), (5), (6), (7), and (8)  
14 as paragraphs (8), (9), (10), (11), and (12), re-  
15 spectively;

16 (C) paragraphs (9) and (10) as paragraphs  
17 (14) and (15) respectively;

18 (D) paragraphs (11) and (12) as para-  
19 graphs (17) and (18), respectively;

20 (E) paragraphs (13), (14), and (15) as  
21 paragraphs (20), (21), and (22), respectively;

22 (F) paragraph (16) as paragraph (26); and

23 (G) paragraph (17) as paragraph (23) and  
24 inserting it after paragraph (22), as redesign-  
25 nated;

1           (2) by inserting before paragraph (2), as redesi-  
2           gnated, the following:

3           “(1) ‘adverse impact’ means the direct or indi-  
4           rect result or consequence of an event or process  
5           that—

6                     “(A) creates a hazard to the environment,  
7                     human health, property, or a natural resource;

8                     “(B) impairs biological diversity; or

9                     “(C) interferes with the legitimate use of  
10           waters subject to the jurisdiction of the United  
11           States;”;

12           (3) by striking paragraph (4), as redesignated,  
13           and inserting the following:

14           “(4) ‘ballast water’—

15                     “(A) means water taken on board a vessel  
16                     to control trim, list, draught, stability, or  
17                     stresses of the vessel, including matter sus-  
18                     pended in such water; but

19                     “(B) does not include potable or technical  
20                     water that does not contain harmful aquatic or-  
21                     ganisms or pathenogens that is taken on board  
22                     a vessel and used for a purpose described in  
23                     subparagraph (A) if such potable or technical  
24                     water is discharged in compliance with section

1           312 of the Clean Water Act (33 U.S.C.  
2           1322);”;

3           (4) by inserting after paragraph (4) the fol-  
4           lowing:

5           “(5) ‘ballast water capacity’ means the total  
6           volumetric capacity of any tanks, spaces, or com-  
7           partments on a vessel that is used for carrying, load-  
8           ing, or discharging ballast water, including any  
9           multi-use tank, space, or compartment designed to  
10          allow carriage of ballast water;

11          “(6) ‘ballast water management’ means me-  
12          chanical, physical, chemical, and biological processes  
13          used, either singularly or in combination, to remove,  
14          render harmless, or avoid the uptake or discharge of  
15          harmful aquatic organisms and pathogens within  
16          ballast water and sediment;

17          “(7) ‘constructed’ means a state of construction  
18          of a vessel at which—

19                 “(A) the keel is laid;

20                 “(B) construction identifiable with the spe-  
21                 cific vessel begins;

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

1           “(D) the vessel undergoes a major conver-  
2           sion;”;

3           (5) by inserting after paragraph (12), as redesi-  
4           gnated, the following:

5           “(13) ‘harmful aquatic organisms and patho-  
6           gens’ means aquatic organisms or pathogens that  
7           have been determined by the Secretary, after con-  
8           sultation with the Administrator of the National  
9           Oceanographic and Atmospheric Administration and  
10          the Administrator of the Environmental Protection  
11          Agency, to cause an adverse impact if introduced  
12          into the waters subject to the jurisdiction of the  
13          United States;”;

14          (6) by inserting after paragraph (15), as redesi-  
15          gnated, the following:

16          “(16) ‘major conversion’ means a conversion of  
17          a vessel, that—

18                 “(A) changes its ballast water carrying ca-  
19                 pacity by at least 15 percent;

20                 “(B) changes the vessel class;

21                 “(C) is projected to prolong the vessel’s life  
22                 by at least 10 years (as determined by the Sec-  
23                 retary); or

24                 “(D) results in modifications to the vessel’s  
25                 ballast water system, except—

1 “(i) component replacement-in-kind;

2 or

3 “(ii) conversion of a vessel to meet the  
4 requirements of section 1101(e);”;

5 (7) by inserting after paragraph (18), as reded-  
6 icated, the following:

7 “(19) ‘sediment’ means matter that has settled  
8 out of ballast water within a vessel;”;

9 (8) by inserting after paragraph (23), as reded-  
10 icated, the following:

11 “(24) ‘United States port’ means a port, river,  
12 harbor, or offshore terminal under the jurisdiction of  
13 the United States, including ports located in Puerto  
14 Rico, Guam, the Northern Marianas, and the United  
15 States Virgin Islands;

16 “(25) ‘vessel of the Armed Forces’ means—

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

20 “(B) any vessel owned or operated by the  
21 Department of Homeland Security that is des-  
22 icated by the Secretary of the department in  
23 which the Coast Guard is operating as a vessel  
24 equivalent to a vessel described in subparagraph  
25 (A);” and

1           (9) by inserting after paragraph (26), as redesi-  
2           gnated, the following:

3           “(27) ‘waters subject to the jurisdiction of the  
4           United States’ means navigable waters and the terri-  
5           torial sea of the United States, the exclusive eco-  
6           nomic zone, and the Great Lakes.”.

7           (c) GREAT LAKES REGULATIONS.—Until vessels de-  
8           scribed in section 1101(e)(2) of the Nonindigenous Aquat-  
9           ic Nuisance Prevention and Control Act of 1990 (16  
10          U.S.C. 4711(e)(2)), as amended by this Act, are required  
11          to conduct ballast water treatment in accordance with the  
12          requirements of section 1101(f) of that Act (16 U.S.C.  
13          1101(f)), as amended by this Act, the regulations promul-  
14          gated by the Secretary of Transportation under section  
15          1101 of the Nonindigenous Aquatic Nuisance Prevention  
16          and Control Act of 1990 (16 U.S.C. 4711), as such regu-  
17          lations were in effect on the day before the date of enact-  
18          ment of this Act, shall remain in full force and effect for,  
19          and shall continue to apply to, such vessels.

20       **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

21          Section 1301(a) of the Nonindigenous Aquatic Nui-  
22          sance Prevention and Control Act of 1990 (16 U.S.C.  
23          4741(a)) is amended—

24               (1) by striking “and” after the semicolon in  
25               paragraph (4)(B);

1           (2) by striking “1102(f).” in paragraph (5)(B)  
2           and inserting “1102(f); and”; and

3           (3) by adding at the end the following:

4           “(6) \$10,000,000 for each of fiscal years 2006  
5           through 2010 to the Secretary to carry out section  
6           1101.”.

7 **SEC. 5. COAST GUARD REPORT ON OTHER VESSEL-RE-**  
8           **LATED VECTORS OF INVASIVE SPECIES.**

9           (a) **IN GENERAL.**—Within 90 days after the date of  
10 enactment of this Act, the Commandant of the Coast  
11 Guard shall transmit a report to the Senate Committee  
12 on Commerce, Science, and Transportation and the House  
13 of Representatives Committee on Transportation and In-  
14 frastructure on vessel-related vectors of harmful aquatic  
15 organisms and pathogens other than ballast water and  
16 sediment, including vessel hulls and equipment, and from  
17 vessels equipped with ballast tanks that carry no ballast  
18 water on board.

19           (b) **BEST PRACTICES.**—As soon as practicable, the  
20 Coast Guard shall develop best practices standards and  
21 procedures designed to reduce the introduction of invasive  
22 species into and within the United States from vessels and  
23 establish a timeframe for implementation of those stand-  
24 ards and procedures by vessels, in addition to the manda-  
25 tory requirements set forth in section 1101 for ballast

1 water. Such standards and procedures should include des-  
2 igation of geographical locations for uptake and dis-  
3 charge of untreated ballast water, as well as standards and  
4 procedures for other vessel vectors of invasive aquatic spe-  
5 cies. The Commandant shall transmit a report to the Com-  
6 mittees describing the standards and procedures developed  
7 and the implementation timeframe, together with any rec-  
8 ommendations, including legislative recommendations if  
9 appropriate, the Commandant deems appropriate. The  
10 Secretary of the department in which the Coast Guard is  
11 operating may promulgate regulations to incorporate and  
12 enforce standards and procedures developed under this  
13 subsection.

○