

108TH CONGRESS
2D SESSION

S. 2490

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

IN THE SENATE OF THE UNITED STATES

JUNE 2, 2004

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

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 2004”.

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 aquatic species may originate in
5 other countries, or from distinct regions in the
6 United States.

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

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

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

18 (13) Current Federal programs are insufficient
19 to effectively address this growing problem.

20 (14) Preventing aquatic invasive species from
21 being introduced is the most cost-effective approach
22 for addressing this issue, because once established,
23 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 is en route to,
 14 or has departed from, a United States port.

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

17 “(A) permanent ballast water in a sealed
 18 tank on a vessel that is not subject to dis-
 19 charge;

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

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

23 “(3) STANDARDS FOR VESSELS OF THE ARMED
 24 FORCES.—With respect to a vessel of the Armed
 25 Forces that is designed or constructed to carry bal-
 26 last water, the Secretary of Defense, after consulta-

1 tion with the Administrator of the Environmental
2 Protection Agency and the Secretary, shall promul-
3 gate ballast water and sediment management stand-
4 ards for such vessels that, so far as is reasonable
5 and practicable, achieve environmental results that
6 are comparable to those achieved by the require-
7 ments of this section in waters subject to the juris-
8 diction of the United States. In promulgating those
9 standards, the Secretary of Defense may take into
10 account the standards promulgated for such vessels
11 under section 312 of the Clean Water Act (33
12 U.S.C. 1322) to the extent that compliance with
13 those standards would meet the requirements of this
14 Act.

15 “(4) VESSEL EXEMPTIONS BY SECRETARY.—
16 The Secretary may exempt a vessel, or category of
17 vessels, from the application of this section if the
18 Secretary determines, after consultation with the
19 Administrator of the Environmental Protection
20 Agency and the Administrator of the National Oce-
21 anic and Atmospheric Administration, that ballast
22 water discharge from the vessel or category of ves-
23 sels will not have an adverse impact (as defined in
24 section 1003(1) of this Act), based on factors includ-

1 ing the origin and destination of the voyages under-
2 taken by such vessel or category of vessels.

3 “(5) COAST GUARD ASSESSMENT AND RE-
4 PORT.—Within 180 days after the date of enactment
5 of the Ballast Water Management Act of 2004, the
6 Commandant of the Coast Guard shall transmit a
7 report to the Senate Committee on Commerce,
8 Science, and Transportation and the House of Rep-
9 resentatives Committee on Transportation and In-
10 frastructure containing—

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

17 “(B) recommendations, including legisla-
18 tive recommendations if appropriate, of options
19 for addressing such ballast water operations.

20 “(b) UPTAKE AND DISCHARGE OF BALLAST WATER
21 AND SEDIMENT.—

22 “(1) PROHIBITION.—Except as provided in this
23 section, no person may uptake or discharge ballast
24 water and sediment from a vessel to which this sec-

1 tion applies into waters subject to the jurisdiction of
2 the United States.

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

6 “(A) The uptake or discharge is solely for
7 the purpose of—

8 “(i) ensuring the safety of vessel in an
9 emergency situation; or

10 “(ii) saving a life at sea.

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

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

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

22 “(C) The uptake or discharge is solely for
23 the purpose of avoiding or minimizing the dis-
24 charge of pollution from the vessel.

1 “(D) The uptake and subsequent discharge
2 on the high seas of the same ballast water and
3 sediment.

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

10 “(3) SPECIAL RULE FOR UNITED STATES FLAG
11 VESSELS.—For a vessel described in subsection
12 (a)(1)(A), paragraph (1) of this subsection shall be
13 applied without regard to whether the uptake or dis-
14 charge occurs in waters subject to the jurisdiction of
15 the United States.

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

21 “(c) VESSEL BALLAST WATER MANAGEMENT
22 PLAN.—

23 “(1) IN GENERAL.—A vessel to which this sec-
24 tion applies shall conduct all its ballast water man-

1 agement operations in accordance with a ballast
2 water management plan that—

3 “(A) meets the requirements prescribed by
4 the Secretary by regulation; and

5 “(B) is approved by the Secretary.

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

9 “(A) describes in detail safety procedures
10 for the vessel and crew associated with ballast
11 water management;

12 “(B) describes in detail the actions to be
13 taken to implement the ballast water manage-
14 ment requirements established under this sec-
15 tion;

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

18 “(D) designates the officer on board the
19 vessel in charge of ensuring that the plan is
20 properly implemented;

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

23 “(F) meets all other requirements pre-
24 scribed by the Secretary.

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

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

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

10 “(A) each operation involving ballast water
11 is fully recorded without delay, in accordance
12 with regulations promulgated by the Secretary;
13 and

14 “(B) each such operation is described in
15 detail, including the location and circumstances
16 of, and the reason for, the operation.

17 “(2) AVAILABILITY.—The ballast water record
18 book—

19 “(A) shall be kept readily available for ex-
20 amination by the Secretary at all reasonable
21 times; and

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

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

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

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

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

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

15 “(B) each completed page in the ballast
16 water record book be signed and dated by the
17 master of the vessel.

18 “(5) ALTERNATIVE MEANS OF RECORD-
19 KEEPING.—The Secretary may provide by regulation
20 for alternative methods of recordkeeping, including
21 electronic recordkeeping, to comply with the require-
22 ments of this subsection.

23 “(e) BALLAST WATER EXCHANGE REQUIRE-
24 MENTS.—

1 “(1) IN GENERAL.—Until a vessel conducts bal-
2 last water treatment in accordance with the require-
3 ments of subsection (f) of this section, the operator
4 of a vessel to which this section applies may not con-
5 duct the uptake or discharge of ballast water unless
6 the operator conducts ballast water exchange, in ac-
7 cordance with regulations prescribed by the Sec-
8 retary, in a manner that results in an efficiency of
9 at least 95 percent volumetric exchange of the bal-
10 last water for each ballast water tank.

11 “(2) SPECIAL RULE FOR VESSELS IN THE
12 GREAT LAKES.—

13 “(A) IN GENERAL.—Notwithstanding any
14 other provision of this subsection, under regula-
15 tions prescribed by the Secretary to prevent the
16 introduction and spread of aquatic nuisance
17 species into the Great Lakes through the ballast
18 water of vessels, all vessels equipped with bal-
19 last water tanks that enter a United States port
20 on the Great Lakes after operating on the wa-
21 ters beyond the exclusive economic zone shall—

22 “(i) carry out exchange of ballast
23 water on the waters beyond the exclusive
24 economic zone prior to entry into any port
25 within the Great Lakes; or

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

8 “(B) ADDITIONAL MATTERS COVERED BY
9 THE REGULATIONS.—The regulations shall—

10 “(i) not affect or supersede any re-
11 quirements or prohibitions pertaining to
12 the discharge of ballast water into waters
13 of the United States under the Federal
14 Water Pollution Control Act (33 U.S.C.
15 1251 et seq.);

16 “(ii) provide for sampling procedures
17 to monitor compliance with the require-
18 ments of the regulations;

19 “(iii) prohibit the operation of a vessel
20 in the Great Lakes if the master of the
21 vessel has not certified to the Secretary or
22 the Secretary’s designee by not later than
23 the departure of that vessel from the first
24 lock in the St. Lawrence Seaway that the

1 vessel has complied with the requirements
2 of the regulations;

3 “(iv) protect the safety of—

4 “(I) each vessel; and

5 “(II) the crew and passengers of
6 each vessel;

7 “(v) take into consideration different
8 operating conditions; and

9 “(vi) be based on the best scientific
10 information available.

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

15 “(D) EDUCATION AND TECHNICAL ASSIST-
16 ANCE PROGRAMS.—The Secretary may carry
17 out education and technical assistance pro-
18 grams and other measures to promote compli-
19 ance with the regulations issued under this
20 paragraph.

21 “(3) EXCHANGE AREAS.—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraphs (B), (C), and (D), the operator
24 of a vessel to which this section applies shall

1 conduct ballast water exchange in accordance
2 with regulations prescribed by the Secretary—

3 “(i) at least 200 nautical miles from
4 the nearest land; and

5 “(ii) in water at least 200 meters in
6 depth.

7 “(B) MINIMUM DISTANCE AND DEPTH.—

8 “(i) IN GENERAL.—Except as pro-
9 vided in subparagraph (C), if the operator
10 of a vessel is unable to conduct ballast
11 water exchange in accordance with sub-
12 paragraph (A), the ballast water exchange
13 shall be conducted in water that is—

14 “(I) as far as possible from land;

15 “(II) at least 50 nautical miles
16 from land; and

17 “(III) in water of at least 200
18 meters in depth.

19 “(ii) LIMITATION.—The operator of a
20 vessel may not conduct ballast water ex-
21 change in accordance with clause (i) in any
22 area with respect to which the Secretary
23 has determined, after consultation with the
24 Administrators of the Environmental Pro-
25 tection Agency and the National Oceanic

1 and Atmospheric Administration, that bal-
2 last water exchange in the area will have
3 an adverse impact, notwithstanding the
4 fact that the area meets the distance and
5 depth criteria of clause (i).

6 “(C) EXCHANGE IN DESIGNATED AREA.—

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

20 “(ii) CHARTING.—The Administrator
21 of the National Oceanic and Atmospheric
22 Administration, in consultation with the
23 Secretary, shall designate such areas on
24 nautical charts.

1 “(iii) LIMITATION.—The Adminis-
2 trator may not designate an area under
3 clause (i) if a ballast water exchange in
4 that area could have an adverse impact, as
5 determined by the Secretary in consulta-
6 tion with the Administrator of the Envi-
7 ronmental Protection Agency.

8 “(D) SAFETY OR STABILITY EXCEPTION.—

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

19 “(ii) NOTIFICATION REQUIRED.—
20 Whenever the master of a vessel conducts
21 a ballast water discharge or uptake under
22 the exception described in clause (i), the
23 master of the vessel shall notify the Sec-
24 retary as soon as practicable thereafter but

1 no later than 24 hours after the ballast
2 water discharge or uptake commenced.

3 “(iii) LIMITATION ON VOLUME.—The
4 volume of any ballast water taken up or
5 discharged under the exception described
6 in clause (i) may not exceed the volume
7 necessary to ensure the safe operation of
8 the vessel.

9 “(iv) REVIEW OF CIRCUMSTANCES.—
10 If the master of a vessel conducts a ballast
11 water discharge or uptake under the excep-
12 tion described in clause (i) on more than 2
13 out of 6 sequential voyages, the Secretary
14 shall review the circumstances to determine
15 whether those ballast water discharges or
16 uptakes met the requirements of this sub-
17 paragraph. The review under this clause
18 shall be in addition to any other enforce-
19 ment activity by the Secretary.

20 “(E) INABILITY TO COMPLY WITH EX-
21 CHANGE AREA REQUIREMENTS.—

22 “(i) DEVIATION OR DELAY OF VOY-
23 AGE.—In determining the ability of the op-
24 erator of a vessel to conduct ballast water
25 exchange in accordance with the require-

1 ments of subparagraph (A) or (B), a vessel
2 is not required to deviate from its intended
3 voyage or unduly delay its voyage to com-
4 ply with those requirements.

5 “(ii) PARTIAL COMPLIANCE.—An op-
6 erator of a vessel that is unable to comply
7 fully with the requirements of subpara-
8 graph (A) or (B), shall conduct ballast
9 water exchange to the maximum extent
10 feasible in compliance with those subpara-
11 graphs.

12 “(F) SPECIAL RULE FOR THE GREAT
13 LAKES.—This paragraph does not apply to ves-
14 sels subject to the regulations under paragraph
15 (2).

16 “(f) BALLAST WATER TREATMENT REQUIRE-
17 MENTS.—

18 “(1) IN GENERAL.—Subject to the implementa-
19 tion schedule in paragraph (3), before discharging
20 ballast water in waters subject to the jurisdiction of
21 the United States a vessel to which this section ap-
22 plies shall conduct ballast water treatment so that
23 the ballast water discharged will contain—

1 “(A) less than 0.1 living organisms per
2 cubic meter that are 50 or more micrometers in
3 minimum dimension;

4 “(B) less than 0.1 living organisms per
5 milliliter that are less than 50 micrometers in
6 minimum dimension and more than 10 microm-
7 eters in minimum dimension;

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

10 “(i) 1 colony-forming unit of
11 Toxicogenic vibrio cholera (O1 and O139)
12 per 100 milliliters, or less than 1 colony-
13 forming unit of that microbe per gram of
14 wet weight of zoological samples;

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

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

19 “(D) concentrations of such indicator mi-
20 crobes as may be specified in regulations pro-
21 mulgated by the Secretary that are less than
22 the amount specified in those regulations.

23 “(2) RECEPTION FACILITY EXCEPTION.—Para-
24 graph (1) does not apply to a vessel that discharges
25 ballast water into a reception facility that meets

1 standards prescribed by the Secretary, in consulta-
2 tion with the Administrator of the Environmental
3 Protection Agency, for the reception of ballast water
4 that provide for the reception of ballast water and
5 its disposal or treatment in a way that does not im-
6 pair or damage the environment, human health,
7 property, or resources. The Secretary may not pre-
8 scribe such standards that are less stringent than
9 any otherwise applicable Federal, State, or local law
10 requirements.

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

14 “(A) FIRST PHASE.—Beginning January
15 1, 2009, for vessels constructed on or after that
16 date with a ballast water capacity of less than
17 5,000 cubic meters.

18 “(B) SECOND PHASE.—Beginning January
19 1, 2012, for vessels constructed on or after that
20 date with a ballast water capacity of 5,000
21 cubic meters or more.

22 “(C) THIRD PHASE.—Beginning January
23 1, 2014, for vessels constructed before January
24 1, 2009, with a ballast water capacity of 1,500

1 cubic meters or more but not more than 5,000
2 cubic meters.

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

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

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

13 “(4) REVIEW OF STANDARDS.—

14 “(A) IN GENERAL.—In December, 2012,
15 and in every third year thereafter, the Secretary
16 shall review the treatment standards established
17 in paragraph (1) of this subsection to deter-
18 mine, in consultation with the Administrator of
19 the National Oceanic and Atmospheric Admin-
20 istration and the Administrator of the Environ-
21 mental Protection Agency, if the standards
22 should be revised to reduce the amount of orga-
23 nisms or microbes allowed to be discharged
24 using the best available technology economically

1 available. The Secretary shall revise such stand-
2 ards as necessary by regulation.

3 “(B) APPLICATION OF ADJUSTED STAND-
4 ARDS.—In the regulations, the Secretary shall
5 provide for the prospective application of the
6 adjusted standards prescribed under this para-
7 graph to vessels constructed after the date on
8 which the adjusted standards apply and for an
9 orderly phase-in of the adjusted standards to
10 existing vessels.

11 “(5) DELAY OF APPLICATION FOR VESSEL PAR-
12 TICIPATING IN PROMISING TECHNOLOGY EVALUA-
13 TIONS.—

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

1 “(B) VESSEL DIVERSITY.—The Sec-
2 retary—

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

6 “(ii) may not grant a delay under this
7 paragraph to more than 1 percent of the
8 vessels to which subparagraph (A), (B),
9 (C), or (D) of paragraph (3) applies.

10 “(C) TERMINATION OF POSTPONEMENT.—
11 The Secretary may terminate the 5-year post-
12 ponement period if participation of the vessel in
13 the program is terminated without the consent
14 of the Secretary.

15 “(6) FEASIBILITY REVIEW.—

16 “(A) IN GENERAL.—Not less than 2 years
17 before the date on which paragraph (1) applies
18 to vessels under each subparagraph of para-
19 graph (3), the Secretary shall complete a review
20 to determine whether appropriate technologies
21 are available to achieve the standards set forth
22 in paragraph (1) for the vessels to which they
23 apply under the schedule set forth in paragraph
24 (3).

1 “(B) DELAY IN SCHEDULED APPLICA-
2 TION.—If the Secretary determines, on the
3 basis of the review conducted under subpara-
4 graph (A), that compliance with the standards
5 set forth in paragraph (1) in accordance with
6 the schedule set forth in any subparagraph of
7 paragraph (3) is not feasible, the Secretary
8 shall—

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

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

15 “(7) TREATMENT SYSTEM APPROVAL RE-
16 QUIRED.—The operator of a vessel may not use a
17 ballast water treatment system to comply with the
18 requirements of this subsection unless the system is
19 approved by the Secretary. The Secretary shall pro-
20 mulgate regulations establishing a process for such
21 approval.

22 “(g) WARNINGS CONCERNING BALLAST WATER UP-
23 TAKE.—

24 “(1) IN GENERAL.—The Secretary shall notify
25 mariners of any area in waters subject to the jurisdic-

1 diction of the United States in which vessels should
2 not uptake ballast water due to known conditions.

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

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

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

7 “(h) SEDIMENT MANAGEMENT.—

8 “(1) IN GENERAL.—The operator of a vessel to
9 which this section applies may not remove or dispose
10 of sediment from spaces designed to carry ballast
11 water except in accordance with this subsection and
12 the ballast water management plan required under
13 subsection (c).

14 “(2) DESIGN REQUIREMENTS.—

15 “(A) NEW VESSELS.—No person may re-
16 move and dispose of such sediment from a ves-
17 sel to which this section applies in waters sub-
18 ject to the jurisdiction of the United States that
19 is constructed on or after January 1, 2009, un-
20 less the vessel is designed and constructed in a
21 manner that—

22 “(i) minimizes the uptake and entrap-
23 ment of sediment;

24 “(ii) facilitates removal of sediment;
25 and

1 “(iii) provides for safe access for sedi-
2 ment removal and sampling.

3 “(B) EXISTING VESSELS.—The operator of
4 a vessel to which this section applies that was
5 constructed before January 1, 2009, may not
6 remove and dispose of such sediment in waters
7 subject to the jurisdiction of the United States
8 unless—

9 “(i) the vessel has been modified, to
10 the extent practicable and in accordance
11 with regulations promulgated by the Sec-
12 retary, to achieve the objectives described
13 in clauses (i), (ii), and (iii) of subpara-
14 graph (A); or

15 “(ii) the removal and disposal of the
16 sediment is conducted in such a manner as
17 to achieve those objectives to the greatest
18 extent practicable and in accordance with
19 those regulations.

20 “(C) REGULATIONS.—The Secretary shall
21 promulgate regulations establishing design and
22 construction standards to achieve the objectives
23 of subparagraph (A) and providing guidance for
24 modifications and practices under subparagraph
25 (B). The Secretary shall incorporate the stand-

1 ards and guidance in the regulations governing
2 the ballast water management plan.

3 “(3) SEDIMENT RECEPTION FACILITIES.—

4 “(A) STANDARDS.—The Administrator of
5 the Environmental Protection Agency in con-
6 sultation with the Secretary, shall promulgate
7 regulations governing facilities for the reception
8 of vessel sediment from spaces designed to
9 carry ballast water that provide for the disposal
10 of such sediment in a way that does not impair
11 or damage the environment, human health, or
12 property or resources of the disposal area. The
13 Administrator may not prescribe standards
14 under this subparagraph that are less stringent
15 than any otherwise applicable Federal, State, or
16 local law requirements.

17 “(B) DESIGNATION.—The Secretary shall
18 designate facilities for the reception of vessel
19 sediment that meet the requirements of the reg-
20 ulations promulgated under subparagraph (A)
21 at ports and terminals where ballast tanks are
22 cleaned or repaired.

23 “(i) EXAMINATIONS AND CERTIFICATIONS.—

24 “(1) INITIAL EXAMINATION.—

1 “(A) IN GENERAL.—The Secretary shall
2 examine vessels to which this section applies to
3 determine whether—

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

6 “(ii) the equipment used for ballast
7 water and sediment management in ac-
8 cordance with the requirements of this sec-
9 tion and the regulations promulgated here-
10 under is installed and functioning properly.

11 “(B) NEW VESSELS.—For vessels con-
12 structed on or after January 1, 2009, the Sec-
13 retary shall conduct the examination required
14 by subparagraph (A) before the vessel is placed
15 in service.

16 “(C) EXISTING VESSELS.—For vessels con-
17 structed before January 1, 2009, the Secretary
18 shall—

19 “(i) conduct the examination required
20 by subparagraph (A) before the date on
21 which subsection (f)(1) applies to the ves-
22 sel according to the schedule in subsection
23 (f)(3); and

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

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

5 “(3) INSPECTION AUTHORITY.—In order to
6 carry out the provisions of this section, the Sec-
7 retary may take ballast water samples at any time
8 on any vessel to which this section applies to ensure
9 its compliance with this Act.

10 “(4) REQUIRED CERTIFICATE.—

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

22 “(B) FOREIGN CERTIFICATES.—The Sec-
23 retary may treat a certificate issued by a for-
24 eign government as a certificate issued under
25 subparagraph (A) if the Secretary determines

1 that the standards used by the issuing govern-
2 ment are equivalent to or more stringent than
3 the standards used by the Secretary under sub-
4 paragraph (A).

5 “(5) NOTIFICATION OF VIOLATIONS.—If the
6 Secretary finds, on the basis of an examination
7 under paragraph (1) or (2), sampling under para-
8 graph (3), or any other information, that a vessel is
9 being operated in violation of the requirements of
10 this section and the regulations promulgated here-
11 under, the Secretary shall—

12 “(A) notify—

13 “(i) the master of the vessel; and

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

16 “(B) take such other action as may be ap-
17 propriate.

18 “(j) DETENTION OF VESSELS.—

19 “(1) IN GENERAL.—The Secretary, by notice to
20 the owner, charterer, managing operator, agent,
21 master, or other individual in charge of a vessel,
22 may detain that vessel if the Secretary has reason-
23 able cause to believe that—

24 “(A) the vessel is a vessel to which this
25 section applies;

1 “(B) the vessel does not comply with the
2 requirements of this section or of the regula-
3 tions issued hereunder or is being operated in
4 violation of such requirements; and

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

7 “(2) CLEARANCE.—

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

13 “(B) WITHDRAWAL.—If the Secretary
14 finds that a vessel detained under paragraph
15 (1) has received a clearance under section 4197
16 of the Revised Statutes (46 U.S.C. App. 91) be-
17 fore it was detained under paragraph (1), the
18 Secretary shall request the Secretary of the
19 Treasury to withdraw the clearance. Upon re-
20 quest of the Secretary, the Secretary of the
21 Treasury shall withhold or revoke the clearance.

22 “(k) SANCTIONS.—

23 “(1) CIVIL PENALTIES.—Any person who vio-
24 lates a regulation promulgated under this section
25 shall be liable for a civil penalty in an amount not

1 to exceed \$25,000. Each day of a continuing viola-
2 tion constitutes a separate violation. A vessel oper-
3 ated in violation of the regulations is liable in rem
4 for any civil penalty assessed under this subsection
5 for that violation.

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

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

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

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

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

1 “(l) CONSULTATION WITH CANADA, MEXICO, AND
2 OTHER FOREIGN GOVERNMENTS.—In developing the
3 guidelines issued and regulations promulgated under this
4 section, the Secretary is encouraged to consult with the
5 Government of Canada, the Government of Mexico, and
6 any other government of a foreign country that the Sec-
7 retary, in consultation with the Task Force, determines
8 to be necessary to develop and implement an effective
9 international program for preventing the unintentional in-
10 troduction and spread of nonindigenous species.

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

1 “(n) NON-DISCRIMINATION.—The Secretary shall en-
2 sure that vessels registered outside of the United States
3 do not receive more favorable treatment than vessels reg-
4 istered in the United States when the Secretary performs
5 studies, reviews compliance, determines effectiveness, es-
6 tablishes requirements, or performs any other responsibil-
7 ities under this Act.

8 “(o) SUPPORT FOR FEDERAL BALLAST WATER DEM-
9 ONSTRATION PROJECT.—In addition to amounts other-
10 wise available to the Maritime Administration, the Na-
11 tional Oceanographic and Atmospheric Administration,
12 and the United States Fish and Wildlife Service for the
13 Federal Ballast Water Demonstration Project, the Sec-
14 retary shall provide support for the conduct and expansion
15 of the project, including grants for research and develop-
16 ment of innovative technologies for the management,
17 treatment, and disposal of ballast water and sediment, for
18 ballast water exchange, and for other vessel vectors of
19 invasive aquatic species such as hull fouling. There are
20 authorized to be appropriated to the Secretary
21 \$25,000,000 for each fiscal year to carry out this sub-
22 section.

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

1 “(q) PREEMPTION.—Notwithstanding any other pro-
2 vision of law, the provisions of subsections (e) and (f)
3 (other than subsection (f)(2)) supersede any provision of
4 State or local law determined by the Secretary to be incon-
5 sistent with the requirements of that subsection or to con-
6 flict with the requirements of that subsection.

7 “(r) REGULATIONS.—The Secretary may issue such
8 regulations as may be necessary to carry out this section
9 and the terms defined in section 1003 that are used in
10 this section.”.

11 (b) DEFINITIONS.—Section 1003 of the Nonindige-
12 nous Aquatic Nuisance Prevention and Control Act of
13 1990 (16 U.S.C. 4702) is amended—

14 (1) by redesignating—

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

17 (B) paragraphs (4), (5), (6), (7), and (8)
18 as paragraphs (8), (9), (10), (11), and (12), re-
19 spectively;

20 (C) paragraphs (9) and (10) as paragraphs
21 (14) and (15) respectively;

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

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

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

2 (G) paragraph (17) as paragraph (23) and

3 inserting it after paragraph (22), as redesignated;

4

5 (2) by inserting before paragraph (2), as redesignated,

6 the following:

7 “(1) ‘adverse impact’ means the direct or indirect

8 result or consequence of an event or process

9 that—

10 “(A) creates a hazard to the environment,

11 human health, property, or a natural resource;

12 “(B) impairs biological diversity; or

13 “(C) interferes with the legitimate use of

14 waters subject to the jurisdiction of the United

15 States;”;

16 (3) by striking paragraph (4), as redesignated,

17 and inserting the following:

18 “(4) ‘ballast water’—

19 “(A) means water taken on board a vessel

20 to control trim, list, draught, stability, or

21 stresses of the vessel, including matter suspended

22 in such water; but

23 “(B) does not include potable or technical

24 water that does not contain harmful aquatic organisms

25 or pathenogens that is taken on board

1 a vessel and used for a purpose described in
2 subparagraph (A) if such potable or technical
3 water is discharged in compliance with section
4 312 of the Clean Water Act (33 U.S.C.
5 1322);”;

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

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

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

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

22 “(A) the keel is laid;

23 “(B) construction identifiable with the spe-
24 cific vessel begins;

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

5 “(D) the vessel undergoes a major conver-
6 sion;”;

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

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

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

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

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

24 “(B) changes the vessel class;

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

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

6 “(i) component replacement-in-kind;
7 or

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

10 (7) by inserting after paragraph (18), as reded-
11 ignated, the following:

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

14 (8) by inserting after paragraph (23), as reded-
15 ignated, the following:

16 “(24) ‘United States port’ means a port, river,
17 harbor, or offshore terminal under the jurisdiction of
18 the United States, including ports located in Puerto
19 Rico, Guam, the Northern Marianas, and the United
20 States Virgin Islands;

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

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

1 “(B) any vessel owned or operated by the
2 Department of Homeland Security that is des-
3 ignated by the Secretary of the department in
4 which the Coast Guard is operating as a vessel
5 equivalent to a vessel described in subparagraph
6 (A);” and

7 (9) by inserting after paragraph (26), as reded-
8 ignated, the following:

9 “(27) ‘waters subject to the jurisdiction of the
10 United States’ means navigable waters and the terri-
11 torial sea of the United States, the exclusive eco-
12 nomic zone, and the Great Lakes.”.

13 (c) GREAT LAKES REGULATIONS.—Until vessels de-
14 scribed in section 1101(e)(2) of the Nonindigenous Aquat-
15 ic Nuisance Prevention and Control Act of 1990 (16
16 U.S.C. 4711(e)(2)), as amended by this Act, are required
17 to conduct ballast water treatment in accordance with the
18 requirements of section 1101(f) of that Act (16 U.S.C.
19 1101(f)), as amended by this Act, the regulations promul-
20 gated by the Secretary of Transportation under section
21 1101 of the Nonindigenous Aquatic Nuisance Prevention
22 and Control Act of 1990 (16 U.S.C. 4711), as such regu-
23 lations were in effect on the day before the date of enact-
24 ment of this Act, shall remain in full force and effect for,
25 and shall continue to apply to, such vessels.

1 **SEC. 4. COAST GUARD REPORT ON OTHER VESSEL-RE-**
2 **LATED VECTORS OF INVASIVE SPECIES.**

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

13 (b) BEST PRACTICES.—As soon as practicable, the
14 Coast Guard shall develop best practices standards and
15 procedures designed to reduce the introduction of invasive
16 species into and within the United States from vessels and
17 establish a timeframe for implementation of those stand-
18 ards and procedures by vessels, in addition to the manda-
19 tory requirements set forth in section 1101 for ballast
20 water. Such standards and procedures should include des-
21 ignation of geographical locations for uptake and/or dis-
22 charge of untreated ballast water, as well as standards and
23 procedures for other vessel vectors of invasive aquatic spe-
24 cies. The Commandant shall transmit a report to the Com-
25 mittees describing the standards and procedures developed
26 and the implementation timeframe, together with any rec-

1 ommendations, including legislative recommendations if
2 appropriate, the Commandant deems appropriate. The
3 Secretary of the department in which the Coast Guard is
4 operating may promulgate regulations to incorporate and
5 enforce standards and procedures developed under this
6 subsection.

○