

110TH CONGRESS  
1ST SESSION

# S. 1578

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

JUNE 7, 2007

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

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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 2007”.

6 **SEC. 2. FINDINGS.**

7 Section 1002(a) of the Nonindigenous Aquatic Nui-  
8 sance Prevention and Control Act of 1990 (16 U.S.C.  
9 4701(a)) is amended—

1           (1) by redesignating paragraphs (14) and (15)  
2 as paragraphs (15) and (16);

3           (2) by inserting after paragraph (13) the fol-  
4 lowing:

5           “(14) aquatic nuisance species may be intro-  
6 duced by other vessel conduits, including the hulls of  
7 ships;”;

8           (3) by striking “inland lakes and rivers by rec-  
9 reational boaters, commercial barge traffic, and a  
10 variety of other pathways; and” in paragraph (15),  
11 as redesignated, and inserting “other areas of the  
12 United States, including coastal areas, inland lakes,  
13 and rivers by recreational boaters, commercial traf-  
14 fic, and a variety of other pathways;”;

15           (4) by inserting “nongovernmental entities, in-  
16 stitutions of higher education, and the private sec-  
17 tor,” after “governments,” in paragraph (16), as re-  
18 designated;

19           (5) by striking “technologies.” in paragraph  
20 (16), as redesignated, and inserting “technologies;”;  
21 and

22           (6) adding at the end the following:

23           “(17) in 2004, the International Maritime Or-  
24 ganization agreed to a Convention, which the United  
25 States played an active role in negotiating, to pre-

1 vent, minimize, and ultimately eliminate the transfer  
2 of aquatic nuisance species through the control and  
3 management of ballast water and sediments;

4 “(18) the International Maritime Organization  
5 agreement specifically recognizes that countries can  
6 take more stringent measures than those of the Con-  
7 vention with respect to the control and management  
8 of ships’ ballast water and sediment; and

9 “(19) due to the interstate nature of maritime  
10 transportation and the ways by which aquatic nui-  
11 sance species may be transferred by vessels, a com-  
12 prehensive and uniform national approach for ad-  
13 dressing vessel-borne aquatic nuisance species is  
14 needed to address this issue effectively.”

15 **SEC. 3. MANAGEMENT OF VESSEL-BORNE AQUATIC NUI-**  
16 **SANCE SPECIES.**

17 (a) IN GENERAL.—Section 1101 of the Nonindige-  
18 nous Aquatic Nuisance Prevention and Control Act of  
19 1990 (16 U.S.C. 4711) is amended to read as follows:

20 **“SEC. 1101. MANAGEMENT OF VESSEL-BORNE AQUATIC NUI-**  
21 **SANCE SPECIES.**

22 **“(a) STATEMENT OF PURPOSE; VESSELS TO WHICH**  
23 **THIS SECTION APPLIES.—**

24 **“(1) PURPOSES.—**The purposes of this section  
25 are—

1           “(A) to provide an effective, comprehen-  
2           sive, and uniform national approach for ad-  
3           dressing the introduction and spread of aquatic  
4           nuisance species from ballast water and other  
5           ship-borne vectors;

6           “(B) to require, as part of that approach,  
7           mandatory treatment technology, with the ulti-  
8           mate goal of achieving zero discharge of aquatic  
9           nuisance species;

10          “(C) to create incentives for the develop-  
11          ment of ballast water treatment technologies;

12          “(D) to implement the International Con-  
13          vention for the Control and Management of  
14          Ships’ Ballast Water and Sediments, adopted  
15          by the International Maritime Organization in  
16          2004; and

17          “(E) to establish a management approach  
18          for other ship-borne vectors of aquatic nuisance  
19          species.

20          “(2) IN GENERAL.—Except as provided in para-  
21          graphs (3), (4), (5), and (6) this section applies to  
22          a vessel that is designed, constructed, or adapted to  
23          carry ballast water; and

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

4           “(B) is a foreign vessel that—

5               “(i) is en route to a United States  
6 port or place; or

7               “(ii) has departed from a United  
8 States port or place and is within waters  
9 subject to the jurisdiction of the United  
10 States.

11           “(3) PERMANENT BALLAST WATER VESSELS.—

12 Except as provided in paragraph (6), this section  
13 does not apply to a vessel that carries all of its per-  
14 manent ballast water in sealed tanks and is not sub-  
15 ject to discharge.

16           “(4) ARMED FORCES VESSELS.—

17               “(A) EXEMPTION.—Except as provided in  
18 subparagraph (B) and paragraph (6), this sec-  
19 tion does not apply to a vessel of the Armed  
20 Forces.

21               “(B) BALLAST WATER MANAGEMENT PRO-  
22 GRAM.—The Secretary and the Secretary of De-  
23 fense, after consultation with each other and  
24 with the Under Secretary of Commerce for  
25 Oceans and Atmosphere, the Administrator of

1 the Environmental Protection Agency, and  
2 other appropriate Federal agencies as deter-  
3 mined by the Secretary, shall implement a bal-  
4 last water management program, including the  
5 promulgation of standards for ballast water ex-  
6 change and treatment and for sediment man-  
7 agement, for vessels of the Armed Forces under  
8 their respective jurisdictions designed, con-  
9 structed, or adapted to carry ballast water that  
10 is—

11 “(i) consistent with the requirements  
12 of this section, including the deadlines; and

13 “(ii) at least as stringent as the re-  
14 quirements promulgated for such vessels  
15 under section 312 of the Clean Water Act  
16 (33 U.S.C. 1322).

17 “(5) SPECIAL RULE FOR SMALL VESSELS.—In  
18 applying this section to vessels less than 50 meters  
19 in length that have a maximum ballast water capaci-  
20 ty of 8 cubic meters, the Secretary may promulgate  
21 alternative measures for managing ballast water in  
22 a manner that is consistent with the purposes of this  
23 Act.

24 “(6) OTHER SOURCES OF VESSEL-BORNE  
25 AQUATIC NUISANCE SPECIES.—Measures undertaken

1 by the Secretary under subsection (s) shall apply to  
2 all vessels (as defined in section 3 of title 1, United  
3 States Code).

4 “(b) UPTAKE AND DISCHARGE OF BALLAST WATER  
5 OR SEDIMENT.—

6 “(1) PROHIBITION.—The operator of a vessel to  
7 which this section applies may not conduct the up-  
8 take or discharge of ballast water or sediment except  
9 as provided in this section.

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

13 “(A) The uptake or discharge is solely for  
14 the purpose of—

15 “(i) ensuring the safety of the vessel  
16 in an emergency situation; or

17 “(ii) saving a life at sea.

18 “(B) The uptake or discharge is accidental  
19 and the result of damage to the vessel or its  
20 equipment and—

21 “(i) all reasonable precautions to pre-  
22 vent or minimize ballast water and sedi-  
23 ment discharge have been taken before and  
24 after the damage occurs, the discovery of  
25 the damage, and the discharge; and

1                   “(ii) the owner or officer in charge of  
2                   the vessel did not willfully or recklessly  
3                   cause the damage.

4                   “(C) The uptake or discharge is solely for  
5                   the purpose of avoiding or minimizing the dis-  
6                   charge from the vessel of pollution that would  
7                   otherwise violate applicable Federal or State  
8                   law.

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

16                  “(c) VESSEL BALLAST WATER MANAGEMENT  
17                  PLAN.—

18                  “(1) IN GENERAL.—The operator of a vessel to  
19                  which this section applies shall conduct all ballast  
20                  water management operations of that vessel in ac-  
21                  cordance with a ballast water management plan de-  
22                  signed to minimize the discharge of aquatic nuisance  
23                  species 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.—

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

6 “(i) describes in detail the actions to  
7 be taken to implement the ballast water  
8 management requirements established  
9 under this section;

10 “(ii) describes in detail the procedures  
11 to be used for disposal of sediment at sea  
12 and on shore in accordance with the re-  
13 quirements of this section;

14 “(iii) describes in detail safety proce-  
15 dures for the vessel and crew associated  
16 with ballast water management;

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

20 “(v) contains the reporting require-  
21 ments for vessels established under this  
22 section and a copy of each form necessary  
23 to meet those requirements;

24 “(vi) incorporates regulatory require-  
25 ments, guidance, and best practices devel-

1           oped under subsection (s) for other vessel  
2           pathways by which aquatic nuisance spe-  
3           cies are transported; and

4                   “(vii) meets all other requirements  
5           prescribed by the Secretary.

6                   “(B) FOREIGN VESSELS.—The Secretary  
7           may approve a ballast water management plan  
8           for a foreign vessel (as defined in section  
9           2101(12) of title 46, United States Code) on  
10          the basis of a certificate of compliance with the  
11          criteria described in subparagraph (A) issued  
12          by the vessel’s country of registration in accord-  
13          ance with regulations promulgated by the Sec-  
14          retary.

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

18                           “(A) maintain a copy of the vessel’s ballast  
19                           water management plan on board at all times;  
20                           and

21                           “(B) keep the plan readily available for ex-  
22                           amination by the Secretary at all reasonable  
23                           times.

24                   “(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 in English on board the  
4 vessel in which—

5           “(A) each operation involving ballast water  
6 or sediment discharge is fully recorded without  
7 delay, in accordance with regulations promul-  
8 gated by the Secretary;

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

12           “(C) the exact nature and circumstances of  
13 any situation under which any operation was  
14 conducted under an exception set forth in sub-  
15 section (b)(2) or (e)(3) is described.

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

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

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

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

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

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

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

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

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

15          “(C) the owner or operator of the vessel  
16          transmit such information to the Secretary re-  
17          garding the ballast operations of the vessel as  
18          the Secretary may require.

19          “(5) ALTERNATIVE MEANS OF RECORD-  
20          KEEPING.—The Secretary shall provide by regula-  
21          tion for alternative methods of recordkeeping, in-  
22          cluding electronic recordkeeping, to comply with the  
23          requirements of this subsection. Any electronic rec-  
24          ordkeeping method authorized by the Secretary shall  
25          support the inspection and enforcement provisions of

1 this Act and shall comply with applicable standards  
2 of the National Institute of Standards and Tech-  
3 nology and the Office of Management and Budget  
4 governing reliability, integrity, identity authentica-  
5 tion, and nonrepudiation of stored electronic data.

6 “(e) BALLAST WATER EXCHANGE REQUIRE-  
7 MENTS.—

8 “(1) IN GENERAL.—

9 “(A) REQUIREMENT.—Until a vessel is re-  
10 quired to conduct ballast water treatment in ac-  
11 cordance with subsection (f) of this section, the  
12 operator of a vessel to which this section applies  
13 may not discharge ballast water in waters sub-  
14 ject to the jurisdiction of the United States ex-  
15 cept after—

16 “(i) conducting ballast water exchange  
17 as required by this subsection, in accord-  
18 ance with regulations prescribed by the  
19 Secretary, in a manner that results in an  
20 efficiency of at least 95 percent volumetric  
21 exchange of the ballast water for each bal-  
22 last water tank;

23 “(ii) using ballast water treatment  
24 technology that meets the performance  
25 standards of subsection (f); or

1           “(iii) using environmentally-sound al-  
2           ternative ballast water treatment tech-  
3           nology, if the Secretary determines that  
4           such treatment technology is at least as ef-  
5           fective as the ballast water exchange re-  
6           quired by clause (i) in preventing and con-  
7           trolling the introduction of aquatic nui-  
8           sance species.

9           “(B) TECHNOLOGY EFFICACY.—For pur-  
10          poses of this paragraph, a ballast water treat-  
11          ment technology shall be considered to be at  
12          least as effective as the ballast water exchange  
13          required by clause (i) in preventing and control-  
14          ling the introduction of aquatic nuisance species  
15          if preliminary experiments prior to installation  
16          of the technology aboard the vessel demonstrate  
17          that the technology removed at least 98 percent  
18          of organisms larger than 50 microns.

19          “(2) GUIDANCE; 5-YEAR USAGE.—

20                 “(A) GUIDANCE.—Within 1 year after the  
21          date of enactment of the Ballast Water Man-  
22          agement Act of 2007, after public notice and  
23          opportunity for comment, the Secretary shall  
24          develop guidance on technology that may be  
25          used under paragraph (1)(A)(iii).

1           “(B) 5-YEAR USAGE.—The Secretary shall  
2 allow a vessel using environmentally-sound al-  
3 ternative ballast water treatment technology  
4 under paragraph (1)(A)(iii) to continue to use  
5 that technology for 5 years after the date on  
6 which the environmentally-sound alternative  
7 ballast water treatment technology was first  
8 placed in service on the vessel, or the date on  
9 which treatment requirements under subsection  
10 (f) become applicable, whichever is later.

11           “(3) EXCHANGE AREAS.—

12           “(A) VESSELS OUTSIDE THE UNITED  
13 STATES EEZ.—The operator of a vessel en route  
14 to a United States port or place from a port or  
15 place outside the United States exclusive eco-  
16 nomic zone shall conduct ballast water ex-  
17 change—

18                   “(i) before arriving at a United States  
19 port or place;

20                   “(ii) at least 200 nautical miles from  
21 the nearest point of land; and

22                   “(iii) in water at least 200 meters in  
23 depth.

24           “(B) COASTAL VOYAGES.—In lieu of using  
25 an exchange zone described in subparagraph

1 (A)(ii) or (iii), the operator of a vessel origi-  
2 nating from a port or place within waters sub-  
3 ject to the jurisdiction of the United States, or  
4 from a port within 200 nautical miles of the  
5 United States in Canada, Mexico, or other ports  
6 designated by the Secretary for purposes of this  
7 section, and which does not voyage into waters  
8 described in subparagraph (A)(ii) or (iii), shall  
9 conduct ballast water exchange—

10 “(i) at least 50 nautical miles from  
11 the nearest point of land; and

12 “(ii) in water at least 200 meters in  
13 depth.

14 “(4) SAFETY OR STABILITY EXCEPTION.—

15 “(A) SECRETARIAL DETERMINATION.—

16 Paragraph (3) does not apply to the discharge  
17 of ballast water if the Secretary determines that  
18 compliance with that paragraph would threaten  
19 the safety or stability of the vessel, its crew, or  
20 its passengers because of the design or oper-  
21 ating characteristics of the vessel.

22 “(B) MASTER OF THE VESSEL DETER-  
23 MINATION.—Paragraph (3) does not apply to  
24 the discharge of ballast water if the master of  
25 a vessel determines that compliance with that

1 paragraph would threaten the safety or stability  
2 of the vessel, its crew, or its passengers because  
3 of adverse weather, equipment failure, or any  
4 other relevant condition.

5 “(C) NOTIFICATION REQUIRED.—When-  
6 ever the master of a vessel is unable to comply  
7 with the requirements of paragraph (3) because  
8 of a determination made under subparagraph  
9 (B), the master of the vessel shall—

10 “(i) notify the Secretary as soon as  
11 practicable thereafter but no later than 24  
12 hours after making that determination and  
13 shall ensure that the determination, the  
14 reasons for the determination, and the no-  
15 tice are recorded in the vessel’s ballast  
16 water record book; and

17 “(ii) undertake ballast water ex-  
18 change—

19 “(I) in an alternative area that  
20 may be designated by the Secretary,  
21 after consultation with the Undersec-  
22 retary, and other appropriate Federal  
23 agencies as determined by the Sec-  
24 retary, and representatives of States

1 the waters of which may be affected  
2 by the discharge of ballast water; or

3 “(II) undertake discharge of bal-  
4 last water in accordance with para-  
5 graph (6) if safety or stability con-  
6 cerns prevent undertaking ballast  
7 water exchange in the alternative  
8 area.

9 “(D) REVIEW OF CIRCUMSTANCES.—If the  
10 master of a vessel conducts a ballast water dis-  
11 charge under the provisions of this paragraph,  
12 the Secretary shall review the circumstances to  
13 determine whether the discharge met the re-  
14 quirements of this paragraph. The review under  
15 this clause shall be in addition to any other en-  
16 forcement authority of the Secretary.

17 “(5) DISCHARGE UNDER WAIVER.—

18 “(A) SUBSTANTIAL BUSINESS HARDSHIP  
19 WAIVER.—If, because of the short length of a  
20 voyage, the operator of a vessel is unable to dis-  
21 charge ballast water in accordance with the re-  
22 quirements of paragraph (3)(B) without sub-  
23 stantial business hardship, as determined under  
24 regulations prescribed by the Secretary, the op-  
25 erator shall request a waiver from the Secretary

1 and discharge the ballast water in accordance  
2 with paragraph (6). A request for a waiver  
3 under this subparagraph shall be submitted to  
4 the Secretary at such time and in such form  
5 and manner as the Secretary may require.

6 “(B) SUBSTANTIAL BUSINESS HARD-  
7 SHIP.—For purposes of subparagraph (A), the  
8 factors taken into account in determining sub-  
9 stantial business hardship shall include wheth-  
10 er—

11 “(i) compliance with the requirements  
12 of paragraph (3)(B) would require a suffi-  
13 ciently great change in routing or sched-  
14 uling of service as to compromise the eco-  
15 nomic or commercial viability of the trade  
16 or business in which the vessel is operated;  
17 or

18 “(ii) it is reasonable to expect that the  
19 trade or business or service provided will  
20 be continued only if a waiver is granted  
21 under subparagraph (A).

22 “(6) PERMISSABLE DISCHARGE.—

23 “(A) IN GENERAL.—The discharge of  
24 unexchanged ballast water shall be considered

1 to be carried out in accordance with this para-  
2 graph if it is—

3 “(i) in an area designated for that  
4 purpose by the Secretary, after consulta-  
5 tion with the Undersecretary and other ap-  
6 propriate Federal agencies as determined  
7 by the Secretary and representatives of  
8 any State that may be affected by dis-  
9 charge of ballast water in that area; or

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

12 “(B) LIMITATION ON VOLUME.—The vol-  
13 ume of any ballast water discharged under the  
14 provisions of this paragraph may not exceed the  
15 volume necessary to ensure the safe operation  
16 of the vessel.

17 “(7) PARTIAL COMPLIANCE.—The operator of a  
18 vessel that is unable to comply fully with the re-  
19 quirements of paragraph (3)—

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

23 “(B) may conduct a partial ballast water  
24 exchange under this paragraph only to the ex-  
25 tent that the ballast water in an individual bal-

1 last tank can be completely exchanged in ac-  
2 cordance with the provisions of paragraph  
3 (1)(A).

4 “(8) CERTAIN GEOGRAPHICALLY LIMITED  
5 ROUTES.—Notwithstanding paragraph (3)(B) of this  
6 subsection, the operator of a vessel is not required  
7 to comply with the requirements of this subsection—

8 “(A) if the vessel operates exclusively—

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

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

14 “(B) if the vessel operates exclusively with-  
15 in any area with respect to which the Secretary  
16 has determined, after consultation with the Un-  
17 dersecretary, the Administrator, and represent-  
18 atives of States the waters of which would be  
19 affected by the discharge of ballast water, that  
20 the risk of introducing aquatic nuisance species  
21 through ballast water discharge in the areas in  
22 which the vessel operates is insignificant.

23 “(9) MARINE SANCTUARIES AND OTHER PRO-  
24 HIBITED AREAS.—A vessel may not conduct ballast  
25 water exchange or discharge unexchanged ballast

1 water under this subsection within a marine sanc-  
2 tuary designated under title III of the National Ma-  
3 rine Sanctuaries Act (16 U.S.C. 1431 et seq.) or in  
4 any other waters designated by the Secretary after  
5 consultation with the Undersecretary and the Ad-  
6 ministrator.

7 “(10) REGULATIONS DEADLINE.—The Sec-  
8 retary shall issue a final rule for regulations re-  
9 quired by this subsection within 1 year after the  
10 date of enactment of the Ballast Water Management  
11 Act of 2007.

12 “(11) VESSELS OPERATING IN THE GREAT  
13 LAKES.—

14 “(A) REGULATIONS.—Until such time as  
15 regulations are promulgated to implement the  
16 amendments made by the Ballast Water Man-  
17 agement Act of 2007, regulations promulgated  
18 to carry out this Act shall remain in effect until  
19 revised or replaced pursuant to the Ballast  
20 Water Management Act of 2007.

21 “(B) RELATIONSHIP TO OTHER PRO-  
22 GRAMS.—On promulgation of regulations re-  
23 quired under this Act to implement a national  
24 mandatory ballast management program that is  
25 at least as comprehensive as the Great Lakes

1 program (as determined by the Secretary, in  
2 consultation with the Governors of Great Lakes  
3 States)—

4 “(i) the program regulating vessels  
5 and ballast water in Great Lakes under  
6 this section shall terminate; and

7 “(ii) the national program shall apply  
8 to such vessels and ballast water.

9 “(12) VESSELS WITH NO BALLAST ON  
10 BOARD.—Not later than 180 days after the date of  
11 enactment of the Ballast Water Management Act of  
12 2007, the Secretary shall promulgate regulations to  
13 minimize the discharge of invasive species from ships  
14 entering a United States port or place from outside  
15 the United States exclusive economic zone that claim  
16 no ballast on board, or that claim to be carrying  
17 only unpumpable quantities of ballast, including, at  
18 a minimum, a requirement that—

19 “(i) such a ship shall conduct salt-  
20 water flushing of ballast water tanks—

21 “(I) outside the exclusive eco-  
22 nomic zone; or

23 “(II) at a designated alternative  
24 exchange site; and

1                   “(ii) before being allowed entry into  
2                   the Great Lakes beyond the St. Lawrence  
3                   Seaway, the master of such a ship shall  
4                   certify that the ship has complied with  
5                   each applicable requirement under this  
6                   subsection.

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

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

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

17                         “(B) less than 1 living organism per 10  
18                         milliliters that is less than 50 micrometers in  
19                         minimum dimension and more than 10 microm-  
20                         eters in minimum dimension;

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

23                                 “(i) 1 colony-forming unit of  
24                                 toxicogenic *Vibrio cholera* (serotypes O1  
25                                 and O139) per 100 milliliters, or less than

1           1 colony-forming unit of that microbe per  
2           gram of wet weight of zoological samples;

3           “(ii) 126 colony-forming units of esch-  
4           erichia coli per 100 milliliters; and

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

7           “(D) concentrations of such additional in-  
8           dicator microbes as may be specified in regula-  
9           tions promulgated by the Administrator, after  
10          consultation with the Secretary and other ap-  
11          propriate Federal agencies as determined by the  
12          Secretary, that are less than the amount speci-  
13          fied in those regulations.

14          “(2) RECEPTION FACILITY EXCEPTION.—

15                 “(A) IN GENERAL.—Paragraph (1) does  
16                 not apply to a vessel that discharges ballast  
17                 water into a facility for the reception of ballast  
18                 water that meets standards prescribed by the  
19                 Administrator.

20                 “(B) PROMULGATION OF STANDARDS.—

21                 Within 1 year after the date of enactment of  
22                 the Ballast Water Management Act of 2007,  
23                 the Administrator, in consultation with the Sec-  
24                 retary other appropriate Federal agencies as de-

1           terminated by the Administrator, shall promul-  
2           gate standards for—

3                   “(i) the reception of ballast water  
4                   from vessels into reception facilities; and

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

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

12                   “(A) FIRST PHASE.—Beginning January  
13                   1, 2011, for vessels constructed on or after that  
14                   date with a ballast water capacity of less than  
15                   5,000 cubic meters.

16                   “(B) SECOND PHASE.—Beginning January  
17                   1, 2013, for vessels constructed on or after that  
18                   date with a ballast water capacity of 5,000  
19                   cubic meters or more.

20                   “(C) THIRD PHASE.—Beginning January  
21                   1, 2013, for vessels constructed before January  
22                   1, 2011, with a ballast water capacity of 1,500  
23                   cubic meters or more but not more than 5,000  
24                   cubic meters.

1           “(D) FOURTH PHASE.—Beginning Janu-  
2           ary 1, 2015, for vessels constructed—

3           “(i) before January 1, 2011, with a  
4           ballast water capacity of less than 1,500  
5           cubic meters or 5,000 cubic meters or  
6           more; or

7           “(ii) on or after January 1, 2011, and  
8           before January 1, 2013, with a ballast  
9           water capacity of 5,000 cubic meters or  
10          more.

11          “(4) TREATMENT SYSTEM APPROVAL RE-  
12          QUIRED.—The operator of a vessel may not use a  
13          ballast water treatment system to comply with the  
14          requirements of this subsection unless the system is  
15          approved by the Secretary, in consultation with the  
16          Administrator. The Secretary shall promulgate regu-  
17          lations establishing a process for such approval,  
18          after consultation with the Administrator and other  
19          appropriate Federal agencies as determined by the  
20          Secretary, within 1 year after the date of enactment  
21          of the Ballast Water Management Act of 2007.

22          “(5) FEASIBILITY REVIEW.—

23          “(A) IN GENERAL.—Not less than 2 years  
24          before the date on which paragraph (1) applies  
25          to vessels under each subparagraph of para-

1 graph (3), or as that date may be extended  
2 under this paragraph, the Secretary, in con-  
3 sultation with the Administrator, shall complete  
4 a review to determine whether appropriate tech-  
5 nologies are available to achieve the standards  
6 set forth in paragraph (1) for the vessels to  
7 which they apply under the schedule set forth  
8 in paragraph (3). In reviewing the technologies  
9 the Secretary, after consultation with the Ad-  
10 ministrator and other appropriate Federal  
11 agencies as determined by the Secretary, shall  
12 consider—

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

15 “(ii) feasibility in terms of compat-  
16 ibility with ship design and operations;

17 “(iii) safety considerations;

18 “(iv) whether a technology has an ad-  
19 verse impact on the environment; and

20 “(v) cost effectiveness.

21 “(B) DELAY IN SCHEDULED APPLICA-  
22 TION.—If the Secretary determines, on the  
23 basis of the review conducted under subpara-  
24 graph (A), that compliance with the standards  
25 set forth in paragraph (1) in accordance with

1 the schedule set forth in any subparagraph of  
2 paragraph (3) is not feasible for any class of  
3 vessels, the Secretary shall require use of the  
4 best performing technology available that  
5 meets, at a minimum, the applicable ballast  
6 water discharge standard of the International  
7 Maritime Organization. If the Secretary finds  
8 that no technology exists that will achieve either  
9 the standards set forth in paragraph (1) or the  
10 standards of the International Maritime Orga-  
11 nization, then, the Secretary shall—

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

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

18 “(C) HIGHER STANDARDS; EARLIER IM-  
19 PLEMENTATION.—

20 “(i) STANDARDS.—If the Secretary  
21 determines that ballast water treatment  
22 technology exists that exceeds the perform-  
23 ance standards required under this sub-  
24 section, the Secretary shall, for any class  
25 of vessels, revise the performance stand-

1 ards to incorporate the higher performance  
2 standards.

3 “(ii) IMPLEMENTATION.—If the Sec-  
4 retary determines that technology that  
5 achieves the applicable performance stand-  
6 ards required under this subsection can be  
7 implemented earlier than required by this  
8 subsection, the Secretary shall, for any  
9 class of vessels, accelerate the implementa-  
10 tion schedule under paragraph (3). If the  
11 Secretary accelerates the implementation  
12 schedule pursuant to this clause, the Sec-  
13 retary shall provide at least 24 months no-  
14 tice before such accelerated implementation  
15 goes into effect.

16 “(iii) DETERMINATIONS NOT MUTU-  
17 ALLY EXCLUSIVE.—The Secretary shall  
18 take action under both clause (i) and  
19 clause (ii) if the Secretary makes deter-  
20 minations under both clauses.

21 “(6) DELAY OF APPLICATION FOR VESSEL PAR-  
22 TICIPATING IN PROMISING TECHNOLOGY EVALUA-  
23 TIONS.—

24 “(A) IN GENERAL.—If a vessel participates  
25 in a program approved by the Secretary to test

1 and evaluate promising ballast water treatment  
2 technologies that are likely to result in treat-  
3 ment technologies achieving a standard that is  
4 the same as or more stringent than the stand-  
5 ard that applies under paragraph (1) before the  
6 first date on which paragraph (1) applies to  
7 that vessel, the Secretary shall allow the vessel  
8 to use that technology for a 10-year period and  
9 such vessel shall be deemed to be in compliance  
10 with the requirements of paragraph (1) during  
11 that 10-year period.

12 “(B) VESSEL DIVERSITY.—The Sec-  
13 retary—

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

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

21 “(C) TERMINATION OF GRACE PERIOD.—  
22 The Secretary may terminate the 10-year grace  
23 period of a vessel under subparagraph (A) if  
24 participation of the vessel in the program is ter-  
25 minated without the consent of the Secretary.

1           “(D) ANNUAL RE-EVALUATION; TERMI-  
2           NATION.—The Secretary shall establish an an-  
3           nual evaluation process to determine whether  
4           the performance of an approved technology is  
5           sufficiently effective and whether it is causing  
6           harm to the environment. If the Secretary de-  
7           termines that an approved technology is insuffi-  
8           ciently effective or is causing harm to the envi-  
9           ronment, the Secretary shall revoke the ap-  
10          proval granted under subparagraph (A).

11          “(7) REVIEW OF STANDARDS.—

12           “(A) IN GENERAL.—In December, 2014,  
13           and in every third year thereafter, the Adminis-  
14           trator, in consultation with the Secretary, shall  
15           review ballast water treatment standards to de-  
16           termine, after consultation with the Undersecre-  
17           tary and other appropriate Federal agencies as  
18           determined by the Secretary, if the standards  
19           under this subsection should be revised to re-  
20           duce the amount of organisms or microbes al-  
21           lowed to be discharged, taking into account im-  
22           provements in the scientific understanding of  
23           biological processes leading to the spread of  
24           aquatic nuisance species and improvements in  
25           ballast water treatment technology. The Admin-

1            istrator shall revise by regulation the perform-  
2            ance standard required under this subsection as  
3            necessary.

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

12           “(8) INSTALLED EQUIPMENT.—If ballast water  
13           treatment technology used for purposes of complying  
14           with the regulations under this subsection is in-  
15           stalled on a vessel, maintained in good working  
16           order, and used by the vessel, the vessel may use  
17           that technology for the shorter of—

18                   “(A) the 10-year period beginning on the  
19                   date of initial use of the technology; or

20                   “(B) the life of the ship on which the tech-  
21                   nology is used.

22           “(9) HIGH-RISK VESSELS.—

23                   “(A) VESSEL LIST.—Within 1 year after  
24                   the date of enactment of the Ballast Water  
25                   Management Act of 2007, the Secretary shall

1 publish and regularly update a list of vessels  
2 identified by States that, due to factors such as  
3 the origin of their voyages, the frequency of  
4 their voyages, the volume of ballast water they  
5 carry, the biological makeup of the ballast  
6 water, and the fact that they frequently dis-  
7 charge unexchanged ballast water pursuant to  
8 an exception under subsection (e), pose a rel-  
9 atively high risk of introducing aquatic nuisance  
10 species into the waters of those States.

11 “(B) INCENTIVE PROGRAMS.—The Sec-  
12 retary shall give priority to vessels on the list  
13 for participation in pilot programs described in  
14 paragraph (6). Any Federal agency, and any  
15 State agency with respect to vessels identified  
16 by such State to the Secretary for inclusion on  
17 the list pursuant to subparagraph (A), may de-  
18 velop technology development programs or other  
19 incentives (whether positive or negative) to such  
20 vessels in order to encourage the adoption of  
21 ballast water treatment technology by those ves-  
22 sels consistent with the requirements of this  
23 section on an expedited basis.

24 “(10) EXCEPTION FOR VESSELS OPERATING  
25 EXCLUSIVELY IN DETERMINED AREA.—

1           “(A) IN GENERAL.—Paragraph (1) does  
2 not apply to a vessel that operates exclusively  
3 within an area if the Secretary has determined  
4 through a rulemaking proceeding, after con-  
5 sultation with the Undersecretary and other ap-  
6 propriate Federal agencies as determined by the  
7 Secretary, and representatives of States the wa-  
8 ters of which could be affected by the discharge  
9 of ballast water, that the risk of introducing  
10 aquatic nuisance species through ballast water  
11 discharge from the vessel is insignificant.

12           “(B) CERTAIN VESSELS.—A vessel con-  
13 structed before January 1, 2001, that operates  
14 exclusively within Lake Superior, Lake Michi-  
15 gan, Lake Huron, and Lake Erie and the con-  
16 necting channels shall be presumed not to pose  
17 a significant risk of introducing aquatic nui-  
18 sance species unless the Secretary finds other-  
19 wise in a rulemaking proceeding under subpara-  
20 graph (A).

21           “(C) BEST PRACTICES.—The Secretary  
22 shall develop, and require vessels exempted  
23 from complying with the requirements of para-  
24 graph (1) under this paragraph to follow, best  
25 practices, developed in consultation with the

1           Governors or States that may be affected, to  
2           minimize the spreading of aquatic nuisance spe-  
3           cies in its operating area.

4           “(11) LABORATORIES.—The Secretary may use  
5           any Federal or non-Federal laboratory that meets  
6           standards established by the Secretary for the pur-  
7           pose of evaluating and certifying ballast water treat-  
8           ment technologies and equipment under this sub-  
9           section.

10          “(g) WARNINGS CONCERNING BALLAST WATER UP-  
11 TAKE.—

12           “(1) IN GENERAL.—The Secretary shall notify  
13           vessel owners and operators of any area in waters  
14           subject to the jurisdiction of the United States in  
15           which vessels may not uptake ballast water due to  
16           known conditions.

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

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

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

21          “(h) SEDIMENT MANAGEMENT.—

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

1           “(A) in accordance with this subsection  
2 and the ballast water management plan re-  
3 quired under subsection (c); and

4           “(B) more than 200 nautical miles from  
5 the nearest point of land or into a reception fa-  
6 cility that meets the requirements of paragraph  
7 (3).

8           “(2) DESIGN REQUIREMENTS.—

9           “(A) NEW VESSELS.—After December 31,  
10 2008, it shall be unlawful to construct a vessel  
11 in the United States to which this section ap-  
12 plies unless that vessel is designed and con-  
13 structed, in accordance with regulations pre-  
14 scribed under subparagraph (C), in a manner  
15 that—

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

18                   “(ii) facilitates removal of sediment;

19                   and

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

22           “(B) EXISTING VESSELS.—Every vessel to  
23 which this section applies that was constructed  
24 before January 1, 2009, shall be modified be-  
25 fore January 1, 2009, to the extent practicable,

1 to achieve the objectives described in clauses (i),  
2 (ii), and (iii) of subparagraph (A).

3 “(C) REGULATIONS.—The Secretary shall  
4 promulgate regulations establishing design and  
5 construction standards to achieve the objectives  
6 of subparagraph (A) and providing guidance for  
7 modifications and practices under subparagraph  
8 (B). The Secretary shall incorporate the stand-  
9 ards and guidance in the regulations governing  
10 the ballast water management plan.

11 “(3) SEDIMENT RECEPTION FACILITIES.—

12 “(A) STANDARDS.—The Secretary, in con-  
13 sultation with other appropriate Federal agen-  
14 cies as determined by the Secretary, shall pro-  
15 mulgate regulations governing facilities for the  
16 reception of vessel sediment from spaces de-  
17 signed to carry ballast water that provide for  
18 the disposal of such sediment in a way that  
19 does not impair or damage the environment,  
20 human health, or property or resources of the  
21 disposal area.

22 “(B) DESIGNATION.—The Administrator,  
23 in consultation with the Secretary and other ap-  
24 propriate Federal agencies as determined by the  
25 Administrator, shall designate facilities for the

1 reception of vessel sediment that meet the re-  
2 quirements of the regulations promulgated  
3 under subparagraph (A) at ports and terminals  
4 where ballast tanks are cleaned or repaired.

5 “(i) EXAMINATIONS AND CERTIFICATIONS.—

6 “(1) INITIAL EXAMINATION.—

7 “(A) IN GENERAL.—The Secretary shall  
8 examine vessels to which this section applies to  
9 determine whether—

10 “(i) there is a ballast water manage-  
11 ment plan for the vessel that meets the re-  
12 quirements of this section; and

13 “(ii) the equipment used for ballast  
14 water and sediment management in ac-  
15 cordance with the requirements of this sec-  
16 tion and the regulations promulgated here-  
17 under is installed and functioning properly.

18 “(B) NEW VESSELS.—For vessels con-  
19 structed in the United States on or after Janu-  
20 ary 1, 2011, the Secretary shall conduct the ex-  
21 amination required by subparagraph (A) before  
22 the vessel is placed in service.

23 “(C) EXISTING VESSELS.—For vessels con-  
24 structed before January 1, 2011, the Secretary  
25 shall—

1           “(i) conduct the examination required  
2           by subparagraph (A) before the date on  
3           which subsection (f)(1) applies to the ves-  
4           sel according to the schedule in subsection  
5           (f)(3); and

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

8           “(D) FOREIGN VESSELS.—In the case of a  
9           foreign vessel (as defined in section 2101(12) of  
10          title 46, United States Code), the Secretary  
11          shall perform the examination required by this  
12          paragraph the first time the vessel enters a  
13          United States port.

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

18          “(3) INSPECTION AUTHORITY.—

19                 “(A) IN GENERAL.—The Secretary may  
20                 carry out inspections of any vessel to which this  
21                 section applies at any time, including the taking  
22                 of ballast water samples, to ensure the vessel’s  
23                 compliance with this Act. The Secretary shall  
24                 use all appropriate and practical measures of  
25                 detection and environmental monitoring, and

1 shall establish adequate procedures for report-  
2 ing violations and accumulating evidence.

3 “(B) INVESTIGATIONS.—Upon receipt of  
4 evidence that a violation has occurred, the Sec-  
5 retary shall cause the matter to be investigated.  
6 In any investigation under this section the Sec-  
7 retary may issue subpoenas to require the at-  
8 tendance of any witness and the production of  
9 documents and other evidence. In case of re-  
10 fusal to obey a subpoena issued to any person,  
11 the Secretary may request the Attorney General  
12 to invoke the aid of the appropriate district  
13 court of the United States to compel compli-  
14 ance.

15 “(4) REQUIRED CERTIFICATE.—If, on the basis  
16 of an initial examination under paragraph (1) the  
17 Secretary finds that a vessel complies with the re-  
18 quirements of this section and the regulations pro-  
19 mulgated hereunder, the Secretary shall issue a cer-  
20 tificate under this paragraph as evidence of such  
21 compliance. The certificate shall be valid for a period  
22 of not more than 5 years, as specified by the Sec-  
23 retary. The certificate or a true copy shall be main-  
24 tained on board the vessel.

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

8           “(A) notify in writing—

9           “(i) the master of the vessel; and

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

12           “(B) take such other action as may be ap-  
13 propriate.

14           “(6) COMPLIANCE AND MONITORING.—

15           “(A) IN GENERAL.—The Secretary shall by  
16 regulation establish sampling and other proce-  
17 dures to monitor compliance with the require-  
18 ments of this section and any regulations pro-  
19 mulgated under this section.

20           “(B) USE OF MARKERS.—The Secretary  
21 may verify compliance with treatment standards  
22 under this section and the regulations through  
23 identification of markers associated with a  
24 treatment technology’s effectiveness, such as

1 the presence of indicators associated with a cer-  
2 tified treatment technology.

3 “(7) EDUCATION AND TECHNICAL ASSISTANCE  
4 PROGRAMS.—The Secretary may carry out education  
5 and technical assistance programs and other meas-  
6 ures to promote compliance with the requirements  
7 issued under this section.

8 “(j) DETENTION OF VESSELS.—

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

14 “(A) the vessel is a vessel to which this  
15 section applies; and

16 “(B) the vessel does not comply with the  
17 requirements of this section or of the regula-  
18 tions issued hereunder or is being operated in  
19 violation of such requirements.

20 “(2) CLEARANCE.—

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

1           “(B) WITHDRAWAL.—If the Secretary  
2 finds that a vessel detained under paragraph  
3 (1) has received a clearance under section 4197  
4 of the Revised Statutes (46 U.S.C. App. 91) be-  
5 fore it was detained under paragraph (1), the  
6 Secretary shall withdraw, withhold, or revoke  
7 the clearance.

8           “(k) SANCTIONS.—

9           “(1) CIVIL PENALTIES.—Any person who vio-  
10 lates a regulation promulgated under this section  
11 shall be liable for a civil penalty in an amount not  
12 to exceed \$32,500. Each day of a continuing viola-  
13 tion constitutes a separate violation. A vessel oper-  
14 ated in violation of this section or the regulations is  
15 liable in rem for any civil penalty assessed under  
16 this subsection for that violation.

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

20           “(3) REVOCATION OF CLEARANCE.—Except as  
21 provided in subsection (j)(2), upon request of the  
22 Secretary, the Secretary of the Treasury shall with-  
23 hold or revoke the clearance of a vessel required by  
24 section 4197 of the Revised Statutes (46 U.S.C.  
25 App. 91), if the owner or operator of that vessel is

1 in violation of this section or the regulations issued  
2 under this section.

3 “(4) EXCEPTION TO SANCTIONS.—This sub-  
4 section does not apply to a discharge pursuant to  
5 subsection (b)(3), (e)(5), or (e)(7).

6 “(1) ENFORCEMENT.—

7 “(1) ADMINISTRATIVE ACTIONS.—If the Sec-  
8 retary finds, after notice and an opportunity for a  
9 hearing, that a person has violated any provision of  
10 this section or any regulation promulgated here-  
11 under, the Secretary may assess a civil penalty for  
12 that violation. In determining the amount of a civil  
13 penalty, the Secretary shall take into account the  
14 nature, circumstances, extent, and gravity of the  
15 prohibited acts committed and, with respect to the  
16 violator, the degree of culpability, any history of  
17 prior violations, and such other matters as justice  
18 may require.

19 “(2) CIVIL ACTIONS.—At the request of the  
20 Secretary, the Attorney General may bring a civil  
21 action in an appropriate district court of the United  
22 States to enforce this section, or any regulation pro-  
23 mulgated hereunder. Any court before which such an  
24 action is brought may award appropriate relief, in-

1 including temporary or permanent injunctions and  
2 civil penalties.

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

14 “(n) INTERNATIONAL COOPERATION.—The Sec-  
15 retary, in cooperation with the Undersecretary, the Sec-  
16 retary of State, the Administrator, the heads of other rel-  
17 evant Federal agencies, the International Maritime Orga-  
18 nization of the United Nations, and the Commission on  
19 Environmental Cooperation established pursuant to the  
20 North American Free Trade Agreement, is encouraged to  
21 enter into negotiations with the governments of foreign  
22 countries to develop and implement an effective inter-  
23 national program for preventing the unintentional intro-  
24 duction and spread of aquatic nuisance species through  
25 ballast water. The Secretary is particularly encouraged to

1 seek bilateral or multilateral agreements with Canada,  
2 Mexico, and other nations in the Wider Caribbean (as de-  
3 fined in the Convention for the Protection and Develop-  
4 ment of the Marine Environment of the Wider Caribbean  
5 (Cartagena Convention) under this section.

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

13       “(p) SUPPORT FOR FEDERAL BALLAST WATER DEM-  
14 ONSTRATION PROJECT.—In addition to amounts other-  
15 wise available to the Maritime Administration, the Na-  
16 tional Oceanographic and Atmospheric Administration,  
17 and the United States Fish and Wildlife Service for the  
18 Federal Ballast Water Demonstration Project, the Sec-  
19 retary shall provide support for the conduct and expansion  
20 of the project, including grants for research and develop-  
21 ment of innovative technologies for the management,  
22 treatment, and disposal of ballast water and sediment, for  
23 ballast water exchange, and for other vessel vectors of  
24 aquatic nuisance species such as hull-fouling. There are  
25 authorized to be appropriated to the Secretary \$5,000,000

1 for each of fiscal years 2007 through 2011 to carry out  
2 this subsection.

3 “(q) CONSULTATION WITH TASK FORCE.—The Sec-  
4 retary shall consult with the Task Force in carrying out  
5 this section.

6 “(r) RISK ASSESSMENT.—

7 “(1) IN GENERAL.—Within 2 years after the  
8 date of enactment of the Ballast Water Management  
9 Act of 2007, the Administrator, in consultation with  
10 the Secretary and other appropriate Federal agen-  
11 cies, shall conduct a risk assessment of vessel dis-  
12 charges other than aquatic nuisance species that are  
13 not required by the Clean Water Act (33 U.S.C.  
14 1251 et seq.) to have National Pollution Effluent  
15 Discharge Standards permits under section 122.3(a)  
16 of title 40, Code of Federal Regulations. The risk  
17 assessment shall include—

18 “(A) a characterization of the various  
19 types of discharges by different classes of ves-  
20 sels;

21 “(B) the average volume of such dis-  
22 charges for individual vessels and by class of  
23 vessel in the aggregate;

1           “(C) conclusions as to whether such dis-  
2           charges pose a risk to human health or the en-  
3           vironment; and

4           “(D) recommendations as to steps, includ-  
5           ing regulations, that are necessary to address  
6           such risks.

7           “(2) PUBLIC COMMENT.—The Administrator  
8           shall cause a draft of the risk assessment to be pub-  
9           lished in the Federal Register for public comment,  
10          and shall develop a final risk assessment report after  
11          taking into accounts any comments received during  
12          the public comment period.

13          “(3) FINAL REPORT.—The Administrator shall  
14          transmit a copy of the final report to the Senate  
15          Committee on Commerce, Science, and Transpor-  
16          tation and the House of Representatives Committee  
17          on Transportation and Infrastructure.

18          “(s) OTHER SOURCES OF VESSEL-BORNE NUISANCE  
19          SPECIES.—

20                 “(1) HULL-FOULING AND OTHER VESSEL  
21          SOURCES.—

22                 “(A) REPORT.—Within 180 days after the  
23          date of enactment of the Ballast Water Man-  
24          agement Act of 2007, the Commandant of the  
25          Coast Guard shall transmit a report to the Sen-

1           ate Committee on Commerce, Science, and  
2           Transportation and the House of Representa-  
3           tives Committee on Transportation and Infra-  
4           structure on vessel-borne vectors of aquatic nui-  
5           sance species and pathogens other than ballast  
6           water and sediment, including vessel hulls, an-  
7           chors, and equipment.

8           “(B) MANAGEMENT.—Within 1 year after  
9           the date of enactment of the Ballast Water  
10          Management Act of 2007, the Secretary shall  
11          develop a strategy to address such other vessel  
12          sources of aquatic nuisance species and to re-  
13          duce the introduction of invasive species into  
14          and within the United States from vessels. The  
15          strategy shall include—

16               “(i) designation of geographical loca-  
17               tions for update and discharge of un-  
18               treated ballast water, as well as measures  
19               to address non-ballast vessel vectors of  
20               aquatic invasive species;

21               “(ii) necessary modifications of exist-  
22               ing regulations;

23               “(iii) best practices standards and  
24               procedures; and

1                   “(iv) a timeframe for implementation  
2                   of those standards and procedures by ves-  
3                   sels, in addition to the mandatory require-  
4                   ments set forth in this section for ballast  
5                   water.

6                   “(C) REPORT.—The Secretary shall trans-  
7                   mit a report to the Committees describing the  
8                   strategy, proposed regulations, best practices,  
9                   and the implementation timeframe, together  
10                  with any recommendations, including legislative  
11                  recommendations if appropriate, the Secretary  
12                  deems appropriate.

13                  “(D) STANDARDS FOR VESSELS OF THE  
14                  UNITED STATES.—The strategy shall include  
15                  requirements to ensure the consistent applica-  
16                  tion of best practices to all vessels owned or op-  
17                  erated by a Federal agency.

18                  “(2) TRANSITING VESSELS.—Within 180 days  
19                  after the date of enactment of the Ballast Water  
20                  Management Act of 2007, the Commandant of the  
21                  Coast Guard shall transmit a report to the Senate  
22                  Committee on Commerce, Science, and Transpor-  
23                  tation and the House of Representatives Committee  
24                  on Transportation and Infrastructure containing—

1           “(A) an assessment of the magnitude and  
2           potential adverse impacts of ballast water oper-  
3           ations from foreign vessels designed, adapted,  
4           or constructed to carry ballast water that are  
5           transiting waters subject to the jurisdiction of  
6           the United States; and

7           “(B) recommendations, including legisla-  
8           tive recommendations if appropriate, of options  
9           for addressing ballast water operations of those  
10          vessels.

11         “(t) REGULATIONS.—

12           “(1) IN GENERAL.—The Secretary, after con-  
13           sultation with other appropriate Federal agencies,  
14           shall issue such regulations as may be necessary ini-  
15           tially to carry out this section within 1 year after the  
16           date of enactment of the Ballast Water Management  
17           Act of 2007.

18           “(2) JUDICIAL REVIEW.—

19           “(A) 120-DAY RULE.—An interested per-  
20           son may bring an action for review of a final  
21           regulation promulgated under this section by  
22           the Secretary of the department in which the  
23           Coast Guard is operating in the United States  
24           Court of Appeals for the District of Columbia  
25           Circuit. Any such petition shall be filed within

1           120 days after the date on which notice of the  
2           promulgation appears in the Federal Register,  
3           except that if the petition is based solely on  
4           grounds arising after the 120th day, then any  
5           petition for review under this subsection shall  
6           be filed within 120 days after those grounds  
7           arise.

8           “(B) REVIEW IN ENFORCEMENT PRO-  
9           CEEDINGS.—A regulation for which review  
10          could have been obtained under subparagraph  
11          (A) of this paragraph is not subject to judicial  
12          review in any civil or criminal proceeding for  
13          enforcement.

14          “(u) SAVINGS CLAUSE.—

15          “(1) IN GENERAL.—Nothing in this section  
16          shall be construed to preempt the authority of any  
17          State or local government to impose penalties or fees  
18          for acts or omissions that are violations of this Act,  
19          or to provide incentives under subsection (f)(9)(B).

20          “(2) RECEPTION FACILITIES.—The standards  
21          prescribed by the Secretary or other appropriate  
22          Federal agencies under subsection (f)(2) do not su-  
23          persede any more stringent standard under any oth-  
24          erwise applicable Federal, State, or local law.

1           “(3) APPLICATION WITH OTHER STATUTES.—

2           This section provides the sole Federal authority for  
3           preventing the introduction of species through the  
4           control and management of vessel ballast water or  
5           sediment or other vessel-related vectors.”.

6           (b) DEFINITIONS.—

7           (1) IN GENERAL.—Section 1003 of the Non-  
8           indigenous Aquatic Nuisance Prevention and Control  
9           Act of 1990 (16 U.S.C. 4702) is amended—

10           (A) by redesignating paragraph (1) as  
11           paragraph (1A);

12           (B) by inserting before paragraph (1A), as  
13           redesignated, the following:

14           “(1) ‘Administrator’ means the Administrator  
15           of the Environmental Protection Agency;”;

16           (C) by striking paragraph (3) and insert-  
17           ing the following:

18           “(3) ‘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 sus-  
22           pended in such water; and

23           “(B) any water placed into a ballast tank  
24           during cleaning, maintenance, or other oper-  
25           ations; but

1           “(C) does not include water taken on  
2           board a vessel and used for a purpose described  
3           in subparagraph (A) that, at the time of dis-  
4           charge, does not contain aquatic nuisance spe-  
5           cies;”;

6           (D) by inserting after paragraph (3) the  
7           following:

8           “(3A) ‘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          “(3B) ‘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          aquatic nuisance species and pathogens within bal-  
19          last water and sediment;

20          “(3C) ‘constructed’ means a state of construc-  
21          tion 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           (E) by inserting after paragraph (10) the  
8 following:

9           “(10A) ‘major conversion’ means a conversion  
10 of a vessel, that—

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

13           “(B) changes the vessel class;

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

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

19           “(i) component replacement-in-kind;  
20 or

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

23           (F) by inserting after paragraph (12), as  
24 redesignated, the following:

1           “(12A) ‘saltwater flushing’ means the process  
2 of—

3           “(A) adding midocean water to a ballast  
4 water tank that contains residual quantities of  
5 ballast waters;

6           “(B) mixing the midocean water with the  
7 residual ballast water and sediment in the tank  
8 through the motion of a vessel; and

9           “(C) discharging the mixed water so that  
10 the salinity of the resulting residual ballast  
11 water in the tank exceeds 30 parts per thou-  
12 sand;

13           “(12B) ‘sediment’ means matter that has set-  
14 tled out of ballast water within a vessel;”;

15           (G) by redesignating paragraph (15) as  
16 paragraph (16A) and moving it to follow para-  
17 graph (16);

18           (H) by inserting after paragraph (17) the  
19 following:

20           “(17A) ‘United States port’ means a port,  
21 river, harbor, or offshore terminal under the juris-  
22 diction of the United States, including ports located  
23 in Puerto Rico, Guam, the Northern Marianas, and  
24 the United States Virgin Islands;

25           “(17B) ‘vessel of the Armed Forces’ means—

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

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

10          “(17C) ‘waters subject to the jurisdiction of the  
11          United States’ means navigable waters and the terri-  
12          torial sea of the United States, the exclusive eco-  
13          nomic zone, and the Great Lakes.”.

14          (2) **STYLISTIC CONSISTENCY.**—Section 1003 of  
15          the Nonindigenous Aquatic Nuisance Prevention and  
16          Control Act of 1990 (16 U.S.C. 4702), as amended  
17          by paragraph (1), is further amended—

18                 (A) by striking “As used in this Act, the  
19                 term—” and inserting “In this Act:”;

20                 (B) by redesignating paragraphs (1)  
21                 through (17C) as paragraphs (1) through (27),  
22                 respectively; and

23                 (C) by inserting a heading after the des-  
24                 ignation of each existing paragraph, in a form  
25                 consistent with the form of the paragraphs

1           added by paragraph (1) of this subsection, con-  
2           sisting of the term defined in such paragraph  
3           and “The term”.

4           (c) REPEAL OF SECTION 1103.—Section 1103 of the  
5 Nonindigenous Aquatic Nuisance Prevention and Control  
6 Act of 1990 (16 U.S.C. 4713) is repealed.

7 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

8           Section 1301(a) of the Nonindigenous Aquatic Nui-  
9 sance Prevention and Control Act of 1990 (16 U.S.C.  
10 4741(a)) is amended—

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

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

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

16           “(6) \$20,000,000 for each of fiscal years 2008  
17 through 2012 to the Secretary to carry out section  
18 1101.”.

○