

Appendix A. State Laws And Regulations Relating to Ballast Water

State Laws and Regulations as of 1999.

STATE	LAW
Alaska	<p>AS 46.03.750 Ballast water discharge.</p> <p>(a) Except as provided in (b) of this section, a person may not cause or permit the discharge of ballast water from a cargo tank of a tank vessel into the waters of the state. A tank vessel may not take on petroleum or a petroleum product or by-product as cargo unless it arrives in ports in the state without having discharged ballast from cargo tanks into the waters of the state and the master of the vessel certifies that fact on forms provided by the department.</p> <p>(b) The master of a tank vessel may discharge ballast water from a cargo tank of a tank vessel if it is necessary for the safety of the tank vessel and no alternative action is feasible to ensure the safety of the tank vessel.</p>
California	<p>California Statutes Harbors and Navigation Code.</p> <p>132. Every person who, within the anchorage of any port, harbor, or cove of this State, into which vessels may enter for the purpose of receiving or discharging cargo, throws overboard from any vessel all or any part of the ballast, or who otherwise places or causes to be placed in such port, harbor, or cove, any obstructions to navigation, is guilty of a misdemeanor.</p>
	<p>California Statutes Public Resources Code.</p> <p>30261. Multicompany use of existing and new tanker facilities shall be encouraged to the maximum extent feasible and legally permissible, except where to do so would result in increased tanker operations and associated onshore development incompatible with the land use and environmental goals for the area. New tanker terminals outside of existing terminal areas shall be situated as to avoid risk to environmentally sensitive areas and shall use a monobuoy system, unless an alternative type of system can be shown to be environmentally preferable for a specific site. Tanker facilities shall be designed to (1) minimize the total volume of oil spilled, (2) minimize the risk of collision from movement of other vessels, (3) have ready access to the most effective feasible containment and recovery equipment for oil spills, and (9) have onshore deballasting facilities to receive any fouled ballast water from tankers where operationally or legally required.</p>
	<p>California Statutes Public Resources Code.</p> <p>30707. Tanker terminals.</p> <p>New or expanded tanker terminals shall be designed and constructed to do all of the following:</p> <p>(a) Minimize the total volume of oil spilled. (b) Minimize the risk of collision from movement of other vessels. (c) Have ready access to the most effective feasible oil spill containment and recovery equipment. (d) Have onshore deballasting facilities to receive any fouled ballast water from tankers where operationally or legally required.</p>
Washington	<p>Specific regulations against the spread of specific species, such as the zebra mussel (WAC 232-12-01701 and WAC 232-12-168) and the green crab (Washington Session Law, Chapter 153, Law of 1998).</p>
	<p>RCW 17.10. Noxious weeds.</p> <p>Washington's State Noxious Weed Control Board sets state policy and determines the noxious weed list for the state. Washington's most problematic exotic aquatic species are listed on this list.</p>
STATE	REGULATION
California	2330. Exchange of Information

	<p>(1) Prior to arrival of a tank vessel or barge at the terminal, the terminal operator shall acquire from the tank vessel or barge or its owners, operators or agents, and the vessel's owner, operator or agent shall provide, all of the following items of information which are applicable:</p> <ul style="list-style-type: none"> (A) Draft on arrival; (B) Maximum draft and trim expected during transfer operation; (C) Whether tank cleaning or crude oil washing will be undertaken; (D) Any repairs that could delay commencement of cargo transfer; (E) Manifold details, including type and size; (F) Quantity and nature of slops, dirty ballast to be transferred at the terminal and any contamination thereof by chemical additives;
	<p>2340. Requirements for all Transfer Operations.</p> <p>(a) No operator, crew member or personnel of a vessel or terminal shall carry out or perform any willful or negligent act or omission which causes the entry of any amount of oil into marine waters during any transfer operation.</p> <p>(b)(1) Unless, because of emergencies or unanticipated circumstances, doing so would harm public health or safety or the environment, all transfer operations shall be conducted in accordance with the terminal operations manual approved under Sec. 2385 of these regulations or vessel transfer procedures required by 33 CFR 155.720, as appropriate, and with the mutual agreements and understanding established during the pre-transfer conference.</p> <p>(8) Except when used to receive ballast as agreed within the pre-transfer conference, each overboard discharge or sea suction valve that is connected to the vessel's transfer or cargo tank system is sealed or lashed in the closed position.</p>
	<p>2396. Spill Containment for Ballasting or Deballasting Operations for Tank Vessels at Marine Terminals.</p> <p>(a) Applicability. The provisions of Sec. 2396 apply to tank vessels conducting ballasting or deballasting operations at terminals where any part of the cargo on board or any part of the cargo last carried is a persistent oil. These provisions do not apply to ballasting operations to a tank vessel's segregated ballast tanks.</p>
	<p>8-46-501. Record Keeping:</p> <p>Effective January 1, 1990, a person [subject to] Sections 8-46-110, and 301 through 305 of this Rule shall maintain operating records regarding each loading event. The records shall be maintained for at least two years and shall be made available to the APCO upon request. The records shall include but are not limited to:</p> <ul style="list-style-type: none"> 501.1 The location of each loading event. 501.5 The prior cargo carried by the receiving marine tank vessel. 501.6 The type and amount of liquid cargo loaded into the receiving marine tank vessel. 501.7 The condition of the receiving tanks prior to being loaded, (i.e., cleaned, crude oil washed, gas freed, etc.). 501.9 Amount of ballast water added to unsegregated ballast tanks.
	<p>1142. Marine Tank Vessel Operations.</p> <p>(a) Applicability This rule shall apply to all loading, lightering, ballasting, and housekeeping events where a marine tank vessel is filled with an organic liquid; or where a liquid is placed into a marine tank vessel's cargo tanks which had previously held organic liquid.</p> <p>(b) Definitions</p> <ul style="list-style-type: none"> (1) Background is the ambient concentration of volatile organic compounds in the air determined at least one (1) meter upwind of the component being inspected. (2) Ballasting is the loading of water or other liquid into a marine tank vessel's cargo

	tank to obtain proper propeller, rudder, and hull immersion.
Illinois	<p>6. Ballasting.</p> <p>No person shall ballast or cause any oil carrying vessel to be ballasted unless:</p> <p>A. Valves on the lines used are set first, then the valves to the tanks to be ballasted are opened, the necessary valves in the pump rooms, except seacocks, are set next and cargo pumps are started before opening seacocks.</p> <p>B. When ballasting is started, all tanks are inspected to see that only the tanks intended are receiving ballast.</p> <p>C. The same attention is given to topping off ballasting as to topping off tanks when loading oil.</p> <p>D. When completing the loading of ballast, seacocks are closed before stopping the pumps. This section shall not apply to any vessel with a segregated ballast system in which ballast pumps, pipes and ballast tanks are wholly independent and not connected to the cargo system.</p>
	<p>308.103 Bilge or Ballast water limitations.</p> <p>No bilge or ballast water which fails to meet the effluent standards of Part 304 shall be discharged to the waters of the State.</p>
Massachusetts	<p>15.03 General regulations to comply with water quality standards.</p> <p>(1) No person shall pump, discharge, throw, drain or deposit, or cause to be deposited, oil or other matter containing oil into the waters of the Commonwealth or at any locations where the oil may be washed or drained into such waters which shall cause, or contribute to, a condition in contravention of the established water quality standards.</p> <p>(2) No person shall construct or operate, or cause to be operated, a new disposal system for the discharge of sewage or industrial or other wastes containing oil, or the effluent therefrom, into any of the waters of the Commonwealth without first obtaining approval from the Division. The Division will approve such systems subject to conditions deemed necessary to comply with the established water quality standards.</p> <p>(3) No person shall pump, discharge or deposit, or cause to be deposited, bilge or ballast water, or water from any receptacle containing oil, in such a manner whereby oil may escape into the waters of the Commonwealth which shall cause, or contribute to, a condition in contravention of the established water quality standards.</p>
Maryland	<p>26.10.01.02. Prohibition Against Oil Pollution.</p> <p>B. A person may not pump, discharge, deposit or cause to be deposited, bilge or ballast water, or water from any receptacle containing oil, in a manner by which oil may escape into, or in an area likely to pollute, waters of the State.</p> <p>C. A person violating these prohibitions is subject to sanctions under Environment Article, Sec. 4-417, Annotated Code of Maryland, in addition to the permit and license modification, suspension, or revocation proceeding and in addition to any other sanctions provided by law.</p> <p>D. A person is exempted from the prohibitions in Sections A and B of this regulation if there is an emergency imperiling life or property, unavoidable accident, collision, or stranding, and the person has been authorized by the Department to remove an oil discharge from waters of the State.</p>
Michigan	<p>Water Resources Commission Act, 1929, PA 245.</p> <p>The Water Resources Commission Act has a broad statement of purpose to “regulate, protect, and conserve the water resources of the state.” Section 6 of the Act makes unlawful the discharge or release of “injurious substances.” This language could be interpreted to include ballast water, given the potential to release aquatic nuisance species.</p>
New Jersey	7:27-16.5. Marine Tank Vessel Loading and Ballasting Operations.

	Guidelines on marine tank vessel loading and ballasting operations conducted at marine terminals in New Jersey. Topics include the following: provisions, control apparatus, monitoring, testing, and record keeping.
New York	485.1. State pollutant discharge elimination system (SPDES) program annual fees. Each person required to obtain a permit or certificate pursuant to the SPDES program must annually submit to the department a SPDES program fee determined as follows: (o) \$100.00 for any facility having a permit to discharge or discharging ballast no more than 1,000,000 gallons in any 24 hour period; (p) \$500.00 for any facility having a permit to discharge or discharging ballast in excess of 1,000,000 gallons in any 24 hour period;
	621.4. Requirements for various permits. (e) Certifications made in accordance with section 401 of the Clean Water Act, see section 621.16 of this Part, and Part 608 of this Title -- Water Quality Certifications for projects requiring a Federal permit: (f) Permits under title 7 and 8 of ECL article 17 and Parts 750 - 757 -- SPDES. (2) Minor SPDES projects include: (i) discharges of less than 10,000 gallons per day of sewage affluent, without the admixture of industrial wastes or other wastes, to groundwater; and (ii) ballast discharges.
Rhode Island	14 150 001. Lists prohibitions and provisions and control measures to prevent discharges of any petroleum, gasoline, kerosene or any product or mixture thereof in the waters of the state of Rhode Island. 15. No person shall ballast, or cause, suffer or procure to be ballasted any oil carrying vessel unless: a) The transfer of cargo has been completed and all hose riser valves have been closed and connections blanked. b) If ballast is to be pumped in, whether through deck lines or bottom lines; valves on the lines used are set first, then the valves to the tanks to be ballasted are opened, the necessary valves in the pumprooms, except seacocks, are set next, and cargo pumps are started before opening seacocks. c) If ballasting is done by gravity, ballast is pumped in first for ten minutes in accordance with the procedure outlined above in b) to clear all bottom lines of oil. d) When ballasting is started, all tanks are inspected to see that only the tanks intended are receiving ballast. e) The same attention is given to ballasting as to topping-off tanks when loading cargo. f) When completing the loading of ballast, seacocks are closed before stopping the pumps. The provisions of a), b), c), f) of this rule shall not apply to any vessel whose ballast piping system and ballast pumps are wholly independent and not connected to the cargo system.
	Section 6. Prohibited Activities. (a) No person shall place oil or pollutants into the waters or land of the State or in a location where they are likely to enter the waters of the State, except in compliance with the terms and conditions of a permit or order issued by the Director. This prohibition shall include, but not be limited to, releases, discharges or placement of pollutants from: (2) Boat or ship repair and maintenance, including dry dock operations; (3) Bilge or ballast water from any vessel; (4) Exhaust steam from any coil or other device used to heat oil; (6) Drainage from the floors of a boiler room; (8) Drainage to unauthorized underground injection wells or lagoons;

	<p>Section 8. Ballasting of Oil-Carrying Vessels. List of precautionary measures to follow prior to and during ballasting operations.</p> <p>(a) The owner or operator of an oil-carrying vessel shall take the following precautionary measures prior to and during the ballasting operation:</p> <p>(2) If ballast is to be pumped in, whether through deck lines or bottom line, valves on the lines used are set first; then the valves to the tanks to be ballasted shall be opened; the necessary valves in the pumprooms, except seacocks, shall be set next; and cargo or ballast pumps shall be started before opening seacocks.</p> <p>(3) If ballasting is done by gravity, ballast shall be pumped in first for ten minutes in accordance with the procedure outlined above in (2) to clear all bottom lines of oil.</p> <p>(4) When ballasting has started, all tanks shall be inspected to see that only the tanks intended are receiving ballast.</p> <p>(5) The same attention shall be given to ballasting as to topping-off tanks when loading cargo.</p> <p>(6) When completing the loading of ballast, seacocks shall be closed before stopping the pumps.</p> <p>(b) The provisions of paragraphs (a):(1), (2), (3), and (6) of this section shall not apply to any oil-carrying vessel whose ballast piping system and ballast pumps are wholly independent and not connected to the cargo system.</p>
Virginia	<p>9 VAC 25-70-40. Bilge and ballast water discharges</p> <p>No bilge or ballast water containing more than 10mg/l of petroleum products shall be directly or indirectly discharged from any documented or undocumented boat or vessel into the navigable or nonnavigable waters within this state. However, this provision should not be construed to prevent bilge pumping necessary for the safe operation of the boat or vessel.</p>
	<p>9 VAC 25-70-20. Wood, Garbage, Petroleum Products and Chemicals. Provisions for the disposal for wood, garbage, petroleum products and chemicals should not interfere with the normal operation of marine engines, or necessary pumping of bilge or ballast water.</p> <p>No decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, petroleum products, chemicals, or other substances shall be directly or indirectly cast, placed, thrown, deposited, or discharged from any documented or undocumented boat or vessel into the navigable or nonnavigable waters within this State. However, this provision shall not be construed to prevent the normal operation of marine engines, or necessary pumping of bilge or ballast water pursuant to Section 9 VAC 25-70-40.</p>
Wisconsin	<p>NR 279.22. Effluent Limitations Guidelines Representing the Degree of Effluent Reduction Attainable by the Application of the Best Practicable Control Technology Currently Available (BPT).</p> <p>(1) Except as provided in 40 CFR ss. 125.30 - 125.32, any existing point source subject to this subcategory shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available</p> <p>(3) The provisions of s. NR 279.12 (3) apply to discharges of process wastewater pollutants attributable to ballast water by a point source subject to the provisions of this subcategory.</p>

CHAPTER 849
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INTRODUCED BY Assembly Member Lempert
(Coauthors: Assembly Members Aroner and Corbett)
(Coauthor: Senator Alpert)

FEBRUARY 24, 1999

An act to add and repeal Division 36 (commencing with Section 71200) of the Public Resources Code, relating to ballast water.

LEGISLATIVE COUNSEL'S DIGEST

AB 703, Lempert. Ballast water.

Existing law requires the Department of Fish and Game to adopt the International Maritime Organization's "Guidelines for Preventing the Introduction of Unwanted Aquatic Organisms and Pathogens from Ships' Ballast Water and Sediment Discharges" as the policy of the state to prevent the introduction and spread of aquatic nuisance species into any river, estuary, bay, or coastal area through the exchange of ballast water of vessels prior to entering those waters and to adopt a ballast water control report form to monitor compliance with those guidelines.

This bill, with certain exceptions, would require the master, operator, or person in charge of a vessel to employ prescribed ballast water management practices for ballast water carried into the waters of the state from areas outside the exclusive economic zone, as defined. The bill would require those persons to take certain actions to minimize the uptake and release of nonindigenous species. The bill would require the master, owner, operator, agent, or person in charge of a vessel carrying ballast water into waters of the state after operating outside the exclusive economic zone to provide the State Lands Commission, and maintain on board the vessel, specified information.

The bill would require the State Lands Commission to take samples of ballast water and sediment and to take other action to assess the compliance of any vessel with prescribed requirements. The bill would prohibit, unless required by federal law, any state agency from imposing requirements different from those contained in the bill relating to the discharge of ballast water for the purpose of limiting the introduction of nonindigenous species prior to January 1, 2004. The bill would, on or before December 1, 2002, require the State Water Resources Control Board to evaluate alternatives for managing ballast water, as specified. The bill would require the Department of Fish and Game to conduct a study relating to resident nonindigenous species populations, as prescribed. The bill would, on or before September 1, 2002, require the State Lands Commission to submit to the Legislature, and make available to the public, a report relating to ballast water. The bill would require the state board, the State Lands Commission, and the Department of Fish and Game to conduct prescribed research.

The bill would subject a person who fails to comply with the ballast water management program required to be undertaken by the bill with prescribed civil penalties. The bill would require the State Lands Commission to establish fees not to exceed \$1,000 per vessel, as specified. The bill would require the money generated by the imposition of the fees and the penalties to be deposited in the Exotic Species Control Fund, which the bill would create. The money in the fund, upon appropriation by the Legislature, would be available to carry out the ballast water management program, as described above.

The provisions of this bill would be repealed on January 1, 2004.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Division 36 (commencing with Section 71200) is added to the Public Resources Code, to read:

DIVISION 36. BALLAST WATER MANAGEMENT FOR CONTROL OF
NONINDIGENOUS SPECIES

CHAPTER 1. GENERAL PROVISIONS

71200. Unless the context otherwise requires, the following definitions govern the construction of this division:

(a) "Ballast tank" means any tank or hold on a vessel used for

carrying ballast water, whether or not the tank or hold was designed for that purpose.

(b) "Ballast water" means any water and suspended matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

(c) "EEZ" means exclusive economic zone, which extends from the baseline of the territorial sea of the United States seaward 200 miles.

(d) "Exchange" means to replace the water in a ballast tank using either of the following methods:

(1) "Flow through exchange," means to flush out ballast water by pumping in mid-ocean water at the bottom of the tank and continuously overflowing the tank from the top until three full volumes of water have been changed to minimize the number of original organisms remaining in the tank.

(2) "Empty/refill exchange," means to pump out, until the tank is empty or as close to 100 percent as the master or operator determines is safe to do so, the ballast water taken on in ports, or estuarine or territorial waters, then refilling the tank with mid-ocean waters.

(e) "Mid-ocean waters" means waters that are more than 200 nautical miles from land and at least 2,000 meters (6,560 feet, 1,093 fathoms) deep.

(f) "Nonindigenous species" means any species or other viable biological material that enters an ecosystem beyond its historic range, including any such organism transferred from one country into another.

(g) "Person" means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, or association.

(h) "Sediments" means any matter settled out of ballast water within a vessel.

(i) "Waters of the state" means any surface waters, including saline waters, that are within the boundaries of the state.

(j) "Voyage" means any transit by a vessel destined for any California port from a port or place outside the EEZ, including intermediate stops at a port or place within the EEZ. For the purposes of this division, a transit by a vessel from a United States port to any other United States port, if at any time the vessel operates outside the EEZ or equivalent zone of Canada, is also a voyage.

71201. (a) This division applies to all vessels, United States and

foreign, carrying ballast water into the waters of the state after operating outside the EEZ, except those vessels described in Section 71202.

(b) This division applies to all ballast water and associated sediments taken on a vessel in areas less than 200 nautical miles from any shore, or with water that is less than 2,000 meters (6,560 feet, 1,093 fathoms) deep.

71201.5. This division does not authorize the discharge of oil or noxious liquid substances in a manner prohibited by state, federal or international laws or regulations. Ballast water carried in any tank containing a residue of oil, noxious liquid substances, or any other pollutant shall be discharged in accordance with the applicable requirements.

71202. This division does not apply to any of the following vessels:

(a) A crude oil tanker engaged in the coastwise trade, as implemented by the United States Coast Guard in accordance with the National Invasive Species Act of 1996.

(b) A passenger vessel equipped with a functioning treatment system designed to kill nonindigenous species in the ballast water if both of the following apply:

(1) The State Lands Commission has determined that the system is at least as effective as ballast water exchange at reducing the risk of transfer of nonindigenous species in the ballast water of passenger vessels.

(2) The master, operator, or person in charge of the vessel operates, or ensures the operation of, the treatment system as designed.

(c) A vessel of the United States Department of Defense or United States Coast Guard subject to the requirements of Section 1103 of the National Invasive Species Act of 1996, or any vessel of the armed forces, as defined in Section 1322(a)(14) of Title 33 of the United States Code that is subject to the "Uniform National Discharge Standards for Vessels of the Armed Forces" pursuant to Section 1322 (n) of Title 33 of the United States Code.

(d) A vessel that discharges ballast water or sediments only at the location where the ballast water or sediments originated, if the ballast water or sediments do not mix with ballast water or sediments from areas other than mid-ocean waters.

(e) A vessel in innocent passage, which is a foreign vessel merely traversing the territorial sea of the United States and not entering or departing a United States port, or not navigating the internal waters of the United States. However, it is the intent of the Legislature that a

vessel described in this subdivision does not discharge ballast water into the waters of the state, or into waters that may impact waters of the state, unless the vessel meets the requirements of Section 71204.

CHAPTER 2. BALLAST WATER MANAGEMENT REQUIREMENTS

71203. (a) The master, operator, or person in charge of a vessel is responsible for the safety of the vessel, its crew, and its passengers.

(b) (1) The master, operator, or person in charge of a vessel is not required by this division to conduct a ballast water management practice, including exchange, if the master determines that the practice would threaten the safety of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions.

(2) If a determination described in paragraph (1) is made, it is the intent of the Legislature that the master, operator, or person in charge of the vessel consider taking all feasible measures that do not compromise the safety of the vessel to minimize the discharge of ballast water containing nonindigenous species into the waters of the state, or waters that may impact waters of the state.

(c) Nothing in this division relieves the master, operator, or person in charge of a vessel of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility.

71204. (a) Subject to Section 71203, the master, operator, or person in charge of a vessel shall employ at least one of the following ballast water management practices for ballast water carried into the waters of the state from areas outside the EEZ:

(1) Exchange ballast water outside the EEZ, from an area not less than 200 nautical miles from any shore, and in waters more than 2,000 meters (6,560 feet, 1,093 fathoms) deep, before entering the waters of the state.

(2) Retain the ballast water on board the vessel.

(3) Use an alternative environmentally sound method of ballast water management that has been approved by the State Lands Commission before the vessel begins the voyage, and that is at least as effective as ballast water exchange in removing or killing nonindigenous species.

(4) Discharge ballast water to an approved reception facility.

(5) Under extraordinary conditions, conduct a ballast water exchange within an area agreed to by the State Lands Commission at the time of the request.

(b) Subject to Section 71203, the master, owner, operator, or person in charge of all vessels equipped with ballast water tanks that operate in the waters of the state shall do all of the following to minimize the uptake and the release of nonindigenous species:

(1) Avoid the discharge or uptake of ballast water in areas within or that may directly affect marine sanctuaries, marine preserves, marine parks, or coral reefs.

(2) Minimize or avoid uptake of ballast water in all of the following areas and circumstances:

(A) Areas known to have infestations or populations of harmful organisms and pathogens.

(B) Areas near a sewage outfall.

(C) Areas near dredging operations.

(D) Areas where tidal flushing is known to be poor or times when a tidal stream is known to be more turbid.

(E) In darkness when bottom-dwelling organisms may rise up in the water column.

(F) Where propellers may stir up the sediment.

(3) (A) Clean the ballast tanks regularly to remove sediments.

(B) Clean the ballast tanks in mid-ocean waters or under controlled arrangements in port, or at drydock.

(C) Dispose of sediments in accordance with local, state, and federal law.

(4) Discharge only the minimal amount of ballast water essential for vessel operations while in the waters of the state.

(5) Rinse anchors and anchor chains when retrieving the anchor to remove organisms and sediments at their place of origin.

(6) Remove fouling organisms from hull, piping, and tanks on a regular basis and dispose of any removed substances in accordance with local, state, and federal law.

(7) Maintain a ballast water management plan that was prepared specifically for the vessel.

(8) Train the master, operator, person in charge, and crew, on the application of ballast water and sediment management and treatment procedures.

71205. (a) (1) The master, owner, operator, agent, or person in charge of a vessel carrying ballast water into the waters of the state after operating outside the EEZ shall provide the information described in subdivision (c) in electronic or written form to the State Lands Commission before the vessel departs from the first port of call in California.

(2) The information described in subdivision (c) shall be submitted using the form developed by the United States Coast Guard pursuant to the National Invasive Species Act of 1996.

(b) If the information submitted in accordance with this section changes, an amended form shall be submitted to the State Lands Commission before the vessel departs the waters of the state.

(c) (1) The master, owner, operator, or person in charge of a vessel carrying ballast water into the waters of the state after operating outside the EEZ, shall maintain on board the vessel, in written form, records that include all of the following information:

(A) Vessel information, including all of the following:

(i) Name.

(ii) International Maritime Organization number or official number if the International Maritime Organization number has not been assigned.

(iii) Vessel type.

(iv) Owner or operator.

(v) Gross tonnage.

(vi) Call sign.

(vii) Port of Registry.

(B) Voyage information, including the date and port of arrival, vessel agent, last port and country of call, and next port and country of call.

(C) Ballast water information, including the total ballast water capacity, total volume of ballast water onboard, total number of ballast water tanks, and total number of ballast water tanks in ballast, using units of measurements such as metric tons (MT), cubic meters (m3), long tons (LT), and short tons (ST).

(D) Ballast Water Management, including all of the following information:

(i) The total number of ballast tanks or holds, the contents of which are to be discharged into the waters of the state or to a reception facility.

(ii) If an alternative ballast water management method is used, the number of tanks that were managed using an alternative method, as well as the type of method used.

(iii) Whether the vessel has a ballast water management plan and International Maritime Organization guidelines on board, and whether the ballast water management plan is used.

(E) Information on ballast water tanks, the contents of which are to be discharged into the waters of the state or to a reception facility, including all of the following:

(i) The origin of ballast water, including the date and location of intake, volume, and temperature. If a tank has been exchanged, the identity of the loading port of the ballast water that was discharged during the exchange.

(ii) The date, location, volume, method, thoroughness measured by percentage exchanged if exchange is conducted, and sea height at time of exchange if exchange conducted, of any ballast water exchanged or otherwise managed.

(iii) The expected date, location, volume, and salinity of any ballast water to be discharged into the waters of the state or a reception facility.

(F) Discharge of sediment and, if sediment is to be discharged within the state, the location of the facility where the disposal will take place.

(G) Certification of accurate information, which shall include the printed name, title, and signature of the master, owner, operator, person in charge, or responsible officer attesting to the accuracy of the information provided and certifying compliance with the requirements of this division.

(H) Changes to previously submitted information.

(2) The master, owner, operator, or person in charge of a vessel subject to this subdivision shall retain a signed copy of the information described in this subdivision on board the vessel for two years.

71206. (a) The State Lands Commission, in coordination with the

United States Coast Guard, shall take samples of ballast water and sediment, examine documents, and make other appropriate inquiries to assess the compliance of any vessel subject to this division.

(b) The master, owner, operator, or person in charge of a vessel subject to this division shall make available to the State Lands Commission, upon request of that commission, the records required by Section 71205.

(c) The State Lands Commission, in coordination with the United States Coast Guard, shall compile the information obtained from submitted reports. The information shall be used, in conjunction with existing information relating to the number of vessel arrivals, to assess vessel reporting rates and compliance with the requirements of this division.

71207. (a) This division describes the state program to regulate discharges of ballast water from vessels in order to limit the introduction of nonindigenous species. Unless required by federal law, a state agency, board, commission, or department shall not, prior to January 1, 2004, impose any requirements that are different from those set forth in this division.

(b) Nothing in this division restricts state agencies from enforcing the provisions of this division.

(c) Any person violating this division is subject to civil liability in accordance with Chapter 5 (commencing with Section 71216).

(e) The State Lands Commission may require any vessel operating in violation of this division to depart the waters of the state and exchange, treat or otherwise manage the ballast water at a location determined by the commission, unless the master determines that the departure or exchange would threaten the safety or stability of the vessel, its crew, or its passengers because of adverse weather, vessel architecture design, equipment failure, or any other extraordinary condition.

CHAPTER 3. RESEARCH AND PROGRAM EVALUATION

71210. (a) The State Water Resources Control Board, in consultation with the Department of Fish and Game, the State Lands Commission, the United States Coast Guard, the regulated industry, and other stakeholders, shall evaluate alternatives for treating and otherwise managing ballast water for the purpose of eliminating the discharge of nonindigenous species into the waters of the state or into waters that impact the waters of the state. Whenever possible, the evaluation shall

utilize appropriate existing data.

(b) The evaluation shall be completed and submitted to the Legislature and available to the public, on or before December 31, 2002, and shall include, but not be limited to, a description of recommended best available technologies that reflect the greatest degree of reduction in the release of nonindigenous species that is economically feasible, the relative effectiveness of those technologies in minimizing the discharge of nonindigenous species, and the costs of implementing those technologies.

71211. (a) The Department of Fish and Game, in consultation with the State Water Resources Control Board, the State Lands Commission, and the United States Coast Guard, shall conduct a study to establish baseline conditions in the coastal and estuarine waters of the state, which includes an inventory of the location and geographic range of resident nonindigenous species populations. Whenever possible, the study shall utilize appropriate existing data.

(b) The study shall be submitted to the Legislature, and available to the public, on or before December 31, 2002. Information generated by this study shall be of the type and in a format useful for subsequent studies and reports undertaken for any of the following purposes:

- (1) The determination of alternative discharge zones.
- (2) The identification of environmentally sensitive areas to be avoided for uptake or discharge of ballast water.
- (3) The long-term effectiveness of discharge control measures.
- (4) The assessment of potential risk zones where uptake shall be prohibited.

71212. Notwithstanding Section 7550.5 of the Government Code, on or before September 1, 2002, the State Lands Commission, in consultation with the State Water Resources Control Board, the Department of Fish and Game, and the United States Coast Guard, shall submit to the Legislature, and make available to the public, a report that includes, but is not limited to, all of the following:

(a) A summary of the information provided in the ballast water discharge report forms submitted to the State Lands Commission, including the volumes of ballast water exchanged, volumes discharged into state waters, types of ballast water treatment, and locations at which ballast water was loaded and discharged.

(b) Monitoring and inspection information collected by the State Lands Commission pursuant to this division, including a summary of compliance rates, categorized by geographic area and other groupings as information allows.

(c) An analysis of the monitoring and inspection information, including recommendations for actions to be undertaken to improve the effectiveness of the monitoring and inspection program.

(d) An evaluation of the effectiveness of the measures taken to reduce or eliminate the discharge of nonindigenous species from vessels, including recommendations regarding action that should be taken to improve the effectiveness of those measures.

(e) A summary of the research completed during the two-year period that precedes the release of the report, and ongoing research, on the release of nonindigenous species by vessels, including, but not limited to, the research described in Section 71213.

71213. The State Water Resources Control Board, the State Lands Commission, and the Department of Fish and Game shall conduct any research determined necessary to carry out the requirements of this division. The research may relate to the transport and release of nonindigenous species by vessels, the methods of sampling and monitoring of the nonindigenous species transported or released by vessels, the rate or risk of release or establishment of nonindigenous species in the waters of the state and resulting impacts, and the means by which to reduce or eliminate such a release or establishment. The research shall focus on assessing or developing methodologies for treating or otherwise managing ballast water to reduce or eliminate the discharge or establishment of nonindigenous species.

CHAPTER 4. EXOTIC SPECIES CONTROL FUND

71215. (a) The Exotic Species Control Fund is hereby created. The money in the fund, upon appropriation by the Legislature, shall be used to carry out this division.

(b) (1) The State Lands Commission shall establish a reasonable and appropriate fee to carry out this division in an amount not to exceed one thousand dollars (\$1,000) per vessel voyage. This amount may be adjusted for inflation every two years.

(2) In establishing fees, the State Lands Commission may establish lower levels of fees and the maximum amount of fees for individual shipping companies or vessels. Any fee schedule established, including the level of fees and the maximum amount of fees, shall take into account the impact of the fees on vessels operating from California in the Hawaii or Alaska trades, the frequency of calls by particular vessels to California ports within a year, the ballast water practices of the vessels, and other relevant considerations.

(c) The fee shall be collected by the State Board of Equalization from the owner or operator of each vessel that enters a California port with ballast water loaded from outside the EEZ.

(d) Notwithstanding any other provision of law, all fees imposed pursuant to this section shall be deposited into the Exotic Species Control Fund.

(e) Notwithstanding any other provision of law, all penalties and payments collected for violations of any requirements of this division shall be deposited into the Exotic Species Control Fund.

CHAPTER 5. CIVIL PENALTIES

71216. (a) Except as provided in subdivision (b) or (c), any person who intentionally or negligently fails to comply with the requirements of this division may be liable for an administrative civil penalty in an amount which shall not exceed five thousand dollars (\$5,000) for each violation. Each day of a continuing violation constitutes a separate violation.

(b) Any person who fails to comply with the reporting requirements set forth in Section 71205 may be liable for an administrative civil penalty in an amount which shall not exceed five hundred dollars (\$500) per violation. Each day of a continuing violation constitutes a separate violation.

(c) Any person who, knowingly and with intent to deceive, falsifies a ballast water control report form may be liable for an administrative civil penalty in an amount which shall not exceed five thousand dollars (\$5,000) per violation. Each day of a continuing violation constitutes a separate violation.

(d) The employees designated by the Executive Officer of the State Lands Commission may enforce the requirements of this division.

(e) Any violation of this division may be referred by the Executive Officer of the State Lands Commission to the administrator for oil spill response, as appointed by the Governor pursuant to Section 8670.4 of the Government Code, for the purpose of imposing administrative civil penalties.

(f) The administrator may issue a complaint to any person on whom civil liability may be imposed pursuant to this division. Any hearing required shall be conducted pursuant to Section 8670.68 of the Government Code.

CHAPTER 6. REPEAL

71271. This division shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

SUBSTITUTE SENATE BILL 6293

State of Washington
Regular Session

56th Legislature

2000

By Senate Committee on Natural Resources, Parks & Recreation

(originally sponsored by Senators Jacobsen and Oke)

Read first time 02/02/2000.

AN ACT Relating to ballast water management; adding a new chapter to Title 75 RCW; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

{+ NEW SECTION. +} Sec. 1. The legislature finds that some nonindigenous species have the potential to cause economic and environmental damage to the state and that current efforts to stop the introduction of nonindigenous species from shipping vessels do not adequately reduce the risk of new introductions into Washington waters.

The legislature recognizes the international and rapidly changing dimensions of this issue, and the difficulty that any one state has in either legally or practically managing this issue. Recognizing the possible limits of state jurisdiction over international issues, the state declares its support for the international maritime organization and United States coast guard efforts, and the state intends to complement, to the extent its powers allow it, the United States coast guard's ballast water management program.

{+ NEW SECTION. +} Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Ballast tank" means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(2) "Ballast water" means any water and matter taken on board a

vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

(3) "Empty/refill exchange" means to pump out, until the tank is empty or as close to empty as the master or operator determines is safe, the ballast water taken on in ports, estuarine, or territorial waters, and then refilling the tank with open sea waters.

(4) "Exchange" means to replace the water in a ballast tank using either flow through exchange, empty/refill exchange, or other exchange methodology recommended or required by the United States coast guard.

(5) "Flow through exchange" means to flush out ballast water by pumping in midocean water at the bottom of the tank and continuously overflowing the tank from the top until three full volumes of water have been changed to minimize the number of original organisms remaining in the tank.

(6) "Nonindigenous species" means any species or other viable biological material that enters an ecosystem beyond its natural range.

(7) "Open sea exchange" means an exchange that occurs fifty or more nautical miles offshore. If the United States coast guard requires a vessel to conduct an exchange further offshore, then that distance is the required distance for purposes of compliance with this chapter.

(8) "Recognized marine trade association" means those trade associations in Washington state that promote improved ballast water management practices by educating their members on the provisions of this chapter, participating in regional ballast water coordination through the Pacific ballast water group, assisting the department in the collection of ballast water exchange forms, and the monitoring of ballast water. This includes members of the Puget Sound marine committee for Puget Sound and the Columbia river steamship operators association for the Columbia river.

(9) "Sediments" means any matter settled out of ballast water within a vessel.

(10) "Treated ballast water" means ballast water that has undergone some form of treatment to remove or reduce the number of viable biological organisms.

(11) "Untreated ballast water" includes exchanged or unexchanged ballast water that has not undergone treatment.

(12) "Vessel" means a self-propelled ship in commerce of three hundred gross tons or more.

(13) "Voyage" means any transit by a vessel destined for any Washington port.

(14) "Waters of the state" means any surface waters, including internal waters contiguous to state shorelines within the boundaries of the state.

{+ NEW SECTION. +} Sec. 3. (1) This chapter applies to all vessels carrying ballast water into the waters of the state from a voyage, except:

(a) A vessel of the United States department of defense or United States coast guard subject to the requirements of section 1103 of the national invasive species act of 1996, or any vessel of the armed forces, as defined in 33 U.S.C. Sec. 1322(a)(14), that is subject to the uniform national discharge standards for vessels of the armed forces under 33 U.S.C. Sec. 1322(n);

(b) A vessel (i) that discharges ballast water or sediments only at the location where the ballast water or sediments originated, if the ballast water or sediments do not mix with ballast water or sediments from areas other than open sea waters; or (ii) that does not discharge ballast water in Washington waters;

(c) A vessel traversing the internal waters of Washington in the Strait of Juan de Fuca, bound for a port in Canada, and not entering or departing a United States port, or a vessel in innocent passage, which is a vessel merely traversing the territorial sea of the United States and not entering or departing a United States port, or not navigating the internal waters of the United States; and

(d) A crude oil tanker engaged in coast-wide trade that does not exchange or discharge ballast water into the waters of the state.

(2) This chapter does not authorize the discharge of oil or noxious liquid substances in a manner prohibited by state, federal, or international laws or regulations. Ballast water containing oil, noxious liquid substances, or any other pollutant shall be discharged in accordance with the applicable requirements.

(3) The master or operator in charge of a vessel is responsible for the safety of the vessel, its crew, and its passengers. Nothing in this chapter relieves the master or operator in charge of a vessel of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers.

{+ NEW SECTION. +} Sec. 4. The owner or operator in charge of any vessel covered by this chapter is required to ensure that the vessel under their ownership or control does not discharge ballast water into the waters of the state except as authorized by this section.

(1) Discharge into waters of the state is authorized if the vessel has conducted an open sea exchange of ballast water. A vessel is exempt from this requirement if the vessel's master reasonably determines that

such a ballast water exchange operation will threaten the safety of the vessel or the vessel's crew, or is not feasible due to vessel design limitations or equipment failure. If a vessel relies on this exemption, then it may discharge ballast water into waters of the state, subject to any requirements of treatment under subsection (2) of this section and subject to section 5 of this act.

(2) After July 1, 2002, discharge of ballast water into waters of the state is authorized only if there has been an open sea exchange or if the vessel has treated its ballast water to meet standards set by the department. When weather or extraordinary circumstances make access to treatment unsafe to the vessel or crew, the master of a vessel may delay compliance with any treatment required under this subsection until it is safe to complete the treatment.

(3) The requirements of this section do not apply to a vessel discharging ballast water or sediments that originated solely within the waters of Washington state, the Columbia river system, or the internal waters of British Columbia south of latitude fifty degrees north, including the waters of the Straits of Georgia and Juan de Fuca.

(4) Open sea exchange is an exchange that occurs fifty or more nautical miles offshore. If the United States coast guard requires a vessel to conduct an exchange further offshore, then that distance is the required distance for purposes of compliance with this chapter.

{+ NEW SECTION. +} Sec. 5. The owner or operator in charge of any vessel covered by this chapter is required to ensure that the vessel under their ownership or control complies with the reporting and sampling requirements of this section.

(1) Vessels covered by this chapter must report ballast water management information to the department for each voyage using ballast water management forms that are acceptable to the United States coast guard. Any vessel may rely on a recognized marine trade association to forward this information to the department or directly submit the report to the department. The report shall be submitted before the vessel departs its port of call in Washington.

(2) In order to monitor the effectiveness of national and international efforts to prevent the introduction of nonindigenous species, all vessels covered by this chapter must submit monitoring data describing nonindigenous species that might be present in the vessel's ballast. A vessel covered by this chapter may contract with a recognized marine trade association to randomly sample vessels within that association's membership, and provide data to the department. Vessels that do not belong to a recognized marine trade association must submit ballast tank sample data to the department for each voyage. The department may require monitoring data from any vessel that exempts itself from ballast water exchange under section 4(1) of this act.

(3) All data submitted to the department under subsection (2) of this section shall be consistent with sampling and testing protocols as adopted by rule by the department.

{+ NEW SECTION. +} Sec. 6. (1) The shipping vessel industry and the department shall promote the creation of a pilot project to establish a private sector ballast water treatment operation that is capable of servicing vessels at all Washington ports. Federal and state agencies and private industries shall be invited to participate. The project will develop equipment to treat ballast water and establish operational methods that do not increase the cost of ballast water treatment at smaller ports. The legislature intends that the cost of treatment required by this chapter is substantially equivalent among large and small ports in Washington.

(2) The department shall adopt rules to implement (a) and (b) of this subsection. The rules and recommendations shall be developed in consultation with advisors from regulated industries and the potentially affected parties, including but not limited to shipping interests, ports, shellfish growers, fisheries, environmental interests, interested citizens who have knowledge of the issues, and appropriate governmental representatives including the United States coast guard.

(a) The department shall set standards for the discharge of treated ballast water into the waters of the state. The rules are intended to ensure that the discharge of treated ballast water poses minimal risk of introducing nonindigenous species. In developing this standard, the department shall consider the extent to which the requirement is technologically and practically feasible. Where practical and appropriate, the standards shall be compatible with standards set by the United States coast guard and shall be developed in consultation with federal and state agencies to ensure consistency with the federal clean water act, 33 U.S.C. Sec. 1251-1387.

(b) The department shall adopt ballast water sampling and testing protocols for monitoring the biological components of ballast water that may be discharged into the waters of the state under this chapter. Monitoring data is intended to assist the department in evaluating the risk of new, nonindigenous species introductions from the discharge of ballast water, and to evaluate the accuracy of ballast water exchange practices. The sampling and testing protocols must consist of cost-effective, scientifically verifiable methods that, to the extent practical and without compromising the purposes of this chapter, utilize easily measured indices, such as salinity, or check for species that indicate the potential presence of nonindigenous species or pathogenic species. The department shall specify appropriate quality assurance and quality control for the sampling and testing protocols.

{+ NEW SECTION. +} Sec. 7. The legislature recognizes that international and national laws relating to this chapter are changing and that state law must adapt accordingly. The department shall submit

to the legislature, and make available to the public, a report that summarizes the results of this chapter and makes recommendations for improvement to this chapter on or before December 1, 2001, and a second report on or before December 1, 2004. The 2001 report shall describe how the costs of treatment required as of July 1, 2002, will be substantially equivalent among ports where treatment is required. The department shall strive to fund the provisions of this chapter through existing resources, cooperative agreements with the maritime industry, and federal funding sources.

{+ NEW SECTION. +} Sec. 8. (1) Except as limited by subsection (2) or (3) of this section, the director or the director's designee may impose a civil penalty or warning for a violation of the requirements of this chapter on the owner or operator in charge of a vessel who fails to comply with the requirements imposed under sections 4 and 5 of this act. The penalty shall not exceed five thousand dollars for each violation. In determining the amount of a civil penalty, the department shall consider if the violation was intentional, negligent, or without any fault, and shall consider the quality and nature of risks created by the violation. The owner or operator subject to such a penalty may contest the determination by requesting an adjudicative proceeding within twenty days. Any determination not timely contested is final and may be reduced to a judgment enforceable in any court with jurisdiction. If the department prevails using any judicial process to collect a penalty under this section, the department shall also be awarded its costs and reasonable attorneys' fees.

(2) The civil penalty for a violation of reporting requirements of section 5 of this act shall not exceed five hundred dollars per violation.

(3) Any owner or operator who knowingly, and with intent to deceive, falsifies a ballast water management report form is liable for a civil penalty in an amount not to exceed five thousand dollars per violation, in addition to any criminal liability that may attach to the filing of false documents.

(4) The department, in cooperation with the United States coast guard, may enforce the requirements of this chapter.

{+ NEW SECTION. +} Sec. 9. By December 31, 2005, the natural resources committees of the legislature must review this chapter and its implementation and make recommendations if needed to the 2006 regular session of the legislature.

{+ NEW SECTION. +} Sec. 10. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

{+ NEW SECTION. +} Sec. 11. Sections 1 through 10 of this act

constitute a new chapter in Title 75 RCW.
--- END ---

MARYLAND HOUSE BILL 1305

Unofficial Copy
M3

2000 Regular Session
(01r0365)

ENROLLED BILL

-- Environmental Matters/Economic and Environmental Affairs --

Introduced by Delegates Hubbard, Schisler, Weir, Redmer,
Morhaim, Mohorovic, Cane, Klausmeier, Boutin, Baldwin, Frush,
Owings, Hammen, Hurson, and Nathan-Pulliam

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 Ballast Water Management - Reporting and Prohibition

3 FOR the purpose of requiring the Department of the Environment to adopt certain
4 guidelines relating to vessel ballast water management; requiring certain
5 persons to complete and return a certain form relating to vessel
6 ballast water management; specifying that certain violations are crimes, subject
7 to certain penalties including fines and imprisonment for certain periods;
8 stating findings of the General Assembly; defining certain terms; requesting the
9 Governor to coordinate certain activities and meet with certain persons for
10 certain purposes; and generally relating to ballast water management in waters
11 of the State.

12 BY adding to

13 Article - Environment

14 Section 5-5A-01 through 5-5A-08 to be under the new subtitle "Subtitle 5A.

1 Ballast Water Management"
2 Annotated Code of Maryland
3 (1996 Replacement Volume and 1999 Supplement)

4 BY repealing and reenacting, without amendments,
5 Article - Environment
6 Section 5-1301
7 Annotated Code of Maryland
8 (1996 Replacement Volume and 1999 Supplement)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
10 MARYLAND, That the Laws of Maryland read as follows:

11 Article - Environment

12 SUBTITLE 5A. BALLAST WATER MANAGEMENT.

13 5-5A-01.

14 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
15 INDICATED.

16 (B) "BALLAST WATER" MEANS ANY WATER AND MATTER TAKEN ON BOARD A
17 VESSEL TO CONTROL OR MAINTAIN TRIM, DRAFT, STABILITY, OR STRESSES OF THE
18 VESSEL, WITHOUT REGARD TO THE MANNER IN WHICH IT IS CARRIED.

19 (C) "FEDERAL GUIDELINES" MEANS THE PROVISIONS OF 33 C.F.R. PART 151,
20 SUBPART D, "BALLAST WATER MANAGEMENT FOR CONTROL OF NONINDIGENOUS
21 SPECIES".

22 (D) "STATE GUIDELINES" MEANS PROCEDURES FOR BALLAST WATER
23 MANAGEMENT THAT ARE CONSISTENT WITH FEDERAL GUIDELINES.

24 (E) "VESSEL" MEANS A SELF-PROPELLED SHIP IN COMMERCE OF THREE
25 HUNDRED GROSS TONS OR MORE.

26 5-5A-02.

27 THE GENERAL ASSEMBLY FINDS THAT:

28 (1) THE WATERS OF THE STATE ARE A PRECIOUS, IRREPLACEABLE
29 RESOURCE ESSENTIAL TO THE ENVIRONMENT, COMMERCE, AND RECREATION OF
30 CITIZENS AND TOURISTS OF THE STATE;

31 (2) NONINDIGENOUS AQUATIC SPECIES INTRODUCED INTO WATERS OF
32 THE UNITED STATES FROM BALLAST WATER HAVE CAUSED TREMENDOUS
33 ENVIRONMENTAL AND ECOLOGICAL DAMAGE, DISPLACING NATIVE SPECIES,
34 DEGRADING WATER QUALITY, AND INTERFERING WITH COMMERCE, INCLUDING THE

1 ZEBRA MUSSEL BROUGHT INTO THE GREAT LAKES AND THE UPPER SUSQUEHANNA
2 RIVER;

3 (3) BALLAST WATER PRACTICES OF COMMERCIAL SHIPPING VESSELS
4 MAY CAUSE IRREVERSIBLE DAMAGE TO WATERS OF THE STATE; AND

5 (4) PROTECTIVE MEASURES AGAINST THE INTRODUCTION OF
6 NONINDIGENOUS AQUATIC SPECIES FROM BALLAST WATER ARE NECESSARY TO
7 MINIMIZE EXPOSURE OF THE WATERS OF THE STATE TO UNWANTED
8 CONTAMINATION AND DAMAGE CAUSED BY THESE SPECIES.

9 5-5A-03.

10 THIS SUBTITLE APPLIES TO ALL VESSELS CARRYING BALLAST WATER INTO THE
11 WATERS OF THE STATE FROM A VOYAGE DESTINED FOR A MARYLAND PORT, EXCEPT:

12 (1) A VESSEL OF THE UNITED STATES DEPARTMENT OF DEFENSE OR
13 UNITED STATES COAST GUARD SUBJECT TO THE REQUIREMENTS OF § 1103 OF THE
14 NATIONAL INVASIVE SPECIES ACT OF 1996, OR ANY VESSEL OF THE ARMED FORCES,
15 AS DEFINED IN 33 U.S.C. § 1322(A)(14), THAT IS SUBJECT TO THE UNIFORM
16 NATIONAL DISCHARGE STANDARDS FOR VESSELS OF THE ARMED FORCES UNDER 33
17 U.S.C. § 1322(N); OR

18 (2) A VESSEL:

19 (I) THAT DISCHARGES BALLAST WATER OR SEDIMENTS ONLY AT
20 THE LOCATION WHERE THE BALLAST WATER OR SEDIMENTS ORIGINATED, IF THE
21 BALLAST WATER OR SEDIMENTS DO NOT MIX WITH BALLAST WATER OR SEDIMENTS
22 FROM AREAS OTHER THAN OPEN SEA WATERS; OR

23 (II) THAT DOES NOT DISCHARGE BALLAST WATER IN WATERS OF
24 THE STATE.

25 5-5A-04.

26 (A) IN ORDER TO PREVENT THE INTRODUCTION AND SPREAD OF AQUATIC
27 NUISANCE SPECIES INTO ANY RIVER, ESTUARY, BAY, OR COASTAL AREA THROUGH
28 THE EXCHANGE OF BALLAST WATER OF VESSELS BEFORE ENTERING THE
29 CHESAPEAKE BAY, THE CHESAPEAKE AND DELAWARE CANAL, AND OTHER WATERS
30 OF THE STATE, THE DEPARTMENT SHALL ADOPT, BY REGULATION:

31 (1) THE FEDERAL GUIDELINES, FOR VESSELS ENTERING MARYLAND
32 WATERS FROM OUTSIDE THE UNITED STATES EXCLUSIVE ECONOMIC ZONE; AND

33 (2) STATE GUIDELINES FOR BALLAST WATER MANAGEMENT THAT ARE
34 CONSISTENT WITH THE FEDERAL GUIDELINES, FOR OTHER VESSELS ENTERING
35 MARYLAND WATERS.

1 (B) NOTHING IN THE GUIDELINES ADOPTED UNDER THIS SECTION MAY BE
2 CONSTRUED TO REQUIRE A VESSEL TO OPERATE IN A MANNER THAT MAY THREATEN
3 THE SAFETY OF THE VESSEL OR ITS CREW OR PASSENGERS.

4 5-5A-05.

5 THE DEPARTMENT SHALL:

6 (1) ADOPT BALLAST WATER CONTROL REPORT FORMS, CONSISTENT
7 WITH THE FORM ADOPTED BY THE UNITED STATES COAST GUARD, TO MONITOR
8 COMPLIANCE WITH THE FEDERAL AND STATE GUIDELINES;

9 (2) WORK COOPERATIVELY WITH THE UNITED STATES COAST
10 GUARD, THE MARYLAND PORT ADMINISTRATION, AND THE
11 SHIPPING INDUSTRY TO ASSURE DISTRIBUTION OF THESE FORMS TO VESSELS; AND

12 (3) DIRECT RETURN OF THE FORMS TO THE DEPARTMENT AND TO THE
13 NATIONAL BALLAST WATER INFORMATION CLEARINGHOUSE OF THE SMITHSONIAN
14 ENVIRONMENTAL RESEARCH CENTER.

15 5-5A-06.

16 AS A CONDITION OF USE OF THE WATERS OF THE STATE, THE OPERATOR, OR
17 A SHIPPING AGENT ACTING ON BEHALF OF THE OPERATOR, OF EACH VESSEL THAT IS
18 SUBJECT TO THIS SUBTITLE SHALL COMPLETE AND RETURN A BALLAST WATER
19 CONTROL REPORT FORM IN ACCORDANCE WITH INSTRUCTIONS PROVIDED WITH THE
20 FORM.

21 5-5A-07.

22 A VESSEL OPERATOR, EITHER DIRECTLY OR THROUGH A SHIPPING
23 AGENT, WHO FAILS TO COMPLETE AND RETURN A BALLAST WATER CONTROL
24 REPORT FORM AS REQUIRED BY § 5-5A-06 OF THIS SUBTITLE IS GUILTY OF A
25 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$500.

26 5-5A-08.

27 A PERSON WHO, KNOWINGLY AND WITH AN INTENT TO DECEIVE, FAILS TO
28 COMPLETE AND RETURN, OR FALSIFIES, A BALLAST WATER CONTROL REPORT FORM
29 UNDER § 5-5A-06 OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON
30 CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT
31 EXCEEDING \$5,000 OR BOTH.

32 5-1301.

33 (a) Any person who violates any provision of this title is guilty of a
34 misdemeanor. Upon conviction in a court of competent jurisdiction, unless another
35 penalty is specifically provided elsewhere in this title, the person is subject to a fine

36 not exceeding \$500, with costs imposed in the discretion of the court. Every fine and
37 cost shall be paid in accordance with Article 38, § 4 of the Code.

1 (b) Any person found guilty of a second or subsequent violation of any
2 provision of this title in a court of competent jurisdiction, unless another penalty is
3 specifically provided elsewhere in this title, is subject to a fine not exceeding \$1,000 or
4 imprisonment not exceeding 1 year or both with costs imposed in the discretion of the
5 court. For the purpose of this subsection, a second or subsequent violation is a
6 violation which has occurred within 2 years of any prior violation of this title.

7 (c) In addition to any administrative penalty provided in this title, a violation
8 of any regulation or restriction adopted by any unit within the Department of the
9 Environment pursuant to the provisions of this title is a misdemeanor and is
10 punishable as provided in subsections (a) and (b) of this section.

11 SECTION 2. AND BE IT FURTHER ENACTED, That the Governor of
12 Maryland is requested to:

13 (a) coordinate with neighboring states and with the United States Coast
14 Guard, the Smithsonian Environmental Research Center, and with other appropriate
15 federal agencies in order to provide necessary information on current ballast water
16 management practices; and

17 (b) meet with the Governors of the Commonwealths of Virginia and
18 Pennsylvania, and of the State of Delaware, and with the federal agencies, in order to
19 encourage those states and agencies to:

20 (1) develop uniform standards for ballast water management and
21 reporting for vessels entering State waters from other ports inside and outside the
22 United States Exclusive Economic Zone;

23 (2) cooperate with the State of Maryland and with federal agencies,
24 including the United States Coast Guard and the Smithsonian Environmental
25 Research Center, in developing information and policies to protect the Chesapeake
26 Bay and other State waters from nonindigenous species introduction through
27 improper ballast water management practices; and

28 (3) adopt legislation implementing those standards and policies to
29 protect the waters of the Chesapeake Bay and the states from the introduction of
30 nonindigenous species through ballast water discharge.

31 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2000.

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 312

An Act to amend the Code of Virginia by adding in Chapter 1 of Title 28.2 an article numbered 3, consisting of sections numbered 28.2-109, 28.2-110, and 28.2-111, relating to reporting of ballast water discharge; penalty.

[S 1072]

Approved March 19, 2001

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 1 of Title 28.2 an article numbered 3, consisting of sections numbered 28.2-109, 28.2-110, and 28.2-111, as follows:

Article 3.

Ballast Water Discharge.

§ 28.2-109. Definitions.

As used in this article, unless the context requires a different meaning:

"Ballast water" means any water or matter taken on board a vessel to control or maintain trim, draft, stability or stresses of the vessel, without regard to the manner in which it is carried.

"Commercial vessel" means a self-propelled ship in commerce of 300 gross tons or more. The term "commercial vessel" does not include a vessel of the United States Department of Defense or United States Coast Guard subject to the requirements of § 1103 of the National Invasive Species Act of 1996, or any vessel of the Armed Forces, as defined in 33 U.S.C. § 1322 (A)(14), that is subject to the uniform national discharge standards for vessels of the Armed Forces under 23 U.S.C. § 1322 (N).

"Federal guidelines" means the provisions of 33 C.F.R. Part 151, Subpart D, "Ballast Water Management for Control of Nonindigenous Species in Waters of the United States."

"Operator" means any person who owns, operates, charters, rents or otherwise exercises control

over or responsibility for a vessel.

§ 28.2-110. Filing requirements; penalty.

A. The operator, or a ship agent acting on behalf of the operator, of a commercial vessel that enters into Virginia waters shall file a Ballast Water Control Report form with the Commission (i) within seventy-two hours of the completion of the discharge of ballast water if the commercial vessel discharges ballast water into Virginia waters, or (ii) prior to the commercial vessel's departure from Virginia waters if the commercial vessel does not discharge ballast water into Virginia waters. The operator, or ship agent of an operator, shall not be required to file a Ballast Water Control Report form if the commercial vessel's point of origin is located within the United States Exclusive Economic Zone. A Ballast Water Control Report form shall be deemed to have been filed when it is hand delivered to the Commission, sent by electronic mail or facsimile transmission and received by the Commission, or sent to the Commission by registered or certified mail, return receipt requested.

B. For commercial vessels whose point of origin is located outside the United States Exclusive Economic Zone and whose first port of call within the United States Exclusive Economic Zone is within Virginia waters, the filing of a copy of the completed form submitted by the operator to the National Ballast Water Information Clearinghouse of the Smithsonian Environmental Research Center with the Commission shall be deemed compliance with the reporting requirements of this section.

C. Any operator of a commercial vessel who knowingly fails to file a Ballast Water Control Report form with the Commission within the applicable time period set forth in subsection A, or who knowingly makes any false statement in a Ballast Water Control Report form submitted to the Commission, shall be guilty of a Class 1 misdemeanor.

§ 28.2-111. Adoption of guidelines and forms.

A. The Commission shall adopt the federal guidelines as the guidelines governing voluntary ballast water management practices to be followed by the operators of commercial vessels. The guidelines adopted by the Commission shall not require a commercial vessel to be operated in a manner that may threaten the safety of the commercial vessel, its crew or its passengers.

B. The Commission shall adopt Ballast Water Control Report forms, consistent with the form.2 adopted by the United States Coast Guard and set forth in 33 C.F.R. Part 151, Subpart D, Appendix, to monitor compliance with the guidelines adopted pursuant to this section. The Commission shall adopt procedures to distribute the Ballast Water Control Report form to the operator of a commercial vessel, or to a ship agent for the operator, at the time the commercial vessel enters state waters or as soon thereafter as practicable.

C. The Commission shall submit copies of the forms received from operators of commercial vessels and ship agents acting on behalf of operators of commercial vessels with the National Ballast Water Information Clearinghouse of the Smithsonian Environmental Research Center on a quarterly basis.

Appendix B. Federal Laws And Regulations Potentially Relating to ANS in Ballast Water

Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA)

UNITED STATES CODE TITLE 16--CONSERVATION

Chapter 67--AQUATIC NUISANCE PREVENTION AND CONTROL

SUBCHAPTER I--GENERAL PROVISIONS

Sec.

4701. Findings and purposes.

- (a) Findings.
- (b) Purposes.

4702. Definitions.

SUBCHAPTER II--PREVENTION OF UNINTENTIONAL INTRODUCTIONS OF AQUATIC NUISANCE SPECIES

4711. Aquatic nuisance species in Great Lakes.

- (a) Guidelines.
- (b) Authority of Secretary.
- (c) Civil penalties.
- (d) Criminal penalties.
- (e) Consultation with Canada.

4712. National ballast water control program.

- (a) Studies on introduction of aquatic nuisance species by vessels.
- (b) Consultation.
- (c) Reports.
- (d) Negotiations.

SUBCHAPTER III--PREVENTION AND CONTROL OF AQUATIC NUISANCE SPECIES

4721. Establishment of Task Force.

- (a) Task Force.
- (b) Membership.
- (c) Ex officio members.
- (d) Chairpersons.
- (e) Memorandum of understanding.
- (f) Coordination.

4722. Aquatic nuisance species program.

- (a) In general.
- (b) Content.

- (c) Prevention.
- (d) Monitoring.
- (e) Control.
- (f) Research.
- (g) Technical assistance.
- (h) Education.
- (i) Zebra mussel demonstration program.
- (j) Implementation.
- (k) Reports.

4723. Great Lakes regional coordination.

- (a) In general.
- (b) Consultation.
- (c) Canadian participation.

4724. State aquatic nuisance species management plans.

- (a) State plan.
- (b) Grant program.

4725. Relationship to other laws.

4726. International cooperation.

- (a) Advice.
- (b) Negotiations.

4727. Intentional introductions policy review.

4728. Brown tree snake control program.

SUBCHAPTER IV--AUTHORIZATION OF APPROPRIATIONS

4741. Authorization of appropriations.

- (a) Prevention of unintentional introductions.
- (b) Task Force and aquatic nuisance species program.
- (c) Grants for State management programs.
- (d) Intentional introductions policy review.

SUBCHAPTER V--COOPERATIVE ENVIRONMENTAL ANALYSES

4751. Environmental impact analyses.

Chapter Referred to in Other Sections

This chapter is referred to in section 941c of this title.

-CITE-

16 USC Sec. 4701

01/16/96

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 67 - AQUATIC NUISANCE PREVENTION AND

CONTROL

SUBCHAPTER I - GENERAL PROVISIONS

-HEAD-

Sec. 4701. Findings and purposes

-STATUTE-

(a) Findings

The Congress finds that -

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

(2) when environmental conditions are favorable, nonindigenous species, such as the zebra mussel (*Dreissena polymorpha*), become established and may disrupt the aquatic environment and economy of affected coastal areas;

(3) the zebra mussel was unintentionally introduced into the Great Lakes and, if left uncontrolled, is expected to infest over two-thirds of the continental United States through the unintentional transportation of larvae and adults by vessels operating in inland waters; and

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

(b) Purposes

The purposes of this chapter are -

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

(2) to coordinate federally conducted, funded or authorized research, prevention (FOOTNOTE 1) control, information dissemination and other activities regarding the zebra mussel and other aquatic nuisance species;

(FOOTNOTE 1) So in original. Probably should be followed by a comma.

(3) to develop and carry out environmentally sound control

methods to prevent, monitor and control unintentional introductions of nonindigenous species from pathways other than ballast water exchange;

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

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

-SOURCE-

(Pub. L. 101-646, title I, Sec. 1002, Nov. 29, 1990, 104 Stat. 4761.)

-REFTEXT-

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", which, to reflect the probable intent of Congress, was translated as reading "this title" meaning title I of Pub. L. 101-646, Nov. 29, 1990, 104 Stat. 4761, known as the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out below and Tables.

-MISC2-

SHORT TITLE

Section 1001 of title I of Pub. L. 101-646 provided that: "This title (enacting this chapter and amending section 42 of Title 18, Crimes and Criminal Procedure) may be cited as the 'Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990'."

REPORT ON ESTABLISHMENT OF PROGRAM

Pub. L. 102-567, title II, Sec. 203(b), Oct. 29, 1992, 106 Stat. 4281, provided that: "Not later than one year after the date of the enactment of this Act (Oct. 29, 1992), the Secretary of Commerce shall submit a report to the Congress on progress toward establishing a nonindigenous aquatic nuisance prevention and control program within the National Oceanic and Atmospheric Administration and projected funding for such a program for the following five fiscal years."

-CITE-

16 USC Sec. 4702

01/16/96

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 67 - AQUATIC NUISANCE PREVENTION AND

CONTROL

SUBCHAPTER I - GENERAL PROVISIONS

-HEAD-

Sec. 4702. Definitions

-STATUTE-

As used in this chapter, the term -

(1) "appropriate Committees" means the Committee on Public Works and Transportation and the Committee on Merchant Marine and Fisheries in the House of Representatives and the Committee on Environment and Public Works and Committee on Commerce, Science, and Transportation in the Senate; and

(2) "aquatic nuisance species" means a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural or recreational activities dependent on such waters;

(3) "assistant Secretary" means the Assistant Secretary of the Army (Civil Works);

(4) "ballast water" means any water and associated sediments used to manipulate the trim and stability of a vessel;

(5) "Director" means the Director of the United States Fish and Wildlife Service;

(6) "exclusive economic zone" means the Exclusive Economic Zone of the United States established by Proclamation Number 5030, dated March 10, 1983, and the equivalent zone of Canada;

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

(8) "Great Lakes" means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian (FOOTNOTE 1) Border), and includes all other bodies of water within the drainage basin of such lakes and connecting channels.

(FOOTNOTE 1) So in original. Probably should be "Canadian".

(9) "nonindigenous species" means any species or other viable biological material that enters an ecosystem beyond its historic range, including any such organism transferred from one country into another;

(10) "Secretary" means the Secretary of the department in

which the Coast Guard is operating;

(11) "Task Force" means the Aquatic Nuisance Species Task Force established under section 4721 of this title;

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

(13) "Under Secretary" means the Under Secretary of Commerce for Oceans and Atmosphere;

(14) "waters of the United States" means the navigable waters and the territorial sea of the United States; and

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

-SOURCE-

(Pub. L. 101-646, title I, Sec. 1003, Nov. 29, 1990, 104 Stat. 4762; Pub. L. 102-580, title III, Sec. 302(b)(2), Oct. 31, 1992, 106 Stat. 4839.)

-REFTEXT-

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", which, to reflect the probable intent of Congress, was translated as reading "this title" meaning title I of Pub. L. 101-646, Nov. 29, 1990, 104 Stat. 4761, known as the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out below and Tables.

Proclamation Number 5030, referred to in par. (6), is set out under section 1453 of this title.

Presidential Proclamation Number 5928, referred to in par. (12), is set out under section 1331 of Title 43, Public Lands.

-MISC2-

AMENDMENTS

1992 - Par. (1). Pub. L. 102-580 inserted "the Committee on Public Works and Transportation and" after "means".

-CHANGE-

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of

Pub. L. 104-14, set out as a note preceding section 21 of Title 2,
The Congress.

-TRANS-

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of
Representatives abolished and its jurisdiction transferred by House
Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Committee on Merchant Marine and Fisheries of House of
Representatives treated as referring to Committee on Transportation
and Infrastructure of House of Representatives in case of
provisions relating to matters other than inspection of seafood and
seafood products, interoceanic canals, Merchant Marine Academy and
State Maritime Academies, or national security aspects of merchant
marine, fisheries, wildlife, international fishing agreements,
marine affairs or oceanography, and marine research, by section
1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21
of Title 2, The Congress.

TITLE 16--CONSERVATION

CHAPTER 67--AQUATIC NUISANCE PREVENTION AND CONTROL

SUBCHAPTER II--PREVENTION OF UNINTENTIONAL INTRODUCTIONS OF AQUATIC NUISANCE SPECIES

Sec. 4711. Aquatic nuisance species in Great Lakes

(a) Guidelines

(1) Not later than 6 months after November 29, 1990, the Secretary shall issue voluntary guidelines to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the exchange of ballast water of vessels prior to entering those waters.

(2) The guidelines issued under this subsection shall--

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

(B) protect the safety of each vessel, its crew, and passengers;

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

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

(3) Within 12 months after November 29, 1990, the Secretary shall carry out education and technical assistance programs and other measures

to encourage compliance with the guidelines issued under this subsection.

(b) Authority of Secretary

(1) Within 24 months after November 29, 1990, the Secretary, in consultation with the Task Force, shall issue regulations to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the ballast water of vessels.

(2) The regulations issued under this subsection shall--

(A) require \1\ all vessels that carry ballast water and enter a United States port on the Great Lakes after operating on the waters beyond the exclusive economic zone;

\1\ So in original. Probably should be ``apply to".

(B) require a vessel to--

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

(ii) carry out an exchange of ballast water in other waters where the exchange does not pose a threat of infestation or spread of aquatic nuisance species in the Great Lakes and other waters of the United States, as recommended by the Task Force under section 4712(a)(1) of this title; or

(iii) use environmentally sound alternative ballast water management methods if the Secretary determines that such alternative methods are as effective as ballast water exchange in preventing and controlling infestations of aquatic nuisance species.\2\

\2\ So in original. The period probably should be a semicolon.

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

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

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

(F) request the Secretary of the Treasury to withhold or revoke the clearance required by section 91 of title 46, Appendix, of a vessel, the owner or operator of which is in violation of the regulations;

(G) protect the safety of each vessel, its crew, and passengers;

(H) take into consideration different vessel operating conditions; and

(I) be based on the best scientific information available.

(3) \3\ In addition to issuing regulations under paragraph (1), the Secretary, in consultation with the Task Force shall, not later than 24 months after November 4, 1992, issue regulations to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through ballast water carried on vessels that, after operating on the waters beyond the exclusive economic zone, enter a United States port on the Hudson River north of the George Washington Bridge.

\3\ See 1992 Amendment note below.

(c) Civil penalties

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

(d) Criminal penalties

Any person who knowingly violates the regulations issued under subsection (b) of this section is guilty of a class C felony.

(e) Consultation with Canada

In developing the guidelines and regulations, the Secretary is encouraged to consult with the Government of Canada to develop an effective international program for preventing the introduction and spread of aquatic nuisance species in the Great Lakes from the ballast water of vessels.

(Pub. L. 101-646, title I, Sec. 1101, Nov. 29, 1990, 104 Stat. 4763;
Pub. L. 102-580, title III, Sec. 302(b)(1), Oct. 31, 1992, 106 Stat.

4839; Pub. L. 102-587, title IV, Sec. 4002, Nov. 4, 1992, 106 Stat. 5068.)

References in Text

The Federal Water Pollution Control Act, referred to in subsec. (b)(2)(C), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, Sec. 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (Sec. 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

Amendments

1992--Subsec. (b)(3). Pub. L. 102-580 and Pub. L. 102-587 made substantively identical amendments, adding par. (3). Par. (3) is based on text of Pub. L. 102-587.

Section Referred to in Other Sections

This section is referred to in sections 4712, 4741 of this title.

TITLE 16--CONSERVATION

CHAPTER 67--AQUATIC NUISANCE PREVENTION AND CONTROL

SUBCHAPTER II--PREVENTION OF UNINTENTIONAL INTRODUCTIONS OF AQUATIC NUISANCE SPECIES

Sec. 4712. National ballast water control program

(a) Studies on introduction of aquatic nuisance species by vessels

(1) Ballast exchange study

The Task Force shall conduct a study--

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

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

(2) Biological study

The Task Force shall conduct a study to determine whether aquatic nuisance species threaten the ecological characteristics and economic uses of waters of the United States other than the Great Lakes.

(3) Shipping study

The Secretary shall conduct a study to determine the need for controls on vessels entering waters of the United States, other than the Great Lakes, to minimize the risk of unintentional introduction and dispersal of aquatic nuisance species in those waters. The study shall include an examination of--

- (A) the degree to which shipping may be a major pathway of transmission of aquatic nuisance species in those waters;
- (B) possible alternatives for controlling introduction of those species through shipping; and
- (C) the feasibility of implementing regional versus national control measures.

(b) Consultation

The Secretary and the Task Force shall cooperate in conducting their respective studies under this section.

(c) Reports

(1) Ballast exchange

Not later than 18 months after November 29, 1990, and prior to the effective date of the regulations issued under section 4711(b) of this title, the Task Force shall submit a report to the appropriate Committees that presents the results of the study required under subsection (a)(1) of this section and makes recommendations with respect to such regulations.

(2) Biological and shipping studies

Not later than 18 months after November 29, 1990, the Secretary and the Task Force shall each submit to the appropriate Committees a report on the results of their respective studies under paragraphs (2) and (3) of subsection (a) of this section.

(d) Negotiations

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

(Pub. L. 101-646, title I, Sec. 1102, Nov. 29, 1990, 104 Stat. 4764.)

Section Referred to in Other Sections

This section is referred to in sections 4711, 4741 of this title.

TITLE 16--CONSERVATION

CHAPTER 67--AQUATIC NUISANCE PREVENTION AND CONTROL

SUBCHAPTER III--PREVENTION AND CONTROL OF AQUATIC NUISANCE SPECIES

Sec. 4721. Establishment of Task Force

(a) Task Force

There is hereby established an "Aquatic Nuisance Species Task Force".

(b) Membership

Membership of the Task Force shall consist of--

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

(c) Ex officio members

The chairpersons designated under subsection (d) of this section shall invite representatives of the Great Lakes Commission and State agencies and other governmental entities to participate as ex officio

members of the Task Force.

(d) Chairpersons

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

(e) Memorandum of understanding

Within six months of November 29, 1990, the Director and the Under Secretary shall develop a memorandum of understanding that describes the role of each in jointly carrying out this subchapter.

(f) Coordination

Each Task Force member shall coordinate any action to carry out this subchapter with any such action by other members of the Task Force, and regional, State and local entities.

(Pub. L. 101-646, title I, Sec. 1201, Nov. 29, 1990, 104 Stat. 4765.)

References in Text

This subchapter, referred to in subsecs. (d) to (f), was in the original ``this subtitle'', meaning subtitle C (Secs. 1201-1209) of title I of Pub. L. 101-646, Nov. 29, 1990, 104 Stat. 4765, which enacted this subchapter and amended section 42 of Title 18, Crimes and Criminal Procedure.

Section Referred to in Other Sections

This section is referred to in section 4702 of this title.

TITLE 16--CONSERVATION

CHAPTER 67--AQUATIC NUISANCE PREVENTION AND CONTROL

SUBCHAPTER III--PREVENTION AND CONTROL OF AQUATIC NUISANCE SPECIES

Sec. 4722. Aquatic nuisance species program

(a) In general

The Task Force shall develop and implement a program for waters of the United States to prevent introduction and dispersal of aquatic nuisance species; to monitor, control and study such species; and to disseminate related information.

(b) Content

The program developed under subsection (a) of this section shall--

- (1) identify the goals, priorities, and approaches for aquatic nuisance species prevention, monitoring, control, education and research to be conducted or funded by the Federal Government;
- (2) describe the specific prevention, monitoring, control, education and research activities to be conducted by each Task Force member;
- (3) coordinate aquatic nuisance species programs and activities of Task Force members and affected State agencies;
- (4) describe the role of each Task Force member in implementing the elements of the program as set forth in this subchapter;
- (5) include recommendations for funding to implement elements of the program; and
- (6) develop a demonstration program of prevention, monitoring, control, education and research for the zebra mussel, to be implemented in the Great Lakes and any other waters infested, or likely to become infested in the near future, by the zebra mussel.

(c) Prevention

(1) In general

The Task Force shall establish and implement measures, within the program developed under subsection (a) of this section, to minimize the risk of introduction of aquatic nuisance species to waters of the United States, including--

- (A) identification of pathways by which aquatic organisms are introduced to waters of the United States;
- (B) assessment of the risk that an aquatic organism carried by an identified pathway may become an aquatic nuisance species; and
- (C) evaluation of whether measures to prevent introductions of aquatic nuisance species are effective and environmentally sound.

(2) Implementation

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

(d) Monitoring

The Task Force shall establish and implement monitoring measures, within the program developed under subsection (a) of this section, to--

- (1) detect unintentional introductions of aquatic nuisance species;
- (2) determine the dispersal of aquatic nuisance species after introduction; and
- (3) provide for the early detection and prevention of infestations of aquatic nuisance species in unaffected drainage basins.

(e) Control

(1) In general

The Task Force may develop cooperative efforts, within the program established under subsection (a) of this section, to control established aquatic nuisance species to minimize the risk of harm to the environment and the public health and welfare. For purposes of this chapter, control efforts include eradication of infestations, reductions of populations, development of means of adapting human activities and public facilities to accommodate infestations, and prevention of the spread of aquatic nuisance species from infested areas. Such control efforts shall be developed in consultation with affected Federal agencies, States, Indian Tribes, local governments, interjurisdictional organizations, and other appropriate entities. Control actions authorized by this section shall be based on the best available scientific information and shall be conducted in an environmentally sound manner.

(2) Decisions

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

(3) Programs

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

(f) Research

(1) Priorities

The Task Force shall, within the program developed under subsection (a) of this section, conduct research concerning--

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

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

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

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

(2) Protocol

Within 90 days of November 29, 1990, the Task Force shall establish and follow a protocol to ensure that research activities carried out under this subchapter do not result in the introduction of aquatic nuisance species to waters of the United States.

(3) Grants for research

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

(g) Technical assistance

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

(h) Education

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

(i) Zebra mussel demonstration program

(1) In general

The Task Force shall, within the program developed under subsection (a) of this section, undertake a program of prevention,

monitoring, control, education and research for the zebra mussel to be implemented in the Great Lakes and any other waters of the United States infested or likely to become infested by the zebra mussel, including--

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

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

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

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

(2) Public facility research and development

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

(j) Implementation

(1) Regulations

Not later than 18 months after November 29, 1990, the Director and the Under Secretary may issue such rules and regulations as may be necessary to implement this section.

(2) Participation of others

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

(k) Reports

(1) Not later than 12 months after November 29, 1990, the Task Force shall submit a report describing the program developed under subsection (a) of this section, including the research protocol required under subsection (f)(2) of this section, to the appropriate Committees.

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

(Pub. L. 101-646, title I, Sec. 1202, Nov. 29, 1990, 104 Stat. 4766.)

References in Text

This chapter, referred to in subsecs. (e)(1) and (f)(3), was in the original "this Act", which, to reflect the probable intent of Congress, was translated as reading "this title" meaning title I of Pub. L. 101-646, Nov. 29, 1990, 104 Stat. 4761, known as the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out below and Tables.

Section Referred to in Other Sections

This section is referred to in sections 4723, 4725, 4741 of this title.

TITLE 16--CONSERVATION

CHAPTER 67--AQUATIC NUISANCE PREVENTION AND CONTROL

SUBCHAPTER III--PREVENTION AND CONTROL OF AQUATIC NUISANCE SPECIES

Sec. 4723. Great Lakes regional coordination

(a) In general

Not later than 30 days following November 29, 1990, the Task Force shall request that the Great Lakes Commission (established under Article IV of the Great Lakes Compact to which the Congress granted consent in the Act of July 24, 1968, P.L. 90-419) convene a panel of Great Lakes representatives from Federal, State and local agencies and from private environmental and commercial interests to--

(1) identify priorities for the Great Lakes with respect to

aquatic nuisance species;

(2) make recommendations to the Task Force regarding programs to carry out section 4722(i) of this title;

(3) assist the Task Force in coordinating Federal aquatic nuisance species program activities in the Great Lakes;

(4) coordinate, where possible, aquatic nuisance species program activities in the Great Lakes that are not conducted pursuant to this chapter;

(5) provide advice to public and private individuals and entities concerning methods of controlling aquatic nuisance species; and

(6) submit annually a report to the Task Force describing activities within the Great Lakes related to aquatic nuisance species prevention, research, \1\ control.

\1\ So in original. Probably should be followed by ``and".

(b) Consultation

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

(c) Canadian participation

The panel convened under this section is encourage \2\ to invite representatives from the Federal, provincial or territorial governments of Canada to participate as observers.

\2\ So in original. Probably should be ``encouraged".

(Pub. L. 101-646, title I, Sec. 1203, Nov. 29, 1990, 104 Stat. 4769.)

References in Text

Act of July 24, 1968, referred to in subsec. (a), is Pub. L. 90-419, July 24, 1968, 82 Stat. 414, which is not classified to the Code.

This chapter, referred to in subsec. (a)(4), was in the original ``this Act", which, to reflect the probable intent of Congress, was translated as reading ``this title" meaning title I of Pub. L. 101-646, Nov. 29, 1990, 104 Stat. 4761, known as the Nonindigenous Aquatic

Nuisance Prevention and Control Act of 1990, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out below and Tables.

TITLE 16--CONSERVATION

CHAPTER 67--AQUATIC NUISANCE PREVENTION AND CONTROL

SUBCHAPTER III--PREVENTION AND CONTROL OF AQUATIC NUISANCE SPECIES

Sec. 4724. State aquatic nuisance species management plans

(a) State plan

(1) In general

The Governor of each State may, after notice and opportunity for public comment, prepare and submit--

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

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

(2) Content

Each plan shall, to the extent possible, identify the management practices and measures that will be undertaken to reduce infestations of aquatic nuisance species. Each plan shall--

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

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

(C) a schedule of implementing the plan, including a schedule of annual objectives.

(3) Consultation

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

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

(4) Plan approval

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

(b) Grant program

(1) State grants

The Director or the Assistant Secretary, as appropriate under subsection (a) of this section, may, at the recommendation of the Task Force, make grants to States with approved management plans for the implementation of those plans.

(2) Application

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

(3) Federal share

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

the non-Federal share of such costs shall be provided from non-Federal sources.

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

(4) Administrative \1\ costs

\1\ So in original. Probably should be ``Administrative".

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

(5) In-kind contributions

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

(Pub. L. 101-646, title I, Sec. 1204, Nov. 29, 1990, 104 Stat. 4770.)

Section Referred to in Other Sections

This section is referred to in section 4741 of this title.

TITLE 16--CONSERVATION

CHAPTER 67--AQUATIC NUISANCE PREVENTION AND CONTROL

SUBCHAPTER III--PREVENTION AND CONTROL OF AQUATIC NUISANCE SPECIES

Sec. 4725. Relationship to other laws

All actions taken by Federal agencies in implementing the provisions of section 4722 of this title shall be consistent with all applicable Federal, State, and local environmental laws. Nothing in this chapter shall affect the authority of any State or political subdivision thereof to adopt or enforce control measures for aquatic nuisance species, or

diminish or affect the jurisdiction of any State over species of fish and wildlife. Compliance with the control and eradication measures of any State or political subdivision thereof regarding aquatic nuisance species shall not relieve any person of the obligation to comply with the provisions of this subchapter.

(Pub. L. 101-646, title I, Sec. 1205, Nov. 29, 1990, 104 Stat. 4771.)

References in Text

This chapter, referred to in text, was in the original "this title", meaning title I of Pub. L. 101-646, Nov. 29, 1990, 104 Stat. 4761, known as the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 4701 of this title and Tables.

TITLE 16--CONSERVATION

CHAPTER 67--AQUATIC NUISANCE PREVENTION AND CONTROL

SUBCHAPTER III--PREVENTION AND CONTROL OF AQUATIC NUISANCE SPECIES

Sec. 4726. International cooperation

(a) Advice

The Task Force shall provide timely advice to the Secretary of State concerning aquatic nuisance species that infest waters shared with other countries.

(b) Negotiations

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

(Pub. L. 101-646, title I, Sec. 1206, Nov. 29, 1990, 104 Stat. 4771.)

National Invasive Species Act of 1996 (NISA)

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--H.R.4283--

H.R.4283

One Hundred Fourth Congress

of the

United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Wednesday,
the third day of January, one thousand nine hundred and ninety-six

An Act

To provide for ballast water management to prevent the introduction
and spread of nonindigenous species into the waters of the United
States, and for other purposes.

[Italic->] Be it enacted by the Senate and House of
Representatives of the United States of America in Congress
assembled, [<-Italic]

SECTION 1. SHORT TITLE; REFERENCES.

(a) IN GENERAL- This Act may be cited as the `National Invasive
Species Act of 1996'.

(b) REFERENCES- Whenever in this Act an amendment or repeal is
expressed in terms of an amendment to or repeal of a section or
other provision, the reference shall be considered to be made to a
section or other provision of the Nonindigenous Aquatic Nuisance
Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.).

SEC. 2. AMENDMENTS TO THE NONINDIGENOUS AQUATIC NUISANCE PREVENTION
AND CONTROL ACT OF 1990.

(a) FINDINGS; DEFINITIONS-

(1) FINDINGS- Section 1002(a) (16 U.S.C. 4701(a)) is amended--

(A) by striking paragraphs (2) and (3) and inserting the
following new paragraphs:

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

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

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

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

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

(B) in paragraph (4)--

(i) by inserting `by the zebra mussel and ruffe, round goby, and other nonindigenous species' after `other species'; and

(ii) by striking `and' at the end;

(C) in paragraph (5), by striking the period and inserting a semicolon; and

(D) by adding at the end the following new paragraphs:

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

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

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

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

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

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

 `B) have spread to Lake Huron; and

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

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

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

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

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

 `D) certain shellfish pathogens;

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

`(13) if preventive management measures are not taken nationwide to prevent and control unintentionally introduced

nonindigenous aquatic species in a timely manner, further introductions and infestations of species that are as destructive as, or more destructive than, the zebra mussel or the ruffe infestations may occur;

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

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

(2) DEFINITIONS- Section 1003 (16 U.S.C. 4702) is amended--

(A) by striking paragraph (1) and redesignating paragraphs (2) through (8) as paragraphs (1) through (7), respectively;

(B) in paragraph (2), as redesignated by subparagraph (A) of this paragraph, by striking `assistant Secretary' and inserting `Assistant Secretary';

(C) by redesignating paragraphs (9) through (15) as paragraphs (11) through (17), respectively; and

(D) by inserting after paragraph (7), as redesignated by subparagraph (A) of this paragraph, the following:

`(8) `Great Lakes region' means the 8 States that border on the Great Lakes;

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

`(10) `interstate organization' means an entity--

`(A) established by--

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

`(ii) a Federal statute; or

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

`(B)(i) that represents 2 or more--

`(I) States or political subdivisions thereof; or

`(II) Indian tribes; or

`(ii) that represents--

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

`(II) 1 or more Indian tribes; or

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

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

(b) AQUATIC NUISANCE SPECIES CONTROL PROGRAM-

(1) AMENDMENT TO HEADING- The heading to subtitle B (16 U.S.C. 4711 et seq.) is amended to read as follows:

`SUBTITLE B--PREVENTION OF UNINTENTIONAL INTRODUCTIONS OF NONINDIGENOUS AQUATIC SPECIES'

(2) AQUATIC NUISANCE SPECIES- Section 1101 (16 U.S.C. 4711) is amended to read as follows:

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

`(a) GREAT LAKES GUIDELINES-

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

`(2) CONTENT OF GUIDELINES- The guidelines issued under this subsection shall--

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

`(B) protect the safety of--

`(i) each vessel; and

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

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

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

`(b) REGULATIONS-

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

`(2) CONTENT OF REGULATIONS- The regulations issued under this subsection shall--

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

`(B) require a vessel to--

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

`(ii) carry out an exchange of ballast water in other

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

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

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

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

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

`(F) protect the safety of--

`(i) each vessel; and

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

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

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

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

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

`(c) VOLUNTARY NATIONAL GUIDELINES-

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

`(2) CONTENT OF GUIDELINES- The voluntary guidelines issued under this subsection shall--

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

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

`(C) protect the safety of--

`(i) each vessel; and

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

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

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

`(ii) exchange the ballast water of the vessel in other waters where the exchange does not pose a threat of infestation or spread of nonindigenous species in waters of the United States, as recommended by the Task Force under section 1102(a)(1); or

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

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

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

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

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

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

`(ii) any other information that the Secretary

considers necessary to assess the rate of effective compliance with the guidelines;

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

`(H) take into consideration--

`(i) vessel types;

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

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

`(iv) different operating conditions;

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

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

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

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

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

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

`(e) PERIODIC REVIEW AND REVISION-

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

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

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

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

`(D) as necessary, on the basis of the best scientific information available--

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

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

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

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

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

`(B) as necessary, in the same manner as provided under paragraph (1)(D)--

`(i) revise those guidelines;

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

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

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

`(f) AUTHORITY OF SECRETARY-

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

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

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

`(2) REQUIREMENTS FOR REGULATIONS- The regulations

promulgated by the Secretary under paragraph (1)--

`(A) shall--

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

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

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

`(B) may be regional in scope.

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

`(g) SANCTIONS-

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

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

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

`(4) EXCEPTION TO SANCTIONS- This subsection does not apply to a failure to exchange ballast water if--

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

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

`(h) COORDINATION WITH OTHER AGENCIES- In carrying out the programs under this section, the Secretary is encouraged to use, to the maximum extent practicable, the expertise, facilities, members, or personnel of established agencies and organizations that have routine contact with vessels, including the Animal and Plant Health Inspection Service of the Department of Agriculture, the National

Cargo Bureau, port administrations, and ship pilots' associations.

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

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

`(k) SAFETY EXEMPTION-

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

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

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

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

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

`(l) NON-DISCRIMINATION- The Secretary shall ensure that vessels

registered outside of the United States do not receive more favorable treatment than vessels registered in the United States when the Secretary performs studies, reviews compliance, determines effectiveness, establishes requirements, or performs any other responsibilities under this Act.'

(c) NATIONAL BALLAST WATER MANAGEMENT INFORMATION- Section 1102 (16 U.S.C. 4712) is amended--

(1) by striking the section heading and inserting the following:

SEC. 1102. NATIONAL BALLAST WATER MANAGEMENT INFORMATION.;

(2) in subsection (a)--

(A) in paragraphs (1) and (2), by inserting ', in cooperation with the Secretary,' before 'shall conduct' each place it appears;

(B) in paragraph (2), by inserting 'Lake Champlain and other' after 'economic uses of';

(3) by striking subsection (b) and inserting the following:

(b) ECOLOGICAL AND BALLAST WATER DISCHARGE SURVEYS-

(1) ECOLOGICAL SURVEYS-

(A) IN GENERAL- The Task Force, in cooperation with the Secretary, shall conduct ecological surveys of the Chesapeake Bay, San Francisco Bay, and Honolulu Harbor and, as necessary, of other estuaries of national significance and other waters that the Task Force determines--

(i) to be highly susceptible to invasion by aquatic nuisance species resulting from ballast water operations and other operations of vessels; and

(ii) to require further study.

(B) REQUIREMENTS FOR SURVEYS- In conducting the surveys under this paragraph, the Task Force shall, with respect to each such survey--

(i) examine the attributes and patterns of invasions of aquatic nuisance species; and

(ii) provide an estimate of the effectiveness of ballast water management and other vessel management guidelines issued and regulations promulgated under this subtitle in abating invasions of aquatic nuisance species in the waters that are the subject of the survey.

(2) BALLAST WATER DISCHARGE SURVEYS-

(A) IN GENERAL- The Secretary, in cooperation with the Task Force, shall conduct surveys of ballast water discharge rates and practices in the waters referred to in paragraph (1)(A) on the basis of the criteria under clauses (i) and (ii) of such paragraph.

(B) REQUIREMENTS FOR SURVEYS- In conducting the surveys under this paragraph, the Secretary shall--

(i) examine the rate of, and trends in, ballast

water discharge in the waters that are the subject of the survey; and

`(ii) assess the effectiveness of voluntary guidelines issued, and regulations promulgated, under this subtitle in altering ballast water discharge practices to reduce the probability of accidental introductions of aquatic nuisance species.

`(3) COLUMBIA RIVER- The Secretary, in cooperation with the Task Force and academic institutions in each of the States affected, shall conduct an ecological and ballast water discharge survey of the Columbia River system consistent with the requirements of paragraphs (1) and (2).; and

(4) by adding at the end the following new subsections:

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

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

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

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

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

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

`(f) NATIONAL BALLAST INFORMATION CLEARINGHOUSE-

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

- `(A) ballasting practices;
- `(B) compliance with the guidelines issued pursuant to section 1101(c); and
- `(C) any other information obtained by the Task Force under subsection (b).

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

- `(A) ballast water delivery and management; and
- `(B) invasions of aquatic nuisance species resulting from ballast water.'

(d) ARMED SERVICES BALLAST WATER PROGRAM; BALLAST WATER MANAGEMENT DEMONSTRATION PROGRAM- Subtitle B (16 U.S.C. 4701 et seq.) is amended by adding at the end the following new sections:

`SEC. 1103. ARMED SERVICES BALLAST WATER PROGRAMS.

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

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

`SEC. 1104. BALLAST WATER MANAGEMENT DEMONSTRATION PROGRAM.

`(a) TECHNOLOGIES AND PRACTICES DEFINED- For purposes of this section, the term 'technologies and practices' means those technologies and practices that--

- `(1) may be retrofitted--
 - `(A) on existing vessels or incorporated in new vessel designs; and
 - `(B) on existing land-based ballast water treatment facilities;
- `(2) may be designed into new water treatment facilities;
- `(3) are operationally practical;
- `(4) are safe for a vessel and crew;
- `(5) are environmentally sound;
- `(6) are cost-effective;
- `(7) a vessel operator is capable of monitoring; and
- `(8) are effective against a broad range of aquatic nuisance

species.

`(b) DEMONSTRATION PROGRAM-

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

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

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

`(A) use only vessels that--

`(i) are approved by the Secretary;

`(ii) have ballast water systems conducive to testing aboard-vessel or land-based technologies and practices applicable to a significant number of merchant vessels; and

`(iii) are--

`(I) publicly or privately owned; and

`(II) in active use for trade or other cargo shipment purposes during the demonstration;

`(B) select vessels for participation in the program by giving priority consideration--

`(i) first, to vessels documented under chapter 121 of title 46, United States Code;

`(ii) second, to vessels that are a majority owned by citizens of the United States, as determined by the Secretary; and

`(iii) third, to any other vessels that regularly call on ports in the United States; and

`(C) seek to use a variety of vessel types, including vessels that--

`(i) call on ports in the United States and on the Great Lakes; and

`(ii) are operated along major coasts of the United States and inland waterways, including the San Francisco Bay and Chesapeake Bay.

`(4) SELECTION OF TECHNOLOGIES AND PRACTICES- In selecting technologies and practices for demonstration under this subsection, the Secretary of the Interior and the Secretary of

Commerce shall give priority consideration to technologies and practices identified as promising by the National Research Council Marine Board of the National Academy of Sciences in its report on ships' ballast water operations issued in July 1996.

(5) REPORT- Not later than 3 years after the date of enactment of the National Invasive Species Act of 1996, the Secretary of the Interior and the Secretary of Commerce shall prepare and submit a report to the Congress on the demonstration program conducted pursuant to this section. The report shall include findings and recommendations of the Secretary of the Interior and the Secretary of Commerce concerning technologies and practices.

(c) AUTHORITIES; CONSULTATION AND COOPERATION WITH INTERNATIONAL MARITIME ORGANIZATION AND TASK FORCE-

(1) AUTHORITIES- In conducting the demonstration program under subsection (b), the Secretary of the Interior may--

(A) enter into cooperative agreements with appropriate officials of other agencies of the Federal Government, agencies of States and political subdivisions thereof, and private entities;

(B) accept funds, facilities, equipment, or personnel from other Federal agencies; and

(C) accept donations of property and services.

(2) CONSULTATION AND COOPERATION- The Secretary of the Interior shall consult and cooperate with the International Maritime Organization and the Task Force in carrying out this section.

(e) AMENDMENTS TO SUBTITLE C-

(1) SUBTITLE HEADING- The heading to subtitle C (16 U.S.C. 4721 et seq.) is amended to read as follows:

SUBTITLE C--PREVENTION AND CONTROL OF AQUATIC NUISANCE SPECIES DISPERSAL.

(2) TASK FORCE- Section 1201 (16 U.S.C. 4721) is amended--

(A) in subsection (b)--

(i) by striking 'and' at the end of paragraph (5);

(ii) by redesignating paragraph (6) as paragraph (7);

and

(iii) by inserting after paragraph (5) the following new paragraph:

(6) the Secretary of Agriculture; and'; and

(B) in subsection (c), by inserting 'the Chesapeake Bay Program, the San Francisco Bay-Delta Estuary Program,' before 'and State agencies'.

(3) RESEARCH PROGRAM- Section 1202 (16 U.S.C. 4722) is amended--

(A) in subsection (f)(1)(A), by inserting 'and impacts' after 'economic risks'; and

(B) in subsection (i)--

(i) in paragraph (1)--

(I) by striking `(1) IN GENERAL- The Task Force' and inserting the following:

`(1) ZEBRA MUSSEL-

`(A) IN GENERAL- The Task Force';

(II) by striking `(A) research' and inserting the following:

`(i) research';

(III) by striking `(B) tracking' and inserting the following:

`(ii) tracking';

(IV) by striking `(C) development' and inserting the following:

`(iii) development'; and

(V) by striking `(D) provision' and inserting the following:

`(iv) provision';

(ii) in paragraph (2), by striking `(2) PUBLIC

FACILITY RESEARCH AND DEVELOPMENT- ' and inserting the following:

`(B) PUBLIC FACILITY RESEARCH AND DEVELOPMENT- ';

(iii) in subparagraph (B) of paragraph (1), as so redesignated, by striking the first sentence and inserting the following: `The Assistant Secretary, in consultation with the Task Force, shall develop a program of research, technology development, and demonstration for the environmentally sound control of zebra mussels in and around public facilities.';

(iv) in paragraph (1), by adding after subparagraph (B), as so redesignated, the following new subparagraph:

`(C) VOLUNTARY GUIDELINES- Not later than 1 year after the date of enactment of this subparagraph, the Task Force shall develop and submit to the Secretary voluntary guidelines for controlling the spread of the zebra mussel and, if appropriate, other aquatic nuisance species through recreational activities, including boating and fishing. Not later than 4 months after the date of such submission, and after providing notice and an opportunity for public comment, the Secretary shall issue voluntary guidelines that are based on the guidelines developed by the Task Force under this subparagraph.'; and

(v) by adding at the end the following new paragraphs:

`(2) DISPERSAL CONTAINMENT ANALYSIS-

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

`(i) identify environmentally sound methods for controlling the dispersal of aquatic nuisance species, such as the zebra mussel; and

`(ii) adhere to research protocols developed pursuant to subsection (f)(2).

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

`(3) DISPERSAL BARRIER DEMONSTRATION-

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

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

`(i) which of the methods that are identified under the study conducted under this paragraph are most promising with respect to preventing and reducing the dispersal of aquatic nuisance species; and

`(ii) ways to incorporate those methods into ongoing operations of the United States Army Corps of Engineers that are conducted at the Chicago River Ship and Sanitary Canal.

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

`(4) CONTRIBUTIONS- To the extent allowable by law, in carrying out the studies under paragraphs (2) and (3), the Administrator of the Environmental Protection Agency and the Secretary of the Army may enter into an agreement with an interested party under which that party provides in kind or monetary contributions for the study.

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

(4) IMPLEMENTATION- Section 1202(j)(1) (16 U.S.C. 4722(j)(1)) is amended by striking `Not later than 18 months after the date of the enactment of this Act, the Director' and inserting `The Director, the Secretary,'.

(5) REGIONAL COORDINATION- Section 1203 (16 U.S.C. 4723) is amended--

(A) by striking the section heading and inserting the following:

~~SEC. 1203. REGIONAL COORDINATION.~~;

(B) in subsection (a)--

(i) by striking ~~(a) IN GENERAL- Not~~ and inserting the following:

~~(a) GREAT LAKES PANEL-~~

~~(1) IN GENERAL- Not~~;

(ii) by striking ~~(1) identify~~ and inserting the following:

~~(A) identify~~;

(iii) by striking ~~(2) make~~ and inserting the following:

~~(B) make~~;

(iv) by striking ~~(3) assist~~ and inserting the following:

~~(C) assist~~;

(v) by striking ~~(4) coordinate~~ and inserting the following:

~~(D) coordinate~~;

(vi) by striking ~~(5) provide~~ and inserting the following:

~~(E) provide~~;

(vii) by striking ~~(6) submit~~ and inserting the following:

~~(F) submit~~;

(viii) in paragraph (1), as so redesignated--

(I) in the matter preceding subparagraph (A), by inserting ~~region~~ before ~~representatives~~; and

(II) in subparagraphs (A) through (F), by striking ~~Great Lakes~~ each place it appears and inserting ~~Great Lakes region~~;

(C) by striking ~~(b) CONSULTATION- The Task Force~~ and inserting the following:

~~(2) CONSULTATION- The Task Force~~;

(D) by striking ~~(c) CANADIAN PARTICIPATION- The panel~~ and inserting the following:

~~(3) CANADIAN PARTICIPATION- The panel~~;

(E) in paragraphs (2) and (3) of subsection (a), as so redesignated, by striking ~~this section~~ and inserting ~~this subsection~~; and

(F) by adding at the end the following new subsections:

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

- `(1) identify priorities for the Western region with respect to aquatic nuisance species;
- `(2) make recommendations to the Task Force regarding an education, monitoring (including inspection), prevention, and control program to prevent the spread of the zebra mussel west of the 100th Meridian pursuant to section 1202(i) of this Act;
- `(3) coordinate, where possible, other aquatic nuisance species program activities in the Western region that are not conducted pursuant to this Act;
- `(4) develop an emergency response strategy for Federal, State, and local entities for stemming new invasions of aquatic nuisance species in the region;
- `(5) provide advice to public and private individuals and entities concerning methods of preventing and controlling aquatic nuisance species infestations; and
- `(6) submit annually a report to the Task Force describing activities within the Western region related to aquatic nuisance species prevention, research, and control.

`(c) ADDITIONAL REGIONAL PANELS- The Task Force shall--

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

(6) STATE OR INTERSTATE WATERSHED AQUATIC NUISANCE SPECIES MANAGEMENT PLAN- Section 1204 (16 U.S.C. 4724) is amended--

(A) in subsection (a)--

- (i) by striking the subsection designation and heading and inserting the following:

`(a) STATE OR INTERSTATE INVASIVE SPECIES MANAGEMENT PLANS-';

(ii) in paragraph (1)--

(I) by striking the matter preceding subparagraph (A) and inserting the following:

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

(II) in subparagraph (A), by striking 'technical and financial assistance' and inserting 'technical, enforcement, or financial assistance (or any combination thereof)'; and

(III) in subparagraphs (A) and (B), by inserting 'or within the interstate region involved' after 'within the State' each place it

appears;

(iii) in paragraph (2)--

(I) in subparagraph (B), by striking `and' at the end of the subparagraph;

(II) by redesignating subparagraph (C) as subparagraph (D);

(III) by inserting after subparagraph (B) the following:

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

(IV) in subparagraph (D), as so redesignated, by inserting `, and enabling legislation' before the period;

(iv) in paragraph (3)--

(I) in subparagraph (A)--

(aa) by inserting `or interstate organization' after `the State';

and

(bb) by inserting `Indian tribes,' after `local governments and regional entities,'; and

(II) in subparagraph (B), by inserting `or the appropriate official of an interstate organization' after `a State'; and

(v) in paragraph (4), by inserting `or the interstate organization' after `the Governor';

(B) in subsection (b)(1)--

(i) by striking `or the Assistant Secretary, as appropriate under subsection (a),'; and

(ii) by striking `approved management plans' and inserting `management plans approved under subsection (a)'; and

(C) by adding at the end the following new subsection:

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

(f) AUTHORIZATIONS OF APPROPRIATIONS- Section 1301 (16 U.S.C. 4741) is amended--

(1) in subsection (a)--

(A) by striking `and' at the end of paragraph (2);

(B) by striking paragraph (3) and inserting the following:

`(3) to the Secretary to carry out section 1101--

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

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

(C) by adding at the end the following new paragraphs:

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

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

`(B) \$1,000,000 to the Secretary; and

`(5) for each of fiscal years 1997 through 2002--

`(A) \$3,000,000, which shall be made available from funds otherwise authorized to be appropriated if such funds are so authorized, to the Under Secretary to carry out section 1102(e); and

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

(2) in subsection (b)--

(A) in the matter preceding paragraph (1), by striking

`1991, 1992, 1993, 1994, and 1995' and inserting `1997 through 2002'; and

(B) by striking paragraphs (1) through (7) and inserting the following:

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

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

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

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

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

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

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

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

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

(3) by striking subsection (c) and inserting the following:

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

(4) by adding at the end the following new subsections:

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

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

(g) REFERENCES TO APPROPRIATE COMMITTEES- The Act (16 U.S.C. 4701 et seq.) is amended by striking 'appropriate Committees' each place it appears and inserting 'Congress'.

(h) TECHNICAL CORRECTIONS- Public Law 101-646 (16 U.S.C. 4701 et seq.) is amended--

(1) in titles I, II, and IV, by striking the quotation marks at the beginning of any title, subtitle, section, subsection, paragraph, subparagraph, clause, subclause, or undesignated provision;

(2) at the end of titles II and IV, by striking the closing quotation marks and the final period; and

(3) in section 1003--

(A) by striking each single opening quotation mark and inserting double opening quotation marks; and

(B) by striking each single closing quotation mark and inserting double closing quotations marks.

SEC. 3. STATUTORY CONSTRUCTION.

Nothing in this Act or the amendments made by this Act is intended to affect the authorities and responsibilities of the Great Lakes Fishery Commission established under article II of the Convention on Great Lakes Fisheries between the United States of America and Canada, signed at Washington on September 10, 1954 (hereafter in this section referred to as the 'Convention'), including the authorities and responsibilities of the Great Lakes Fishery Commission--

(1) for developing and implementing a comprehensive program

for eradicating or minimizing populations of sea lamprey in the Great Lakes watershed; and

(2) carrying out the duties of the Commission specified in the Convention (including any amendment thereto) and the Great Lakes Fishery Act of 1956 (16 U.S.C. 931 et seq.).

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

Other Federal Laws

From “Harmful non-native species: issues for Congress,”¹

The Animal Damage Control Act. *The Animal Damage Control Act, originally enacted in 1931 (7 U.S.C. 426), is the primary statute under which APHIS operates its Wildlife Services (WS) program, known until 1997 as the Animal Damage Control program. The Act gives APHIS the authority to control wildlife damage on federal, state, or private land. Wildlife Services is involved in protecting from wildlife damage: (1) field crops, vegetables, fruits, nuts, horticultural crops, and commercial forests; (2) freshwater aquaculture ponds and marine species cultivation areas; (3) livestock on public and private rangeland and in feedlots; (4) public and private buildings and facilities, such as houses, commercial properties, swimming pools, golf courses, reservoirs, levies, and landfills; (5) civilian and military aircraft (against collisions with birds); and (6) public health (against wildlife-borne diseases such as rabies and plague). WS control methods include providing advice to individuals and municipal, state or federal agencies on a wide variety of preventive, nonlethal damage control methods. Control of predatory animals, native or non-native, is largely carried out by lethal means, including hunting, trapping, and poisoning.*

WS also has cooperative agreements with the Fish and Wildlife Service, the National Park Service, and state natural resource agencies to help protect natural resources, including wildlife and threatened or endangered species, from loss of life, habitat, or food supply due to the activities of other species. Under the authority of the Act, APHIS addresses damage problems caused by such non-native species as nutria, blackbirds, European starlings, and monk parakeets. In 1991, Congress passed P.L. 102-237, which, among other things, amended the Animal Damage Control Act specifically to add the brown tree snake to the list of animals that the WS program is to monitor and control.

The Organic Act of 1944. *The Organic Act of 1944 (7 U.S.C. 147a, 148, 148a-148e) is the basis of APHIS’s domestic detection, eradication, control, and prevention efforts with regard to plant pests. The Act operates in conjunction with other APHIS statutes which regulate imports and control interstate movement. The Act authorizes the Secretary to act independently or in cooperation with states in order to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests.*

Federal Plant Pest Act. *The Federal Plant Pest Act of 1957 (7 U.S.C. 150aa-150jj) prohibits the movement of plant pests from a foreign country into or through the United States unless authorized by the Secretary of Agriculture. The law gives APHIS broad authority to inspect, seize, quarantine, treat, destroy or dispose of imported plant and animal materials that are potentially harmful to U.S. agriculture, horticulture, forestry and, to a certain degree, natural resources. (FWS has some limited authority to prevent the introduction of fish and wildlife that could be potentially harmful to nonagricultural interests.) APHIS inspectors at U.S. international airports, seaports, and border stations conduct surveillance of travelers, baggage, and cargo entering the country. APHIS inspectors also inspect incoming international rail and truck freight and mail. In FY1997, APHIS reported that it intercepted 1.6 million plant materials and 295,000 meat and poultry products suspected of harboring potentially harmful pest and disease organisms; 63,000 insect pests and other types of pests also were intercepted.*

In 1993, the Office of Technology Assessment reported that “While APHIS has kept thousands of potential agricultural pests from becoming established, it has done little explicit analysis of risks to natural areas.”² OTA also criticized APHIS for too readily accepting imports of unregulated items — for example, raw logs, wood packing and shipping materials, and containers and ships from known high-risk areas — on the presumption of harmlessness. The first of these criticisms stems from APHIS’s role as the protector primarily of U.S. agriculture: broader responsibility for protecting U.S. natural resources historically has not been part of the agency’s charter. While some authority over pests that are threats to other sectors of the economy might be inferred from APHIS’s authorizing legislation, and used to expand its role in those areas, agency officials assert that rapidly expanding globalization of agricultural trade over the past decade has made it difficult for the agency to fulfill even its current responsibilities concerning agriculture within its budget (\$514 million in FY1999).

The second criticism relates to USDA’s role as both a promoter and regulator of agriculture. When responding to new non-native pest and disease problems, APHIS and USDA officials weigh trade and economic considerations along with biological ones. This may result in less or slower action than those who suffer economic damage from those pests may desire.

National Environmental Policy Act of 1970 (NEPA). *NEPA (P.L. 91-190, as amended; 42 U.S.C. 4321 et seq.) requires, among other things, that federal government agencies consider the environmental effects of their actions. The primary mechanism to achieve this end is the preparation of environmental impact statements (EISs) for major federal actions affecting the environment. Agencies are expected not only to prepare EISs, but also to comment on the EISs prepared by other agencies.³*

This law could apply to some introductions of non-native species. If a federal action might affect the risk of introducing of non-native species, and thereby have a significant impact on the human environment, the associated EIS would have to address this possibility. The limitations of NEPA vis-a-vis its application to non-native species include:

- limited applicability to actions without a federal nexus;
- inapplicability to completed federal actions, though these actions may have effects that continue into the present;

- limited utility if the possibility of introduction of non-native species is not foreseen; and
- the inability of scientists to provide agency administrators with the information necessary for a full understanding of the risks or consequences of the introduction of most non-native species.

If NEPA is triggered, the opportunity for significant analysis of the proposed action via an EIS is great. The analysis may result in modification or abandonment of some actions or alternatives. However, because NEPA has been held to be essentially procedural, it does not, by itself, prevent the activity from going forward even if the risk of unfavorable environmental outcomes is high. Nonetheless, failure to consider the issue of non-native introduction could be grounds for requiring an agency to amend its EIS, thereby delaying the introduction and risk while the revision is prepared.

If new source performance standards are promulgated for ballast water discharge NPDES permits then EPA would have to comply with NEPA in issuing permits for new sources to discharge in waters where states have not assumed NPDES delegation (e.g., Alaska, Massachusetts). If EPA were to acquire or assert authority for permitting of ballast discharges beyond the three mile limit, this situation would apply in those waters as well. While this could have the advantage of applying a comprehensive NEPA analysis to ship discharge operations it could have serious resource implications for the Agency.

Endangered Species Act (ESA). The ESA (P.L. 93-205 as amended, 16 U.S.C. 1531-1543) focuses its attention on species that are rare, not those that are common to the point of being weeds or pests.⁴ However, the strong protections offered under the ESA for rare species may create some vehicle for regulation of non-native species. For example, in the Pacific Northwest, the threat to resident salmon species protected under ESA is a major argument being used against the introduction or expansion of aquaculture of Atlantic salmon. Similarly, introduction of mountain goats in an area where they are not native would be more likely to be questioned if local endangered or threatened plants are likely to be harmed by the goats.

ESA could provide protection in two ways. First, if the introduction were to be carried out by a federal agency or require licensing, financial support, permits, etc., from a federal agency, the agency involved would have to consult with FWS or NMFS to determine whether the introduction (or action leading to introduction) would tend to jeopardize the continued existence of the listed species. If so, the introduction would usually be prevented or modified to reduce the risk. Second, if the action had no federal nexus, but its effects could result in a taking (as defined in the Act) of a listed species, the party carrying out the action would have to seek an incidental take permit from FWS or NMFS.

Questions of knowledge, intent, and causality affect whether penalties under the ESA are available. Therefore, as a practical matter, ESA is unlikely as an appropriate alternative for penalizing the introduction of non-natives because the persons responsible for introducing many non-native species may never be known and introduction is often inadvertent. For example, it is not known who introduced zebra mussels, and it is likely that their probable introduction via ballast water was unintentional. In addition, introductions may go unnoticed for a long time, compounding the difficulty in determining responsibility. For example, the introductions of the brown tree snake and Formosan termites went unnoticed for years after their arrival, though the brown tree snake is strongly suspected of being directly responsible for the extinction of several species. Consequently, enforcement actions in the usual sense are unlikely.

However, the policies of the ESA and the duty of federal agencies to ensure that federal actions will not jeopardize listed species may result in changes in certain practices and the tightening of regulation of potential pathways, e.g., greater regulation of ballast water practices or redesign requirements for aircraft cargo holds to reduce the chance of biological stowaways. Although there may be some circumstances in which the ESA will play a role, new laws more directly and better suited to the prevention of introductions may also be desirable.

Federal Noxious Weed Act. The Federal Noxious Weed Act of 1974 (P.L. 93-629, 7 U.S.C. 2801-2814) authorizes port-of-entry and follow-up activities (quarantine, treatment, disposal, control or eradication programs, etc.) by APHIS to restrict the introduction and spread of non-native noxious weeds. Under the Act, no person shall import or enter any noxious weed identified in regulation, into or through the United States, or move any noxious weed interstate, unless done in accordance with regulations issued by the Secretary. The Act also authorizes permanent restrictions, after a hearing on the issue, and emergency regulations for temporary quarantines, among other things.

The law currently defines noxious weeds as “any living stage (including, but not limited to, seeds and reproductive parts) of any parasitic or other plant of a kind, or subdivision of a kind, which is of foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation, or navigation or the fish and wildlife resources of the United States or the public health” (emphasis added). On an annual basis, APHIS works actively with other federal, state, and private organizations to detect and control a dozen or more invasive plants with several infestation sites in several states. Some recent examples of successes are the control of spotted and diffuse knapweeds (*Centaurea maculosa* Lam. and *C. diffusa* Lam.) and leafy spurge (*Euphorbia esula* L.) on rangelands. These plants are highly unpalatable to livestock and deleterious to wildlife habitat. Successful eradication of incipient infestations of the tropical soda apple (*Solanum viarum*) in eight primarily southeastern states are so far keeping this pest of pasture, crop, and range lands from spreading.

Some critics of APHIS’s administration of the Act assert that the agency does not focus adequately on weeds that affect natural resources, although the Act’s definition (see emphasis above) appears to allow such efforts. Also, the legislative history indicates that APHIS does not quarantine a noxious weed unless it is conducting a control or eradication program for that species.

Alien Species Prevention and Enforcement Act of 1992.

This law (ASPEA; P.L. 102-393, 39 U.S.C.

3015; 106 Stat. 1774) makes it illegal to ship certain categories of plants and animals through the mail. The prohibited species are

- those injurious animals whose movement is prohibited under 18 U.S.C. 42;⁵
- those plant pests whose movement is prohibited under the Federal Plant Pest Act (7 U.S.C. 150bb or 150cc);
- those plants, articles, or plant matter whose importation or interstate shipment is prohibited under the Plant Quarantine Act (7 U.S.C. 151 et seq.); and
- plants and animals whose shipment is prohibited under the Lacey Act (16 U.S.C. 3372).

ASPEA does not make any new categories of plants or animals illegal to ship, but rather makes it clear that the use of the U.S. mail is to be included among those forms of transport whose use is illegal for their shipment. ASPEA appears to do very little to prevent the introduction of non-native species especially if the sender is unaware of the inclusion of the items to be shipped under the prohibitions of the above laws, but ASPEA does appear to add one more law to the arsenal under which prosecutors might bring certain cases involving shipment of various species, including non-native species, to court.

APPENDIX REFERENCES

1. Corn, M. Lynne, Eugene H. Buck, Jean Rawson and Eric Fischer, "Harmful non-native species: issues for Congress," Congressional Research Service, Resources, Science and Industry Division, April 8, 1999.
2. **Harmful Non-Indigenous Species in the United States**, Office of Technology Assessment, OTA-F-566, p. 114-115, September 1993.
3. For an overview of NEPA, see CRS Report 97-49 ENR, **Summaries of Environmental Laws Administered by the Environmental Protection Agency**, p. 109-113. While the focus is on the responsibilities of one agency, the fundamentals of the Act are also explained.
4. For more information about the ESA generally, see CRS Issue Brief 10009, **Endangered Species: Continuing Controversy** by M. Lynne Corn.
5. No short title is given for this law. It refers to importation or shipment of injurious animals, to required permits, and to related matters.