

COMMITTEE AMENDMENT

[STAFF WORKING DRAFT]

July 31, 2007

Purpose: To modify the bill to reflect comments received after the bill was introduced.

**IN THE COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION—110TH Cong., 1ST Sess.**

S. 1578, 110TH Congress, 1ST Session

AUGUST 2, 2007

INTENDED to be proposed by Mr. INOUE, (for himself and Mr. STEVENS)

Viz: Strike out all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Ballast Water Manage-
3 ment Act of 2007”.

4 **SEC. 2. FINDINGS.**

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

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

10 (2) by inserting after paragraph (13) the fol-
11 lowing:

1 “(14) aquatic nuisance species may be intro-
2 duced by other vessel conduits, including the hulls of
3 ships;

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

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

15 (5) by striking “technologies.” in paragraph
16 (16), as redesignated, and inserting “technologies;”;
17 and

18 (6) adding at the end the following:

19 “(17) in 2004, the International Maritime Or-
20 ganization agreed to a Convention, which the United
21 States played an active role in negotiating, to pre-
22 vent, minimize, and ultimately eliminate the transfer
23 of aquatic nuisance species through the control and
24 management of ballast water and sediments;

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

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

12 **SEC. 3. MANAGEMENT OF VESSEL-BORNE AQUATIC NUI-**
13 **SANCE SPECIES.**

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

17 **“SEC. 1101. MANAGEMENT OF VESSEL-BORNE AQUATIC NUI-**
18 **SANCE SPECIES.**

19 “(a) STATEMENT OF PURPOSE; VESSELS TO WHICH
20 THIS SECTION APPLIES.—

21 “(1) PURPOSE.—The purpose of this section is
22 to provide an effective, comprehensive, and uniform
23 national approach for addressing the introduction
24 and spread of aquatic nuisance species from ballast

1 water and other ship-borne vectors, and, in further-
2 ance of that purpose—

3 “(A) to require, as part of that approach,
4 mandatory treatment technology, with the ulti-
5 mate goal of achieving zero discharge of aquatic
6 nuisance species;

7 “(B) to create incentives for the develop-
8 ment of ballast water treatment technologies;

9 “(C) to implement the International Con-
10 vention for the Control and Management of
11 Ships’ Ballast Water and Sediments, adopted
12 by the International Maritime Organization in
13 2004; and

14 “(D) to establish a management approach
15 for other ship-borne vectors of aquatic nuisance
16 species.

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

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

24 “(B) is a foreign vessel that—

1 “(i) is en route to a United States
2 port or place; or

3 “(ii) has departed from a United
4 States port or place and is within waters
5 subject to the jurisdiction of the United
6 States.

7 “(3) PERMANENT BALLAST WATER VESSELS.—
8 Except as provided in paragraph (6), this section
9 does not apply to a vessel that carries all of its per-
10 manent ballast water in sealed tanks and is not sub-
11 ject to discharge.

12 “(4) ARMED FORCES VESSELS.—

13 “(A) EXEMPTION.—Except as provided in
14 subparagraph (B) and paragraph (6), this sec-
15 tion does not apply to a vessel of the Armed
16 Forces.

17 “(B) BALLAST WATER MANAGEMENT PRO-
18 GRAM.—The Secretary and the Secretary of De-
19 fense, after consultation with each other and
20 with the Under Secretary of Commerce for
21 Oceans and Atmosphere, the Administrator of
22 the Environmental Protection Agency, and
23 other appropriate Federal agencies as deter-
24 mined by the Secretary, shall implement a bal-
25 last water management program, including the

1 promulgation of standards for ballast water ex-
2 change and treatment and for sediment man-
3 agement, for vessels of the Armed Forces under
4 their respective jurisdictions designed, con-
5 structed, or adapted to carry ballast water that
6 is—

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

9 “(ii) at least as stringent as the re-
10 quirements promulgated for such vessels
11 under section 312 of the Clean Water Act
12 (33 U.S.C. 1322).

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

20 “(6) OTHER SOURCES OF VESSEL-BORNE
21 AQUATIC NUISANCE SPECIES.—Measures undertaken
22 by the Secretary under subsection (s) shall apply to
23 all vessels (as defined in section 3 of title 1, United
24 States Code).

1 “(b) UPTAKE AND DISCHARGE OF BALLAST WATER
2 OR SEDIMENT.—

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

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

10 “(A) The uptake or discharge is solely for
11 the purpose of—

12 “(i) ensuring the safety of the vessel
13 in an emergency situation; or

14 “(ii) saving a life at sea.

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

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

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

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

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

13 “(c) VESSEL BALLAST WATER MANAGEMENT
14 PLAN.—

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

21 “(A) meets the requirements prescribed by
22 the Secretary by regulation; and

23 “(B) is approved by the Secretary.

24 “(2) APPROVAL CRITERIA.—

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

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

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

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

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

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

22 “(vi) incorporates regulatory require-
23 ments, guidance, and best practices devel-
24 oped under subsection (s) for other vessel

1 pathways by which aquatic nuisance spe-
2 cies are transported; and

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

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

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

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

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

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

24 “(1) IN GENERAL.—The owner or operator of a
25 vessel to which this section applies shall maintain a

1 ballast water record book in English on board the
2 vessel in which—

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

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

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

14 “(2) AVAILABILITY.—The ballast water record
15 book—

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

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

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

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

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

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

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

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

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

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

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

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

8 “(1) IN GENERAL.—

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

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

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

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

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

19 “(2) GUIDANCE; 5-YEAR USAGE.—

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

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

11 “(3) EXCHANGE AREAS.—

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

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

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

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

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

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

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

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

14 “(4) SAFETY OR STABILITY EXCEPTION.—

15 “(A) SECRETARIAL DETERMINATION.—

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

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

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

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

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

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

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

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

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

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

17 “(5) DISCHARGE UNDER WAIVER.—

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

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

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

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

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

22 “(6) PERMISSABLE DISCHARGE.—

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

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

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

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

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

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

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

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

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

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

8 “(A) if the vessel operates exclusively—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 “(D) concentrations of such additional in-
8 dicator microbes, and of viruses, as may be
9 specified in regulations promulgated by the Ad-
10 ministrator, after consultation with the Sec-
11 retary and other appropriate Federal agencies
12 as determined by the Secretary, that are less
13 than the amount specified in those regulations.

14 “(2) RECEPTION FACILITY EXCEPTION.—

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

20 “(B) PROMULGATION OF STANDARDS.—

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

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

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

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

9 “(3) IMPLEMENTATION SCHEDULE.—Para-
10 graph (1) applies to all vessels to which this section
11 applies on January 1, 2012. Based on the outcome
12 of the feasibility review conducted under paragraph
13 (5), the Secretary may require different classes of
14 vessels to comply with paragraph (1) on a different
15 schedule, and shall establish different classes of ves-
16 sels for this purpose through regulations under this
17 section.

18 “(4) TREATMENT SYSTEM APPROVAL RE-
19 QUIRED.—The operator of a vessel may not use a
20 ballast water treatment system to comply with the
21 requirements of this subsection unless the system is
22 approved by the Secretary, in consultation with the
23 Administrator. The Secretary shall promulgate regu-
24 lations establishing a process for such approval,
25 after consultation with the Administrator and other

1 appropriate Federal agencies as determined by the
2 Secretary, within 1 year after the date of enactment
3 of the Ballast Water Management Act of 2007.

4 “(5) FEASIBILITY REVIEW.—

5 “(A) IN GENERAL.—Not less than 2 years
6 before January 1, 2012, or as that date may be
7 extended under this paragraph, the Secretary,
8 in consultation with the Administrator, shall
9 complete a review to determine whether appro-
10 priate technologies are available to achieve the
11 standards set forth in paragraph (1). In review-
12 ing the technologies the Secretary, after con-
13 sultation with the Administrator and other ap-
14 propriate Federal agencies as determined by the
15 Secretary, shall consider—

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

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

20 “(iii) safety considerations;

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

23 “(v) cost effectiveness.

24 “(B) DELAY IN SCHEDULED APPLICA-
25 TION.—If the Secretary determines, on the

1 basis of the review conducted under subpara-
2 graph (A), that technology that complies with
3 the standards set forth in paragraph (1) in ac-
4 cordance with the schedule set forth in para-
5 graph (3), or as that date may be extended
6 under this paragraph, is not available or cost-
7 effective for any class of vessels, the Secretary
8 shall require use of cost-effective technology
9 that achieves the performance levels of the best
10 performing technology available that meets, at
11 a minimum, the applicable ballast water dis-
12 charge standard of the International Maritime
13 Organization. If the Secretary finds that no
14 technology is available that will achieve either
15 the standards set forth in paragraph (1) or the
16 standards of the International Maritime Orga-
17 nization, then, the Secretary shall—

18 “(i) extend the date on which that
19 paragraph applies to vessels for a period of
20 not more than 24 months; and

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

24 “(C) HIGHER STANDARDS; EARLIER IM-
25 PLEMENTATION.—

1 “(i) STANDARDS.—If the Secretary
2 determines that ballast water treatment
3 technology exists that exceeds the perform-
4 ance standards required under paragraph
5 (1) of this subsection, the Secretary shall,
6 for any class of vessels, revise the perform-
7 ance standards to incorporate the higher
8 performance standards.

9 “(ii) IMPLEMENTATION.—If the Sec-
10 retary determines that technology that
11 achieves the applicable performance stand-
12 ards required under paragraph (1) of this
13 subsection can be implemented earlier than
14 required by this subsection, the Secretary
15 shall, for any class of vessels, accelerate
16 the implementation schedule under para-
17 graph (3). If the Secretary accelerates the
18 implementation schedule pursuant to this
19 clause, the Secretary shall provide at least
20 24 months notice before such accelerated
21 implementation goes into effect.

22 “(iii) DETERMINATIONS NOT MUTU-
23 ALLY EXCLUSIVE.—The Secretary shall
24 take action under both clause (i) and

1 clause (ii) if the Secretary makes deter-
2 minations under both clauses.

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

6 “(A) IN GENERAL.—If a vessel participates
7 in a program approved by the Secretary to test
8 and evaluate promising ballast water treatment
9 technologies that are likely to result in treat-
10 ment technologies achieving a standard that is
11 the same as or more stringent than the stand-
12 ard that applies under paragraph (1) before the
13 first date on which paragraph (1) applies to
14 that vessel, the Secretary shall allow the vessel
15 to use that technology for a 10 year period and
16 such vessel shall be deemed to be in compliance
17 with the requirements of paragraph (1) during
18 that 10-year period.

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

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

24 “(ii) may not grant a delay under this
25 paragraph to more than 5 percent of the

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

3 “(C) TERMINATION OF GRACE PERIOD.—

4 The Secretary may terminate the 10-year grace
5 period of a vessel under subparagraph (A) if
6 participation of the vessel in the program is ter-
7 minated without the consent of the Secretary.

8 “(D) ANNUAL RE-EVALUATION; TERMI-

9 NATION.—The Secretary shall establish an an-
10 nual evaluation process to determine whether
11 the performance of an approved technology is
12 sufficiently effective and whether it is causing
13 harm to the environment. If the Secretary de-
14 termines that an approved technology is insuffi-
15 ciently effective or is causing harm to the envi-
16 ronment, the Secretary shall revoke the ap-
17 proval granted under subparagraph (A).

18 “(7) REVIEW OF STANDARDS.—

19 “(A) IN GENERAL.—In December, 2014,
20 and in every third year thereafter, the Adminis-
21 trator, in consultation with the Secretary, shall
22 review ballast water treatment standards to de-
23 termine, after consultation with the Undersecre-
24 tary and other appropriate Federal agencies as
25 determined by the Secretary, if the standards

1 under this subsection should be revised to re-
2 duce the amount of organisms or microbes al-
3 lowed to be discharged, taking into account im-
4 provements in the scientific understanding of
5 biological processes leading to the spread of
6 aquatic nuisance species and improvements in
7 ballast water treatment technology. The Admin-
8 istrator shall revise by regulation the perform-
9 ance standard required under this subsection as
10 necessary.

11 “(B) APPLICATION OF ADJUSTED STAND-
12 ARDS.—In the regulations, the Secretary shall
13 provide for the prospective application of the
14 adjusted standards prescribed under this para-
15 graph to vessels constructed after the date on
16 which the adjusted standards apply and for an
17 orderly phase-in of the adjusted standards to
18 existing vessels.

19 “(8) INSTALLED EQUIPMENT.—If ballast water
20 treatment technology used for purposes of complying
21 with the regulations under this subsection is in-
22 stalled on a vessel, maintained in good working
23 order, and used by the vessel, the vessel may use
24 that technology for the shortest of—

1 “(A) the 10-year period beginning on the
2 date of initial use of technology required by
3 paragraph (1);

4 “(B) and the 5-year period beginning on
5 the date of initial use of technology that, at a
6 minimum, meets International Maritime Orga-
7 nization standards; or

8 “(C) the life of the ship on which the tech-
9 nology is used.

10 “(9) HIGH-RISK VESSELS.—

11 “(A) VESSEL LIST.—Within 1 year after
12 the date of enactment of the Ballast Water
13 Management Act of 2007, the Secretary shall
14 publish and regularly update a list of vessels
15 identified by States that, due to factors such as
16 the origin of their voyages, the frequency of
17 their voyages, the volume of ballast water they
18 carry, the biological makeup of the ballast
19 water, or the fact that they frequently discharge
20 unexchanged ballast water pursuant to an ex-
21 ception under subsection (e), pose a relatively
22 high risk of introducing aquatic nuisance spe-
23 cies into the waters of those States.

24 “(B) INCENTIVE PROGRAMS.—The Sec-
25 retary shall give priority to vessels on the list

1 for participation in pilot programs described in
2 paragraph (6). Any Federal agency, and any
3 State agency with respect to vessels identified
4 by such State to the Secretary for inclusion on
5 the list pursuant to subparagraph (A), may de-
6 velop technology development programs or other
7 incentives (whether positive or negative) to such
8 vessels in order to encourage the adoption of
9 ballast water treatment technology by those ves-
10 sels consistent with the requirements of this
11 section on an expedited basis.

12 “(10) EXCEPTION FOR VESSELS OPERATING
13 EXCLUSIVELY IN DETERMINED AREA.—

14 “(A) IN GENERAL.—Paragraph (1) and
15 subsection (h)(1) do not apply to a vessel that
16 operates exclusively within a geographically lim-
17 ited area if the Secretary has determined
18 through a rulemaking proceeding, after con-
19 sultation with the Undersecretary and other ap-
20 propriate Federal agencies as determined by the
21 Secretary, and representatives of States the wa-
22 ters of which could be affected by the discharge
23 of ballast water or sediment, that the risk of in-
24 troducing and spreading aquatic nuisance spe-

1 cies through ballast water or sediment dis-
2 charge from the vessel is insignificant.

3 “(B) CERTAIN VESSELS.—A vessel con-
4 structed before January 1, 2001, that operates
5 exclusively within Lake Superior, Lake Michi-
6 gan, Lake Huron, and Lake Erie and the con-
7 necting channels shall be presumed not to pose
8 a significant risk of introducing aquatic nui-
9 sance species unless the Secretary finds other-
10 wise in a rulemaking proceeding under subpara-
11 graph (A).

12 “(C) BEST PRACTICES.—The Secretary
13 shall develop, and require vessels exempted
14 under subparagraph (A) to follow, best prac-
15 tices, developed in consultation with the Gov-
16 ernors or States that may be affected, to mini-
17 mize the spreading of aquatic nuisance species
18 or infectious diseases in its operating area.

19 “(11) PROTOCOLS.—The Administrator shall,
20 in consultation with the Secretary, utilize the proto-
21 cols developed under the Environmental Technology
22 Verification Program for verifying the performance
23 of ballast water treatment technologies required by
24 this Act.

1 “(12) LABORATORIES.—The Secretary shall
2 utilize Federal or non-Federal laboratories that meet
3 standards established by the Secretary for the pur-
4 pose of evaluating and certifying ballast water treat-
5 ment technologies and equipment under this sub-
6 section.

7 “(g) WARNINGS CONCERNING BALLAST WATER UP-
8 TAKE.—

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

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

15 “(A) the coordinates of the area;

16 “(B) if possible, the location of alternative
17 areas for the uptake of ballast water; and

18 “(C) the length of time that such warning
19 shall remain in place.

20 “(h) SEDIMENT MANAGEMENT.—

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

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

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

8 “(2) DESIGN REQUIREMENTS.—

9 “(A) NEW VESSELS.—After December 31,
10 2011, it shall be unlawful to construct a vessel
11 in the United States to which this section ap-
12 plies unless that vessel is designed and con-
13 structed, in accordance with regulations pre-
14 scribed under subparagraph (C), in a manner
15 that—

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

18 “(ii) facilitates removal of sediment;

19 and

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

22 “(B) EXISTING VESSELS.—Every vessel to
23 which this section applies that was constructed
24 before January 1, 2012, shall be modified be-
25 fore January 1, 2012, to the extent practicable,

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

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

11 “(3) SEDIMENT RECEPTION FACILITIES.—

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

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

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

5 “(i) EXAMINATIONS AND CERTIFICATIONS.—

6 “(1) INITIAL EXAMINATION.—

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

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

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

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

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

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

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

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

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

18 “(3) INSPECTION AUTHORITY.—

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

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

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

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

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

8 “(A) notify in writing—

9 “(i) the master of the vessel; and

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

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

14 “(6) COMPLIANCE AND MONITORING.—

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

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

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

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

8 “(8) REPORT.—Beginning 1 year after final
9 regulations have been adopted pursuant to this sec-
10 tion after its amendment by the Ballast Water Man-
11 agement Act of 2007 and annually thereafter, the
12 Secretary shall prepare a report summarizing the re-
13 sults of ballast water inspection and enforcement ac-
14 tivities. The report shall, at a minimum, include in-
15 formation on the number of vessels inspected and
16 the type of inspections, the status of implementation
17 of treatment technologies, the number of exemptions
18 claimed from ballast water exchange requirements,
19 the number of violations, a summary of enforcement
20 and regulatory actions, and overall compliance sta-
21 tistics. The report shall be made available on the
22 National Ballast Information Clearinghouse estab-
23 lished under section 1102(f).

24 “(j) DETENTION OF VESSELS.—

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

6 “(A) the vessel is a vessel to which this
7 section applies; and

8 “(B) the vessel does not comply with the
9 requirements of this section or of the regula-
10 tions issued hereunder or is being operated in
11 violation of such requirements.

12 “(2) CLEARANCE.—

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

18 “(B) WITHDRAWAL.—If the Secretary
19 finds that a vessel detained under paragraph
20 (1) has received a clearance under section 4197
21 of the Revised Statutes (46 U.S.C. App. 91) be-
22 fore it was detained under paragraph (1), the
23 Secretary shall withdraw, withhold, or revoke
24 the clearance.

25 “(k) SANCTIONS.—

1 “(1) CIVIL PENALTIES.—Any person who vio-
2 lates a regulation promulgated under this section
3 shall be liable for a civil penalty in an amount not
4 to exceed \$32,500. Each day of a continuing viola-
5 tion constitutes a separate violation. A vessel oper-
6 ated in violation of this section or the regulations is
7 liable in rem for any civil penalty assessed under
8 this subsection for that violation.

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

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

20 “(4) EXCEPTION TO SANCTIONS.—This sub-
21 section does not apply to a discharge pursuant to
22 subsection (b)(2), (e)(5), or (e)(7).

23 “(1) ENFORCEMENT.—

24 “(1) ADMINISTRATIVE ACTIONS.—If the Sec-
25 retary finds, after notice and an opportunity for a

1 hearing, that a person has violated any provision of
2 this section or any regulation promulgated here-
3 under, the Secretary may assess a civil penalty for
4 that violation. In determining the amount of a civil
5 penalty, the Secretary shall take into account the
6 nature, circumstances, extent, and gravity of the
7 prohibited acts committed and, with respect to the
8 violator, the degree of culpability, any history of
9 prior violations, and such other matters as justice
10 may require.

11 “(2) CIVIL ACTIONS.—At the request of the
12 Secretary, the Attorney General may bring a civil
13 action in an appropriate district court of the United
14 States to enforce this section, or any regulation pro-
15 mulgated hereunder. Any court before which such an
16 action is brought may award appropriate relief, in-
17 cluding temporary or permanent injunctions and
18 civil penalties.

19 “(m) CONSULTATION WITH CANADA, MEXICO, AND
20 OTHER FOREIGN GOVERNMENTS.—In developing the
21 guidelines issued and regulations promulgated under this
22 section, the Secretary is encouraged to consult with the
23 Government of Canada, the Government of Mexico, and
24 any other government of a foreign country that the Sec-
25 retary, after consultation with the Task Force, determines

1 to be necessary to develop and implement an effective
2 international program for preventing the unintentional in-
3 troduction and spread of aquatic nuisance species through
4 ballast water.

5 “(n) INTERNATIONAL COOPERATION.—The Sec-
6 retary, in cooperation with the Undersecretary, the Sec-
7 retary of State, the Administrator, the heads of other rel-
8 evant Federal agencies, the International Maritime Orga-
9 nization of the United Nations, and the Commission on
10 Environmental Cooperation established pursuant to the
11 North American Free Trade Agreement, is encouraged to
12 enter into negotiations with the governments of foreign
13 countries to develop and implement an effective inter-
14 national program for preventing the unintentional intro-
15 duction and spread of aquatic nuisance species through
16 ballast water. The Secretary is particularly encouraged to
17 seek bilateral or multilateral agreements with Canada,
18 Mexico, and other nations in the Wider Caribbean (as de-
19 fined in the Convention for the Protection and Develop-
20 ment of the Marine Environment of the Wider Caribbean
21 (Cartagena Convention) under this section.

22 “(o) NON-DISCRIMINATION.—The Secretary shall en-
23 sure that vessels registered outside of the United States
24 do not receive more favorable treatment than vessels reg-
25 istered in the United States when the Secretary performs

1 studies, reviews compliance, determines effectiveness, es-
2 tablishes requirements, or performs any other responsibil-
3 ities under this Act.

4 “(p) SUPPORT FOR FEDERAL BALLAST WATER DEM-
5 ONSTRATION PROJECT.—In addition to amounts other-
6 wise available to the Maritime Administration, the Na-
7 tional Oceanic and Atmospheric Administration, the Envi-
8 ronmental Protection Agency, and the United States Fish
9 and Wildlife Service for the Federal Ballast Water Dem-
10 onstration Project, the Secretary shall provide support, in-
11 cluding grants, for research and development of innovative
12 technologies for the management, treatment, and disposal
13 of ballast water and sediment, for finalizing the validation
14 testing of the verification protocol of the Environmental
15 Technology Verification Program, for ballast water ex-
16 change, and for other vessel vectors of aquatic nuisance
17 species such as hull-fouling. There are authorized to be
18 appropriated to the Secretary \$5,000,000 for each of fiscal
19 years 2008 through 2012 to carry out this subsection.

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

23 “(r) RISK ASSESSMENT.—

24 “(1) IN GENERAL.—Within 2 years after the
25 date of enactment of the Ballast Water Management

1 Act of 2007, the Administrator, in consultation with
2 the Secretary and other appropriate Federal agen-
3 cies, shall conduct a risk assessment of vessel dis-
4 charges other than aquatic nuisance species that are
5 not required by the Clean Water Act (33 U.S.C.
6 1251 et seq.) to have National Pollution Effluent
7 Discharge Standards permits under section 122.3(a)
8 of title 40, Code of Federal Regulations. The risk
9 assessment shall include—

10 “(A) a characterization of the various
11 types of discharges by different classes of ves-
12 sels;

13 “(B) the average volume of such dis-
14 charges for individual vessels and by class of
15 vessel in the aggregate;

16 “(C) conclusions as to whether such dis-
17 charges pose a risk to human health or the en-
18 vironment; and

19 “(D) recommendations as to steps, includ-
20 ing regulations, that are necessary to address
21 such risks.

22 “(2) PUBLIC COMMENT.—The Administrator
23 shall cause a draft of the risk assessment to be pub-
24 lished in the Federal Register for public comment,
25 and shall develop a final risk assessment report after

1 taking into accounts any comments received during
2 the public comment period.

3 “(3) FINAL REPORT.—The Administrator shall
4 transmit a copy of the final report to the Senate
5 Committee on Commerce, Science, and Transpor-
6 tation and the House of Representatives Committee
7 on Transportation and Infrastructure.

8 “(s) OTHER SOURCES OF VESSEL-BORNE NUISANCE
9 SPECIES.—

10 “(1) HULL-FOULING AND OTHER VESSEL
11 SOURCES.—

12 “(A) REPORT.—Within 180 days after the
13 date of enactment of the Ballast Water Man-
14 agement Act of 2007, the Commandant of the
15 Coast Guard shall transmit a report to the Sen-
16 ate Committee on Commerce, Science, and
17 Transportation and the House of Representa-
18 tives Committee on Transportation and Infra-
19 structure on vessel-borne vectors of aquatic nui-
20 sance species and pathogens other than ballast
21 water and sediment, including vessel hulls, an-
22 chors, and equipment.

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

1 develop a strategy to address such other vessel
2 sources of aquatic nuisance species and to re-
3 duce the introduction of invasive species into
4 and within the United States from vessels. The
5 strategy shall include—

6 “(i) designation of geographical loca-
7 tions for uptake and discharge of un-
8 treated ballast water, as well as measures
9 to address non-ballast vessel vectors of
10 aquatic invasive species;

11 “(ii) necessary modifications of exist-
12 ing regulations;

13 “(iii) best practices standards and
14 procedures; and

15 “(iv) a timeframe for implementation
16 of those standards and procedures by ves-
17 sels, in addition to the mandatory require-
18 ments set forth in this section for ballast
19 water.

20 “(C) REPORT.—The Secretary shall trans-
21 mit a report to the Committees describing the
22 strategy, proposed regulations, best practices,
23 and the implementation timeframe, together
24 with any recommendations, including legislative

1 recommendations if appropriate, the Secretary
2 deems appropriate.

3 “(D) STANDARDS FOR VESSELS OF THE
4 UNITED STATES.—The strategy shall include
5 requirements to ensure the consistent applica-
6 tion of best practices to all vessels owned or op-
7 erated by a Federal agency.

8 “(2) TRANSITING VESSELS.—Within 180 days
9 after the date of enactment of the Ballast Water
10 Management Act of 2007, the Commandant of the
11 Coast Guard shall transmit a report to the Senate
12 Committee on Commerce, Science, and Transpor-
13 tation and the House of Representatives Committee
14 on Transportation and Infrastructure containing—

15 “(A) an assessment of the magnitude and
16 potential adverse impacts of ballast water oper-
17 ations from foreign vessels designed, adapted,
18 or constructed to carry ballast water that are
19 transiting waters subject to the jurisdiction of
20 the United States; and

21 “(B) recommendations, including legisla-
22 tive recommendations if appropriate, of options
23 for addressing ballast water operations of those
24 vessels.

1 “(t) RAPID RESPONSE PLAN.—Subtitle C of title I
2 of the Nonindigenous Aquatic Nuisance Prevention and
3 Control Act (16 U.S.C. 4721 et seq.) is amended by add-
4 ing at the end the following:

5 “(t) RAPID RESPONSE PLAN.—

6 “(1) PREPARATION.—The President shall pre-
7 pare and publish a national rapid response plan for
8 killing, removing, or minimizing the spread of aquat-
9 ic nuisance species in the waters of the United
10 States in accordance with this section.

11 “(2) CONTENTS.—The national rapid response plan
12 shall provide for efficient, coordinated, and effective action
13 to minimize damage from aquatic nuisance species in the
14 navigable waters of the United States, including killing,
15 containing, and removal of the aquatic nuisance species,
16 and shall include the following:

17 “(A) Assignment of duties and responsibil-
18 ities among Federal departments and agencies
19 in coordination with State and local agencies
20 and port authorities and private entities.

21 “(B) Identification, procurement, mainte-
22 nance, and storage of equipment and supplies
23 needed to facilitate the killing, containment,
24 and removal of aquatic nuisance species under
25 this section.

1 “(C) Establishment or designation of Fed-
2 eral aquatic nuisance species response teams,
3 consisting of—

4 “(i) trained personnel who shall be
5 available to provide necessary services to
6 carry out the national rapid response plan;

7 “(ii) adequate equipment and material
8 needed to facilitate the killing, contain-
9 ment, and removal of aquatic nuisance spe-
10 cies under this section; and

11 “(iii) a detailed plans to kill, contain,
12 and remove aquatic nuisance species, in-
13 cluding measures to protect fisheries and
14 wildlife.

15 “(D) A system of surveillance and notice
16 designed to safeguard against, as well as ensure
17 earliest possible notice of, the introduction of
18 aquatic nuisance species and imminent threats
19 of such introduction to the appropriate State
20 and Federal agencies.

21 “(E) Establishment of a national center to
22 provide coordination and direction for oper-
23 ations in carrying out the plan.—

24 “(F) Procedures and techniques to be em-
25 ployed in identifying, containing, killing, and re-

1 moving aquatic nuisance species in the waters
2 of the United States.

3 “(G) A schedule identifying—

4 “(i) mitigating devices and sub-
5 stances, if any, that may be used in car-
6 rying out the plan;

7 “(ii) the waters in which such miti-
8 gating devices and substances may be
9 used; and

10 “(iii) the quantities of such mitigating
11 device or substance which can be used
12 safely in such waters.

13 “(H) A system whereby the State or States
14 affected by an aquatic nuisance species may act
15 where necessary to remove such species.

16 “(I) Establishment of criteria and proce-
17 dures to ensure immediate and effective Federal
18 identification of, and response to, an introduc-
19 tion of aquatic nuisance species.

20 “(J) Designation of the Federal official
21 who shall be the Federal on-scene coordinator
22 for measures taken to kill, contain, and remove
23 aquatic nuisance species under this section.

24 “(K) A fish and wildlife response plan for
25 the immediate and effective protection, rescue,

1 and rehabilitation of, and the minimization of
2 risk of damage to, fish and wildlife resources
3 and their habitat that are harmed or that may
4 be jeopardized by an introduction of an aquatic
5 nuisance species.

6 “(3) FEDERAL REMOVAL AUTHORITY.—

7 “(A) REMOVAL REQUIREMENT.—

8 “(i) IN GENERAL.—The President
9 shall ensure, in accordance with the na-
10 tional rapid response plan, effective and
11 immediate killing, containing, and removal
12 of the aquatic nuisance species in the wa-
13 ters of the United States.

14 “(ii) DISCRETIONARY AUTHORITY.—
15 Under the authority provided by clause (i),
16 an aquatic nuisance species may be—

17 “(I) killed, contained, or removed
18 at any time; and

19 “(II) all Federal, State, and pri-
20 vate actions to kill, contain, and re-
21 move the aquatic nuisance species
22 may be directed or monitored.

23 “(B) ACTIONS IN ACCORDANCE WITH NA-
24 TIONAL RAPID RESPONSE PLAN.—Each Federal
25 agency, State, owner or operator, or other per-

1 son participating in efforts under this sub-
2 section shall act in accordance with the national
3 rapid response plan or as directed to carry out
4 the plan.

5 “(u) REGULATIONS.—

6 “(1) IN GENERAL.—The Secretary, after con-
7 sultation with other appropriate Federal agencies,
8 shall issue such regulations as may be necessary ini-
9 tially to carry out this section within 1 year after the
10 date of enactment of the Ballast Water Management
11 Act of 2007.

12 “(2) JUDICIAL REVIEW.—

13 “(A) 120-DAY RULE.—An interested per-
14 son may bring an action for review of a final
15 regulation promulgated under this section by
16 the Secretary of the department in which the
17 Coast Guard is operating in the United States
18 Court of Appeals for the District of Columbia
19 Circuit. Any such petition shall be filed within
20 120 days after the date on which notice of the
21 promulgation appears in the Federal Register,
22 except that if the petition is based solely on
23 grounds arising after the 120th day, then any
24 petition for review under this subsection shall

1 be filed within 120 days after those grounds
2 arise.

3 “(B) REVIEW IN ENFORCEMENT PRO-
4 CEEDINGS.—A regulation for which review
5 could have been obtained under subparagraph
6 (A) of this paragraph is not subject to judicial
7 review in any civil or criminal proceeding for
8 enforcement.

9 “(v) SAVINGS CLAUSE.—

10 “(1) IN GENERAL.—Nothing in this section
11 shall be construed to preempt any State or local law
12 that prohibits the discharge of ballast water or sedi-
13 ment within State waters and requires discharge of
14 ballast water or sediment into port reception facili-
15 ties, imposes penalties or fees for acts or omissions
16 that are violations of this Act, or provides incentives
17 under subsection (f)(9)(B).

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

23 “(3) APPLICATION WITH OTHER STATUTES.—
24 This section provides the sole Federal authority for
25 preventing the introduction of species through the

1 control and management of vessel ballast water or
2 sediment or other vessel-related vectors.”.

3 (b) DEFINITIONS.—

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

7 (A) by redesignating paragraph (1) as
8 paragraph (1A);

9 (B) by inserting before paragraph (1A), as
10 redesignated, the following:

11 “(1) ADMINISTRATOR.—The term ‘Adminis-
12 trator’ means the Administrator of the Environ-
13 mental Protection Agency;”;

14 (C) by striking paragraph (3) and insert-
15 ing the following:

16 “(3) BALLAST WATER.—The term ‘ballast
17 water’—

18 “(A) means water taken on board a vessel
19 to control trim, list, draught, stability, or
20 stresses of the vessel, including matter sus-
21 pended in such water; and

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

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

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

8 “(3A) BALLAST WATER CAPACITY.—The term
9 ‘ballast water capacity’ means the total volumetric
10 capacity of any tanks, spaces, or compartments on
11 a vessel that is used for carrying, loading, or dis-
12 charging ballast water, including any multi-use tank,
13 space, or compartment designed to allow carriage of
14 ballast water;

15 “(3B) BALLAST WATER MANAGEMENT.—The
16 term ‘ballast water management’ means mechanical,
17 physical, chemical, and biological processes used, ei-
18 ther singularly or in combination, to remove, render
19 harmless, or avoid the uptake or discharge of aquat-
20 ic nuisance species and pathogens within ballast
21 water and sediment;

22 “(3C) CONSTRUCTED.—The term ‘constructed’
23 means a state of construction of a vessel at which—

24 “(A) the keel is laid;

1 “(B) construction identifiable with the spe-
2 cific vessel begins;

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

7 “(D) the vessel undergoes a major conver-
8 sion;”;

9 (E) by inserting after paragraph (10) the
10 following:

11 “(10A) MAJOR CONVERSION.—The term ‘major
12 conversion’ means a conversion of a vessel, that—

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

15 “(B) changes the vessel class;

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

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

21 “(i) component replacement-in-kind;

22 or

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

1 (F) by inserting after paragraph (12), as
2 redesignated, the following:

3 “(12A) SALTWATER FLUSHING.—The term
4 ‘saltwater flushing’ means the process of—

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

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

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

15 “(12B) SEDIMENT.—The term ‘sediment’
16 means matter that has settled out of ballast water
17 within a vessel;”;

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

21 (H) by inserting after paragraph (17) the
22 following:

23 “(17A) UNITED STATES PORT.—The term
24 ‘United States port’ means a port, river, harbor, or
25 offshore terminal under the jurisdiction of the

1 United States, including ports located in Puerto
2 Rico, Guam, the Northern Marianas, and the United
3 States Virgin Islands;

4 “(17B) VESSEL OF THE ARMED FORCES.—The
5 term ‘vessel of the Armed Forces’ means—

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

9 “(B) any vessel owned or operated by the
10 Department of Homeland Security that is des-
11 ignated by the Secretary of the department in
12 which the Coast Guard is operating as a vessel
13 equivalent to a vessel described in subparagraph
14 (A); and

15 “(17C) WATERS SUBJECT TO THE JURISDIC-
16 TION OF THE UNITED STATES.—The term ‘waters
17 subject to the jurisdiction of the United States’
18 means navigable waters and the territorial sea of the
19 United States, the exclusive economic zone, and the
20 Great Lakes.”.

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

1 (A) by striking “As used in this Act, the
2 term—” and inserting “In this Act.”;

3 (B) by redesignating paragraphs (1)
4 through (17C) as paragraphs (1) through (27),
5 respectively; and

6 (C) by inserting a heading after the des-
7 ignation of each existing paragraph , in a form
8 consistent with the form of the paragraphs
9 added by paragraph (1) of this subsection, con-
10 sisting of the term defined in such paragraph
11 and “The term”.

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

15 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

16 Section 1301(a) of the Nonindigenous Aquatic Nui-
17 sance Prevention and Control Act of 1990 (16 U.S.C.
18 4741(a)) is amended—

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

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

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

1 “(6) \$20,000,000 for each of fiscal years 2008
2 through 2012 to the Secretary to carry out section
3 1101.”.

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