

S. 363, The Ballast Water Management Act of 2005

The Senate Commerce Committee has unanimously approved S. 363, the Ballast Water Management Act of 2005. The U.S. Commission on Ocean Policy identified ballast water as a major pathway for introduction of aquatic invasive species. This bipartisan bill would establish a comprehensive national program to prevent new introductions of invasive species from ballast water into U.S. waters.



This national program closely tracks the requirements and structure of the International Maritime Organization's 2004 Convention on ballast water management, but uses a standard 100 times tougher than the IMO. It requires all vessels in U.S. waters to conduct ballast water exchange for international and coastal voyages, and moves towards ballast water treatment as quickly as new technology will allow.

The Coast Guard would conduct a feasibility review before these standards would go into effect. This review would evaluate whether they could be met based on the performance, environmental impact, and cost effectiveness of available treatment technologies. If there were no available technology, the Coast Guard could provide up to two additional years for compliance.

However, if the Coast Guard finds that treatment technologies are feasible sooner than the initial time-frame, the requirements would go into force even faster. The feasibility review could also result in an even tougher standard being adopted.

S. 363 would continue to have the Coast Guard serve as the lead federal agency for ballast water management, but would maintain the EPA's important role in implementing the bill's requirements. While states would be free to continue their invasive species programs, S. 363 would prevent state authorities from imposing contradictory ballast water exchange or treatment requirements on commercial shipping.

The bipartisan approach adopted in S. 363 provides a comprehensive national program to prevent the introduction of invasive species through ballast water. It gives the shipping industry the certainty it needs in order to undertake a fleet-wide installation of treatment technology and imposes the toughest environmental standards that new technology can provide.

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General

S. 363 would amend the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711, et seq.) to establish a new, national approach to addressing invasive species in ballast water. The new approach closely tracks with the requirements and structure of the international agreement on ballast water adopted by the International Maritime Organization (IMO). However, the bill includes a much more rigorous standard for ballast water treatment than the IMO agreement, as well as a mechanism by which treatment would be required on a faster track.

Scope

S. 363 would comprehensively address the issue of invasive species in ballast water by regulating not only vessels traveling to U.S. ports from foreign ports -- including foreign flag vessels --but vessels traveling from one U.S. port to another. Exceptions are included for vessels of the Armed Forces and small recreational vessels, which are required to implement alternative measures.

S. 363 also requires the Coast Guard to provide an assessment to Congress of the magnitude and potential adverse impacts of ballast water operations from foreign vessels that transit U.S. waters, but do not enter a U.S. port, and to provide recommendations for addressing such operations.

Ballast Water Exchange

S. 363 requires the exchange of ballast water containing invasive species with water in mid-ocean to reduce the number of such species until the new treatment requirements come into effect. Vessels arriving from outside the United States exclusive economic zone (EEZ) are to conduct exchanges at least 200 nautical miles from the nearest point of land, and vessels voyaging within 200 nautical miles of the United States are to conduct exchanges at least 50 nautical miles from the nearest land. In both cases, the exchanges are to take place in water at least 200 meters in depth.

This requirement is subject to a number of exceptions, including for safety of crew, passengers and vessels, for vessels on short voyages if conducting exchange 50 miles from shore would cause an operator substantial business hardship, and for voyages exclusively between the main Hawaiian islands, within the Great Lakes, and other voyages where the risk of introducing invasive species is insignificant. Alternative measures to reduce the risks from introductions of invasive species are required in the event that exceptions are utilized.

Vessels may use ballast water treatment that is at least as effective as exchange to meet this requirement. The Coast Guard would be required to establish guidelines within one year of enactment of the bill on what level of treatment would be at least as effective as ballast water exchange.



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Ballast Water Treatment

S. 363, consistent with the IMO convention, sets performance standards for treatment based on concentrations of species in water. This provides a concrete target for the development of effective treatment technology. The bill phases-in treatment on a schedule matching the timetable agreed upon in the IMO Convention.

The allowable concentrations of invasive species in the S. 363 standards are 100 times lower than those adopted by the IMO convention. This is to ensure that the technologies required will have a meaningful impact on reducing invasions.

The Coast Guard would conduct a feasibility review before these standards would go into effect. This review would evaluate whether they could be met based on the performance, environmental impact, and cost effectiveness of available treatment technologies. If there were no available technology, the Coast Guard could provide up to two additional years for compliance.

However, if the Coast Guard finds that treatment technologies are feasible sooner than the included time-frame, the requirements would go into force even faster. The feasibility review could also result in an even tougher standard being adopted.

Technology Program

S. 363 provides that for vessels participating in a pilot program, approved by the Coast Guard, to conduct ship-board testing of ballast water treatment technologies likely to achieve or exceed the performance standards, the Coast Guard shall allow the vessels to use such technology for ten years. This provision is aimed at encouraging vessel operators to participate in such programs, who have not participated at a high rate due to the costs involved in testing technologies on board.

No Ballast on Board

S. 363 would also address "NOBOBS" -- vessels that enter U.S. ports with no ballast on board, but which may discharge invasive species in U.S. ports with water later taken on. This improvement to current law is critically important, particularly for the Great Lakes, as the National Oceanic and Atmospheric Administration (NOAA) has estimated that such vessels account for 90 percent of the saltwater vessels entering the Great Lakes. [NB: a technical, drafting change is needed to ensure the application to NOBOBs in the Great Lakes].

Other Vessel-Borne Introductions of Invasive Species

S. 363 would also require the Coast Guard to provide a report to Congress within 180 days on hull-fouling and other sources of vessel-borne invasive species, and to develop best practices, standards and procedures to reduce the introduction of invasive species from these vectors.



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Preemption

S. 363 would preempt State and local laws with respect to ballast water exchange and ballast water treatment requirements. Such a requirement is necessary to ensure that ships traveling from port to port are not subject to conflicting state laws, which would make compliance difficult if not impossible.

However, S. 363 would not preempt the imposition by States or local governments of greater penalties or fees for violations of the provisions of the bill, or other State and local law provisions that do not conflict and are not inconsistent with the requirements of the bill. Nor would it prevent states from continuing or expanding their own invasive species prevention and mitigation programs.



S. 363 also includes language that requires the Coast Guard, in consultation with states, to identify vessels that have a high risk of causing invasions, due to such factors as their size, the composition of their ballast water, and their inability to conduct effective exchanges. These vessels are to be given priority to participate in technology pilot programs, which allow promising technologies to be adopted sooner. States are also free to provide incentives to more quickly require treatment instead of ballast water exchange. These provisions, in combination with the provision allowing use of treatment technologies in place of ballast water exchange, will provide a means by which interested states could provide incentives for the accelerated use of treatment technologies.

Relation to other Federal Laws

The bill establishes the Coast Guard as the lead federal authority for aquatic invasive species in ballast water and sediment, and supersedes any provision of other federal law that conflicts with the bill. This is intended to strengthen the existing federal program and to avoid inconsistencies or duplicative regulation of this issue at the federal level. However, S. 363 also provides other agencies and states, including the Environmental Protection Agency (EPA), with a significant role. For example, the Coast Guard may only designate alternative areas for exchange and discharge of ballast water after consultation with the EPA, NOAA, and affected states. The Coast Guard must consult the EPA to identify additional microbes to be regulated, to develop a process for approving treatment technologies, and to review technologies for their effectiveness. The EPA would also establish regulations for reception facilities for ballast water and sediment.

Authorizations

S. 363 includes significant authorizations for the Coast Guard to implement this new program; \$20 million annually, for fiscal years 2006 through 2010. It also would provide an additional \$5 million per year for the Federal Ballast Water Demonstration Project.

Senate Committee on Commerce,
Science, and Transportation—
National Ocean Policy Study
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