

Calendar No. 589110TH CONGRESS
2D SESSION**S. 1578****[Report No. 110-269]**

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

IN THE SENATE OF THE UNITED STATES

JUNE 7, 2007

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

MARCH 3, 2008

Reported by Mr. INOUE, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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:

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

15 (3) by striking “inland lakes and rivers by rec-
16 reational boaters, commercial barge traffic, and a
17 variety of other pathways; and” in paragraph (15),
18 as redesignated, and inserting “other areas of the
19 United States, including coastal areas, inland lakes,
20 and rivers by recreational boaters, commercial traf-
21 fic, and a variety of other pathways;”;

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

1 (5) by striking “technologies.” in paragraph
2 (16), as redesignated, and inserting “technologies;”;
3 and

4 (6) adding at the end the following:

5 “(17) in 2004, the International Maritime Or-
6 ganization agreed to a Convention, which the United
7 States played an active role in negotiating, to pre-
8 vent, minimize, and ultimately eliminate the transfer
9 of aquatic nuisance species through the control and
10 management of ballast water and sediments;

11 “(18) the International Maritime Organization
12 agreement specifically recognizes that countries can
13 take more stringent measures than those of the Con-
14 vention with respect to the control and management
15 of ships’ ballast water and sediment; and

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

1 **SEC. 3. MANAGEMENT OF VESSEL-BORNE AQUATIC NUI-**
 2 **SANCE SPECIES.**

3 (a) IN GENERAL.—Section 1101 of the Nonindige-
 4 nous Aquatic Nuisance Prevention and Control Act of
 5 1990 (16 U.S.C. 4711) is amended to read as follows:

6 **“SEC. 1101. MANAGEMENT OF VESSEL-BORNE AQUATIC NUI-**
 7 **SANCE SPECIES.**

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

10 “(1) PURPOSES.—The purposes of this section
 11 are—

12 “(A) to provide an effective, comprehen-
 13 sive, and uniform national approach for ad-
 14 dressing the introduction and spread of aquatic
 15 nuisance species from ballast water and other
 16 ship-borne vectors;

17 “(B) to require, as part of that approach,
 18 mandatory treatment technology, with the ulti-
 19 mate goal of achieving zero discharge of aquatic
 20 nuisance species;

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

23 “(D) to implement the International Con-
 24 vention for the Control and Management of
 25 Ships’ Ballast Water and Sediments, adopted

1 by the International Maritime Organization in
2 2004; and

3 “(E) to establish a management approach
4 for other ship-borne vectors of aquatic nuisance
5 species.

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

10 “(A) is a vessel of United States registry
11 or nationality, or operated under the authority
12 of the United States, wherever located; or

13 “(B) is a foreign vessel that—

14 “(i) is en route to a United States
15 port or place; or

16 “(ii) has departed from a United
17 States port or place and is within waters
18 subject to the jurisdiction of the United
19 States.

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

25 “(4) ARMED FORCES VESSELS.—

1 “(A) EXEMPTION.—Except as provided in
2 subparagraph (B) and paragraph (6), this sec-
3 tion does not apply to a vessel of the Armed
4 Forces.

5 “(B) BALLAST WATER MANAGEMENT PRO-
6 GRAM.—The Secretary and the Secretary of De-
7 fense, after consultation with each other and
8 with the Under Secretary of Commerce for
9 Oceans and Atmosphere, the Administrator of
10 the Environmental Protection Agency, and
11 other appropriate Federal agencies as deter-
12 mined by the Secretary, shall implement a bal-
13 last water management program, including the
14 promulgation of standards for ballast water ex-
15 change and treatment and for sediment man-
16 agement, for vessels of the Armed Forces under
17 their respective jurisdictions designed, con-
18 structed, or adapted to carry ballast water that
19 is—

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

22 “(ii) at least as stringent as the re-
23 quirements promulgated for such vessels
24 under section 312 of the Clean Water Act
25 (33 U.S.C. 1322).

1 “(5) SPECIAL RULE FOR SMALL VESSELS.—In
 2 applying this section to vessels less than 50 meters
 3 in length that have a maximum ballast water capac-
 4 ity of 8 cubic meters, the Secretary may promulgate
 5 alternative measures for managing ballast water in
 6 a manner that is consistent with the purposes of this
 7 Act.

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

13 “(b) UPTAKE AND DISCHARGE OF BALLAST WATER
 14 OR SEDIMENT.—

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

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

22 “(A) The uptake or discharge is solely for
 23 the purpose of—

24 “(i) ensuring the safety of the vessel
 25 in an emergency situation; or

1 “(ii) saving a life at sea.

2 “(B) The uptake or discharge is accidental
3 and the result of damage to the vessel or its
4 equipment and—

5 “(i) all reasonable precautions to pre-
6 vent or minimize ballast water and sedi-
7 ment discharge have been taken before and
8 after the damage occurs, the discovery of
9 the damage, and the discharge; and

10 “(ii) the owner or officer in charge of
11 the vessel did not willfully or recklessly
12 cause the damage.

13 “(C) The uptake or discharge is solely for
14 the purpose of avoiding or minimizing the dis-
15 charge from the vessel of pollution that would
16 otherwise violate applicable Federal or State
17 law.

18 “(D) The uptake or discharge of ballast
19 water and sediment occurs at the same location
20 where the whole of that ballast water and that
21 sediment originated and there is no mixing with
22 ballast water and sediment from another area
23 that has not been managed in accordance with
24 the requirements of this section.

1 “(e) VESSEL BALLAST WATER MANAGEMENT
2 PLAN.—

3 “(1) IN GENERAL.—The operator of a vessel to
4 which this section applies shall conduct all ballast
5 water management operations of that vessel in ac-
6 cordance with a ballast water management plan de-
7 signed to minimize the discharge of aquatic nuisance
8 species that—

9 “(A) meets the requirements prescribed by
10 the Secretary by regulation; and

11 “(B) is approved by the Secretary.

12 “(2) APPROVAL CRITERIA.—

13 “(A) IN GENERAL.—The Secretary may
14 not approve a ballast water management plan
15 unless the Secretary determines that the plan—

16 “(i) describes in detail the actions to
17 be taken to implement the ballast water
18 management requirements established
19 under this section;

20 “(ii) describes in detail the procedures
21 to be used for disposal of sediment at sea
22 and on shore in accordance with the re-
23 quirements of this section;

1 “(iii) describes in detail safety proce-
2 dures for the vessel and crew associated
3 with ballast water management;

4 “(iv) designates the officer on board
5 the vessel in charge of ensuring that the
6 plan is properly implemented;

7 “(v) contains the reporting require-
8 ments for vessels established under this
9 section and a copy of each form necessary
10 to meet those requirements;

11 “(vi) incorporates regulatory require-
12 ments, guidance, and best practices devel-
13 oped under subsection (s) for other vessel
14 pathways by which aquatic nuisance spe-
15 cies are transported; and

16 “(vii) meets all other requirements
17 prescribed by the Secretary.

18 “(B) FOREIGN VESSELS.—The Secretary
19 may approve a ballast water management plan
20 for a foreign vessel (as defined in section
21 2101(12) of title 46, United States Code) on
22 the basis of a certificate of compliance with the
23 criteria described in subparagraph (A) issued
24 by the vessel’s country of registration in accord-

1 ance with regulations promulgated by the Sec-
2 retary.

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

6 “(A) maintain a copy of the vessel’s ballast
7 water management plan on board at all times;
8 and

9 “(B) keep the plan readily available for ex-
10 amination by the Secretary at all reasonable
11 times.

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

13 “(1) IN GENERAL.—The owner or operator of a
14 vessel to which this section applies shall maintain a
15 ballast water record book in English on board the
16 vessel in which—

17 “(A) each operation involving ballast water
18 or sediment discharge is fully recorded without
19 delay, in accordance with regulations promul-
20 gated by the Secretary;

21 “(B) each such operation is described in
22 detail, including the location and circumstances
23 of, and the reason for, the operation; and

24 “(C) the exact nature and circumstances of
25 any situation under which any operation was

1 conducted under an exception set forth in sub-
2 section (b)(2) or (e)(3) is described.

3 ~~“(2) AVAILABILITY.—~~The ballast water record
4 book—

5 ~~“(A) shall be kept readily available for ex-~~
6 ~~amination by the Secretary at all reasonable~~
7 ~~times; and~~

8 ~~“(B) notwithstanding paragraph (1), may~~
9 ~~be kept on the towing vessel in the case of an~~
10 ~~unmanned vessel under tow.~~

11 ~~“(3) RETENTION PERIOD.—~~The ballast water
12 record book shall be retained—

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

16 ~~“(B) under the control of the vessel’s~~
17 ~~owner for an additional period of 3 years.~~

18 ~~“(4) REGULATIONS.—~~In the regulations pre-
19 scribed under this section, the Secretary shall re-
20 quire, at a minimum, that—

21 ~~“(A) each entry in the ballast water record~~
22 ~~book be signed and dated by the officer in~~
23 ~~charge of the ballast water operation recorded;~~

1 “(B) each completed page in the ballast
2 water record book be signed and dated by the
3 master of the vessel; and

4 “(C) the owner or operator of the vessel
5 transmit such information to the Secretary re-
6 garding the ballast operations of the vessel as
7 the Secretary may require.

8 “(5) ALTERNATIVE MEANS OF RECORD-
9 KEEPING.—The Secretary shall provide by regula-
10 tion for alternative methods of recordkeeping, in-
11 cluding electronic recordkeeping, to comply with the
12 requirements of this subsection. Any electronic re-
13 cordkeeping method authorized by the Secretary shall
14 support the inspection and enforcement provisions of
15 this Act and shall comply with applicable standards
16 of the National Institute of Standards and Tech-
17 nology and the Office of Management and Budget
18 governing reliability, integrity, identity authentica-
19 tion, and nonrepudiation of stored electronic data.

20 “(e) BALLAST WATER EXCHANGE REQUIRE-
21 MENTS.—

22 “(1) IN GENERAL.—

23 “(A) REQUIREMENT.—Until a vessel is re-
24 quired to conduct ballast water treatment in ac-
25 cordance with subsection (f) of this section, the

1 operator of a vessel to which this section applies
2 may not discharge ballast water in waters sub-
3 ject to the jurisdiction of the United States ex-
4 cept after—

5 “(i) conducting ballast water exchange
6 as required by this subsection, in accord-
7 ance with regulations prescribed by the
8 Secretary, in a manner that results in an
9 efficiency of at least 95 percent volumetric
10 exchange of the ballast water for each bal-
11 last water tank;

12 “(ii) using ballast water treatment
13 technology that meets the performance
14 standards of subsection (f); or

15 “(iii) using environmentally-sound al-
16 ternative ballast water treatment tech-
17 nology, if the Secretary determines that
18 such treatment technology is at least as ef-
19 fective as the ballast water exchange re-
20 quired by clause (i) in preventing and con-
21 trolling the introduction of aquatic nui-
22 sance species.

23 “(B) TECHNOLOGY EFFICACY.—For pur-
24 poses of this paragraph, a ballast water treat-
25 ment technology shall be considered to be at

1 least as effective as the ballast water exchange
2 required by clause (i) in preventing and control-
3 ling the introduction of aquatic nuisance species
4 if preliminary experiments prior to installation
5 of the technology aboard the vessel demonstrate
6 that the technology removed at least 98 percent
7 of organisms larger than 50 microns.

8 ~~“(2) GUIDANCE; 5-YEAR USAGE.—~~

9 ~~“(A) GUIDANCE.—Within 1 year after the~~
10 ~~date of enactment of the Ballast Water Man-~~
11 ~~agement Act of 2007, after public notice and~~
12 ~~opportunity for comment, the Secretary shall~~
13 ~~develop guidance on technology that may be~~
14 ~~used under paragraph (1)(A)(iii).~~

15 ~~“(B) 5-YEAR USAGE.—The Secretary shall~~
16 ~~allow a vessel using environmentally-sound al-~~
17 ~~ternative ballast water treatment technology~~
18 ~~under paragraph (1)(A)(iii) to continue to use~~
19 ~~that technology for 5 years after the date on~~
20 ~~which the environmentally-sound alternative~~
21 ~~ballast water treatment technology was first~~
22 ~~placed in service on the vessel, or the date on~~
23 ~~which treatment requirements under subsection~~
24 ~~(f) become applicable, whichever is later.~~

25 ~~“(3) EXCHANGE AREAS.—~~

1 “(A) VESSELS OUTSIDE THE UNITED
2 STATES EEZ.—The operator of a vessel en route
3 to a United States port or place from a port or
4 place outside the United States exclusive eco-
5 nomic zone shall conduct ballast water ex-
6 change—

7 “(i) before arriving at a United States
8 port or place;

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

11 “(iii) in water at least 200 meters in
12 depth.

13 “(B) COASTAL VOYAGES.—In lieu of using
14 an exchange zone described in subparagraph
15 (A)(ii) or (iii), the operator of a vessel origi-
16 nating from a port or place within waters sub-
17 ject to the jurisdiction of the United States, or
18 from a port within 200 nautical miles of the
19 United States in Canada, Mexico, or other ports
20 designated by the Secretary for purposes of this
21 section, and which does not voyage into waters
22 described in subparagraph (A)(ii) or (iii), shall
23 conduct ballast water exchange—

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

1 “(ii) in water at least 200 meters in
2 depth.

3 ~~“(4) SAFETY OR STABILITY EXCEPTION.—~~

4 ~~“(A) SECRETARIAL DETERMINATION.—~~

5 Paragraph (3) does not apply to the discharge
6 of ballast water if the Secretary determines that
7 compliance with that paragraph would threaten
8 the safety or stability of the vessel, its crew, or
9 its passengers because of the design or oper-
10 ating characteristics of the vessel.

11 ~~“(B) MASTER OF THE VESSEL DETER-~~
12 ~~MINATION.—~~Paragraph (3) does not apply to
13 the discharge of ballast water if the master of
14 a vessel determines that compliance with that
15 paragraph would threaten the safety or stability
16 of the vessel, its crew, or its passengers because
17 of adverse weather, equipment failure, or any
18 other relevant condition.

19 ~~“(C) NOTIFICATION REQUIRED.—~~When-
20 ever the master of a vessel is unable to comply
21 with the requirements of paragraph (3) because
22 of a determination made under subparagraph
23 (B), the master of the vessel shall—

24 “(i) notify the Secretary as soon as
25 practicable thereafter but no later than 24

1 hours after making that determination and
2 shall ensure that the determination, the
3 reasons for the determination, and the no-
4 tice are recorded in the vessel's ballast
5 water record book; and

6 “(ii) undertake ballast water ex-
7 change—

8 “(I) in an alternative area that
9 may be designated by the Secretary,
10 after consultation with the Undersec-
11 retary, and other appropriate Federal
12 agencies as determined by the Sec-
13 retary, and representatives of States
14 the waters of which may be affected
15 by the discharge of ballast water; or

16 “(II) undertake discharge of bal-
17 last water in accordance with para-
18 graph (6) if safety or stability con-
19 cerns prevent undertaking ballast
20 water exchange in the alternative
21 area.

22 “(D) REVIEW OF CIRCUMSTANCES.—If the
23 master of a vessel conducts a ballast water dis-
24 charge under the provisions of this paragraph,
25 the Secretary shall review the circumstances to

1 determine whether the discharge met the re-
2 quirements of this paragraph. The review under
3 this clause shall be in addition to any other en-
4 forcement authority of the Secretary.

5 “(5) DISCHARGE UNDER WAIVER.—

6 “(A) SUBSTANTIAL BUSINESS HARDSHIP
7 WAIVER.—If, because of the short length of a
8 voyage, the operator of a vessel is unable to dis-
9 charge ballast water in accordance with the re-
10 quirements of paragraph (3)(B) without sub-
11 stantial business hardship, as determined under
12 regulations prescribed by the Secretary, the op-
13 erator shall request a waiver from the Secretary
14 and discharge the ballast water in accordance
15 with paragraph (6). A request for a waiver
16 under this subparagraph shall be submitted to
17 the Secretary at such time and in such form
18 and manner as the Secretary may require.

19 “(B) SUBSTANTIAL BUSINESS HARD-
20 SHIP.—For purposes of subparagraph (A), the
21 factors taken into account in determining sub-
22 stantial business hardship shall include wheth-
23 er—

24 “(i) compliance with the requirements
25 of paragraph (3)(B) would require a suffi-

1 ciently great change in routing or sched-
 2 uling of service as to compromise the eco-
 3 nomic or commercial viability of the trade
 4 or business in which the vessel is operated;
 5 or

6 “(ii) it is reasonable to expect that the
 7 trade or business or service provided will
 8 be continued only if a waiver is granted
 9 under subparagraph (A).

10 “(6) PERMISSABLE DISCHARGE.—

11 “(A) IN GENERAL.—The discharge of
 12 unexchanged ballast water shall be considered
 13 to be carried out in accordance with this para-
 14 graph if it is—

15 “(i) in an area designated for that
 16 purpose by the Secretary, after consulta-
 17 tion with the Undersecretary and other ap-
 18 propriate Federal agencies as determined
 19 by the Secretary and representatives of
 20 any State that may be affected by dis-
 21 charge of ballast water in that area; or

22 “(ii) into a reception facility described
 23 in subsection (f)(2).

24 “(B) LIMITATION ON VOLUME.—The vol-
 25 ume of any ballast water discharged under the

1 provisions of this paragraph may not exceed the
2 volume necessary to ensure the safe operation
3 of the vessel.

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

7 “(A) shall nonetheless conduct ballast
8 water exchange to the maximum extent feasible
9 in compliance with those paragraphs; and

10 “(B) may conduct a partial ballast water
11 exchange under this paragraph only to the ex-
12 tent that the ballast water in an individual bal-
13 last tank can be completely exchanged in ac-
14 cordance with the provisions of paragraph
15 (1)(A).

16 “(8) CERTAIN GEOGRAPHICALLY LIMITED
17 ROUTES.—Notwithstanding paragraph (3)(B) of this
18 subsection, the operator of a vessel is not required
19 to comply with the requirements of this subsection—

20 “(A) if the vessel operates exclusively—

21 “(i) within Lake Superior, Lake
22 Michigan, Lake Huron, and Lake Erie and
23 the connecting channels; or

24 “(ii) between or among the main
25 group of the Hawaiian Islands; or

1 “(B) if the vessel operates exclusively with-
2 in any area with respect to which the Secretary
3 has determined, after consultation with the Un-
4 dersecretary, the Administrator, and represent-
5 atives of States the waters of which would be
6 affected by the discharge of ballast water, that
7 the risk of introducing aquatic nuisance species
8 through ballast water discharge in the areas in
9 which the vessel operates is insignificant.

10 “(9) MARINE SANCTUARIES AND OTHER PRO-
11 HIBITED AREAS.—A vessel may not conduct ballast
12 water exchange or discharge unexchanged ballast
13 water under this subsection within a marine sanc-
14 tuary designated under title III of the National Ma-
15 rine Sanctuaries Act (16 U.S.C. 1431 et seq.) or in
16 any other waters designated by the Secretary after
17 consultation with the Undersecretary and the Ad-
18 ministrator.

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

24 “(11) VESSELS OPERATING IN THE GREAT
25 LAKES.—

1 “(A) REGULATIONS.—Until such time as
2 regulations are promulgated to implement the
3 amendments made by the Ballast Water Man-
4 agement Act of 2007, regulations promulgated
5 to carry out this Act shall remain in effect until
6 revised or replaced pursuant to the Ballast
7 Water Management Act of 2007.

8 “(B) RELATIONSHIP TO OTHER PRO-
9 GRAMS.—On promulgation of regulations re-
10 quired under this Act to implement a national
11 mandatory ballast management program that is
12 at least as comprehensive as the Great Lakes
13 program (as determined by the Secretary, in
14 consultation with the Governors of Great Lakes
15 States)—

16 “(i) the program regulating vessels
17 and ballast water in Great Lakes under
18 this section shall terminate; and

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

21 “(12) VESSELS WITH NO BALLAST ON
22 BOARD.—Not later than 180 days after the date of
23 enactment of the Ballast Water Management Act of
24 2007, the Secretary shall promulgate regulations to
25 minimize the discharge of invasive species from ships

1 entering a United States port or place from outside
 2 the United States exclusive economic zone that claim
 3 no ballast on board, or that claim to be carrying
 4 only unpumpable quantities of ballast, including, at
 5 a minimum, a requirement that—

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

8 “(I) outside the exclusive eco-
 9 nomic zone; or

10 “(II) at a designated alternative
 11 exchange site; and

12 “(ii) before being allowed entry into
 13 the Great Lakes beyond the St. Lawrence
 14 Seaway, the master of such a ship shall
 15 certify that the ship has complied with
 16 each applicable requirement under this
 17 subsection.

18 “(f) BALLAST WATER TREATMENT REQUIRE-
 19 MENTS.—

20 “(1) PERFORMANCE STANDARDS.—A vessel to
 21 which this section applies shall conduct ballast water
 22 treatment in accordance with the requirements of
 23 this subsection before discharging ballast water so
 24 that the ballast water discharged will contain—

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

4 “(B) less than 1 living organism per 10
5 milliliters that is less than 50 micrometers in
6 minimum dimension and more than 10 micrometers
7 in minimum dimension;

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

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

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

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

19 “(D) concentrations of such additional indicator
20 microbes as may be specified in regulations
21 promulgated by the Administrator, after
22 consultation with the Secretary and other appropriate
23 Federal agencies as determined by the
24 Secretary, that are less than the amount specified
25 in those regulations.

1 “(2) RECEPTION FACILITY EXCEPTION.—

2 “(A) IN GENERAL.—Paragraph (1) does
3 not apply to a vessel that discharges ballast
4 water into a facility for the reception of ballast
5 water that meets standards prescribed by the
6 Administrator.

7 “(B) PROMULGATION OF STANDARDS.—
8 Within 1 year after the date of enactment of
9 the Ballast Water Management Act of 2007,
10 the Administrator, in consultation with the Sec-
11 retary other appropriate Federal agencies as de-
12 termined by the Administrator, shall promul-
13 gate standards for—

14 “(i) the reception of ballast water
15 from vessels into reception facilities; and

16 “(ii) the disposal or treatment of such
17 ballast water in a way that does not impair
18 or damage the environment, human health,
19 property, or resources.

20 “(3) IMPLEMENTATION SCHEDULE.—Para-
21 graph (1) applies to vessels in accordance with the
22 following schedule:

23 “(A) FIRST PHASE.—Beginning January
24 1, 2011, for vessels constructed on or after that

1 date with a ballast water capacity of less than
2 5,000 cubic meters.

3 “(B) SECOND PHASE.—Beginning January
4 1, 2013, for vessels constructed on or after that
5 date with a ballast water capacity of 5,000
6 cubic meters or more.

7 “(C) THIRD PHASE.—Beginning January
8 1, 2013, for vessels constructed before January
9 1, 2011, with a ballast water capacity of 1,500
10 cubic meters or more but not more than 5,000
11 cubic meters.

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

14 “(i) before January 1, 2011, with a
15 ballast water capacity of less than 1,500
16 cubic meters or 5,000 cubic meters or
17 more; or

18 “(ii) on or after January 1, 2011, and
19 before January 1, 2013, with a ballast
20 water capacity of 5,000 cubic meters or
21 more.

22 “(4) TREATMENT SYSTEM APPROVAL RE-
23 QUIRED.—The operator of a vessel may not use a
24 ballast water treatment system to comply with the
25 requirements of this subsection unless the system is

1 approved by the Secretary, in consultation with the
2 Administrator. The Secretary shall promulgate regu-
3 lations establishing a process for such approval,
4 after consultation with the Administrator and other
5 appropriate Federal agencies as determined by the
6 Secretary, within 1 year after the date of enactment
7 of the Ballast Water Management Act of 2007.

8 “(5) FEASIBILITY REVIEW.—

9 “(A) IN GENERAL.—Not less than 2 years
10 before the date on which paragraph (1) applies
11 to vessels under each subparagraph of para-
12 graph (3), or as that date may be extended
13 under this paragraph, the Secretary, in con-
14 sultation with the Administrator, shall complete
15 a review to determine whether appropriate tech-
16 nologies are available to achieve the standards
17 set forth in paragraph (1) for the vessels to
18 which they apply under the schedule set forth
19 in paragraph (3). In reviewing the technologies
20 the Secretary, after consultation with the Ad-
21 ministrator and other appropriate Federal
22 agencies as determined by the Secretary, shall
23 consider—

24 “(i) the effectiveness of a technology
25 in achieving the standards;

- 1 “(ii) feasibility in terms of compat-
2 ibility with ship design and operations;
3 “(iii) safety considerations;
4 “(iv) whether a technology has an ad-
5 verse impact on the environment; and
6 “(v) cost effectiveness.

7 “(B) DELAY IN SCHEDULED APPLICA-
8 TION.—If the Secretary determines, on the
9 basis of the review conducted under subpara-
10 graph (A), that compliance with the standards
11 set forth in paragraph (1) in accordance with
12 the schedule set forth in any subparagraph of
13 paragraph (2) is not feasible for any class of
14 vessels, the Secretary shall require use of the
15 best performing technology available that
16 meets, at a minimum, the applicable ballast
17 water discharge standard of the International
18 Maritime Organization. If the Secretary finds
19 that no technology exists that will achieve either
20 the standards set forth in paragraph (1) or the
21 standards of the International Maritime Orga-
22 nization, then, the Secretary shall—

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

1 “(ii) recommend action to ensure that
2 compliance with the extended date schedule
3 for that subparagraph is achieved.

4 “(C) HIGHER STANDARDS; EARLIER IM-
5 PLEMENTATION.—

6 “(i) STANDARDS.—If the Secretary
7 determines that ballast water treatment
8 technology exists that exceeds the perform-
9 ance standards required under this sub-
10 section, the Secretary shall, for any class
11 of vessels, revise the performance stand-
12 ards to incorporate the higher performance
13 standards.

14 “(ii) IMPLEMENTATION.—If the Sec-
15 retary determines that technology that
16 achieves the applicable performance stand-
17 ards required under this subsection can be
18 implemented earlier than required by this
19 subsection, the Secretary shall, for any
20 class of vessels, accelerate the implementa-
21 tion schedule under paragraph (3). If the
22 Secretary accelerates the implementation
23 schedule pursuant to this clause, the Sec-
24 retary shall provide at least 24 months no-

1 tice before such accelerated implementation
2 goes into effect.

3 “(iii) DETERMINATIONS NOT MUTU-
4 ALLY EXCLUSIVE.—The Secretary shall
5 take action under both clause (i) and
6 clause (ii) if the Secretary makes deter-
7 minations under both clauses.

8 “(6) DELAY OF APPLICATION FOR VESSEL PAR-
9 TICIPATING IN PROMISING TECHNOLOGY EVALUA-
10 TIONS.—

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

24 “(B) VESSEL DIVERSITY.—The Sec-
25 retary—

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

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

8 “(C) TERMINATION OF GRACE PERIOD.—
9 The Secretary may terminate the 10-year grace
10 period of a vessel under subparagraph (A) if
11 participation of the vessel in the program is ter-
12 minated without the consent of the Secretary.

13 “(D) ANNUAL RE-EVALUATION; TERMI-
14 NATION.—The Secretary shall establish an an-
15 nual evaluation process to determine whether
16 the performance of an approved technology is
17 sufficiently effective and whether it is causing
18 harm to the environment. If the Secretary de-
19 termines that an approved technology is insuffi-
20 ciently effective or is causing harm to the envi-
21 ronment, the Secretary shall revoke the ap-
22 proval granted under subparagraph (A).

23 “(7) REVIEW OF STANDARDS.—

24 “(A) IN GENERAL.—In December, 2014,
25 and in every third year thereafter, the Adminis-

1 trator, in consultation with the Secretary, shall
2 review ballast water treatment standards to de-
3 termine, after consultation with the Undersecre-
4 tary and other appropriate Federal agencies as
5 determined by the Secretary, if the standards
6 under this subsection should be revised to re-
7 duce the amount of organisms or microbes al-
8 lowed to be discharged, taking into account im-
9 provements in the scientific understanding of
10 biological processes leading to the spread of
11 aquatic nuisance species and improvements in
12 ballast water treatment technology. The Admin-
13 istrator shall revise by regulation the perform-
14 ance standard required under this subsection as
15 necessary.

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

24 “(S) INSTALLED EQUIPMENT.—If ballast water
25 treatment technology used for purposes of complying

1 with the regulations under this subsection is in-
2 stalled on a vessel, maintained in good working
3 order, and used by the vessel, the vessel may use
4 that technology for the shorter of—

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

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

9 “(9) HIGH-RISK VESSELS.—

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

23 “(B) INCENTIVE PROGRAMS.—The Sec-
24 retary shall give priority to vessels on the list
25 for participation in pilot programs described in

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

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

13 “(A) IN GENERAL.—Paragraph (1) does
14 not apply to a vessel that operates exclusively
15 within an area if the Secretary has determined
16 through a rulemaking proceeding, after con-
17 sultation with the Undersecretary and other ap-
18 propriate Federal agencies as determined by the
19 Secretary, and representatives of States the wa-
20 ters of which could be affected by the discharge
21 of ballast water, that the risk of introducing
22 aquatic nuisance species through ballast water
23 discharge from the vessel is insignificant.

24 “(B) CERTAIN VESSELS.—A vessel con-
25 structed before January 1, 2001, that operates

1 exclusively within Lake Superior, Lake Michi-
2 gan, Lake Huron, and Lake Erie and the con-
3 necting channels shall be presumed not to pose
4 a significant risk of introducing aquatic nui-
5 sance species unless the Secretary finds other-
6 wise in a rulemaking proceeding under subpara-
7 graph (A).

8 “(C) BEST PRACTICES.—The Secretary
9 shall develop, and require vessels exempted
10 from complying with the requirements of para-
11 graph (1) under this paragraph to follow, best
12 practices, developed in consultation with the
13 Governors or States that may be affected, to
14 minimize the spreading of aquatic nuisance spe-
15 cies in its operating area.

16 “(11) LABORATORIES.—The Secretary may use
17 any Federal or non-Federal laboratory that meets
18 standards established by the Secretary for the pur-
19 pose of evaluating and certifying ballast water treat-
20 ment technologies and equipment under this sub-
21 section.

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

24 “(1) IN GENERAL.—The Secretary shall notify
25 vessel owners and operators of any area in waters

1 subject to the jurisdiction of the United States in
2 which vessels may not uptake ballast water due to
3 known conditions.

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

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

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

8 “(h) SEDIMENT MANAGEMENT.—

9 “(1) IN GENERAL.—The operator of a vessel to
10 which this section applies may not remove or dispose
11 of sediment from spaces designed to carry ballast
12 water except—

13 “(A) in accordance with this subsection
14 and the ballast water management plan re-
15 quired under subsection (c); and

16 “(B) more than 200 nautical miles from
17 the nearest point of land or into a reception fa-
18 cility that meets the requirements of paragraph
19 (3).

20 “(2) DESIGN REQUIREMENTS.—

21 “(A) NEW VESSELS.—After December 31,
22 2008, it shall be unlawful to construct a vessel
23 in the United States to which this section ap-
24 plies unless that vessel is designed and con-
25 structed, in accordance with regulations pre-

1 scribed under subparagraph (C), in a manner
2 that—

3 “(i) minimizes the uptake and entrap-
4 ment of sediment;

5 “(ii) facilitates removal of sediment;
6 and

7 “(iii) provides for safe access for sedi-
8 ment removal and sampling.

9 “(B) EXISTING VESSELS.—Every vessel to
10 which this section applies that was constructed
11 before January 1, 2009, shall be modified be-
12 fore January 1, 2009, to the extent practicable,
13 to achieve the objectives described in clauses (i),
14 (ii), and (iii) of subparagraph (A).

15 “(C) REGULATIONS.—The Secretary shall
16 promulgate regulations establishing design and
17 construction standards to achieve the objectives
18 of subparagraph (A) and providing guidance for
19 modifications and practices under subparagraph
20 (B). The Secretary shall incorporate the stand-
21 ards and guidance in the regulations governing
22 the ballast water management plan.

23 “(3) SEDIMENT RECEPTION FACILITIES.—

24 “(A) STANDARDS.—The Secretary, in con-
25 sultation with other appropriate Federal agen-

1 cies as determined by the Secretary, shall pro-
2 mulgate regulations governing facilities for the
3 reception of vessel sediment from spaces de-
4 signed to carry ballast water that provide for
5 the disposal of such sediment in a way that
6 does not impair or damage the environment,
7 human health, or property or resources of the
8 disposal area.

9 “(B) DESIGNATION.—The Administrator,
10 in consultation with the Secretary and other ap-
11 propriate Federal agencies as determined by the
12 Administrator, shall designate facilities for the
13 reception of vessel sediment that meet the re-
14 quirements of the regulations promulgated
15 under subparagraph (A) at ports and terminals
16 where ballast tanks are cleaned or repaired.

17 “(i) EXAMINATIONS AND CERTIFICATIONS.—

18 “(1) INITIAL EXAMINATION.—

19 “(A) IN GENERAL.—The Secretary shall
20 examine vessels to which this section applies to
21 determine whether—

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

1 “(ii) the equipment used for ballast
2 water and sediment management in ac-
3 cordance with the requirements of this sec-
4 tion and the regulations promulgated here-
5 under is installed and functioning properly.

6 “(B) NEW VESSELS.—For vessels con-
7 structed in the United States on or after Janu-
8 ary 1, 2011, the Secretary shall conduct the ex-
9 amination required by subparagraph (A) before
10 the vessel is placed in service.

11 “(C) EXISTING VESSELS.—For vessels con-
12 structed before January 1, 2011, the Secretary
13 shall—

14 “(i) conduct the examination required
15 by subparagraph (A) before the date on
16 which subsection (f)(1) applies to the ves-
17 sel according to the schedule in subsection
18 (f)(3); and

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

21 “(D) FOREIGN VESSELS.—In the case of a
22 foreign vessel (as defined in section 2101(12) of
23 title 46, United States Code), the Secretary
24 shall perform the examination required by this

1 paragraph the first time the vessel enters a
2 United States port.

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

7 ~~“(3) INSPECTION AUTHORITY.—~~

8 ~~“(A) IN GENERAL.—~~The Secretary may
9 carry out inspections of any vessel to which this
10 section applies at any time, including the taking
11 of ballast water samples, to ensure the vessel’s
12 compliance with this Act. The Secretary shall
13 use all appropriate and practical measures of
14 detection and environmental monitoring, and
15 shall establish adequate procedures for report-
16 ing violations and accumulating evidence.

17 ~~“(B) INVESTIGATIONS.—~~Upon receipt of
18 evidence that a violation has occurred, the Sec-
19 retary shall cause the matter to be investigated.
20 In any investigation under this section the Sec-
21 retary may issue subpoenas to require the at-
22 tendance of any witness and the production of
23 documents and other evidence. In case of re-
24 fusal to obey a subpoena issued to any person,
25 the Secretary may request the Attorney General

1 to invoke the aid of the appropriate district
2 court of the United States to compel compli-
3 ance.

4 “(4) REQUIRED CERTIFICATE.—If, on the basis
5 of an initial examination under paragraph (1) the
6 Secretary finds that a vessel complies with the re-
7 quirements of this section and the regulations pro-
8 mulgated hereunder, the Secretary shall issue a cer-
9 tificate under this paragraph as evidence of such
10 compliance. The certificate shall be valid for a period
11 of not more than 5 years, as specified by the Sec-
12 retary. The certificate or a true copy shall be main-
13 tained on board the vessel.

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

21 “(A) notify in writing—

22 “(i) the master of the vessel; and

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

1 “(B) take such other action as may be ap-
2 propriate.

3 ~~“(6) COMPLIANCE AND MONITORING.—~~

4 ~~“(A) IN GENERAL.—The Secretary shall by~~
5 ~~regulation establish sampling and other proce-~~
6 ~~dures to monitor compliance with the require-~~
7 ~~ments of this section and any regulations pro-~~
8 ~~mulgated under this section.~~

9 ~~“(B) USE OF MARKERS.—The Secretary~~
10 ~~may verify compliance with treatment standards~~
11 ~~under this section and the regulations through~~
12 ~~identification of markers associated with a~~
13 ~~treatment technology’s effectiveness, such as~~
14 ~~the presence of indicators associated with a cer-~~
15 ~~tified treatment technology.~~

16 ~~“(7) EDUCATION AND TECHNICAL ASSISTANCE~~
17 ~~PROGRAMS.—The Secretary may carry out education~~
18 ~~and technical assistance programs and other meas-~~
19 ~~ures to promote compliance with the requirements~~
20 ~~issued under this section.~~

21 ~~“(j) DETENTION OF VESSELS.—~~

22 ~~“(1) IN GENERAL.—The Secretary, by notice to~~
23 ~~the owner, charterer, managing operator, agent,~~
24 ~~master, or other individual in charge of a vessel,~~

1 may detain that vessel if the Secretary has reason-
2 able cause to believe that—

3 “(A) the vessel is a vessel to which this
4 section applies; and

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

9 “(2) CLEARANCE.—

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

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

22 “(k) SANCTIONS.—

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

1 to exceed \$2,500. Each day of a continuing viola-
2 tion constitutes a separate violation. A vessel oper-
3 ated in violation of this section or the regulations is
4 liable in rem for any civil penalty assessed under
5 this subsection for that violation.

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

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

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

20 “(1) ENFORCEMENT.—

21 “(1) ADMINISTRATIVE ACTIONS.—If the Sec-
22 retary finds, after notice and an opportunity for a
23 hearing, that a person has violated any provision of
24 this section or any regulation promulgated here-
25 under, the Secretary may assess a civil penalty for

1 that violation. In determining the amount of a civil
2 penalty, the Secretary shall take into account the
3 nature, circumstances, extent, and gravity of the
4 prohibited acts committed and, with respect to the
5 violator, the degree of culpability, any history of
6 prior violations, and such other matters as justice
7 may require.

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

16 “(m) CONSULTATION WITH CANADA, MEXICO, AND
17 OTHER FOREIGN GOVERNMENTS.—In developing the
18 guidelines issued and regulations promulgated under this
19 section, the Secretary is encouraged to consult with the
20 Government of Canada, the Government of Mexico, and
21 any other government of a foreign country that the Sec-
22 retary, after consultation with the Task Force, determines
23 to be necessary to develop and implement an effective
24 international program for preventing the unintentional in-

1 troduction and spread of aquatic nuisance species through
2 ballast water.

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

20 “(o) NON-DISCRIMINATION.—The Secretary shall en-
21 sure that vessels registered outside of the United States
22 do not receive more favorable treatment than vessels reg-
23 istered in the United States when the Secretary performs
24 studies, reviews compliance, determines effectiveness, es-

1 tablishes requirements, or performs any other responsibil-
2 ities under this Act.

3 “(p) SUPPORT FOR FEDERAL BALLAST WATER DEM-
4 ONSTRATION PROJECT.—In addition to amounts other-
5 wise available to the Maritime Administration, the Na-
6 tional Oceanographic and Atmospheric Administration,
7 and the United States Fish and Wildlife Service for the
8 Federal Ballast Water Demonstration Project, the Sec-
9 retary shall provide support for the conduct and expansion
10 of the project, including grants for research and develop-
11 ment of innovative technologies for the management,
12 treatment, and disposal of ballast water and sediment, for
13 ballast water exchange, and for other vessel vectors of
14 aquatic nuisance species such as hull-fouling. There are
15 authorized to be appropriated to the Secretary \$5,000,000
16 for each of fiscal years 2007 through 2011 to carry out
17 this subsection.

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

21 “(r) RISK ASSESSMENT.—

22 “(1) IN GENERAL.—Within 2 years after the
23 date of enactment of the Ballast Water Management
24 Act of 2007, the Administrator, in consultation with
25 the Secretary and other appropriate Federal agen-

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

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

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

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

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

20 “(2) PUBLIC COMMENT.—The Administrator
21 shall cause a draft of the risk assessment to be pub-
22 lished in the Federal Register for public comment,
23 and shall develop a final risk assessment report after
24 taking into accounts any comments received during
25 the public comment period.

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

6 “(s) OTHER SOURCES OF VESSEL-BORNE NUISANCE
7 SPECIES.—

8 “(1) HULL-FOULING AND OTHER VESSEL
9 SOURCES.—

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

21 “(B) MANAGEMENT.—Within 1 year after
22 the date of enactment of the Ballast Water
23 Management Act of 2007, the Secretary shall
24 develop a strategy to address such other vessel
25 sources of aquatic nuisance species and to re-

1 duce the introduction of invasive species into
2 and within the United States from vessels. The
3 strategy shall include—

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

9 “(ii) necessary modifications of exist-
10 ing regulations;

11 “(iii) best practices standards and
12 procedures; and

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

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

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

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

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

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

23 “(t) REGULATIONS.—

24 “(1) IN GENERAL.—The Secretary, after con-
25 sultation with other appropriate Federal agencies,

1 shall issue such regulations as may be necessary ini-
2 tially to carry out this section within 1 year after the
3 date of enactment of the Ballast Water Management
4 Act of 2007.

5 “(2) JUDICIAL REVIEW.—

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

20 “(B) REVIEW IN ENFORCEMENT PRO-
21 CEEDINGS.—A regulation for which review
22 could have been obtained under subparagraph
23 (A) of this paragraph is not subject to judicial
24 review in any civil or criminal proceeding for
25 enforcement.

1 “(u) SAVINGS CLAUSE.—

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

7 “(2) RECEPTION FACILITIES.—The standards
8 prescribed by the Secretary or other appropriate
9 Federal agencies under subsection (f)(2) do not su-
10 persede any more stringent standard under any oth-
11 erwise applicable Federal, State, or local law.

12 “(3) APPLICATION WITH OTHER STATUTES.—
13 This section provides the sole Federal authority for
14 preventing the introduction of species through the
15 control and management of vessel ballast water or
16 sediment or other vessel-related vectors.”.

17 (b) DEFINITIONS.—

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

21 (A) by redesignating paragraph (1) as
22 paragraph (1A);

23 (B) by inserting before paragraph (1A), as
24 redesignated, the following:

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

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

5 “(3) ‘ballast water’—

6 “(A) means water taken on board a vessel
7 to control trim, list, draught, stability, or
8 stresses of the vessel, including matter sus-
9 pended in such water; and

10 “(B) any water placed into a ballast tank
11 during cleaning, maintenance, or other oper-
12 ations; but

13 “(C) does not include water taken on
14 board a vessel and used for a purpose described
15 in subparagraph (A) that, at the time of dis-
16 charge, does not contain aquatic nuisance spe-
17 cies;”;

18 (D) by inserting after paragraph (3) the
19 following:

20 “(3A) ‘ballast water capacity’ means the total
21 volumetric capacity of any tanks, spaces, or com-
22 partments on a vessel that is used for carrying, load-
23 ing, or discharging ballast water, including any
24 multi-use tank, space, or compartment designed to
25 allow carriage of ballast water;

1 “(3B) ‘ballast water management’ means me-
2 chanical, physical, chemical, and biological processes
3 used, either singularly or in combination, to remove,
4 render harmless, or avoid the uptake or discharge of
5 aquatic nuisance species and pathogens within bal-
6 last water and sediment;

7 “(3C) ‘constructed’ means a state of construc-
8 tion of a vessel at which—

9 “(A) the keel is laid;

10 “(B) construction identifiable with the spe-
11 cific vessel begins;

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

16 “(D) the vessel undergoes a major conver-
17 sion;”;

18 “(E) by inserting after paragraph (10) the
19 following:

20 “(10A) ‘major conversion’ means a conversion
21 of a vessel, that—

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

24 “(B) changes the vessel class;

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

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

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

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

10 (F) by inserting after paragraph (12), as
11 redesignated, the following:

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

14 “(A) adding midocean water to a ballast
15 water tank that contains residual quantities of
16 ballast waters;

17 “(B) mixing the midocean water with the
18 residual ballast water and sediment in the tank
19 through the motion of a vessel; and

20 “(C) discharging the mixed water so that
21 the salinity of the resulting residual ballast
22 water in the tank exceeds 30 parts per thou-
23 sand;

24 “(12B) ‘sediment’ means matter that has set-
25 tled out of ballast water within a vessel;”;

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

4 (H) by inserting after paragraph (17) the
5 following:

6 “(17A) ‘United States port’ means a port,
7 river, harbor, or offshore terminal under the juris-
8 diction of the United States, including ports located
9 in Puerto Rico, Guam, the Northern Marianas, and
10 the United States Virgin Islands;

11 “(17B) ‘vessel of the Armed Forces’ means—

12 “(A) any vessel owned or operated by the
13 Department of Defense, other than a time or
14 voyage chartered vessel; and

15 “(B) any vessel owned or operated by the
16 Department of Homeland Security that is des-
17 ignated by the Secretary of the department in
18 which the Coast Guard is operating as a vessel
19 equivalent to a vessel described in subparagraph
20 (A); and

21 “(17C) ‘waters subject to the jurisdiction of the
22 United States’ means navigable waters and the terri-
23 torial sea of the United States, the exclusive eco-
24 nomic zone, and the Great Lakes.”.

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

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

7 (B) by redesignating paragraphs (1)
8 through (17C) as paragraphs (1) through (27),
9 respectively; and

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

16 (e) **REPEAL OF SECTION 1103.**—Section 1103 of the
17 Nonindigenous Aquatic Nuisance Prevention and Control
18 Act of 1990 (16 U.S.C. 4713) is repealed.

19 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

20 Section 1301(a) of the Nonindigenous Aquatic Nui-
21 sance Prevention and Control Act of 1990 (16 U.S.C.
22 4741(a)) is amended—

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

1 (2) by striking “1102(f).” in paragraph (5)(B)
2 and inserting “1102(f); and”; and
3 (3) by adding at the end the following:
4 “~~(6) \$20,000,000 for each of fiscal years 2008~~
5 ~~through 2012 to the Secretary to carry out section~~
6 ~~1101.”.~~

7 **SECTION 1. SHORT TITLE.**

8 *This Act may be cited as the “Ballast Water Manage-*
9 *ment Act of 2007”.*

10 **SEC. 2. FINDINGS.**

11 *Section 1002(a) of the Nonindigenous Aquatic Nui-*
12 *sance Prevention and Control Act of 1990 (16 U.S.C.*
13 *4701(a)) is amended—*

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

16 (2) *by inserting after paragraph (13) the fol-*
17 *lowing:*

18 “(14) *aquatic nuisance species may be intro-*
19 *duced by other vessel conduits, including the hulls of*
20 *ships;*

21 (3) *by striking “inland lakes and rivers by rec-*
22 *reational boaters, commercial barge traffic, and a va-*
23 *riety of other pathways; and” in paragraph (15), as*
24 *redesignated, and inserting “other areas of the United*
25 *States, including coastal areas, inland lakes, and riv-*

1 *ers by recreational boaters, commercial traffic, and a*
2 *variety of other pathways;”;*

3 *(4) by inserting “nongovernmental entities, in-*
4 *stitutions of higher education, and the private sector,”*
5 *after “governments,” in paragraph (16), as redesign-*
6 *ated;*

7 *(5) by striking “technologies.” in paragraph*
8 *(16), as redesignated, and inserting “technologies;”;*
9 *and*

10 *(6) adding at the end the following:*

11 *“(17) in 2004, the International Maritime Orga-*
12 *nization agreed to a Convention, which the United*
13 *States played an active role in negotiating, to pre-*
14 *vent, minimize, and ultimately eliminate the transfer*
15 *of aquatic nuisance species through the control and*
16 *management of ballast water and sediments;*

17 *“(18) the International Maritime Organization*
18 *agreement specifically recognizes that countries can*
19 *take more stringent measures than those of the Con-*
20 *vention with respect to the control and management*
21 *of ships’ ballast water and sediment; and*

22 *“(19) due to the interstate nature of maritime*
23 *transportation and the ways by which aquatic nui-*
24 *sance species may be transferred by vessels, a com-*
25 *prehensive and uniform national approach for ad-*

1 *dressing vessel-borne aquatic nuisance species is need-*
 2 *ed to address this issue effectively.”.*

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

5 *(a) IN GENERAL.—Section 1101 of the Nonindigenous*
 6 *Aquatic Nuisance Prevention and Control Act of 1990 (16*
 7 *U.S.C. 4711) is amended to read as follows:*

8 **“SEC. 1101. MANAGEMENT OF VESSEL-BORNE AQUATIC NUI-**
 9 **SANCE SPECIES.**

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

12 *“(1) PURPOSE.—The purpose of this section is to*
 13 *provide an effective, comprehensive, and uniform na-*
 14 *tional approach for addressing the introduction and*
 15 *spread of aquatic nuisance species from ballast water*
 16 *and other ship-borne vectors, and, in furtherance of*
 17 *that purpose—*

18 *“(A) to require, as part of that approach,*
 19 *mandatory treatment technology, with the ulti-*
 20 *mate goal of achieving zero discharge of aquatic*
 21 *nuisance species;*

22 *“(B) to create incentives for the development*
 23 *of ballast water treatment technologies;*

24 *“(C) to implement the International Con-*
 25 *vention for the Control and Management of*

1 *Ships' Ballast Water and Sediments, adopted by*
2 *the International Maritime Organization in*
3 *2004; and*

4 “(D) *to establish a management approach*
5 *for other ship-borne vectors of aquatic nuisance*
6 *species.*

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

11 “(A) *is a vessel of United States registry or*
12 *nationality, or operated under the authority of*
13 *the United States, wherever located; or*

14 “(B) *is a foreign vessel that—*

15 “(i) *is en route to a United States port*
16 *or place; or*

17 “(ii) *has departed from a United*
18 *States port or place and is within waters*
19 *subject to the jurisdiction of the United*
20 *States.*

21 “(3) *PERMANENT BALLAST WATER VESSELS.—*
22 *Except as provided in paragraph (6), this section*
23 *does not apply to a vessel that carries all of its per-*
24 *manent ballast water in sealed tanks and is not sub-*
25 *ject to discharge.*

1 “(4) *ARMED FORCES VESSELS.*—

2 “(A) *EXEMPTION.*—*Except as provided in*
3 *subparagraph (B) and paragraph (6), this sec-*
4 *tion does not apply to a vessel of the Armed*
5 *Forces.*

6 “(B) *BALLAST WATER MANAGEMENT PRO-*
7 *GRAM.*—*The Secretary and the Secretary of De-*
8 *fense, after consultation with each other and*
9 *with the Under Secretary of Commerce for*
10 *Oceans and Atmosphere, the Administrator of the*
11 *Environmental Protection Agency, and other ap-*
12 *propriate Federal agencies as determined by the*
13 *Secretary, shall implement a ballast water man-*
14 *agement program, including the promulgation of*
15 *standards for ballast water exchange and treat-*
16 *ment and for sediment management, for vessels*
17 *of the Armed Forces under their respective juris-*
18 *dictions designed, constructed, or adapted to*
19 *carry ballast water that is—*

20 “(i) *consistent with the requirements of*
21 *this section, including the deadlines; and*

22 “(ii) *at least as stringent as the re-*
23 *quirements promulgated for such vessels*
24 *under section 312 of the Clean Water Act*
25 *(33 U.S.C. 1322).*

1 “(5) *SPECIAL RULE FOR SMALL VESSELS.*—In
2 *applying this section to vessels less than 50 meters in*
3 *length that have a maximum ballast water capacity*
4 *of 8 cubic meters, the Secretary may promulgate al-*
5 *ternative measures for managing ballast water in a*
6 *manner that is consistent with the purposes of this*
7 *Act.*

8 “(6) *OTHER SOURCES OF VESSEL-BORNE AQUAT-*
9 *IC NUISANCE SPECIES.*—*Measures undertaken by the*
10 *Secretary under subsection (s) shall apply to all ves-*
11 *sels (as defined in section 3 of title 1, United States*
12 *Code).*

13 “(b) *UPTAKE AND DISCHARGE OF BALLAST WATER OR*
14 *SEDIMENT.*—

15 “(1) *PROHIBITION.*—*The operator of a vessel to*
16 *which this section applies may not conduct the uptake*
17 *or discharge of ballast water or sediment except as*
18 *provided in this section.*

19 “(2) *EXCEPTIONS.*—*Paragraph (1) does not*
20 *apply to the uptake or discharge of ballast water or*
21 *sediment in the following circumstances:*

22 “(A) *The uptake or discharge is solely for*
23 *the purpose of—*

24 “(i) *ensuring the safety of the vessel in*
25 *an emergency situation; or*

1 “(ii) *saving a life at sea.*

2 “(B) *The uptake or discharge is accidental*
3 *and the result of damage to the vessel or its*
4 *equipment and—*

5 “(i) *all reasonable precautions to pre-*
6 *vent or minimize ballast water and sedi-*
7 *ment discharge have been taken before and*
8 *after the damage occurs, the discovery of the*
9 *damage, and the discharge; and*

10 “(ii) *the owner or officer in charge of*
11 *the vessel did not willfully or recklessly*
12 *cause the damage.*

13 “(C) *The uptake or discharge is solely for*
14 *the purpose of avoiding or minimizing the dis-*
15 *charge from the vessel of pollution that would*
16 *otherwise violate applicable Federal or State*
17 *law.*

18 “(D) *The uptake or discharge of ballast*
19 *water and sediment occurs at the same location*
20 *where the whole of that ballast water and that*
21 *sediment originated and there is no mixing with*
22 *ballast water and sediment from another area*
23 *that has not been managed in accordance with*
24 *the requirements of this section.*

25 “(c) *VESSEL BALLAST WATER MANAGEMENT PLAN.—*

1 “(1) *IN GENERAL.*—*The operator of a vessel to*
2 *which this section applies shall conduct all ballast*
3 *water management operations of that vessel in ac-*
4 *cordance with a ballast water management plan de-*
5 *signed to minimize the discharge of aquatic nuisance*
6 *species that—*

7 “(A) *meets the requirements prescribed by*
8 *the Secretary by regulation; and*

9 “(B) *is approved by the Secretary.*

10 “(2) *APPROVAL CRITERIA.*—

11 “(A) *IN GENERAL.*—*The Secretary may not*
12 *approve a ballast water management plan unless*
13 *the Secretary determines that the plan—*

14 “(i) *describes in detail the actions to be*
15 *taken to implement the ballast water man-*
16 *agement requirements established under this*
17 *section;*

18 “(ii) *describes in detail the procedures*
19 *to be used for disposal of sediment at sea*
20 *and on shore in accordance with the re-*
21 *quirements of this section;*

22 “(iii) *describes in detail safety proce-*
23 *dures for the vessel and crew associated with*
24 *ballast water management;*

1 “(iv) designates the officer on board the
2 vessel in charge of ensuring that the plan is
3 properly implemented;

4 “(v) contains the reporting require-
5 ments for vessels established under this sec-
6 tion and a copy of each form necessary to
7 meet those requirements;

8 “(vi) incorporates regulatory require-
9 ments, guidance, and best practices devel-
10 oped under subsection (s) for other vessel
11 pathways by which aquatic nuisance species
12 are transported; and

13 “(vii) meets all other requirements pre-
14 scribed by the Secretary.

15 “(B) FOREIGN VESSELS.—The Secretary
16 may approve a ballast water management plan
17 for a foreign vessel (as defined in section
18 2101(12) of title 46, United States Code) on the
19 basis of a certificate of compliance with the cri-
20 teria described in subparagraph (A) issued by
21 the vessel’s country of registration in accordance
22 with regulations promulgated by the Secretary.

23 “(3) COPY OF PLAN ON BOARD VESSEL.—The
24 owner or operator of a vessel to which this section ap-
25 plies shall—

1 “(A) maintain a copy of the vessel’s ballast
2 water management plan on board at all times;
3 and

4 “(B) keep the plan readily available for ex-
5 amination by the Secretary at all reasonable
6 times.

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

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

12 “(A) each operation involving ballast water
13 or sediment discharge is fully recorded without
14 delay, in accordance with regulations promul-
15 gated by the Secretary;

16 “(B) each such operation is described in de-
17 tail, including the location and circumstances of,
18 and the reason for, the operation; and

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

23 “(2) AVAILABILITY.—The ballast water record
24 book—

1 “(A) shall be kept readily available for ex-
2 amination by the Secretary at all reasonable
3 times; and

4 “(B) notwithstanding paragraph (1), may
5 be kept on the towing vessel in the case of an un-
6 manned vessel under tow.

7 “(3) *RETENTION PERIOD.*—The ballast water
8 record book shall be retained—

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

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

14 “(4) *REGULATIONS.*—In the regulations pre-
15 scribed under this section, the Secretary shall require,
16 at a minimum, that—

17 “(A) each entry in the ballast water record
18 book be signed and dated by the officer in charge
19 of the ballast water operation recorded;

20 “(B) each completed page in the ballast
21 water record book be signed and dated by the
22 master of the vessel; and

23 “(C) the owner or operator of the vessel
24 transmit such information to the Secretary re-

1 *garding the ballast operations of the vessel as the*
2 *Secretary may require.*

3 “(5) *ALTERNATIVE MEANS OF RECORD-*
4 *KEEPING.—The Secretary shall provide by regulation*
5 *for alternative methods of recordkeeping, including*
6 *electronic recordkeeping, to comply with the require-*
7 *ments of this subsection. Any electronic recordkeeping*
8 *method authorized by the Secretary shall support the*
9 *inspection and enforcement provisions of this Act and*
10 *shall comply with applicable standards of the Na-*
11 *tional Institute of Standards and Technology and the*
12 *Office of Management and Budget governing reli-*
13 *ability, integrity, identity authentication, and non-*
14 *repudiation of stored electronic data.*

15 “(e) *BALLAST WATER EXCHANGE REQUIREMENTS.—*

16 “(1) *IN GENERAL.—*

17 “(A) *REQUIREMENT.—Until a vessel is re-*
18 *quired to conduct ballast water treatment in ac-*
19 *cordance with subsection (f) of this section, the*
20 *operator of a vessel to which this section applies*
21 *may not discharge ballast water in waters sub-*
22 *ject to the jurisdiction of the United States ex-*
23 *cept after—*

24 “(i) *conducting ballast water exchange*
25 *as required by this subsection, in accord-*

1 *ance with regulations prescribed by the Sec-*
2 *retary, in a manner that results in an effi-*
3 *ciency of at least 95 percent volumetric ex-*
4 *change of the ballast water for each ballast*
5 *water tank;*

6 *“(ii) using ballast water treatment*
7 *technology that meets the performance*
8 *standards of subsection (f); or*

9 *“(iii) using alternative ballast water*
10 *treatment technology, if the Secretary, in*
11 *consultation with the Administrator, deter-*
12 *mines that such treatment technology is at*
13 *least as effective as the ballast water ex-*
14 *change required by clause (i) in preventing*
15 *and controlling the introduction of aquatic*
16 *nuisance species, and will not have an ad-*
17 *verse impact on the environment.*

18 *“(B) TECHNOLOGY EFFICACY.—For pur-*
19 *poses of this paragraph, a ballast water treat-*
20 *ment technology shall be considered to be at least*
21 *as effective as the ballast water exchange re-*
22 *quired by clause (i) in preventing and control-*
23 *ling the introduction of aquatic nuisance species*
24 *if preliminary experiments prior to installation*
25 *of the technology aboard the vessel demonstrate*

1 *that the technology removed at least 98 percent*
2 *of organisms larger than 50 microns.*

3 “(2) *GUIDANCE; 5-YEAR USAGE.*—

4 “(A) *GUIDANCE.*—*Within 1 year after the*
5 *date of enactment of the Ballast Water Manage-*
6 *ment Act of 2007, after public notice and oppor-*
7 *tunity for comment, the Secretary shall develop*
8 *guidance on technology that may be used under*
9 *paragraph (1)(A)(iii).*

10 “(B) *5-YEAR USAGE.*—*The Secretary shall*
11 *allow a vessel using environmentally-sound alter-*
12 *native ballast water treatment technology under*
13 *paragraph (1)(A)(iii) to continue to use that*
14 *technology for 5 years after the date on which the*
15 *environmentally-sound alternative ballast water*
16 *treatment technology was first placed in service*
17 *on the vessel, or the date on which treatment re-*
18 *quirements under subsection (f) become applica-*
19 *ble, whichever is later.*

20 “(3) *EXCHANGE AREAS.*—

21 “(A) *VESSELS OUTSIDE THE UNITED*
22 *STATES EEZ.*—*The operator of a vessel en route*
23 *to a United States port or place from a port or*
24 *place outside the United States exclusive eco-*

1 *nomie zone shall conduct ballast water ex-*
2 *change—*

3 “(i) *before arriving at a United States*
4 *port or place;*

5 “(ii) *at least 200 nautical miles from*
6 *the nearest point of land; and*

7 “(iii) *in water at least 200 meters in*
8 *depth.*

9 “(B) *COASTAL VOYAGES.—In lieu of using*
10 *an exchange zone described in subparagraph*
11 *(A)(ii) or (iii), the operator of a vessel origi-*
12 *nating from a port or place within waters sub-*
13 *ject to the jurisdiction of the United States, or*
14 *from a port within 200 nautical miles of the*
15 *United States in Canada, Mexico, or other ports*
16 *designated by the Secretary for purposes of this*
17 *section, and which does not voyage into waters*
18 *described in subparagraph (A)(ii) or (iii), shall*
19 *conduct ballast water exchange—*

20 “(i) *at least 50 nautical miles from the*
21 *nearest point of land; and*

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

24 “(4) *SAFETY OR STABILITY EXCEPTION.—*

1 “(A) *SECRETARIAL DETERMINATION.*—
2 *Paragraph (3) does not apply to the discharge of*
3 *ballast water if the Secretary determines that*
4 *compliance with that paragraph would threaten*
5 *the safety or stability of the vessel, its crew, or*
6 *its passengers because of the design or operating*
7 *characteristics of the vessel.*

8 “(B) *MASTER OF THE VESSEL DETERMINA-*
9 *TION.*—*Paragraph (3) does not apply to the dis-*
10 *charge of ballast water if the master of a vessel*
11 *determines that compliance with that paragraph*
12 *would threaten the safety or stability of the ves-*
13 *sel, its crew, or its passengers because of adverse*
14 *weather, equipment failure, or any other relevant*
15 *condition.*

16 “(C) *NOTIFICATION REQUIRED.*—*Whenever*
17 *the master of a vessel is unable to comply with*
18 *the requirements of paragraph (3) because of a*
19 *determination made under subparagraph (B),*
20 *the master of the vessel shall—*

21 “(i) *notify the Secretary as soon as*
22 *practicable thereafter but no later than 24*
23 *hours after making that determination and*
24 *shall ensure that the determination, the rea-*
25 *sons for the determination, and the notice*

1 are recorded in the vessel's ballast water
2 record book; and

3 “(ii) undertake ballast water ex-
4 change—

5 “(I) in an alternative area that
6 may be designated by the Secretary,
7 after consultation with the Undersecre-
8 tary, and other appropriate Federal
9 agencies as determined by the Sec-
10 retary, and representatives of States
11 the waters of which may be affected by
12 the discharge of ballast water; or

13 “(II) undertake discharge of bal-
14 last water in accordance with para-
15 graph (6) if safety or stability concerns
16 prevent undertaking ballast water ex-
17 change in the alternative area.

18 “(D) REVIEW OF CIRCUMSTANCES.—If the
19 master of a vessel conducts a ballast water dis-
20 charge under the provisions of this paragraph,
21 the Secretary shall review the circumstances to
22 determine whether the discharge met the require-
23 ments of this paragraph. The review under this
24 clause shall be in addition to any other enforce-
25 ment authority of the Secretary.

1 “(5) *DISCHARGE UNDER WAIVER.*—

2 “(A) *SUBSTANTIAL BUSINESS HARDSHIP*
3 *WAIVER.*—*If, because of the short length of a voy-*
4 *age, the operator of a vessel is unable to dis-*
5 *charge ballast water in accordance with the re-*
6 *quirements of paragraph (3)(B) without substan-*
7 *tial business hardship, as determined under reg-*
8 *ulations prescribed by the Secretary, the operator*
9 *shall request a waiver from the Secretary and*
10 *discharge the ballast water in accordance with*
11 *paragraph (6). A request for a waiver under this*
12 *subparagraph shall be submitted to the Secretary*
13 *at such time and in such form and manner as*
14 *the Secretary may require.*

15 “(B) *SUBSTANTIAL BUSINESS HARDSHIP.*—
16 *For purposes of subparagraph (A), the factors*
17 *taken into account in determining substantial*
18 *business hardship shall include whether—*

19 “(i) *compliance with the requirements*
20 *of paragraph (3)(B) would require a suffi-*
21 *ciently great change in routing or sched-*
22 *uling of service as to compromise the eco-*
23 *nomical or commercial viability of the trade*
24 *or business in which the vessel is operated;*
25 *or*

1 “(ii) it is reasonable to expect that the
2 trade or business or service provided will be
3 continued only if a waiver is granted under
4 subparagraph (A).

5 “(6) *PERMISSABLE DISCHARGE.*—

6 “(A) *IN GENERAL.*—The discharge of
7 unexchanged ballast water shall be considered to
8 be carried out in accordance with this paragraph
9 if it is—

10 “(i) in an area designated for that
11 purpose by the Secretary, after consultation
12 with the Undersecretary and other appro-
13 priate Federal agencies as determined by
14 the Secretary and representatives of any
15 State that may be affected by discharge of
16 ballast water in that area; or

17 “(ii) into a reception facility described
18 in subsection (f)(2).

19 “(B) *LIMITATION ON VOLUME.*—The volume
20 of any ballast water discharged under the provi-
21 sions of this paragraph may not exceed the vol-
22 ume necessary to ensure the safe operation of the
23 vessel.

1 “(7) *PARTIAL COMPLIANCE.*—*The operator of a*
2 *vessel that is unable to comply fully with the require-*
3 *ments of paragraph (3)—*

4 “(A) *shall nonetheless conduct ballast water*
5 *exchange to the maximum extent feasible in com-*
6 *pliance with those paragraphs; and*

7 “(B) *may conduct a partial ballast water*
8 *exchange under this paragraph only to the extent*
9 *that the ballast water in an individual ballast*
10 *tank can be completely exchanged in accordance*
11 *with the provisions of paragraph (1)(A).*

12 “(8) *CERTAIN GEOGRAPHICALLY LIMITED*
13 *ROUTES.*—*Notwithstanding paragraph (3)(B) of this*
14 *subsection, the operator of a vessel is not required to*
15 *comply with the requirements of this subsection—*

16 “(A) *if the vessel operates exclusively—*

17 “(i) *within Lake Superior, Lake*
18 *Michigan, Lake Huron, Lake Ontario, and*
19 *Lake Erie and the connecting channels; or*

20 “(ii) *between or among the main group*
21 *of the Hawaiian Islands; or*

22 “(B) *if the vessel operates exclusively within*
23 *any area with respect to which the Secretary has*
24 *determined, after consultation with the Undersec-*
25 *retary, the Administrator, and concurrence by*

1 *the State whose state waters would be affected by*
2 *the discharge of ballast water, that the risk of in-*
3 *roducing aquatic nuisance species through bal-*
4 *last water discharge in the areas in which the*
5 *vessel operates is insignificant.*

6 “(9) *MARINE SANCTUARIES AND OTHER PROHIB-*
7 *ITED AREAS.—*

8 “(A) *IN GENERAL.—A vessel may not dis-*
9 *charge ballast water or sediment containing*
10 *aquatic nuisance species within—*

11 “(i) *a marine sanctuary designated*
12 *under title III of the National Marine*
13 *Sanctuaries Act (16 U.S.C. 1431 et seq.);*

14 “(ii) *a national marine monument*
15 *designated under the Antiquities Act of*
16 *1906; or*

17 “(iii) *an area designated by the Sec-*
18 *retary in any other waters, after consulta-*
19 *tion with the Undersecretary and the Ad-*
20 *ministrators and opportunity for public*
21 *comment, that meet the criteria established*
22 *pursuant to subparagraph (B) of this para-*
23 *graph.*

24 “(B) *ADDITIONAL AREAS.—The Secretary*
25 *shall, after consultation with the Undersecretary,*

1 *the Administrator and other appropriate Federal*
2 *and State agencies, as determined by the Sec-*
3 *retary, and opportunity for public comment, es-*
4 *tablish criteria for designating additional areas*
5 *in which, due to their sensitive ecological nature,*
6 *restrictions on the discharge of vessel ballast*
7 *water or sediment containing aquatic nuisance*
8 *species are warranted.*

9 “(C) *STATE WATERS.*—*The governor of any*
10 *State may submit a written petition to the Sec-*
11 *retary to designate an area of State waters*
12 *under subparagraph (A)(iii) that meets the cri-*
13 *teria established under subparagraph (B) of this*
14 *paragraph. The petition shall include a detailed*
15 *analysis as to how the area proposed to be des-*
16 *ignated meets those criteria. An area may not be*
17 *designated under this paragraph until the Sec-*
18 *retary determines, based on evidence provided by*
19 *the governor, that adequate alternative areas or*
20 *reception facilities for discharging ballast water*
21 *or sediment are available. Within 180 days after*
22 *receiving such a petition, the Secretary shall—*

23 “(i) *make a determination as to wheth-*
24 *er the proposal meets the requirements of*
25 *this paragraph for designation, and*

1 “(ii) either—

2 “(I) publish a written notice of
3 the petition and the proposed restric-
4 tions in the Federal Register; or

5 “(II) notify the governor in writ-
6 ing that the area proposed for designa-
7 tion does not qualify for designation
8 under this paragraph and include in
9 the notice a detailed explanation of
10 why the area does not qualify for des-
11 ignation under this paragraph.

12 “(D) PROCEDURE; DEADLINE.—Before des-
13 ignating any area under subparagraph (A)(iii),
14 whether on the Secretary’s initiative or in re-
15 sponse to a petition under subparagraph (C), the
16 Secretary, after providing an opportunity for
17 public comment, shall publish notice in the Fed-
18 eral Register of the proposed designation. The
19 Secretary and the Undersecretary shall make
20 such information available through other appro-
21 priate mechanisms, including a notice to mari-
22 ners and inclusion on nautical charts. The des-
23 ignation of an area by the Secretary under sub-
24 paragraph (A)(iii) may not take effect less than
25 180 days after the publishing of such notice.

1 “(E) *EFFECT ON STATE LAW.*—Nothing in
2 this paragraph supersedes any State law in ef-
3 fect as of January 1, 2007, that restricts the dis-
4 charge of ballast water or sediment in State wa-
5 ters and requires such discharges to be made into
6 reception facilities.

7 “(10) *REGULATIONS DEADLINE.*—The Secretary
8 shall issue a final rule for regulations required by this
9 subsection within 1 year after the date of enactment
10 of the Ballast Water Management Act of 2007.

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

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

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

1 *consultation with the Governors of Great Lakes*
2 *States)—*

3 “(i) *the program regulating vessels and*
4 *ballast water in Great Lakes under this sec-*
5 *tion shall terminate; and*

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

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

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

20 “(I) *outside the exclusive economic*
21 *zone; or*

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

24 “(ii) *before being allowed entry into*
25 *the Great Lakes beyond the St. Lawrence*

1 *Seaway, the master of such a ship shall cer-*
2 *tify that the ship has complied with each*
3 *applicable requirement under this sub-*
4 *section.*

5 “(f) *BALLAST WATER TREATMENT REQUIREMENTS.—*

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

11 “*(A) less than 1 living organism per 10*
12 *cubic meters that is 50 or more micrometers in*
13 *minimum dimension;*

14 “*(B) less than 1 living organism per 10*
15 *milliliters that is less than 50 micrometers in*
16 *minimum dimension and more than 10 microm-*
17 *eters in minimum dimension;*

18 “*(C) concentrations of indicator microbes*
19 *that are less than—*

20 “*(i) 1 colony-forming unit of*
21 *toxicogenic Vibrio cholera (serotypes O1 and*
22 *O139) per 100 milliliters, or less than 1 col-*
23 *ony-forming unit of that microbe per gram*
24 *of wet weight of zoological samples;*

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

3 “(iii) 33 colony-forming units of *intes-*
4 *tinal enterococci* per 100 milliliters; and

5 “(D) concentrations of such additional indi-
6 cator microbes, and of viruses, as may be speci-
7 fied in regulations promulgated by the Adminis-
8 trator, after consultation with the Secretary and
9 other appropriate Federal and State agencies as
10 determined by the Administrator, that are less
11 than the amount specified in those regulations.

12 “(2) RECEPTION FACILITY EXCEPTION.—

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

18 “(B) PROMULGATION OF STANDARDS.—
19 Within 1 year after the date of enactment of the
20 Ballast Water Management Act of 2007, the Ad-
21 ministrator, in consultation with the Secretary
22 and other appropriate Federal and State agen-
23 cies as determined by the Administrator, shall
24 promulgate standards for—

1 “(i) the reception of ballast water from
2 vessels into reception facilities; and

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

7 “(3) *IMPLEMENTATION SCHEDULE.*—Paragraph
8 (1) applies to all vessels to which this section applies
9 on January 1, 2012. Based on the outcome of the fea-
10 sibility review conducted under paragraph (5), the
11 Secretary may require different classes of vessels to
12 comply with paragraph (1) on a different schedule,
13 and shall establish different classes of vessels for this
14 purpose through regulations under this section.

15 “(4) *TREATMENT SYSTEM APPROVAL RE-*
16 *QUIRED.*—The operator of a vessel may not use a bal-
17 last water treatment system to comply with the re-
18 quirements of this subsection unless the system is ap-
19 proved by the Secretary, in consultation with the Ad-
20 ministrators. The Secretary shall promulgate regula-
21 tions establishing a process for such approval, after
22 consultation with the Administrator and other appro-
23 priate Federal agencies as determined by the Sec-
24 retary, within 1 year after the date of enactment of
25 the Ballast Water Management Act of 2007.

1 “(5) *FEASIBILITY REVIEW.*—

2 “(A) *IN GENERAL.*—Not less than 2 years
3 before January 1, 2012, or as that date may be
4 extended under this paragraph, the Secretary, in
5 consultation with the Administrator, shall com-
6 plete a review to determine whether appropriate
7 technologies are available to achieve the stand-
8 ards set forth in paragraph (1). In reviewing the
9 technologies the Secretary, after consultation
10 with the Administrator and other appropriate
11 Federal agencies as determined by the Secretary,
12 shall consider—

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

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

17 “(iii) safety considerations;

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

20 “(v) cost effectiveness.

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

1 *the schedule set forth in paragraph (3), or as*
2 *that date may be extended under this paragraph,*
3 *is not available or cost-effective for any class of*
4 *vessels, the Secretary shall require use of cost-ef-*
5 *fective technology that achieves the performance*
6 *levels of the best performing technology available*
7 *that meets, at a minimum, the applicable ballast*
8 *water discharge standard of the International*
9 *Maritime Organization. If the Secretary finds*
10 *that no technology is available that will achieve*
11 *either the standards set forth in paragraph (1)*
12 *or the standards of the International Maritime*
13 *Organization, then, the Secretary shall—*

14 “(i) *extend the date on which that*
15 *paragraph applies to vessels for a period of*
16 *not more than 24 months; and*

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

20 “(C) *HIGHER STANDARDS; EARLIER IMPLI-*
21 *MENTATION.—*

22 “(i) *STANDARDS.—If the Secretary de-*
23 *termines that ballast water treatment tech-*
24 *nology exists that exceeds the performance*
25 *standards required under paragraph (1) of*

1 *this subsection, the Secretary shall, for any*
2 *class of vessels, revise the performance*
3 *standards to incorporate the higher per-*
4 *formance standards.*

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

18 *“(iii) DETERMINATIONS NOT MUTU-*
19 *ALLY EXCLUSIVE.—The Secretary shall take*
20 *action under both clause (i) and clause (ii)*
21 *if the Secretary makes determinations*
22 *under both clauses.*

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

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

14 “(B) *VESSEL DIVERSITY.*—The Secretary—

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

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

22 “(C) *TERMINATION OF GRACE PERIOD.*—

23 The Secretary may terminate the 10-year grace
24 period of a vessel under subparagraph (A) if

1 *participation of the vessel in the program is ter-*
2 *minated without the consent of the Secretary.*

3 “(D) ANNUAL RE-EVALUATION; TERMI-
4 NATION.—*The Secretary shall establish an an-*
5 *annual evaluation process to determine whether the*
6 *performance of an approved technology is suffi-*
7 *ciently effective and whether it is causing harm*
8 *to the environment. If the Secretary determines*
9 *that an approved technology is insufficiently ef-*
10 *fective or is causing harm to the environment,*
11 *the Secretary shall revoke the approval granted*
12 *under subparagraph (A).*

13 “(7) REVIEW OF STANDARDS.—

14 “(A) IN GENERAL.—*In December, 2014, and*
15 *in every third year thereafter, the Administrator,*
16 *in consultation with the Secretary, shall review*
17 *ballast water treatment standards to determine,*
18 *after consultation with the Undersecretary and*
19 *Federal and State agencies as determined by the*
20 *Administrator, if the standards under this sub-*
21 *section should be revised to reduce the amount of*
22 *organisms, microbes, or viruses allowed to be dis-*
23 *charged, taking into account improvements in*
24 *the scientific understanding of biological proc-*
25 *esses leading to the spread of aquatic nuisance*

1 *species and improvements in ballast water treat-*
2 *ment technology. The Administrator shall revise*
3 *by regulation the performance standard required*
4 *under this subsection as necessary.*

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

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

19 “(A) *the 10-year period beginning on the*
20 *date of initial use of technology required by*
21 *paragraph (1);*

22 “(B) *and the 5-year period beginning on*
23 *the date of initial use of technology that, at a*
24 *minimum, meets International Maritime Orga-*
25 *nization standards; or*

1 “(C) *the life of the ship on which the tech-*
2 *nology is used.*

3 “(9) *HIGH-RISK VESSELS.—*

4 “(A) *VESSEL LIST.—Within 1 year after the*
5 *date of enactment of the Ballast Water Manage-*
6 *ment Act of 2007, the Secretary shall publish a*
7 *list of vessels identified by States that, due to*
8 *factors such as the origin of their voyages, the*
9 *frequency of their voyages, the volume of ballast*
10 *water they carry, the biological makeup of the*
11 *ballast water, or the fact that they frequently dis-*
12 *charge unexchanged ballast water pursuant to an*
13 *exception under subsection (e), pose a relatively*
14 *high risk of introducing aquatic nuisance species*
15 *into the waters of those States. The Secretary*
16 *shall update the list after any calendar quarter*
17 *in which new vessels are identified by States*
18 *under the preceding sentence.*

19 “(B) *INCENTIVE PROGRAMS.—The Secretary*
20 *shall give priority to vessels on the list for par-*
21 *ticipation in pilot programs described in para-*
22 *graph (6). Any Federal agency, and any State*
23 *agency with respect to vessels identified by such*
24 *State to the Secretary for inclusion on the list*
25 *pursuant to subparagraph (A), may develop*

1 *technology development programs or other incen-*
2 *tives (whether positive or negative) to such ves-*
3 *sels in order to encourage the adoption of ballast*
4 *water treatment technology by those vessels con-*
5 *sistent with the requirements of this section on*
6 *an expedited basis.*

7 “(10) *EXCEPTION FOR VESSELS OPERATING EX-*
8 *CLUSIVELY IN DETERMINED AREA.—*

9 “(A) *IN GENERAL.—Paragraph (1) and*
10 *subsection (h)(1) do not apply to a vessel that*
11 *operates exclusively within a geographically lim-*
12 *ited area if the Secretary has determined through*
13 *a rulemaking proceeding, after consultation with*
14 *the Undersecretary and other appropriate Fed-*
15 *eral agencies as determined by the Secretary,*
16 *and representatives of States the waters of which*
17 *could be affected by the discharge of ballast water*
18 *or sediment, that the risk of introducing and*
19 *spreading aquatic nuisance species through bal-*
20 *last water or sediment discharge from the vessel*
21 *is insignificant.*

22 “(B) *CERTAIN VESSELS.—A vessel con-*
23 *structed before January 1, 2001, that operates*
24 *exclusively within Lake Superior, Lake Michi-*
25 *gan, Lake Huron, and Lake Erie and the con-*

1 necting channels shall be presumed not to pose a
2 significant risk of introducing aquatic nuisance
3 species unless the Secretary finds otherwise in a
4 rulemaking proceeding under subparagraph (A).

5 “(C) *BEST PRACTICES.*—The Secretary
6 shall develop, and require vessels exempted under
7 subparagraph (A) to follow, best practices, devel-
8 oped in consultation with the Governors or
9 States that may be affected, to minimize the
10 spreading of aquatic nuisance species or infec-
11 tious diseases in its operating area.

12 “(11) *TESTING PROTOCOLS AND LABORA-*
13 *TORIES.*—

14 “(A) *IN GENERAL.*—The Secretary, in con-
15 sultation with the Administrator, shall, no later
16 than 90 days after the date of enactment of the
17 Ballast Water Management Act of 2007 and
18 without regard to chapter 5 of title 5, United
19 States Code, issue interim protocols for verifying
20 the performance of ballast water treatment tech-
21 nologies required by this Act, criteria for certi-
22 fying laboratories to evaluate such technologies,
23 and procedures for approving treatment equip-
24 ment and systems for shipboard use.

1 “(B) *PROTOCOLS AND PROCEDURES FOR*
2 *TREATMENT TECHNOLOGIES.*—*In developing pro-*
3 *ocols and procedures for verifying and approv-*
4 *ing treatment technologies, the Secretary, in con-*
5 *sultation with the Administrator, shall consider*
6 *using existing protocols and procedures includ-*
7 *ing methods used as part of the Ballast Water*
8 *Management Demonstration Program by the En-*
9 *vironmental Protection Agency as a part of its*
10 *Environmental Testing & Verification Program,*
11 *or by the Secretary as part of the Coast Guard’s*
12 *Shipboard Technology Evaluation Program.*

13 “(C) *LABORATORIES.*—*The Secretary shall*
14 *utilize Federal or non-Federal laboratories that*
15 *meet standards established by the Secretary for*
16 *the purpose of evaluating and certifying ballast*
17 *water treatment technologies and equipment*
18 *under this subsection.*

19 “(D) *REQUIREMENTS; UPDATES.*—*The Sec-*
20 *retary, in consultation with the Administrator,*
21 *shall periodically review and, if necessary, revise*
22 *the criteria, protocols, and procedures developed*
23 *under this paragraph.*

24 “(g) *WARNINGS CONCERNING BALLAST WATER UP-*
25 *TAKE.*—

1 “(1) *IN GENERAL.*—*The Secretary shall notify*
2 *vessel owners and operators of any area in waters*
3 *subject to the jurisdiction of the United States in*
4 *which vessels may not uptake ballast water due to*
5 *known conditions.*

6 “(2) *CONTENTS.*—*The notice shall include—*

7 “(A) *the coordinates of the area;*

8 “(B) *if possible, the location of alternative*
9 *areas for the uptake of ballast water; and*

10 “(C) *the length of time that such warning*
11 *shall remain in place.*

12 “(h) *SEDIMENT MANAGEMENT.*—

13 “(1) *IN GENERAL.*—*The operator of a vessel to*
14 *which this section applies may not remove or dispose*
15 *of sediment from spaces designed to carry ballast*
16 *water except—*

17 “(A) *in accordance with this subsection and*
18 *the ballast water management plan required*
19 *under subsection (c); and*

20 “(B) *more than 200 nautical miles from the*
21 *nearest point of land or into a reception facility*
22 *that meets the requirements of paragraph (3).*

23 “(2) *DESIGN REQUIREMENTS.*—

24 “(A) *NEW VESSELS.*—*After December 31,*
25 *2011, it shall be unlawful to construct a vessel*

1 *in the United States to which this section applies*
2 *unless that vessel is designed and constructed, in*
3 *accordance with regulations prescribed under*
4 *subparagraph (C), in a manner that—*

5 *“(i) minimizes the uptake and entrap-*
6 *ment of sediment;*

7 *“(ii) facilitates removal of sediment;*
8 *and*

9 *“(iii) provides for safe access for sedi-*
10 *ment removal and sampling.*

11 *“(B) EXISTING VESSELS.—Every vessel to*
12 *which this section applies that was constructed*
13 *before January 1, 2012, shall be modified before*
14 *January 1, 2012, to the extent practicable, to*
15 *achieve the objectives described in clauses (i),*
16 *(ii), and (iii) of subparagraph (A).*

17 *“(C) REGULATIONS.—The Secretary shall*
18 *promulgate regulations establishing design and*
19 *construction standards to achieve the objectives of*
20 *subparagraph (A) and providing guidance for*
21 *modifications and practices under subparagraph*
22 *(B). The Secretary shall incorporate the stand-*
23 *ards and guidance in the regulations governing*
24 *the ballast water management plan.*

25 *“(3) SEDIMENT RECEPTION FACILITIES.—*

1 “(A) *STANDARDS.*—*The Administrator, in*
2 *consultation with other appropriate Federal*
3 *agencies as determined by the Administrator,*
4 *shall promulgate regulations governing facilities*
5 *for the reception of vessel sediment from spaces*
6 *designed to carry ballast water that provide for*
7 *the disposal of such sediment in a way that does*
8 *not impair or damage the environment, human*
9 *health, or property or resources of the disposal*
10 *area.*

11 “(B) *DESIGNATION.*—*The Administrator, in*
12 *consultation with the Secretary and other appro-*
13 *priate Federal agencies as determined by the Ad-*
14 *ministrator, shall designate facilities for the re-*
15 *ception of vessel sediment that meet the require-*
16 *ments of the regulations promulgated under sub-*
17 *paragraph (A) at ports and terminals where bal-*
18 *last tanks are cleaned or repaired.*

19 “(i) *EXAMINATIONS AND CERTIFICATIONS.*—

20 “(1) *INITIAL EXAMINATION.*—

21 “(A) *IN GENERAL.*—*The Secretary shall ex-*
22 *amine vessels to which this section applies to de-*
23 *termine whether—*

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

4 “(ii) the equipment used for ballast
5 water and sediment management in accord-
6 ance with the requirements of this section
7 and the regulations promulgated hereunder
8 is installed and functioning properly.

9 “(B) NEW VESSELS.—For vessels con-
10 structed in the United States on or after Janu-
11 ary 1, 2011, the Secretary shall conduct the ex-
12 amination required by subparagraph (A) before
13 the vessel is placed in service.

14 “(C) EXISTING VESSELS.—For vessels con-
15 structed before January 1, 2011, the Secretary
16 shall—

17 “(i) conduct the examination required
18 by subparagraph (A) before the date on
19 which subsection (f)(1) applies to the vessel
20 according to the schedule in subsection
21 (f)(3); and

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

24 “(D) FOREIGN VESSELS.—In the case of a
25 foreign vessel (as defined in section 2101(12) of

1 *title 46, United States Code), the Secretary shall*
2 *perform the examination required by this para-*
3 *graph the first time the vessel enters a United*
4 *States port.*

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

9 “(3) *INSPECTION AUTHORITY.*—

10 “(A) *IN GENERAL.*—*The Secretary may*
11 *carry out inspections of any vessel to which this*
12 *section applies at any time, including the taking*
13 *of ballast water samples, to ensure the vessel’s*
14 *compliance with this Act. The Secretary shall*
15 *use all appropriate and practical measures of de-*
16 *tection and environmental monitoring, and shall*
17 *establish adequate procedures for reporting viola-*
18 *tions and accumulating evidence.*

19 “(B) *INVESTIGATIONS.*—*Upon receipt of*
20 *evidence that a violation has occurred, the Sec-*
21 *retary shall cause the matter to be investigated.*
22 *In any investigation under this section the Sec-*
23 *retary may issue subpoenas to require the at-*
24 *tendance of any witness and the production of*
25 *documents and other evidence. In case of refusal*

1 to obey a subpoena issued to any person, the Sec-
2 retary may request the Attorney General to in-
3 voke the aid of the appropriate district court of
4 the United States to compel compliance.

5 “(4) *REQUIRED CERTIFICATE.*—If, on the basis
6 of an initial examination under paragraph (1) the
7 Secretary finds that a vessel complies with the re-
8 quirements of this section and the regulations promul-
9 gated hereunder, the Secretary shall issue a certificate
10 under this paragraph as evidence of such compliance.
11 The certificate shall be valid for a period of not more
12 than 5 years, as specified by the Secretary. The cer-
13 tificate or a true copy shall be maintained on board
14 the vessel.

15 “(5) *NOTIFICATION OF VIOLATIONS.*—If the Sec-
16 retary finds, on the basis of an examination under
17 paragraph (1) or (2), sampling under paragraph (3),
18 or any other information, that a vessel is being oper-
19 ated in violation of the requirements of this section or
20 the regulations promulgated hereunder, the Secretary
21 shall—

22 “(A) notify in writing—

23 “(i) the master of the vessel; and

24 “(ii) the captain of the port at the ves-
25 sel’s next port of call; and

1 “(B) *take such other action as may be ap-*
2 *propriate.*

3 “(6) *COMPLIANCE AND MONITORING.—*

4 “(A) *IN GENERAL.—The Secretary shall by*
5 *regulation establish sampling and other proce-*
6 *dures to monitor compliance with the require-*
7 *ments of this section and any regulations pro-*
8 *mulgated under this section.*

9 “(B) *USE OF MARKERS.—The Secretary*
10 *may verify compliance with treatment standards*
11 *under this section and the regulations through*
12 *identification of markers associated with a treat-*
13 *ment technology’s effectiveness, such as the pres-*
14 *ence of indicators associated with a certified*
15 *treatment technology.*

16 “(7) *EDUCATION AND TECHNICAL ASSISTANCE*
17 *PROGRAMS.—The Secretary may carry out education*
18 *and technical assistance programs and other measures*
19 *to promote compliance with the requirements issued*
20 *under this section.*

21 “(8) *REPORT.—Beginning 1 year after final reg-*
22 *ulations have been adopted pursuant to this section*
23 *after its amendment by the Ballast Water Manage-*
24 *ment Act of 2007 and annually thereafter, the Sec-*
25 *retary shall prepare a report summarizing the results*

1 of ballast water inspection and enforcement activities.
2 The report shall, at a minimum, include information
3 on the number of vessels inspected and the type of in-
4 spections, the status of implementation of treatment
5 technologies, the number of exemptions claimed from
6 ballast water exchange requirements, the number of
7 violations, a summary of enforcement and regulatory
8 actions, and overall compliance statistics. The report
9 shall be made available on the National Ballast Infor-
10 mation Clearinghouse established under section
11 1102(f).

12 “(j) *DETENTION OF VESSELS.*—

13 “(1) *IN GENERAL.*—The Secretary, by notice to
14 the owner, charterer, managing operator, agent, mas-
15 ter, or other individual in charge of a vessel, may de-
16 tain that vessel if the Secretary has reasonable cause
17 to believe that—

18 “(A) the vessel is a vessel to which this sec-
19 tion applies; and

20 “(B) the vessel does not comply with the re-
21 quirements of this section or of the regulations
22 issued hereunder or is being operated in viola-
23 tion of such requirements.

24 “(2) *CLEARANCE.*—

1 “(A) *IN GENERAL.*—A vessel detained under
2 paragraph (1) may obtain clearance under sec-
3 tion 4197 of the Revised Statutes (46 U.S.C.
4 App. 91) only if the violation for which it was
5 detained has been corrected.

6 “(B) *WITHDRAWAL.*—If the Secretary finds
7 that a vessel detained under paragraph (1) has
8 received a clearance under section 4197 of the
9 Revised Statutes (46 U.S.C. App. 91) before it
10 was detained under paragraph (1), the Secretary
11 shall withdraw, withhold, or revoke the clear-
12 ance.

13 “(k) *SANCTIONS.*—

14 “(1) *CIVIL PENALTIES.*—Any person who violates
15 a regulation promulgated under this section shall be
16 liable for a civil penalty in an amount not to exceed
17 \$32,500. Each day of a continuing violation con-
18 stitutes a separate violation. A vessel operated in vio-
19 lation of this section or the regulations is liable in
20 rem for any civil penalty assessed under this sub-
21 section for that violation.

22 “(2) *CRIMINAL PENALTIES.*—Any person who
23 knowingly violates the regulations promulgated under
24 this section is guilty of a class C felony.

1 “(3) *REVOCATION OF CLEARANCE.*—*Except as*
2 *provided in subsection (j)(2), upon request of the Sec-*
3 *retary, the Secretary of the Treasury shall withhold*
4 *or revoke the clearance of a vessel required by section*
5 *4197 of the Revised Statutes (46 U.S.C. App. 91), if*
6 *the owner or operator of that vessel is in violation of*
7 *this section or the regulations issued under this sec-*
8 *tion.*

9 “(4) *EXCEPTION TO SANCTIONS.*—*This subsection*
10 *does not apply to a discharge pursuant to subsection*
11 *(b)(2), (e)(5), or (e)(7).*

12 “(l) *ENFORCEMENT.*—

13 “(1) *ADMINISTRATIVE ACTIONS.*—*If the Sec-*
14 *retary finds, after notice and an opportunity for a*
15 *hearing, that a person has violated any provision of*
16 *this section or any regulation promulgated hereunder,*
17 *the Secretary may assess a civil penalty for that vio-*
18 *lation. In determining the amount of a civil penalty,*
19 *the Secretary shall take into account the nature, cir-*
20 *cumstances, extent, and gravity of the prohibited acts*
21 *committed and, with respect to the violator, the degree*
22 *of culpability, any history of prior violations, and*
23 *such other matters as justice may require.*

24 “(2) *CIVIL ACTIONS.*—*At the request of the Sec-*
25 *retary, the Attorney General may bring a civil action*

1 *in an appropriate district court of the United States*
2 *to enforce this section, or any regulation promulgated*
3 *hereunder. Any court before which such an action is*
4 *brought may award appropriate relief, including tem-*
5 *porary or permanent injunctions and civil penalties.*

6 “(m) *CONSULTATION WITH CANADA, MEXICO, AND*
7 *OTHER FOREIGN GOVERNMENTS.—In developing the guide-*
8 *lines issued and regulations promulgated under this section,*
9 *the Secretary is encouraged to consult with the Government*
10 *of Canada, the Government of Mexico, and any other gov-*
11 *ernment of a foreign country that the Secretary, after con-*
12 *sultation with the Task Force, determines to be necessary*
13 *to develop and implement an effective international pro-*
14 *gram for preventing the unintentional introduction and*
15 *spread of aquatic nuisance species through ballast water.*

16 “(n) *INTERNATIONAL COOPERATION.—The Secretary,*
17 *in cooperation with the Undersecretary, the Secretary of*
18 *State, the Administrator, the heads of other relevant Federal*
19 *agencies, the International Maritime Organization of the*
20 *United Nations, and the Commission on Environmental*
21 *Cooperation established pursuant to the North American*
22 *Free Trade Agreement, is encouraged to enter into negotia-*
23 *tions with the governments of foreign countries to develop*
24 *and implement an effective international program for pre-*
25 *venting the unintentional introduction and spread of*

1 *aquatic nuisance species through ballast water. The Sec-*
2 *retary is particularly encouraged to seek bilateral or multi-*
3 *lateral agreements with Canada, Mexico, and other nations*
4 *in the Wider Caribbean (as defined in the Convention for*
5 *the Protection and Development of the Marine Environment*
6 *of the Wider Caribbean (Cartagena Convention) under this*
7 *section.*

8 “(o) *NON-DISCRIMINATION.*—*The Secretary shall en-*
9 *sure that vessels registered outside of the United States do*
10 *not receive more favorable treatment than vessels registered*
11 *in the United States when the Secretary performs studies,*
12 *reviews compliance, determines effectiveness, establishes re-*
13 *quirements, or performs any other responsibilities under*
14 *this Act.*

15 “(p) *SUPPORT FOR FEDERAL BALLAST WATER DEM-*
16 *ONSTRATION PROJECT.*—*In addition to amounts otherwise*
17 *available to the Maritime Administration, the National*
18 *Oceanic and Atmospheric Administration, the Environ-*
19 *mental Protection Agency, and the United States Fish and*
20 *Wildlife Service for the Federal Ballast Water Demonstra-*
21 *tion Project, the Secretary shall provide support, including*
22 *grants, for research and development of innovative tech-*
23 *nologies for the management, treatment, and disposal of*
24 *ballast water and sediment, for finalizing the validation*
25 *testing of the verification protocol of the Environmental*

1 *Technology Verification Program, for ballast water ex-*
2 *change, and for other vessel vectors of aquatic nuisance spe-*
3 *cies such as hull-fouling. There are authorized to be appro-*
4 *priated to the Secretary \$5,000,000 for each of fiscal years*
5 *2008 through 2012 to carry out this subsection.*

6 “(q) *CONSULTATION WITH TASK FORCE.—The Sec-*
7 *retary shall consult with the Task Force in carrying out*
8 *this section.*

9 “(r) *EVALUATION OF VESSEL DISCHARGES.—*

10 “(1) *IN GENERAL.—Within 2 years after the date*
11 *of enactment of the Ballast Water Management Act of*
12 *2007, the Administrator, in consultation with the*
13 *Secretary and other appropriate Federal agencies,*
14 *shall conduct an evaluation of vessel discharges other*
15 *than aquatic nuisance species, incidental to the nor-*
16 *mal operation of a vessel as defined in section*
17 *312(a)(12)(A) of the Clean Water Act (33 U.S.C.*
18 *1322(a)(12)(A)) that are not required by the Clean*
19 *Water Act (33 U.S.C. 1251 et seq.) to have National*
20 *Pollution Effluent Discharge Standards permits*
21 *under section 122.3(a) of title 40, Code of Federal*
22 *Regulations. The evaluation shall include—*

23 “(A) *a characterization of the various types*
24 *of discharges by different classes of vessels;*

1 “(B) *the average volume of such discharges*
2 *for individual vessels and by class of vessel in the*
3 *aggregate;*

4 “(C) *conclusions as to whether such dis-*
5 *charges pose a risk to human health or the envi-*
6 *ronment; and*

7 “(D) *recommendations as to steps, includ-*
8 *ing regulations, that are necessary to address*
9 *such risks.*

10 “(2) *PUBLIC COMMENT.—The Administrator*
11 *shall cause a draft of the evaluation to be published*
12 *in the Federal Register for public comment, and shall*
13 *develop a final evaluation report after taking into ac-*
14 *counts any comments received during the public com-*
15 *ment period.*

16 “(3) *FINAL REPORT.—The Administrator shall*
17 *transmit a copy of the final report to the Senate*
18 *Committee on Commerce, Science, and Transporta-*
19 *tion and the House of Representatives Committee*
20 *on Transportation and Infrastructure.*

21 “(s) *OTHER SOURCES OF VESSEL-BORNE NUISANCE*
22 *SPECIES.—*

23 “(1) *HULL-FOULING AND OTHER VESSEL*
24 *SOURCES.—*

1 “(A) *REPORT.*—*Within 180 days after the*
2 *date of enactment of the Ballast Water Manage-*
3 *ment Act of 2007, the Commandant of the Coast*
4 *Guard shall transmit a report to the Senate*
5 *Committee on Commerce, Science, and Transpor-*
6 *tation and the House of Representatives Com-*
7 *mittee on Transportation and Infrastructure on*
8 *vessel-borne vectors of aquatic nuisance species*
9 *and pathogens other than ballast water and sedi-*
10 *ment, including vessel hulls, anchors, and equip-*
11 *ment.*

12 “(B) *MANAGEMENT.*—*Within 1 year after*
13 *the date of enactment of the Ballast Water Man-*
14 *agement Act of 2007, the Secretary shall develop*
15 *a strategy to address such other vessel sources of*
16 *aquatic nuisance species and to reduce the intro-*
17 *duction of invasive species into and within the*
18 *United States from vessels. The strategy shall in-*
19 *clude—*

20 “(i) *designation of geographical loca-*
21 *tions for uptake and discharge of untreated*
22 *ballast water, as well as measures to ad-*
23 *dress non-ballast vessel vectors of aquatic*
24 *invasive species;*

1 “(ii) necessary modifications of exist-
2 ing regulations;

3 “(iii) best practices standards and pro-
4 cedures; and

5 “(iv) a timeframe for implementation
6 of those standards and procedures by vessels,
7 in addition to the mandatory requirements
8 set forth in this section for ballast water.

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

16 “(D) *FEDERAL GOVERNMENT VESSELS.*—
17 The strategy shall include requirements to ensure
18 the consistent application of best practices to all
19 vessels owned or operated by any Federal agency
20 or department and shall preempt any other re-
21 quirement of Federal, State, or local law with re-
22 spect to such vessel-borne vectors for those vessels.

23 “(2) *TRANSITING VESSELS.*—Within 180 days
24 after the date of enactment of the Ballast Water Man-
25 agement Act of 2007, the Commandant of the Coast

1 *Guard shall transmit a report to the Senate Com-*
2 *mittee on Commerce, Science, and Transportation*
3 *and the House of Representatives Committee on*
4 *Transportation and Infrastructure containing—*

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

11 *“(B) recommendations, including legislative*
12 *recommendations if appropriate, of options for*
13 *addressing ballast water operations of those ves-*
14 *sels.*

15 *“(t) RAPID RESPONSE PLAN.—*

16 *“(1) PREPARATION.—The President shall pre-*
17 *pare and publish a national rapid response plan for*
18 *killing, removing, or minimizing the spread of aquat-*
19 *ic nuisance species in the waters of the United States*
20 *in accordance with this section.*

21 *“(2) CONTENTS.—The national rapid response plan*
22 *shall provide for efficient, coordinated, and effective action*
23 *to minimize damage from aquatic nuisance species in the*
24 *navigable waters of the United States, including killing,*

1 *containing, and removal of the aquatic nuisance species,*
2 *and shall include the following:*

3 “(A) *Assignment of duties and responsibil-*
4 *ities among Federal departments and agencies in*
5 *coordination with State and local agencies and*
6 *port authorities and private entities.*

7 “(B) *Identification, procurement, mainte-*
8 *nance, and storage of equipment and supplies*
9 *needed to facilitate the killing, containment, and*
10 *removal of aquatic nuisance species under this*
11 *section.*

12 “(C) *Establishment or designation of Fed-*
13 *eral aquatic nuisance species response teams,*
14 *consisting of—*

15 “(i) *trained personnel who shall be*
16 *available to provide necessary services to*
17 *carry out the national rapid response plan;*

18 “(ii) *adequate equipment and material*
19 *needed to facilitate the killing, containment,*
20 *and removal of aquatic nuisance species*
21 *under this section; and*

22 “(iii) *a detailed plans to kill, contain,*
23 *and remove aquatic nuisance species, in-*
24 *cluding measures to protect fisheries and*
25 *wildlife.*

1 “(D) *A system of surveillance and notice de-*
2 *signed to safeguard against, as well as ensure*
3 *earliest possible notice of, the introduction of*
4 *aquatic nuisance species and imminent threats*
5 *of such introduction to the appropriate State*
6 *and Federal agencies.*

7 “(E) *Establishment of a national center to*
8 *provide coordination and direction for oper-*
9 *ations in carrying out the plan.—*

10 “(F) *Procedures and techniques to be em-*
11 *ployed in identifying, containing, killing, and*
12 *removing aquatic nuisance species in the waters*
13 *of the United States.*

14 “(G) *A schedule identifying—*

15 “(i) *mitigating devices and substances,*
16 *if any, that may be used in carrying out*
17 *the plan;*

18 “(ii) *the waters in which such miti-*
19 *gating devices and substances may be used;*
20 *and*

21 “(iii) *the quantities of such mitigating*
22 *device or substance which can be used safely*
23 *in such waters.*

1 “(H) *A system whereby the State or States*
2 *affected by an aquatic nuisance species may act*
3 *where necessary to remove such species.*

4 “(I) *Establishment of criteria and proce-*
5 *dures to ensure immediate and effective Federal*
6 *identification of, and response to, an introduc-*
7 *tion of aquatic nuisance species.*

8 “(J) *Designation of the Federal official who*
9 *shall be the Federal on-scene coordinator for*
10 *measures taken to kill, contain, and remove*
11 *aquatic nuisance species under this section.*

12 “(K) *A fish and wildlife response plan for*
13 *the immediate and effective protection, rescue,*
14 *and rehabilitation of, and the minimization of*
15 *risk of damage to, fish and wildlife resources and*
16 *their habitat that are harmed or that may be*
17 *jeopardized by an introduction of an aquatic*
18 *nuisance species.*

19 “(3) *FEDERAL REMOVAL AUTHORITY.—*

20 “(A) *REMOVAL REQUIREMENT.—*

21 “(i) *IN GENERAL.—The President shall*
22 *ensure, in accordance with the national*
23 *rapid response plan, effective and imme-*
24 *diate killing, containing, and removal of the*

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

3 “(ii) *DISCRETIONARY AUTHORITY.—*
4 *Under the authority provided by clause (i),*
5 *an aquatic nuisance species may be—*

6 “(I) *killed, contained, or removed*
7 *at any time; and*

8 “(II) *all Federal, State, and pri-*
9 *vate actions to kill, contain, and re-*
10 *move the aquatic nuisance species may*
11 *be directed or monitored.*

12 “(B) *ACTIONS IN ACCORDANCE WITH NA-*
13 *TIONAL RAPID RESPONSE PLAN.—Each Federal*
14 *agency, State, owner or operator, or other person*
15 *participating in efforts under this subsection*
16 *shall act in accordance with the national rapid*
17 *response plan or as directed to carry out the*
18 *plan.*

19 “(u) *REGULATIONS.—*

20 “(1) *IN GENERAL.—The Secretary, after con-*
21 *sultation with other appropriate Federal agencies,*
22 *shall issue such regulations as may be necessary ini-*
23 *tially to carry out this section within 1 year after the*
24 *date of enactment of the Ballast Water Management*
25 *Act of 2007.*

1 “(2) *JUDICIAL REVIEW.*—

2 “(A) *120-DAY RULE.*—*An interested person*
3 *may bring an action for review of a final regula-*
4 *tion promulgated under this section by the Sec-*
5 *retary of the department in which the Coast*
6 *Guard is operating in the United States Court*
7 *of Appeals for the District of Columbia Circuit.*
8 *Any such petition shall be filed within 120 days*
9 *after the date on which notice of the promulga-*
10 *tion appears in the Federal Register, except that*
11 *if the petition is based solely on grounds arising*
12 *after the 120th day, then any petition for review*
13 *under this subsection shall be filed within 120*
14 *days after those grounds arise.*

15 “(B) *REVIEW IN ENFORCEMENT PRO-*
16 *CEEDINGS.*—*A regulation for which review could*
17 *have been obtained under subparagraph (A) of*
18 *this paragraph is not subject to judicial review*
19 *in any civil or criminal proceeding for enforce-*
20 *ment.*

21 “(3) *RIGHT OF ACTION.*—

22 “(A) *IN GENERAL.*—*Except as provided in*
23 *subparagraph (B) of this paragraph, the gov-*
24 *ernor of any State which is, or can be, adversely*
25 *affected by any act or duty under this section*

1 *which is not discretionary, may bring an action*
2 *on behalf of that State—*

3 “(i) *against the Secretary where there*
4 *is alleged a failure of the Secretary to per-*
5 *form an act or duty under this Act which*
6 *is not discretionary; and*

7 “(ii) *against the Administrator where*
8 *there is alleged a failure of the Adminis-*
9 *trator to perform an act or duty under this*
10 *Act which is not discretionary.*

11 “(B) *CONDITIONS.—An action may not be*
12 *commenced under subparagraph (A) of this*
13 *paragraph prior to 60 days after the plaintiff*
14 *has given notice, in writing and under oath, to*
15 *the Secretary or Administrator, as appropriate.*

16 “(C) *VENUE.—An action brought under this*
17 *subsection shall be brought in the United States*
18 *district court for the District of Columbia.*

19 “(v) *STATE COOPERATIVE AGREEMENTS.—The Sec-*
20 *retary may enter into a cooperative management agreement*
21 *with the governor of a State to implement provisions of this*
22 *section within State waters. The agreement may include ar-*
23 *rangements for cooperative enforcement, inspection, re-*
24 *search, and other provisions included in this Act. The Sec-*

1 *retary may provide grants to States to implement the agree-*
2 *ments.*

3 “(w) *SAVINGS CLAUSE.*—

4 “(1) *IN GENERAL.*—*Nothing in this section shall*
5 *preempt any State or local law related to aquatic*
6 *nuisance species from vessel ballast water or sediment*
7 *or other vessel-related vectors that—*

8 “(A) *does not require exchange or treatment*
9 *requirements substantively different from those*
10 *required under subsections (e) and (f); and*

11 “(B) *does not conflict with the requirements*
12 *of this section; and*

13 “(C) *does not pose an undue burden on*
14 *interstate commerce.*

15 “(2) *RECEPTION FACILITIES.*—*The standards*
16 *prescribed by the Administrator under subsection*
17 *(f)(2) do not supersede any more stringent standard*
18 *under any otherwise applicable Federal, State, or*
19 *local law.*

20 “(3) *APPLICATION WITH OTHER STATUTES.*—
21 *This section provides the sole Federal authority for*
22 *preventing the introduction of aquatic nuisance spe-*
23 *cies through the control and management of vessel*
24 *ballast water or sediment or other vessel-related vec-*
25 *tors.”.*

1 **(b) DEFINITIONS.**—

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

5 **(A)** *by redesignating paragraph (1) as*
6 *paragraph (1A);*

7 **(B)** *by inserting before paragraph (1A), as*
8 *redesignated, the following:*

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

12 **(C)** *by striking paragraph (3) and inserting*
13 *the following:*

14 **“(3) BALLAST WATER.**—*The term ‘ballast*
15 *water’—*

16 **“(A)** *means water taken on board a vessel*
17 *to control trim, list, draught, stability, or*
18 *stresses of the vessel, including matter suspended*
19 *in such water; and*

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

23 **“(C)** *does not include water taken on board*
24 *a vessel and used for a purpose described in sub-*

1 paragraph (A) that, at the time of discharge,
2 does not contain aquatic nuisance species.”;

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

5 “(3A) *BALLAST WATER CAPACITY*.—The term
6 ‘ballast water capacity’ means the total volumetric
7 capacity of any tanks, spaces, or compartments on a
8 vessel that is used for carrying, loading, or dis-
9 charging ballast water, including any multi-use tank,
10 space, or compartment designed to allow carriage of
11 ballast water.

12 “(3B) *BALLAST WATER MANAGEMENT*.—The
13 term ‘ballast water management’ means mechanical,
14 physical, chemical, and biological processes used, ei-
15 ther singularly or in combination, to remove, render
16 harmless, or avoid the uptake or discharge of aquatic
17 nuisance species and pathogens within ballast water
18 and sediment.

19 “(3C) *CONSTRUCTED*.—The term ‘constructed’
20 means a state of construction of a vessel at which—

21 “(A) the keel is laid;

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

24 “(C) assembly of the vessel has begun com-
25 prising at least 50 tons or 1 percent of the esti-

1 *mated mass of all structural material of the ves-*
 2 *sel, whichever is less; or*

3 “(D) *the vessel undergoes a major conver-*
 4 *sion.*”;

5 (E) *by striking “Canandian” in paragraph*
 6 *(7) and inserting “Canadian”;*

7 (F) *by inserting after paragraph (10) the*
 8 *following:*

9 “(10A) *MAJOR CONVERSION.—The term ‘major*
 10 *conversion’ means a conversion of a vessel, that—*

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

13 “(B) *changes the vessel class;*

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

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

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

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

22 (G) *by inserting after paragraph (12), as*
 23 *redesignated, the following:*

24 “(12A) *SALTWATER FLUSHING.—The term ‘salt-*
 25 *water flushing’ means the process of—*

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

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

7 “(C) discharging the mixed water so that
8 the salinity of the resulting residual ballast
9 water in the tank exceeds 30 parts per thousand.

10 “(12B) *SEDIMENT*.—The term ‘sediment’ means
11 matter that has settled out of ballast water within a
12 vessel.”;

13 (H) by inserting after paragraph (17) the
14 following:

15 “(17A) *UNITED STATES PORT*.—The term
16 ‘United States port’ means a port, river, harbor, or
17 offshore terminal under the jurisdiction of the United
18 States, including ports located in Puerto Rico, Guam,
19 the Northern Marianas, and the United States Virgin
20 Islands.

21 “(17B) *VESSEL OF THE ARMED FORCES*.—The
22 term ‘vessel of the Armed Forces’ means—

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

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

7 “(17C) WATERS SUBJECT TO THE JURISDICTION
8 OF THE UNITED STATES.—The term ‘waters subject to
9 the jurisdiction of the United States’ means navigable
10 waters and the territorial sea of the United States, the
11 exclusive economic zone, and the Great Lakes.”.

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

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

18 (B) by redesignating paragraphs (1)
19 through (17C) as paragraphs (1) through (27),
20 respectively;

21 (C) by inserting a heading after the des-
22 ignation of each existing paragraph, in a form
23 consistent with the form of the paragraphs added
24 by paragraph (1) of this subsection, consisting of

1 *the term defined in such paragraph and “The*
2 *term”;* and

3 *(D) by striking the semicolon at the end of*
4 *each paragraph that ends with a semicolon, and*
5 *the semicolon and “and” in paragraph (23) as*
6 *redesignated, and inserting a period.*

7 *(c) REPEAL OF SECTION 1103.—Section 1103 of the*
8 *Nonindigenous Aquatic Nuisance Prevention and Control*
9 *Act of 1990 (16 U.S.C. 4713) is repealed.*

10 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

11 *Section 1301(a) of the Nonindigenous Aquatic Nui-*
12 *sance Prevention and Control Act of 1990 (16 U.S.C.*
13 *4741(a)) is amended—*

14 *(1) by striking “and” after the semicolon in*
15 *paragraph (4)(B);*

16 *(2) by striking “1102(f).” in paragraph (5)(B)*
17 *and inserting “1102(f); and”;* and

18 *(3) by adding at the end the following:*

19 *“(6) \$50,000,000 for each of fiscal years 2008*
20 *through 2012 to the Secretary to carry out section*
21 *1101, of which up to \$10,000,000 shall be made avail-*
22 *able to States under subsection (v).”.*

Calendar No. 589

110TH CONGRESS
2^D SESSION

S. 1578

[Report No. 110-269]

A BILL

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

MARCH 3, 2008

Reported with an amendment