AN ACT

To authorize appropriations for the Coast Guard for fiscal year 2008, to amend the Immigration and Nationality Act and title 18, United States Code, to combat the crime of alien smuggling and related activities, 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,
TITLE V—BALLAST WATER TREATMENT

SEC. 501. SHORT TITLE.

This title may be cited as the “Ballast Water Treatment Act of 2008”.

SEC. 502. DECLARATION OF GOALS AND PURPOSES.

Section 1002 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701) is amended—

(1) by redesignating subsection (b) as subsection (c);

(2) by inserting after subsection (a) the following:

“(b) DECLARATION OF GOALS AND PURPOSES.—The objective of this Act is to eliminate the threat and impacts of nonindigenous aquatic nuisance species in the waters of the United States. In order to achieve this objective, it is declared that, consistent with the provisions of this Act—

“(1) it is the national goal that ballast water discharged into the waters of the United States will contain no living (viable) organisms by the year 2015;
“(2) it is the national policy that the introduction of nonindigenous aquatic nuisance species in the waters of the United States be prohibited; and

“(3) it is the national policy that Federal, State, and local governments and the private sector identify the most effective ways to coordinate prevention efforts, and harmonize environmentally sound methods to prevent, detect, monitor, and control nonindigenous aquatic nuisance species, in an expeditious manner.”.

(3) in subsection (c)(1) (as redesignated by paragraph (1) of this section)—

(A) by striking “prevent” and inserting “eliminate”; and

(B) by inserting “treatment” after “ballast water”;

(4) in subsection (c)(2) (as so redesignated)—

(A) by inserting “, detection, monitoring,” after “prevention”; and

(B) by striking “the zebra mussel and other”;

(5) in subsection (c)(3) (as so redesignated)—

(A) by inserting “detect,” after “prevent,”;

and
(B) by striking “from pathways other than ballast water exchange”;

(6) in subsection (c)(4) (as so redesignated) by striking “, including the zebra mussel”; and

(7) in subsection (c)(5) (as so redesignated)—

(A) by inserting “prevention,” after “in the”;

(B) by inserting a comma after “management”; and

(C) by striking “zebra mussels” and inserting “aquatic nuisance species”.

SEC. 503. BALLAST WATER MANAGEMENT.

(a) In General.—Section 1101 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711) is amended to read as follows:

“SEC. 1101. BALLAST WATER MANAGEMENT.

“(a) Vessels to Which This Section Applies.—

“(1) In General.—Except as provided in paragraphs (2), (3), (4), and (5), this section applies to a vessel that engages in the discharge of ballast water in waters subject to the jurisdiction of the United States that—

“(A) is designed, constructed, or adapted to carry ballast water; and

“(B)(i) is a vessel of the United States; or

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“(ii) is a foreign vessel that—

“(I) is en route to a United States port or place; or

“(II) has departed from a United States port or place and is within waters subject to the jurisdiction of the United States.

“(2) PERMANENT BALLAST WATER VESSELS.—

This section does not apply to a vessel that carries all of its permanent ballast water in sealed tanks that are not subject to discharge or a vessel that continuously takes on and discharges ballast water in a flow-through system.

“(3) ARMED FORCES VESSELS.—

“(A) EXEMPTION.—Except as provided in subparagraph (B), this section does not apply to a vessel of the Armed Forces.

“(B) BALLAST WATER MANAGEMENT PROGRAM.—The Secretary and the Secretary of Defense, after consultation with each other and with the Under Secretary and the heads of other appropriate Federal agencies as determined by the Secretary, shall implement a ballast water management program, including the issuance of standards for ballast water ex-
change and treatment and for sediment manage-
ment, for vessels of the Armed Forces under
their respective jurisdictions designed, con-
structed, or adapted to carry ballast water that
are—

“(i) consistent with the requirements
of this section, including the deadlines es-
tablished by this section; and

“(ii) at least as stringent as the re-
quirements issued for such vessels under
section 312 of the Federal Water Pollution

“(4) Special rule for small recreational
vessels.—In applying this section to recreational
vessels less than 50 meters in length that have a
maximum ballast water capacity of 8 cubic meters,
the Secretary may issue alternative measures for
managing ballast water in a manner that is con-
sistent with the requirements of this section.

“(5) MarAd vessels.—Subsection (f) does not
apply to any vessel in the National Defense Reserve
Fleet that is scheduled to be disposed of through
scraping or sinking.

“(b) Uptake and Discharge of Ballast Water
or Sediment.—
“(1) PROHIBITION.—The operator of a vessel to which this section applies may not conduct the up-
take or discharge of ballast water or sediment in wa-
ters subject to the jurisdiction of the United States except as provided in this section.

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

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

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

“(ii) saving a life at sea.

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

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

“(ii) the owner or officer in charge of the vessel did not willfully or recklessly cause the damage.
“(C) The uptake or discharge is solely for the purpose of avoiding or minimizing the discharge from the vessel of pollution that would otherwise violate applicable Federal or State law.

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

“(c) VESSEL BALLAST WATER MANAGEMENT PLAN.—

“(1) IN GENERAL.—The operator of a vessel to which this section applies shall conduct all ballast water management operations of that vessel in accordance with a ballast water management plan designed to minimize the discharge of aquatic nuisance species that—

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

“(B) is approved by the Secretary.

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

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

“(ii) describes in detail the procedures to be used for disposal of sediment at sea and on shore in accordance with the requirements of this section;

“(iii) describes in detail safety procedures for the vessel and crew associated with ballast water management;

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

“(v) contains the reporting requirements for vessels established under this section and a copy of each form necessary to meet those requirements; and

“(vi) meets all other requirements prescribed by the Secretary.

“(B) FOREIGN VESSELS.—The Secretary may approve a ballast water management plan
for a foreign vessel on the basis of a certificate of compliance issued by the vessel's country of registration if the government of that country requires the ballast water management plan for that vessel to include information comparable to the information required under regulations issued by the Secretary.

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

"(A) maintain a copy of the vessel's ballast water management plan on board at all times; and

"(B) keep the plan readily available for examination by the Secretary and the head of the appropriate agency of the State in which the vessel is located at all reasonable times.

"(d) VESSEL BALLAST WATER RECORD BOOK.—

"(1) IN GENERAL.—The owner or operator of a vessel to which this section applies shall maintain, in English on board the vessel, a ballast water record book in which each operation of the vessel involving ballast water or sediment discharge is recorded in accordance with regulations issued by the Secretary.
“(2) AVAILABILITY.—The ballast water record book—

“(A) shall be kept readily available for ex-
amination by the Secretary and the head of the
appropriate agency of the State in which the
vessel is located at all reasonable times; and

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

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

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

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

“(4) REGULATIONS.—In the regulations issued
under this section, the Secretary shall require, at a
minimum, that—

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

“(B) each completed page in the ballast
water record book be signed and dated by the
master of the vessel; and
“(C) at least monthly, the owner or operator of the vessel transmit to the Secretary all the entries entered in the ballast water record book during the preceding month, and transmit such additional information regarding the ballast operations of the vessel as the Secretary may require.

“(5) ALTERNATIVE MEANS OF RECORD-KEEPING.—The Secretary may provide, by regulation, for alternative methods of recordkeeping, including electronic recordkeeping, to comply with the requirements of this subsection. Any electronic recordkeeping method authorized by the Secretary shall support the inspection and enforcement provisions of this Act and shall comply with applicable standards of the National Institute of Standards and Technology and the Office of Management and Budget governing reliability, integrity, identity authentication, and nonrepudiation of stored electronic data.

“(e) BALLAST WATER EXCHANGE REQUIREMENTS.—

“(1) IN GENERAL.—

“(A) REQUIREMENT.—Until a vessel is required to conduct ballast water treatment in accordance with subsection (f), the operator of a
vessel to which this section applies may not dis-
charge ballast water in waters subject to the ju-
risdiction of the United States, except after—

“(i) conducting ballast water exchange
as required by this subsection, in accord-
ance with regulations issued by the Sec-
retary;

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

“(iii) using environmentally sound al-
ternative ballast water treatment tech-
ology if the Secretary determines that
such treatment technology is at least as ef-
effective as the ballast water exchange re-
quired by clause (i) in preventing and con-
trolling the introduction of aquatic nuis-
sance species.

“(B) BALLAST WATER REGULATIONS.—
Ballast water exchange regulations developed
under subparagraph (A)(i) shall contain—

“(i) a provision for ballast water ex-
change that requires—

“(I) at least 1 empty-and-refill
cycle, outside the exclusive economic
zone or in an alternative exchange
area designated by the Secretary, of
each ballast tank that contains ballast
water to be discharged into waters of
the United States; or

“(II) for a case in which the
master of a vessel determines that
compliance with the requirement
under subclause (I) is impracticable, a
sufficient number of flow-through ex-
changes of ballast water, outside the
exclusive economic zone or in an alter-
native exchange area designated by
the Secretary, to achieve replacement
of at least 95 percent of ballast water
in ballast tanks of the vessel, as deter-
mined by a certification dye study
conducted or model developed by the
Secretary and recorded in the ballast
water management plan of the vessel
pursuant to subsection (c)(2)(A)(i);
and

“(ii) if a ballast water exchange is not
undertaken pursuant to subsection (h), a
contingency procedure that requires the
master of a vessel to use the best practicable technology or practice to treat ballast discharge.

“(C) TECHNOLOGY EFFICACY.—For purposes of this paragraph, a ballast water treatment technology shall be considered to be at least as effective as the ballast water exchange required by clause (i) in preventing and controlling the introduction of aquatic nuisance species if preliminary experiments prior to installation of the technology aboard the vessel demonstrate that the technology meets the ballast water discharge standard provided under Regulation D-2 of the International Convention for the Control and Management of Ships’ Ballast Water and Sediments as signed on February 13, 2004.

“(2) GUIDANCE; 5-YEAR USAGE.—

“(A) GUIDANCE.—Not later than one year after the date of enactment of the Ballast Water Treatment Act of 2008, the Secretary shall develop and issue guidance on technology that may be used under paragraph (1)(A)(iii).

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

“(3) EXCHANGE AREAS.—

“(A) VESSELS OUTSIDE THE UNITED STATES EEZ.—The operator of a vessel en route to a United States port or place from a port or place outside the waters subject to the jurisdiction of the United States shall conduct ballast water exchange—

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

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

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

“(B) COASTAL VOYAGES.—The operator of a vessel originating from a port or place within the United States exclusive economic zone, or from a port within 200 nautical miles of the United States in Canada, Mexico, or other ports
designated by the Secretary for purposes of this
section, shall conduct ballast water exchange—
“(i) at least 50 nautical miles from
the nearest point of land; and
“(ii) in water at least 200 meters in
depth.
“(4) SAFETY OR STABILITY EXCEPTION.—
“(A) SECRETARIAL DETERMINATION.—
Paragraph (3) does not apply to the discharge
of ballast water if the Secretary determines that
compliance with that paragraph would threaten
the safety or stability of the vessel, its crew, or
is passengers.
“(B) MASTER OF THE VESSEL DETER-
MINATION.—Paragraph (3) does not apply to
the discharge of ballast water if the master of
a vessel determines that compliance with that
paragraph would threaten the safety or stability
of the vessel, its crew, or its passengers because
of adverse weather, equipment failure, or any
other relevant condition.
“(C) NOTIFICATION REQUIRED.—When-
ever the master of a vessel is unable to comply
with the requirements of paragraph (3) because
of a determination made under subparagraph (B), the master of the vessel shall—

“(i) notify the Secretary as soon as practicable thereafter but no later than 24 hours after making that determination and shall ensure that the determination, the reasons for the determination, and the notice are recorded in the vessel's ballast water record book; and

“(ii) undertake ballast water exchange—

“(I) in an alternative area that may be designated by the Secretary, after consultation with the Under Secretary, and other appropriate Federal agencies as determined by the Secretary, and representatives of States the waters of which may be affected by the discharge of ballast water; or

“(II) in accordance with paragraph (6) if safety or stability concerns prevent undertaking ballast water exchange in the alternative area.
“(D) Review of circumstances.—If the master of a vessel conducts a ballast water discharge under the provisions of this paragraph, the Secretary shall review the circumstances to determine whether the discharge met the requirements of this paragraph. The review under this clause shall be in addition to any other enforcement authority of the Secretary.

“(5) Discharge under waiver.—

“(A) Substantial business hardship waiver.—If, because of the short length of a voyage, the operator of a vessel is unable to discharge ballast water in accordance with the requirements of paragraph (3)(B) without substantial business hardship, as determined under regulations issued by the Secretary, the operator may request a waiver from the Secretary and discharge the ballast water in accordance with paragraph (6). A request for a waiver under this subparagraph shall be submitted to the Secretary at such time and in such form and manner as the Secretary may require.

“(B) Substantial business hardship.—For purposes of subparagraph (A), the factors taken into account in determining sub-
substantial business hardship shall include whether—

“(i) compliance with the requirements of paragraph (3)(B) would require a sufficiently great change in routing or scheduling of service as to compromise the economic or commercial viability of the trade or business in which the vessel is operated; or

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

“(6) PERMISSIBLE DISCHARGE.—

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

“(i) in an area designated for that purpose by the Secretary, after consultation with the Under Secretary, the heads of other appropriate Federal agencies as determined by the Secretary, and representatives of any State that may be affected by discharge of ballast water in that area; or
“(ii) into a reception facility described in subsection (f)(2).

“(B) Limitation on volume.—The volume of any ballast water discharged under this paragraph may not exceed the volume necessary to ensure the safe operation of the vessel.

“(7) Certain geographically limited routes.—Notwithstanding paragraph (1), the operator of a vessel is not required to comply with the requirements of this subsection and subsection (h)(1)—

“(A) if the vessel operates exclusively—

“(i) within the Great Lakes ecosystem; or

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

“(B) if the vessel operates exclusively within any area with respect to which the Secretary has determined, after consultation with the Under Secretary, the Administrator, and representatives of States the waters of which would be affected by the discharge of ballast water from the vessel, that the risk of introducing aquatic nuisance species through ballast water
discharge in the areas in which the vessel operates is insignificant.

"(8) NATIONAL MARINE SANCTUARIES AND OTHER PROHIBITED AREAS.—

"(A) IN GENERAL.—A vessel may not conduct ballast water exchange or discharge ballast water under this subsection—

"(i) within a national marine sanctuary designated under the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.);

"(ii) a marine national monument designated under the Act of June 8, 1906 (chapter 3060; 16 U.S.C. 433 et seq.), popularly known as the Antiquities Act of 1906;

"(iii) a national park;

"(iv) in waters that are approved by the Administrator as a nondischarge zone under section 312(n)(7) of the Federal Water Pollution Control Act (33 U.S.C. 1322(n)(7)); or

"(v) in any other waters designated by the Secretary, in consultation with the Under Secretary and the Administrator.
“(B) ADDITIONAL AREAS.—The Secretary shall, after consultation with the Under Secretary, the Administrator, and other appropriate Federal and State agencies, as determined by the Secretary, and opportunity for public comment, establish criteria for designating additional areas in which, due to their sensitive ecological nature, restrictions on the discharge of vessel ballast water or sediment containing aquatic nuisance species are warranted.

“(C) STATE WATERS.—The Governor of any State may submit a written petition to the Secretary to designate an area of State waters that meets the criteria established under subparagraph (B) of this paragraph. The petition shall include a detailed analysis as to how the area proposed to be designated meets those criteria. An area may not be designated under this paragraph until the Secretary determines, based on evidence provided by the Governor, that adequate alternative areas or reception facilities for discharging ballast water or sediment are available. Within 180 days after receiving such a petition, the Secretary shall—
“(i) make a determination as to whether the proposal meets the requirements of this paragraph for designation; and

“(ii) either—

“(I) publish a written notice of the petition and the proposed restrictions in the Federal Register; or

“(II) notify the Governor in writing that the area proposed for designation does not qualify for designation under this paragraph and include in the notice a detailed explanation of why the area does not qualify for designation under this paragraph.

“(D) Procedure; Deadline.—Before designating any area in response to a petition under subparagraph (C), the Secretary, after providing an opportunity for public comment, shall publish notice in the Federal Register of the proposed designation. The Secretary and the Under Secretary shall make such information available through other appropriate mechanisms, including a notice to mariners and inclusion on nautical charts.
“(E) Effect on State Law.—Nothing in this paragraph supersedes any State law in effect as of January 1, 2007, that restricts the discharge of ballast water or sediment in State waters and requires such discharges to be made into reception facilities.

“(9) Vessels without Pumpable Ballast Water or with No Ballast on Board.—Not later than 180 days after the date of enactment of the Ballast Water Treatment Act of 2008, the Secretary shall promulgate regulations to minimize the discharge of invasive species from vessels entering a United States port or place from outside the United States exclusive economic zone that do not exchange their ballast water pursuant to paragraph (1)(A)(iii) of this subsection and claim no ballast on board, or that claim to be carrying only unpumpable quantities of ballast, including, at a minimum, a requirement that—

“(A) such a ship shall conduct saltwater flushing of ballast water tanks—

“(i) outside the exclusive economic zone; or

“(ii) at a designated alternative exchange site; and
“(B) before being allowed entry into the
Great Lakes beyond the St. Lawrence Seaway,
the master of such a vessel shall certify that the
vessel has complied with each applicable re-
requirement under this subsection.
The vessels to which this paragraph applies shall
conduct ballast water treatment in accordance with
subsection (f) when it applies.
“(f) BALLAST WATER TREATMENT REQUI-
REMENTS.—
“(1) PERFORMANCE STANDARDS.—A vessel to
which this section applies shall conduct ballast water
treatment in accordance with the requirements of
this subsection before discharging ballast water in
waters subject to the jurisdiction of the United
States so that the ballast water discharged will con-
tain—
“(A) less than 1 living organism per 10
cubic meters that is 50 or more micrometers in
minimum dimension;
“(B) less than 1 living organism per 10
milliliters that is less than 50 micrometers in
minimum dimension and more than 10 microm-
eters in minimum dimension;
“(C) concentrations of indicator microbes that are less than—

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

“(ii) 126 colony-forming units of escherichia coli per 100 milliliters; and

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

“(D) concentrations of such additional indicator microbes and of viruses as may be specified in regulations issued by the Secretary and the Administrator, after consultation with other appropriate Federal agencies as determined by the Secretary and the Administrator, that are less than the amount specified in those regulations.

“(2) Reception facility exception.—

“(A) In general.—Paragraph (1) does not apply to a vessel that discharges ballast water into—
“(i) a land-based facility for the reception of ballast water that meets standards issued by the Administrator; or

“(ii) a water-based facility for the reception of ballast water that meets standards issued by the Secretary.

“(B) ISSUANCE OF STANDARDS.—Not later than one year after the date of enactment of the Ballast Water Treatment Act of 2008, the Secretary, in consultation with the heads of other appropriate Federal agencies as determined by the Secretary, shall issue standards for—

“(i) the reception of ballast water in land-based and water-based reception facilities; and

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

“(3) TREATMENT SYSTEM IMPLEMENTATION.—

“(A) IMO STANDARD IMPLEMENTATION.— A vessel to which this section applies shall have a ballast water treatment system that meets the standards provided under Regulation D–2 of
the International Convention for the Control and Management of Ships’ Ballast Water and Sediments as signed on February 13, 2004, beginning on the date of the first drydocking of the vessel after December 31, 2008.

"(B) UNITED STATES STANDARD IMPLEMENTATION.—Paragraph (1) applies to a vessel to which this section applies beginning on the date of the first drydocking of the vessel after December 31, 2011, but not later than December 31, 2013.

"(C) PERIOD FOR USE OF EQUIPMENT.—The Secretary shall allow a vessel using a treatment system installed under this subsection to continue to use that system for 10 years after the date on which that system was first placed in service on the vessel.

"(4) TREATMENT SYSTEM APPROVAL REQUIRED.—The operator of a vessel to which this section applies may not use a ballast water treatment system to comply with the requirements of this subsection unless the system is approved by the Secretary. The Secretary, in consultation with the Administrator, shall issue regulations establishing a process for such approval, after consultation with

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the heads of other appropriate Federal agencies as
determined by the Secretary.

"(5) RELIANCE ON CERTAIN REPORTS, DOCU-
MENTS, AND RECORDS.—In approving a ballast
water treatment system under this subsection, the
Secretary may rely on reports, documents, and
records of persons that meet such requirements as
the Secretary may prescribe.

"(6) FEASIBILITY REVIEW.—

"(A) IN GENERAL.—Not less than 2 years
before January 1, 2012, the Secretary, in con-
sultation with the Administrator, shall complete
a review to determine whether appropriate tech-
nologies are available to achieve the perform-
ance standards set forth in paragraph (1). In
reviewing the technologies the Secretary, the
Administrator, and the heads of other appro-
priate Federal agencies as determined by the
Secretary, shall consider—

"(i) the effectiveness of a technology
in achieving the standards;

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

"(iii) safety considerations;
“(iv) whether a technology has an adverse impact on the environment; and

“(v) cost effectiveness.

“(B) DELAY IN SCHEDULED APPLICATION.—If the Secretary, in consultation with the Administrator, determines, on the basis of the review conducted under subparagraph (A), and after an opportunity for a public hearing, that technology that complies with the standards set forth in paragraph (1) in accordance with the schedule set forth in paragraph (3) is not available for any class of vessels, the Secretary shall require use of technology that achieves the performance levels of the best performing technology available. If the Secretary finds that no technology is available that will achieve the standards set forth in paragraph (1), then the Secretary shall—

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

“(ii) recommend action to ensure that compliance with the extended date schedule for that subparagraph is achieved.
“(C) MORE PROTECTIVE STANDARDS; EARLIER IMPLEMENTATION.—

“(i) PERFORMANCE STANDARDS.—If the Secretary and the Administrator determine that ballast water treatment technology exists that exceeds the performance standards required under paragraph (1), the Secretary and the Administrator shall, for any class of vessels, revise the performance standards to incorporate the higher performance standards.

“(ii) IMPLEMENTATION.—If the Secretary and the Administrator determine that technology that achieves the applicable performance standards required under paragraph (1) can be implemented earlier than required by this subsection, the Secretary and the Administrator shall, for any class of vessels, accelerate the implementation schedule under paragraph (3). If the Secretary and the Administrator accelerate the implementation schedule pursuant to this clause, the Secretary and the Administrator shall provide at least 24 months no-
tice before such accelerated implementation

goes into effect.

"(iii) DETERMINATIONS NOT MUTUALLY EXCLUSIVE.—The Secretary and the
Administrator shall take action under both
clause (i) and clause (ii) if the Secretary
and the Administrator make determina-
tions under both clauses.

"(7) DELAY OF APPLICATION FOR VESSEL PAR-
TICIPATING IN PROMISING TECHNOLOGY EVALUA-
TIONS.—

"(A) IN GENERAL.—If a vessel participates
in a program, including the Shipboard Tech-
nology Evaluation Program established under
section 1104, using a technology approved by
the Secretary to test and evaluate promising
ballast water treatment technologies that are
likely to result in treatment technologies achiev-
ing a standard that is the same as or more
stringent than the standard that applies under
paragraph (1) before the first date on which
paragraph (1) applies to that vessel, the Sec-
retary shall allow the vessel to use that tech-
nology for a 10-year period and such vessel
shall be deemed to be in compliance with the re-
quirements of paragraph (1) during that 10-year period.

“(B) VESSEL DIVERSITY.—The Secretary—

“(i) shall seek to ensure that a wide variety of vessel types and voyages are included in the program; but

“(ii) may not grant a delay under this paragraph to more than 5 percent of the vessels to which this section applies.

“(C) TERMINATION OF GRACE PERIOD.—The Secretary may terminate the 10-year grace period of a vessel under subparagraph (A) if—

“(i) the participation of the vessel in the program is terminated without the consent of the Secretary;

“(ii) the vessel does not comply with manufacturer’s standards for operating the ballast water treatment technology used on such vessel; or

“(iii) the Secretary determines that the approved technology is insufficiently effective or is causing harm to the environment.

“(8) REVIEW OF STANDARDS.—
“(A) In general.—In December 2012 and every third year thereafter, the Administrator and the Secretary shall complete review of ballast water treatment standards in effect under this subsection to determine, after consultation with the heads of other appropriate Federal agencies determined by the Administrator and the Secretary, if the standards under this subsection should be revised to reduce the amount of organisms or microbes allowed to be discharged, taking into account improvements in the scientific understanding of biological processes leading to the spread of aquatic nuisance species and improvements in ballast water treatment technology. The Administrator and the Secretary shall revise, by regulation, the requirements of this subsection as necessary.

“(B) Application of adjusted standards.—In the regulations, the Secretary and the Administrator shall provide for the prospective application of the adjusted standards issued under this paragraph to vessels constructed after the date on which the adjusted standards apply and for an orderly phase-in of the adjusted standards to existing vessels.
“(9) HIGH-RISK VOYAGES.—

“(A) VESSEL LIST.—Not later than one year after the date of enactment of the Ballast Water Treatment Act of 2008, the Secretary shall publish and regularly update a list of vessels, not equipped with ballast water equipment under this section, identified by the States that, due to factors such as the origin of their voyages, the frequency of their voyages, the volume of ballast water they carry, the biological make-up of the ballast water, and the fact that they frequently discharge ballast water under an exception to subsection (e), pose a high risk of introducing aquatic nuisance species into the waters of those States.

“(B) INCENTIVE PROGRAMS.—The Secretary shall give priority to vessels on the list for participation in a program described in paragraph (7). Any Federal agency, and any State agency with respect to vessels identified by such State to the Secretary for inclusion on a list under subparagraph (A), may develop and implement technology development programs or other incentives (whether positive or negative) in order to encourage the adoption of ballast
water treatment technology by those vessels consistent with the requirements of this section on an expedited basis.

“(10) NONAPPLICABILITY OF VESSELS OPERATING EXCLUSIVELY IN DETERMINED AREA.—

“(A) IN GENERAL.—Except as provided in subparagraph (D), paragraph (1) does not apply to a vessel that operates exclusively within a geographically limited area if the Secretary and the Administrator have determined through a rulemaking proceeding, after consultation with the heads of other appropriate Federal agencies as determined by the Secretary and the Administrator, and representatives of States the waters of which could be affected by the discharge of ballast water from the vessel, that the risk of introducing aquatic nuisance species through ballast water discharge from the vessel is insignificant.

“(B) CERTAIN VESSELS.—A vessel constructed before January 1, 2001, that operates exclusively within the Great Lakes ecosystem shall be presumed not to pose a significant risk of introducing aquatic nuisance species unless the Secretary and the Administrator find other-
wise in a rulemaking proceeding under subparagraph (A).

"(C) BEST PRACTICES.—The Secretary and the Administrator shall develop, and require a vessel exempted from complying with the requirements of paragraph (1) under this paragraph to follow, best practices to minimize the spreading of aquatic nuisance species in its operation area. The best practices shall be developed in consultation with the Governors of States that may be affected.

"(D) STOPPING THE SPREAD OF INFECTIOUS DISEASE.—The Secretary, at the request of the Secretary of Agriculture, shall require a vessel to which paragraph (1) does not apply in accordance with subparagraph (A) or (B) to have a ballast water treatment system approved by the Secretary under this subsection to stop the spread of infectious diseases to plants and animals as otherwise authorized by law.

"(11) TESTING PROTOCOLS AND LABORATORIES.—

"(A) IN GENERAL.—The Secretary and the Administrator, shall, no later than 90 days after the date of enactment of the Ballast
Water Treatment Act of 2008 and without regard to chapter 5 of title 5, United States Code, issue interim protocols for verifying the performance of ballast water treatment technologies required by this Act, criteria for certifying laboratories to evaluate such technologies, and procedures for approving treatment equipment and systems for shipboard use.

"(B) Protocols and procedures for treatment technologies.—In developing protocols and procedures for verifying and approving treatment technologies, the Secretary and the Administrator, shall consider using existing protocols and procedures including methods used as part of the Ballast Water Management Demonstration Program by the Environmental Protection Agency as a part of its Environmental Testing & Verification Program, or by the Secretary as part of the Coast Guard's Shipboard Technology Evaluation Program.

"(C) Laboratories.—The Secretary and the Administrator shall utilize Federal or non-Federal laboratories that meet standards established by the Secretary for the purpose of evaluating and certifying ballast water treatment
technologies and equipment under this sub-
section.

“(D) REQUIREMENTS; UPDATES.—The
Secretary and the Administrator shall periodi-
cally review and, if necessary, revise the cri-
teria, protocols, and procedures developed under
this paragraph.

“(12) PROGRAM TO SUPPORT THE PROMULGA-
TION AND IMPLEMENTATION OF STANDARDS.—

“(A) IN GENERAL.—The Secretary and the
Administrator, in coordination with the Under
Secretary, the Task Force and other appro-
priate Federal agencies, shall carry out a co-
ordinated program to support the promulgation
and implementation of standards under this
subsection to prevent the introduction and
spread of aquatic invasive species by vessels.
The program established under this section
shall, at a minimum—

“(i) characterize physical, chemical,
and biological harbor conditions relevant to
ballast discharge into United States waters
to inform the design and implementation
of ship vector control technologies and
practices;
“(ii) develop testing protocols for determining the effectiveness of vessel vector monitoring and control technologies and practices;

“(iii) demonstrate methods for mitigating the spread of invasive species by coastal voyages, including exploring the effectiveness of alternative exchange zones in the near coastal areas and other methods proposed to reduce transfers of organisms;

“(iv) verify the practical effectiveness of any process for approving a type of alternative ballast water management as meeting standards established under this subsection, to ensure that the process produces repeatable and accurate assessments of treatment effectiveness; and

“(v) evaluate the effectiveness and residual risk and environmental impacts associated with any standard set with respect to the vessel pathways.

“(B) AUTHORIZATION OF APPROPRIATIONS.—In addition to other amounts authorized by this title, to carry out this paragraph there are authorized to be appropriated
$1,500,000 to the Secretary and $1,500,000 to
the Under Secretary for each of fiscal years
2008 through 2012.

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

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

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

“(A) the coordinates of the area; and

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

“(h) SEDIMENT MANAGEMENT.—

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

“(A) in accordance with this subsection
and the ballast water management plan ap-
proved under subsection (c); and

“(B)(i) more than 200 nautical miles from
the nearest point of land; or
“(ii) into a reception facility that meets the requirements of paragraph (3).

“(2) DESIGN REQUIREMENTS.—

“(A) NEW VESSELS.—After December 31, 2008, a vessel to which this section applies may not be operated on waters subject to the jurisdiction of the United States, unless that vessel is designed and constructed in accordance with regulations issued under subparagraph (C) and in a manner that—

“(i) minimizes the uptake and entrapment of sediment;

“(ii) facilitates removal of sediment; and

“(iii) provides for safe access for sediment removal and sampling.

“(B) EXISTING VESSELS.—A vessel to which this section applies that was constructed before January 1, 2009, shall be modified, to the extent practicable, at the first drydocking of the vessel after December 31 2008, but not later than December 31, 2013, to achieve the objectives described in subparagraph (A).

“(C) REGULATIONS.—The Secretary shall issue regulations establishing design and con-
struction standards to achieve the objectives of subparagraph (A) and providing guidance for modifications and practices under subparagraph (B). The Secretary shall incorporate the standards and guidance in the regulations governing the ballast water management plan approved under subsection (c).

"(3) SEDIMENT RECESSION FACILITIES.—

"(A) STANDARDS.—The Secretary, in consultation with the heads of other appropriate Federal agencies as determined by the Secretary, shall issue regulations governing facilities for the reception of vessel sediment from spaces designed to carry ballast water that provide for the disposal of such sediment in a way that does not impair or damage the environment, human health, or property or resources of the disposal area.

"(B) DESIGNATION.—The Secretary, in consultation with the heads of other appropriate Federal agencies as determined by the Secretary shall designate facilities for the reception of vessel sediment that meet the requirements of the regulations issued under subparagraph
(A) at ports and terminals where ballast tanks
are cleaned or repaired.

“(i) EXAMINATIONS AND CERTIFICATIONS.—

“(1) INITIAL EXAMINATION.—

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

“(i) there is a ballast water manage-
ment plan for the vessel that is approved
by the Secretary and a ballast water record
book on the vessel that meets the require-
ments of subsection (d);

“(ii) the equipment used for ballast
water and sediment management in ac-
cordance with the requirements of this sec-
tion and the regulations issued under this
section is installed and functioning prop-
erly.

“(B) NEW VESSELS.—For vessels con-
structed on or after January 1, 2009, the Sec-
retary shall conduct the examination required
by subparagraph (A) before the vessel is placed
in service.
“(C) EXISTING VESSELS.—For vessels constructed before January 1, 2009, the Secretary shall—

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

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

“(D) FOREIGN VESSEL.—In the case of a foreign vessel, the Secretary shall perform the examination required by this paragraph the first time the vessel enters a United States port.

“(2) SUBSEQUENT EXAMINATIONS.—In addition to the examination required by paragraph (1), the Secretary shall annually examine vessels to which this section applies, to ensure compliance with the requirements of this section and the regulations issued under this section.

“(3) INSPECTION AUTHORITY.—

“(A) IN GENERAL.—The Secretary may carry out inspections of any vessel to which this section applies at any time, including the taking
of ballast water samples, to ensure compliance
with this section. The Secretary shall use all
appropriate and practical measures of detection
and environmental monitoring such vessels and
shall establish adequate procedures for report-
ing violations of this section and accumulating
evidence regarding such violations.

“(B) INVESTIGATIONS.—

“(i) IN GENERAL.—Upon receipt of
evidence that a violation of this section or
a regulation issued under this section has
occurred, the Secretary shall cause the
matter to be investigated.

“(ii) ISSUANCE OF SUBPOENAS.—In
an investigation under this subparagraph,
the Secretary may issue subpoenas to re-
quire the attendance of any witness and
the production of documents and other evi-
dence.

“(iii) COMPELLING COMPLIANCE WITH
SUBPOENAS.—In case of refusal to obey a
subpoena issued under this subparagraph,
the Secretary may request the Attorney
General to invoke the aid of the appro-
appropriate district court of the United States to compel compliance.

"(4) STATE PROGRAMS.—

"(A) SUBMISSION TO SECRETARY.—At any time after the date of issuance of ballast water treatment regulations issued under this section, the Governor of each State desiring to administer its own inspection and enforcement authority for ballast water discharges within its jurisdiction may submit to the Secretary a complete description of the program the Governor proposes to establish and administer under State law. In addition, the Governor shall submit a statement from the attorney general that the laws of such State provide adequate authority to carry out the described program.

"(B) APPROVAL.—The Secretary shall approve a program submitted under subparagraph (A), unless the Secretary determines that adequate resources do not exist or, in the case of ballast water testing, that adequate scientific expertise does not exist—

"(i) to inspect, monitor, and board any vessel to which this section applies at any time, including the taking and testing
of ballast water samples, to ensure the vessel’s compliance with this section;

“(ii) to ensure that any ballast water discharged within the waters subject to the jurisdiction of the State meet the ballast water requirements of this section and the regulations issued under this section, including any revisions to such requirements and regulations;

“(iii) to establish adequate procedures for reporting violations of this section;

“(iv) to investigate and abate violations of this section, including civil and criminal penalties and other ways and means of enforcement; and

“(v) to ensure that the Secretary receives notice of each violation of the ballast water treatment requirements issued under this section in an expeditious manner.

“(C) COMPLIANCE.—Any State program approved under this paragraph shall at all times be conducted in accordance with this section and regulations issued under this section.

“(D) WITHDRAWAL OF APPROVAL.—Whenever the Secretary determines, after public
hearing, that a State is not administering a
program approved under this paragraph in ac-
cordance with this section and regulations
issued under this section, the Secretary shall
notify the State and, if appropriate corrective
action is not taken within a reasonable period
of time not to exceed 90 days, the Secretary
shall withdraw approval of the program. The
Secretary shall not withdraw approval of any
program unless the Secretary shall first have
notified the State, and made public, in writing,
the reasons for such withdrawal.

"(E) LIMITATION ON STATUTORY CON-
STRUCTION.—Nothing in this paragraph shall
limit the authority of the Secretary carry out
inspections and investigations of any vessels
under paragraph (3).

"(5) REQUIRED CERTIFICATE.—If, on the basis
of an initial examination under paragraph (1), the
Secretary finds that a vessel complies with the re-
quirements of this section and the regulations issued
under this section, the Secretary shall issue a certifi-
cate under this paragraph as evidence of such com-
pliance. The certificate shall be valid for a period of
not more than 5 years, as specified by the Secretary.
The certificate or a true copy shall be maintained on board the vessel.

"(6) Notification of Violations.—If the Secretary finds, on the basis of an examination under paragraph (1) or (2), investigation under paragraph (3), or any other information, that a vessel is being operated in violation of any requirement of this section or regulation issued under this section, the Secretary shall—

"(A) notify, in writing—

"(i) the master of the vessel; and

"(ii) the captain of the port at the vessel’s next port of call;

"(B) remove from the vessel the certificate issued under paragraph (5);

"(C) take such other action as may be appropriate.

"(7) Compliance Monitoring.—

"(A) In General.—The Secretary shall establish, by regulation, sampling and other procedures to monitor compliance with the requirements of this section and the regulations issued under this section.

"(B) Use of Markers.—The Secretary may verify compliance with the discharge re-
requirements of subsection (f) and the regulations
issued under this section with respect to such
requirements through identification of markers
associated with a treatment technology's effec-
tiveness, such as the presence of indicators as-
associated with a certified treatment technology.

“(8) **Education and Technical Assistance**
programs.—The Secretary may carry out education
and technical assistance programs and other meas-
ures to promote compliance with the requirements of
this section and the regulations issued under this
section.

“(9) **Report.**—Beginning 1 year after final
regulations have been adopted pursuant to this sec-
tion after the enactment of the Ballast Water Treat-
ment Act of 2008, and annually thereafter, the Sec-
retary shall prepare a report summarizing the re-
results of ballast water inspection and enforcement ac-
tivities. The report shall, at a minimum, include in-
formation on the number of vessels inspected and
the type of inspections, the status of implementation
of treatment technologies, the number of exemptions
claimed from ballast water exchange requirements,
the number of violations, a summary of enforcement
and regulatory actions, and overall compliance sta-
tistics. The report shall be made available on the
National Ballast Information Clearinghouse estab-
lished under section 1102(f).

“(j) DETENTION OF VESSELS.—The Secretary, by
notice to the owner, charterer, managing operator, agent,
master, or other individual in charge of a vessel, may de-
tain that vessel if the Secretary has reasonable cause to
believe that—

“(1) the vessel is a vessel to which this section
applies; and

“(2) the vessel does not comply with any re-
quirement of this section or regulation issued under
this section or is being operated in violation of such
a requirement or regulation.

“(k) SANCTIONS.—

“(1) CIVIL PENALTIES.—Any person who vio-
lates this section (including a regulation issued
under this section) shall be liable for a civil penalty
in an amount not to exceed $32,500. Each day of
a continuing violation constitutes a separate viola-
tion. A vessel operated in violation of this section
(including a regulation issued under this section) is
liable in rem for any civil penalty assessed under
this subsection for that violation.
“(2) CRIMINAL PENALTIES.—Whoever knowingly violates this section (including a regulation issued under this section) shall be fined under title 18, United States, or imprisoned not more than 12 years, or both.

“(3) REVOCATION OF CLEARANCE.—Except as provided in subsection (j)(2), upon request of the Secretary, the Secretary of the Treasury shall withhold or revoke the clearance of a vessel required by section 60105 of title 46, United States Code, if the owner or operator of that vessel is in violation of this section or a regulation issued under this section.

“(1) ENFORCEMENT.—

“(1) ADMINISTRATIVE ACTIONS.—If the Secretary finds, after notice and an opportunity for a hearing, that a person has violated this section or a regulation issued under this section, the Secretary may assess a civil penalty for that violation. In determining the amount of the civil penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior violations, and such other matters as justice may require.
“(2) CIVIL ACTIONS.—At the request of the Secretary, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this section or any regulation issued under this section. Any court before which such an action is brought may award appropriate relief, including temporary or permanent injunctions and civil penalties.

“(m) CONSULTATION WITH CANADA, MEXICO, AND OTHER FOREIGN GOVERNMENTS.—In developing the guidelines and regulations to be issued under this section, the Secretary is encouraged to consult with the Government of Canada, the Government of Mexico and any other government of a foreign country that the Secretary, after consultation with the Task Force, determines to be necessary to develop and implement an effective international program for preventing the unintentional introduction and spread of aquatic nuisance species through ballast water.

“(n) INTERNATIONAL COOPERATION.—The Secretary, in cooperation with the Under Secretary, the Secretary of State, the Administrator, the heads of other relevant Federal agencies, the International Maritime Organization of the United Nations, and the Commission on Environmental Cooperation established pursuant to the North American Free Trade Agreement, is encouraged to
enter into negotiations with the governments of foreign
countries to develop and implement an effective inter-
national program for preventing the unintentional intro-
duction and spread of aquatic invasive species. The Sec-
retary is particularly encouraged to seek bilateral or multi-
lateral agreements with Canada, Mexico, and other na-
tions in the Wider Caribbean Region (as defined in the
Convention for the Protection and Development of the Ma-ine Environment of the Wider Caribbean, signed at
Cartagena on March 24, 1983 (TIAF 11085), to carry
out the objectives of this section.

"(o) NONDISCRIMINATION.—The Secretary shall en-
sure that foreign vessels do not receive more favorable
treatment than vessels of the United States when the Sec-
retary performs studies, reviews compliance, determines
effectiveness, establishes requirements, or performs any
other responsibilities under this Act.

"(p) CONSULTATION WITH TASK FORCE.—The Sec-
retary shall consult with the Task Force in carrying out
this section.

"(q) PREEMPTION.—

"(1) IN GENERAL.—Except as provided in sub-
section (i)(4) and paragraph (4) of this subsection
but notwithstanding any other provision of law, the
provisions of subsections (e) and (f) supersede any
provision of State or local law that is inconsistent
with the requirements of those subsections or that
conflicts with the requirements of those subsections.

"(2) GREATER PENALTIES OR FEES.—For pur-
pose of paragraph (1), the imposition by State or
local law of greater penalties or fees for acts or
omissions that are violations of such law and also
violations of this Act or the imposition by a State of
incentives under subsection (f)(9)(B) shall not be
considered to be inconsistent, or to conflict, with the
requirements of subsections (e) and (f).

"(3) RECEPTION FACILITIES.—The standards
issued by the Secretary or the heads of other appro-
priate Federal agencies under subsection (f)(2) do
not supersede any more stringent standard under
any otherwise applicable Federal, State, or local law.

"(4) LIMITATION ON APPLICATION.—Until Jan-
uary 1, 2012, this subsection does not apply to a
State law requiring ballast water treatment and any
regulations prescribed under that law as those laws
and regulations were in effect on January 1, 2007.

"(r) LEGAL ACTIONS.—

"(1) CIVIL ACTION.—Any person may petition
the Secretary to bring a civil action in an appro-
priate district court of the United States to enforce
this section, or any regulation promulgated hereunder. Within 90 days after receiving such a petition, the Secretary shall—

“(A) respond to the person filing the petition with a determination of whether a violation of this section, or any regulation promulgated hereunder, has occurred or is occurring; and

“(B) if the Secretary determines that a violation of this section, or any regulation promulgated hereunder, has occurred or is occurring—

“(i) immediately bring a civil action in an appropriate district court of the United States to enforce this section, or any regulation promulgated hereunder; or

“(ii) demonstrate that the violation has ceased.

“(2) RELIEF.—Any court before which such an action is brought may award appropriate relief, including temporary or permanent injunctive relief and civil penalties.

“(s) COAST GUARD REPORT ON OTHER SOURCES OF VESSEL-BOURNE NUISANCE SPECIES.—

“(1) IN GENERAL.—
“(A) HULL-FOULING AND OTHER VESSEL SOURCES.—Not later than 180 days after the date of enactment of the Ballast Water Treatment Act of 2008, the Secretary shall transmit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on vessel-related pathways of harmful aquatic organisms and pathogens other than ballast water and sediment, including vessel hulls and equipment, and from vessels equipped with ballast tanks that carry no ballast water on board.

“(B) BEST PRACTICES.—

“(i) IN GENERAL.—As soon as practicable, the Secretary shall develop best practices standards and procedures designed to reduce the introduction and spread of invasive species into and within the United States from vessels and establish a timeframe for implementation of those standards and procedures by vessels. Such standards and procedures shall include designation of geographical locations for uptake and discharge of untreated bal-
last water, as well as standards and procedure for other vessel pathways of aquatic invasive species.

"(ii) REPORT.—The Secretary shall transmit a report to the committees referred to in subparagraph (A) describing the standards and procedures developed under this subparagraph and the implementation timeframe, together with such recommendations as the Secretary determines appropriate.

"(iii) REGULATIONS.—The Secretary may issue regulations to incorporate and enforce standards and procedures developed under this paragraph.

"(2) TRANSITING VESSELS.—Not later than 180 days after the date of enactment of the Ballast Water Treatment Act of 2008, the Secretary shall transmit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives containing—

"(A) an assessment of the magnitude and potential adverse impacts of ballast water operations from foreign vessels designed, adapted,
or constructed to carry ballast water that are transiting waters subject to the jurisdiction of the United States; and

“(B) recommendations, including legislative recommendations if appropriate, of options for addressing ballast water operations of those vessels.”.

(b) DEFINITIONS.—Section 1003 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4702) is amended—

(1) by redesignating—

(A) paragraphs (1), (2), and (3) as paragraphs (2), (3), and (4), respectively;

(B) paragraphs (4), (5), and (6) as paragraphs (8), (9), and (10), respectively;

(C) paragraphs (7), (8), (9), and (10) as paragraphs (12), (13), (14), and (15), respectively;

(D) paragraphs (11) and (12) as paragraphs (17) and (18), respectively;

(E) paragraphs (13), (14), and (15) as paragraphs (20), (21), and (22), respectively;

(F) paragraph (16) as paragraph (27); and

(G) paragraph (17) as paragraph (23);
(2) by moving paragraph (23), as so redesignated, after paragraph (22), as so redesigned;
(3) by inserting before paragraph (2), as so redesignated, the following:
“(1) ‘Administrator’ means the Administrator of the Environmental Protection Agency;”;
(4) by striking paragraph (4), as so redesignated, and inserting the following:
“(4) ‘ballast water’ means—
“(A) water taken on board a vessel to control trim, list, draught, stability, or stresses of the vessel, including matter suspended in such water; or
“(B) any water placed into a ballast tank during cleaning, maintenance, or other operations;”;
(5) by inserting after paragraph (4), as so redesignated and amended, the following:
“(5) ‘ballast water capacity’ means the total volumetric capacity of any tanks, spaces, or compartments on a vessel that is used for carrying, loading, or discharging ballast water, including any multi-use tank, space, or compartment designed to allow carriage of ballast water;
“(6) ‘ballast water management’ means mechanical, physical, chemical, and biological processes used, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of harmful aquatic organisms and pathogens within ballast water and sediment;

“(7) ‘constructed’ means a state of construction of a vessel at which—

“(A) the keel is laid;

“(B) construction identifiable with the specific vessel begins;

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

“(D) the vessel undergoes a major conversion;”;

(6) by inserting after paragraph (10), as so redesignated, the following:

“(11) ‘foreign vessel’ has the meaning such term has under section 110 of title 46, United States Code;”;

(7) by inserting after paragraph (15), as so redesignated, the following:
“(16) ‘major conversion’ means a conversion of a vessel, that—

“(A) changes its ballast water carrying capacity by at least 15 percent;

“(B) changes the vessel class;

“(C) is projected to prolong the vessel’s life by at least 10 years (as determined by the Secretary); or

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

“(i) component replacement-in-kind;

or

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

(8) by inserting after paragraph (18), as so redesignated, the following:

“(19) ‘sediment’ means matter that has settled out of ballast water within a vessel;”;

(9) in paragraph (12), as so redesignated, by striking the period at the end and inserting a semi-colon;

(10) by inserting after paragraph (23), as so redesignated and moved, the following:

“(24) ‘United States port’ means a port, river, harbor, or offshore terminal under the jurisdiction of
the United States, including ports located in Puerto
Rico, Guam, and the United States Virgin Islands;
“(25) ‘vessel of the Armed Forces’ means—
“(A) any vessel owned or operated by the
Department of Defense, other than a time or
voyage chartered vessel; and
“(B) any vessel owned or operated by the
Department of Homeland Security that is des-
ignated by the Secretary as a vessel equivalent
to a vessel described in subparagraph (A);
“(26) ‘vessel of the United States’ has the
meaning such term has under section 116 of title
46, United States Code;”; and
(11) in paragraph (23), as so redesignated, by
striking the period at the end and inserting “;”.
(c) REPEAL OF SECTION 1103.—Section 1103 of the
Nonindigenous Aquatic Nuisance Prevention and Control
Act of 1990 (16 U.S.C. 4713) is repealed.
(d) INTERIM FINAL RULE.—The Secretary shall
issue an interim final rule as a temporary regulation im-
plementing the amendments made by this section as soon
as practicable after the date of enactment of this section,
without regard to the provisions of chapter 5 of title 5,
United States Code. All regulations issued under the au-
thority of this subsection that are not earlier superseded
by final regulations shall expire not later than one year after the date of enactment of this Act.

SEC. 504. NATIONAL BALLAST WATER MANAGEMENT IN-
FORMATION.

Section 1102 (16 U.S.C. 4712) is amended—

(1) by adding at the end the following:

"(g) BALLAST WATER SURVEYS.—

"(1) IN GENERAL.—The Secretary shall con-
duct the following ballast water surveys:

"(A) A survey of the number of living or-
organisms in untreated ballast water of a rep-
resentative number of vessels, as determined by
the Secretary.

"(B) A survey of the number of living or-
organisms in the ballast water of a representative
number of vessels, as determined by the Sec-
retary, that has been exchanged on the high
seas.

"(C) Surveys of the number of living organ-
isms in the ballast water of vessels that are
participating in a program to test and evaluate
promising ballast water treatment, as approved
by the Secretary.

"(2) REPORTS.—The Secretary shall submit to
the Committee on Transportation and Infrastructure
of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate—

“(A) a report on the results of the surveys under subparagraphs (A) and (B) of paragraph (1) by not later than 18 months after the date of enactment of the Ballast Water Treatment Act of 2008; and

“(B) a report on the results of the surveys required under subparagraph (C) of paragraph (1) upon completion of each demonstration concerned.”;

(2) in subsection (b)(1)(B)(ii), by striking “guidelines issued and”; 

(3) in subsection (b)(2)(B)(ii), by striking “voluntary guidelines issued, and regulations promulgated,” and inserting “regulations promulgated”;

(4) in subsection (c)(1), by striking “section 1101(b)” and inserting “section 1101(a)”; and

(5) in subsection (f)(1)(B), by striking “guidelines issued pursuant to section 1101(c)” and inserting “regulations issued pursuant to section 1101”.

SEC. 505. BALLAST WATER MANAGEMENT EVALUATION AND DEMONSTRATION PROGRAM.

Section 1104 (16 U.S.C. 4714) is amended—

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

"SEC. 1104. BALLAST WATER TREATMENT TECHNOLOGY EVALUATION AND DEMONSTRATION PROGRAM."

(2) by striking subsection (a);

(3) by redesignating subsection (b) as subsection (a);

(4) by redesignating subsection (c) as subsection (d);

(5) in subsection (a), as so redesignated—

(A) by striking so much as precedes paragraph (2) and inserting the following:

"(a) SHIPBOARD TECHNOLOGY EVALUATION PROGRAM.—

"(1) IN GENERAL.—The Secretary shall establish a Shipboard Technology Evaluation Program to evaluate ballast water treatment technologies aboard vessels to prevent aquatic nuisance species from being introduced into and spread through discharges of ballast water in waters of the United States."

and

(B) in paragraph (2) by striking "of the technologies and practices used in the demonstration program" and inserting "of ballast
water treatment technologies used in the program’;

(6) in subsection (a)(3), as so redesignated, by striking “technologies and practices” and all that follows through “shall—” and inserting “ballast water treatment technologies on vessels under this subsection, the Secretary shall—”;

(7) in subsection (a)(3)(A), as so redesignated, by striking clause (i) and redesignating clauses (ii) and (iii) in order as clauses (i) and (ii);

(8) by amending subsection (a)(3)(A)(i), as so redesignated, to read as follows:

“(i) have ballast water systems conducive to testing aboard the vessel; and’’;

(9) by amending subsection (a)(3)(C), as so redesignated, to read as follows:

“(C) seek to use a variety of vessel types.”;

(10) by amending subsection (a)(4), as so redesignated, to read as follows:

“(4) SELECTION OF BALLAST WATER TREATMENT TECHNOLOGIES.—In order for a ballast water treatment technology to be eligible to be installed on vessels for evaluation under this section, such technology must be, at a minimum—
“(A) determined by the Secretary to have
the demonstrated potential to reduce the num-
ber of organisms greater than or equal to 50
microns in minimum dimension in discharged
ballast water to fewer than 10 living organisms
per cubic meter of water;
“(B) cost-effective;
“(C) environmentally sound;
“(D) operationally practical;
“(E) able to be retrofitted on existing ves-
sels or incorporated in new vessel design (or
both);
“(F) safe for a vessel and crew; and
“(G) accessible to monitoring.”;
(11) in subsection (a), as so redesignated, by
adding at the end the following:
“(6) AUTHORITY OF SECRETARY TO REVIEW
AND REVISE CRITERIA.—The Secretary may review
and revise the criteria described in paragraph (4)(A)
to require ballast water treatment technologies to
meet a more stringent ballast water discharge stand-
ard, including standards promulgated under section
1101(f), before being eligible for installation aboard
vessels under the program.”;
(12) by inserting after subsection (a), as so re-designated, the following:

"(b) Shipboard Technology Demonstration Program.—

"(1) IN GENERAL.—The Under Secretary, with the concurrence of and in cooperation with the Secretary, shall conduct a program to demonstrate ballast water treatment technologies evaluated aboard vessels under subsection (a) to prevent aquatic nuisance species from being introduced into and spread through ballast water in waters of the United States.

"(2) LOCATION.—The installation and construction of ballast water treatment technologies used in the demonstration program under this subsection shall be performed in the United States.

"(3) VESSEL ELIGIBILITY.—Vessels eligible to participate in the demonstration program under this subsection shall consist only of vessels that have been accepted into and are actively participating in the Shipboard Technology Evaluation Program under subsection (a).

"(4) GRANTS.—

"(A) IN GENERAL.—The Under Secretary shall establish a grant program to provide funding for acquiring, installing, and operating bal-
last water treatment technologies aboard vessels participating in the program under this subsection.

“(B) Matching requirements.—The amount of Federal funds used for any demonstration project under this subsection—

“(i) shall not exceed $1,000,000; and

“(ii) shall not exceed 50 percent of the total cost of such project.

“(c) Alternative Ship Pathway Program.—

“(1) In general.—The Under Secretary, with the concurrence of and in cooperation with the Secretary, shall conduct a program to demonstrate and verify technologies and practices to monitor and control the introduction of aquatic invasive species by ship pathways other than the release of ballast water.

“(2) Selection of methods.—The Under Secretary may not select technologies and practices for demonstration or verification under paragraph (1) unless such technologies and practices, in the determination of the Under Secretary, in consultation with the Secretary, meet the criteria outlined in subparagraphs (B) through (G) of subsection (a)(4).
“(3) LOCATION.—The installation and construction of technologies and practices for demonstration and verification under this subsection shall be performed in the United States.”; and (13) in subsection (d), as so redesignated, by striking “Secretary of the Interior” each place it appears and inserting “Secretary, in consultation with the Under Secretary,”.

SEC. 506. RAPID RESPONSE PLAN.

Subtitle C of title I of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4721 et seq.) is amended by adding at the end the following:

“SEC. 1210. RAPID RESPONSE PLAN.

“(a) PREPARATION BY PRESIDENT.—The President shall prepare and publish a national rapid response plan for killing, removing, or minimizing the spread of aquatic nuisance species in the waters of the United States in accordance with this section.

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

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“(1) Assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies and port authorities and private entities.

“(2) Identification, procurement, maintenance, and storage of equipment and supplies needed to facilitate the killing, containment, and removal of aquatic nuisance species under this section.

“(3) Establishment or designation by the President of Federal aquatic nuisance species response teams, consisting of—

“(A) personnel who shall be trained and prepared by the President and shall be available to provide necessary services to carry out the national rapid response plan;

“(B) adequate equipment and material needed to facilitate the killing, containment, and removal of aquatic nuisance species under this section; and

“(C) a detailed plans to kill, contain, and remove aquatic nuisance species, including measures to protect fisheries and wildlife.

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

"(5) Establishment by the President of a national center to provide coordination and direction for operations in carrying out the plan.

"(6) Procedures and techniques to be employed in identifying, containing, killing, and removing aquatic nuisance species in the waters of the United States.

"(7) A schedule, prepared by the President in cooperation with the States, identifying—

"(A) mitigating devices and substances, if any, that may be used in carrying out the plan;

"(B) the waters in which such mitigating devices and substances may be used; and

"(C) the quantities of such mitigating device or substance which can be used safely in such waters.

"(8) A system whereby the State or States affected by an aquatic nuisance species may act where necessary to remove such species.

"(9) Establishment by the President of criteria and procedures to ensure immediate and effective
Federal identification of, and response to, an introduction of aquatic nuisance species.

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

“(11) A fish and wildlife response plan for the immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to, fish and wildlife resources and their habitat that are harmed or that may be jeopardized by an introduction of an aquatic nuisance species.

“(c) **Federal Removal Authority.**—

“(1) **Removal requirement.**—

“(A) **In general.**—The President shall ensure, in accordance with the national rapid response plan, effective and immediate killing, containing, and removal of the aquatic nuisance species in the waters of the United States.

“(B) **Discretionary authority.**—In carrying out this paragraph, the President may—

“(i) kill, contain, and remove an aquatic nuisance species, at any time; and
“(ii) direct or monitor all Federal, State, and private actions to kill, contain, and remove the aquatic nuisance species.

“(2) ACTIONS IN ACCORDANCE WITH NATIONAL RAPID RESPONSE PLAN.—Each Federal agency, State, owner or operator, or other person participating in efforts under this subsection shall act in accordance with the national rapid response plan or as directed by the President to carry out the plan.”.

SEC. 507. AUTHORIZATION OF APPROPRIATIONS.

Section 1301(a) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4741(a)) is amended—

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

(2) by striking the period at the end of paragraph (5)(B) and inserting a semicolon; and

(3) by adding at the end the following:

“(6) $20,000,000 for each of fiscal years 2008 through 2012 to the Secretary to carry out section 1101;

“(7) $500,000 to the Secretary for each of fiscal years 2008 through 2013 to carry out section 1102(f);
“(8) $6,000,000 to the Under Secretary for each of fiscal years 2008 through 2013 to carry out paragraph (4) of section 1104(b); and
“(9) $1,500,000 to the Under Secretary for each of fiscal years 2008 through 2013 to carry out section 1104(c).”.

TITLE VI—MARITIME POLLUTION PREVENTION

SEC. 601. SHORT TITLE.

This title may be cited as the “Maritime Pollution Prevention Act of 2008”.

SEC. 602. REFERENCES.

Wherever in this title an amendment or repeal is expressed in terms of an amendment to or a repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.).

SEC. 603. DEFINITIONS.

Section 2(a) (33 U.S.C. 1901(a)) is amended—

(1) by redesignating the paragraphs (1) through (12) as paragraphs (2) through (13), respectively;

(2) by inserting before paragraph (2) (as so redesignated) the following: