

States determined in accordance with international law, as set forth in Presidential Proclamation Number 5928, dated December 27, 1988;

(15) “Under Secretary” means the Under Secretary of Commerce for Oceans and Atmosphere;

(16) “waters of the United States” means the navigable waters and the territorial sea of the United States; and

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

(Pub. L. 101-646, title I, §1003, Nov. 29, 1990, 104 Stat. 4762; Pub. L. 102-580, title III, §302(b)(2), Oct. 31, 1992, 106 Stat. 4839; Pub. L. 104-332, §2(a)(2), (h)(1), (3), Oct. 26, 1996, 110 Stat. 4074, 4091.)

REFERENCES IN TEXT

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

Proclamation Number 5030, referred to in par. (5), is set out under section 1453 of this title.

The Alaska Native Claims Settlement Act, referred to in par. (9), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Presidential Proclamation Number 5928, referred to in par. (14), is set out under section 1331 of Title 43.

AMENDMENTS

1996—Pub. L. 104-332, §2(h)(1), (3), made technical amendment to Pub. L. 101-646, §1003, which enacted this section.

Par. (1). Pub. L. 104-332, §2(a)(2)(A), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: “‘appropriate Committees’ means the Committee on Public Works and Transportation and the Committee on Merchant Marine and Fisheries in the House of Representatives and the Committee on Environment and Public Works and Committee on Commerce, Science, and Transportation in the Senate; and”.

Par. (2). Pub. L. 104-332, §2(a)(2)(B), substituted “‘Assistant Secretary’ means” for “‘assistant Secretary’ means”.

Pub. L. 104-332, §2(a)(2)(A), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Pars. (3) to (7). Pub. L. 104-332, §2(a)(2)(A), redesignated pars. (4) to (8) as (3) to (7), respectively. Former par. (3) redesignated (2).

Par. (8). Pub. L. 104-332, §2(a)(2)(D), added par. (8).

Pub. L. 104-332, §2(a)(2)(A), redesignated par. (8) as (7).

Pars. (9), (10). Pub. L. 104-332, §2(a)(2)(D), added pars. (9) and (10).

Pub. L. 104-332, §2(a)(2)(C), redesignated pars. (9) and (10) as (11) and (12), respectively.

Pars. (11) to (17). Pub. L. 104-332, §2(a)(2)(C), redesignated pars. (9) to (15) as (11) to (17), respectively.

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

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER II—PREVENTION OF UNINTENTIONAL INTRODUCTIONS OF NON-INDIGENOUS AQUATIC SPECIES

§4711. Aquatic nuisance species in waters of United States

(a) Great Lakes guidelines

(1) In general

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

(2) Content of guidelines

The guidelines issued under this subsection shall—

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

(B) protect the safety of—

(i) each vessel; and

(ii) the crew and passengers of each vessel;

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

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

(b) Regulations

(1) In general

Not later than 2 years after November 29, 1990, the Secretary, in consultation with the Task Force, shall issue regulations to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the ballast water of vessels.

(2) Content of regulations

The regulations issued under this subsection shall—

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

(B) require a vessel to—

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

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

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

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

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

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

(F) protect the safety of—

- (i) each vessel; and
- (ii) the crew and passengers of each vessel;

(G) take into consideration different operating conditions; and

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

(3) Additional regulations

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

(4) Education and technical assistance programs

The Secretary may carry out education and technical assistance programs and other measures to promote compliance with the regulations issued under this subsection.

(c) Voluntary national guidelines

(1) In general

Not later than 1 year after October 26, 1996, and after providing notice and an opportunity for public comment, the Secretary shall issue voluntary guidelines to prevent the introduction and spread of nonindigenous species in waters of the United States by ballast water operations and other operations of vessels equipped with ballast water tanks.

(2) Content of guidelines

The voluntary guidelines issued under this subsection shall—

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

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

(C) protect the safety of—

- (i) each vessel; and
- (ii) the crew and passengers of each vessel;

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

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

(ii) exchange the ballast water of the vessel in other waters where the exchange does not pose a threat of infestation or spread of nonindigenous species in waters of the United States, as recommended by the Task Force under section 4712(a)(1) of this title; or

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

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

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

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

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

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

(ii) any other information that the Secretary considers necessary to assess the rate of effective compliance with the guidelines;

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

(H) take into consideration—

- (i) vessel types;
- (ii) variations in the characteristics of point of origin and receiving water bodies;
- (iii) variations in the ecological conditions of waters and coastal areas of the United States; and
- (iv) different operating conditions;

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

(J) not affect or supersede any requirements or prohibitions pertaining to the discharge of ballast water into waters of the

United States under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and

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

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

(3) Education and technical assistance programs

Not later than 1 year after October 26, 1996, the Secretary shall carry out education and technical assistance programs and other measures to encourage compliance with the guidelines issued under this subsection.

(d) Report to Congress

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

(e) Periodic review and revision

(1) In general

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

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

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

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

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

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

(ii) promulgate additional regulations pursuant to subsection (f)(1) of this section; or

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

(2) Special review and revision

Not later than 90 days after the Task Force makes a request to the Secretary for a special review and revision for coastal and inland waterways designated by the Task Force, the Secretary shall—

(A) conduct a special review of guidelines and regulations applicable to those water-

ways in accordance with the review procedures under paragraph (1); and

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

(i) revise those guidelines;

(ii) promulgate additional regulations pursuant to subsection (f)(1) of this section; or

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

(3) Criteria for effectiveness

Not later than 18 months after October 26, 1996, the Task Force shall submit to the Secretary criteria for determining the adequacy and effectiveness of the voluntary guidelines issued under subsection (c) of this section.

(f) Authority of Secretary

(1) General regulations

If, on the basis of a periodic review conducted under subsection (e)(1) of this section or a special review conducted under subsection (e)(2) of this section, the Secretary determines that—

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

(B) the reporting by vessels pursuant to those guidelines is not adequate for the Secretary to assess the compliance with those guidelines and provide a rate of compliance of vessels, including the assessment of the rate of compliance of vessels under subsection (e)(2) of this section,

the Secretary shall promptly promulgate regulations that meet the requirements of paragraph (2).

(2) Requirements for regulations

The regulations promulgated by the Secretary under paragraph (1)—

(A) shall—

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

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

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

(B) may be regional in scope.

(3) International regulations

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

(g) Sanctions

(1) Civil penalties

Any person who violates a regulation promulgated under subsection (b) or (f) of this section shall be liable for a civil penalty in an amount not to exceed \$25,000. Each day of a continuing violation constitutes a separate

violation. A vessel operated in violation of the regulations is liable in rem for any civil penalty assessed under this subsection for that violation.

(2) Criminal penalties

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

(3) Revocation of clearance

Upon request of the Secretary, the Secretary of the Treasury shall withhold or revoke the clearance of a vessel required by section 60105 of title 46, if the owner or operator of that vessel is in violation of the regulations issued under subsection (b) or (f) of this section.

(4) Exception to sanctions

This subsection does not apply to a failure to exchange ballast water if—

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

(B) the recordkeeping and reporting requirements of this chapter are complied with.

(h) Coordination with other agencies

In carrying out the programs under this section, the Secretary is encouraged to use, to the maximum extent practicable, the expertise, facilities, members, or personnel of established agencies and organizations that have routine contact with vessels, including the Animal and Plant Health Inspection Service of the Department of Agriculture, the National Cargo Bureau, port administrations, and ship pilots' associations.

(i) Consultation with Canada, Mexico, and other foreign governments

In developing the guidelines issued and regulations promulgated under this section, the Secretary is encouraged to consult with the Government of Canada, the Government of Mexico, and any other government of a foreign country that the Secretary, in consultation with the Task Force, determines to be necessary to develop and implement an effective international program for preventing the unintentional introduction and spread of nonindigenous species.

(j) International cooperation

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

(k) Safety exemption

(1) Master discretion

The master of a vessel is not required to conduct a ballast water exchange if the master decides that the exchange would threaten the safety or stability of the vessel, its crew, or its passengers because of adverse weather, vessel

architectural design, equipment failure, or any other extraordinary conditions.

(2) Other requirements

(A) In general

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

(B) Great Lakes

Subparagraph (A) shall not apply in a case in which a vessel is subject to the regulations issued by the Secretary under subsection (b) of this section.

(3) Crude oil tanker ballast facility study

(A) Within 60 days of October 26, 1996,¹ the Secretary of the department in which the Coast Guard is operating, in consultation with the Under Secretary of Commerce for Oceans and Atmosphere, affected shoreside ballast water facility operators, affected crude oil tanker operators, and interested parties, shall initiate a study of the effectiveness of existing shoreside ballast water facilities used by crude oil tankers in the coastwise trade off Alaska in preventing the introduction of nonindigenous aquatic species into the waters off Alaska, as well as the cost and feasibility of modifying such facilities to improve such effectiveness.

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

(l) Non-discrimination

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

(Pub. L. 101-646, title I, §1101, Nov. 29, 1990, 104 Stat. 4763; Pub. L. 102-580, title III, §302(b)(1), Oct. 31, 1992, 106 Stat. 4839; Pub. L. 102-587, title IV, §4002, Nov. 4, 1992, 106 Stat. 5068; Pub. L. 104-332, §2(b)(2), Oct. 26, 1996, 110 Stat. 4075.)

REFERENCES IN TEXT

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

This chapter, referred to in subsecs. (e)(1)(A), (g)(4)(B), and (l), was in the original "this Act" or "the Act", which, to reflect the probable intent of Congress, was translated as reading "this title" meaning title I of Pub. L. 101-646, Nov. 29, 1990, 104 Stat. 4761, known as the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out below and Tables.

CODIFICATION

In subsec. (g)(3), "section 60105 of title 46" substituted for "section 4197 of the Revised Statutes (46 U.S.C. App.

¹ See Codification note below.

91)” on authority of Pub. L. 109-304, §18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 60105 of Title 46, Shipping.

October 26, 1996, referred to in subsec. (k)(3), was in the original “the date of enactment of this Act”, which was translated as meaning the date of enactment of Pub. L. 104-332, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

1996—Pub. L. 104-332 amended section generally, substituting subsecs. (a) to (l) relating to aquatic nuisance species in waters of the United States for former subsecs. (a) to (e) relating to aquatic nuisance species in the Great Lakes.

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

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4712. National ballast water management information

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

(1) Ballast exchange study

The Task Force, in cooperation with the Secretary, shall conduct a study—

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

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

(2) Biological study

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

(3) Shipping study

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

(A) the degree to which shipping may be a major pathway of transmission of aquatic nuisance species in those waters;

(B) possible alternatives for controlling introduction of those species through shipping; and

(C) the feasibility of implementing regional versus national control measures.

(b) Ecological and ballast water discharge surveys

(1) Ecological surveys

(A) In general

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

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

(ii) to require further study.

(B) Requirements for surveys

In conducting the surveys under this paragraph, the Task Force shall, with respect to each such survey—

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

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

(2) Ballast water discharge surveys

(A) In general

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

(B) Requirements for surveys

In conducting the surveys under this paragraph, the Secretary shall—

(i) examine the rate of, and trends in, ballast water discharge in the waters that are the subject of the survey; and

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

(3) Columbia River

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

(c) Reports

(1) Ballast exchange

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