

Subsec. (a)(6) to (15). Pub. L. 104-332, §2(a)(1)(B)(ii), (C), (D), added pars. (6) to (15).

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-332, §1(a), Oct. 26, 1996, 110 Stat. 4073, provided that: "This Act [enacting sections 4713 and 4714 of this title, amending sections 941 to 941g, 4701, 4702, 4711, 4712, 4721 to 4728, 4741 and 4751 of this title, section 42 of Title 18, Crimes and Criminal Procedure, and section 2761 of Title 33, Navigation and Navigable Waters, enacting provisions set out as a note under this section, and amending provisions set out as notes under this section, section 941 of this title, and section 2701 of Title 33] may be cited as the 'National Invasive Species Act of 1996'."

SHORT TITLE

Pub. L. 101-646, title I, §1001, Nov. 29, 1990, 104 Stat. 4761, as amended by Pub. L. 104-332, §2(h)(1), Oct. 26, 1996, 110 Stat. 4091, provided that: "This title [enacting this chapter and amending section 42 of Title 18, Crimes and Criminal Procedure] may be cited as the 'Non-indigenous Aquatic Nuisance Prevention and Control Act of 1990'."

AQUATIC INVASIVE SPECIES PREVENTION

Pub. L. 113-121, title I, §1039(b), June 10, 2014, 128 Stat. 1237, provided that:

"(1) MULTIAGENCY EFFORT TO SLOW THE SPREAD OF ASIAN CARP IN THE UPPER MISSISSIPPI AND OHIO RIVER BASINS AND TRIBUTARIES.—

"(A) IN GENERAL.—The Director of the United States Fish and Wildlife Service, in coordination with the Secretary [of the Army], the Director of the National Park Service, and the Director of the United States Geological Survey, shall lead a multiagency effort to slow the spread of Asian carp in the Upper Mississippi and Ohio River basins and tributaries by providing technical assistance, coordination, best practices, and support to State and local governments in carrying out activities designed to slow, and eventually eliminate, the threat posed by Asian carp.

"(B) BEST PRACTICES.—To the maximum extent practicable, the multiagency effort shall apply lessons learned and best practices such as those described in the document prepared by the Asian Carp Working Group entitled 'Management and Control Plan for Bighead, Black, Grass, and Silver Carps in the United States' and dated November 2007, and the document prepared by the Asian Carp Regional Coordinating Committee entitled 'FY 2012 Asian Carp Control Strategy Framework' and dated February 2012.

"(2) REPORT TO CONGRESS.—

"(A) IN GENERAL.—Not later than December 31 of each year, the Director of the United States Fish and Wildlife Service, in coordination with the Secretary, shall submit to the Committee on Appropriations and the Committee on Environment and Public Works of the Senate and the Committee on Appropriations, the Committee on Natural Resources, and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report describing the coordinated strategies established and progress made toward the goals of controlling and eliminating Asian carp in the Upper Mississippi and Ohio River basins and tributaries.

"(B) CONTENTS.—Each report submitted under subparagraph (A) shall include—

"(i) any observed changes in the range of Asian carp in the Upper Mississippi and Ohio River basins and tributaries during the 2-year period preceding submission of the report;

"(ii) a summary of Federal agency efforts, including cooperative efforts with non-Federal partners, to control the spread of Asian carp in the Upper Mississippi and Ohio River basins and tributaries;

"(iii) any research that the Director determines could improve the ability to control the spread of Asian carp;

"(iv) any quantitative measures that the Director intends to use to document progress in controlling the spread of Asian carp; and

"(v) a cross-cut accounting of Federal and non-Federal expenditures to control the spread of Asian carp."

CONSTRUCTION OF 1996 AMENDMENT

Pub. L. 104-332, §3, Oct. 26, 1996, 110 Stat. 4092, provided that: "Nothing in this Act [see Short Title of 1996 Amendment note above] or the amendments made by this Act is intended to affect the authorities and responsibilities of the Great Lakes Fishery Commission established under article II of the Convention on Great Lakes Fisheries between the United States of America and Canada, signed at Washington on September 10, 1954 (hereafter in this section referred to as the 'Convention'), including the authorities and responsibilities of the Great Lakes Fishery Commission—

"(1) for developing and implementing a comprehensive program for eradicating or minimizing populations of sea lamprey in the Great Lakes watershed; and

"(2) carrying out the duties of the Commission specified in the Convention (including any amendment thereto) and the Great Lakes Fishery Act of 1956 (16 U.S.C. 931 et seq.)."

REPORT ON ESTABLISHMENT OF PROGRAM

Pub. L. 102-567, title II, §203(b), Oct. 29, 1992, 106 Stat. 4281, provided that: "Not later than one year after the date of the enactment of this Act [Oct. 29, 1992], the Secretary of Commerce shall submit a report to the Congress on progress toward establishing a nonindigenous aquatic nuisance prevention and control program within the National Oceanic and Atmospheric Administration and projected funding for such a program for the following five fiscal years."

§ 4702. Definitions

As used in this chapter, the term—

(1) "aquatic nuisance species" means a non-indigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural or recreational activities dependent on such waters;

(2) "Assistant Secretary" means the Assistant Secretary of the Army (Civil Works);

(3) "ballast water" means any water and associated sediments used to manipulate the trim and stability of a vessel;

(4) "Director" means the Director of the United States Fish and Wildlife Service;

(5) "exclusive economic zone" means the Exclusive Economic Zone of the United States established by Proclamation Number 5030, dated March 10, 1983, and the equivalent zone of Canada;

(6) "environmentally sound" methods, efforts, actions or programs means methods, efforts, actions or programs to prevent introductions or control infestations of aquatic nuisance species that minimize adverse impacts to the structure and function of an ecosystem and adverse effects on non-target organisms and ecosystems and emphasize integrated pest management techniques and nonchemical measures;

(7) "Great Lakes" means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara

River, and Saint Lawrence River to the Canadian¹ Border), and includes all other bodies of water within the drainage basin of such lakes and connecting channels.

(8) “Great Lakes region” means the 8 States that border on the Great Lakes;

(9) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(10) “interstate organization” means an entity—

(A) established by—

(i) an interstate compact that is approved by Congress;

(ii) a Federal statute; or

(iii) a treaty or other international agreement with respect to which the United States is a party; and

(B)(i) that represents 2 or more—

(I) States or political subdivisions thereof; or

(II) Indian tribes; or

(ii) that represents—

(I) 1 or more States or political subdivisions thereof; and

(II) 1 or more Indian tribes; or

(iii) that represents the Federal Government and 1 or more foreign governments; and

(C) has jurisdiction over, serves as forum for coordinating, or otherwise has a role or responsibility for the management of, any land or other natural resource;

(11) “nonindigenous species” means any species or other viable biological material that enters an ecosystem beyond its historic range, including any such organism transferred from one country into another;

(12) “Secretary” means the Secretary of the department in which the Coast Guard is operating;

(13) “Task Force” means the Aquatic Nuisance Species Task Force established under section 4721 of this title;

(14) “territorial sea” means the belt of the sea measured from the baseline of the United 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 non-

indigenous 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.

¹ So in original. Probably should be “Canadian”.

SUBCHAPTER II—PREVENTION OF UN-
INTENTIONAL 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 dis-

charge 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;