

SUBCHAPTER III—PREVENTION AND CONTROL OF AQUATIC NUISANCE SPECIES DISPERSAL

§ 4721. Establishment of Task Force

(a) Task Force

There is hereby established an “Aquatic Nuisance Species Task Force”.

(b) Membership

Membership of the Task Force shall consist of—

- (1) the Director;
- (2) the Under Secretary;
- (3) the Administrator of the Environmental Protection Agency;
- (4) the Commandant of the United States Coast Guard;
- (5) the Assistant Secretary;
- (6) the Secretary of Agriculture; and
- (7) the head of any other Federal agency that the chairpersons designated under subsection (d) deem appropriate.

(c) Ex officio members

The chairpersons designated under subsection (d) shall invite representatives of the Great Lakes Commission, the Lake Champlain Basin Program, the Chesapeake Bay Program, the San Francisco Bay-Delta Estuary Program, and State agencies and other governmental entities to participate as ex officio members of the Task Force.

(d) Chairpersons

The Director and the Under Secretary shall serve as co-chairpersons of the Task Force and shall be jointly responsible, and are authorized to undertake such activities as may be necessary, for carrying out this subchapter in consultation and cooperation with the other members of the Task Force.

(e) Memorandum of understanding

Within six months of November 29, 1990, the Director and the Under Secretary shall develop a memorandum of understanding that describes the role of each in jointly carrying out this subchapter.

(f) Coordination

Each Task Force member shall coordinate any action to carry out this subchapter with any such action by other members of the Task Force, and regional, State and local entities.

(Pub. L. 101-646, title I, §1201, Nov. 29, 1990, 104 Stat. 4765; Pub. L. 104-182, title III, §308(b), Aug. 6, 1996, 110 Stat. 1689; Pub. L. 104-332, §2(e)(2), (h)(1), Oct. 26, 1996, 110 Stat. 4085, 4091.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (d) to (f), was in the original “this subtitle”, meaning subtitle C (§§1201-1209) of title I of Pub. L. 101-646, Nov. 29, 1990, 104 Stat. 4765, which enacted this subchapter and amended section 42 of Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1996—Pub. L. 104-332, §2(h)(1), made technical amendment to Pub. L. 101-646, §1201, which enacted this section.

Subsec. (b)(5) to (7). Pub. L. 104-332, §2(e)(2)(A), struck out “and” at end of par. (5), added par. (6), and redesignated former par. (6) as (7).

Subsec. (c). Pub. L. 104-332, §2(e)(2)(B), inserted “the Chesapeake Bay Program, the San Francisco Bay-Delta Estuary Program,” before “and State agencies”.

Pub. L. 104-182 inserted “, the Lake Champlain Basin Program,” after “Great Lakes Commission”.

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.

§ 4722. Aquatic nuisance species program

(a) In general

The Task Force shall develop and implement a program for waters of the United States to prevent introduction and dispersal of aquatic nuisance species; to monitor, control and study such species; and to disseminate related information.

(b) Content

The program developed under subsection (a) shall—

- (1) identify the goals, priorities, and approaches for aquatic nuisance species prevention, monitoring, control, education and research to be conducted or funded by the Federal Government;
- (2) describe the specific prevention, monitoring, control, education and research activities to be conducted by each Task Force member;
- (3) coordinate aquatic nuisance species programs and activities of Task Force members and affected State agencies;
- (4) describe the role of each Task Force member in implementing the elements of the program as set forth in this subchapter;
- (5) include recommendations for funding to implement elements of the program; and
- (6) develop a demonstration program of prevention, monitoring, control, education and research for the zebra mussel, to be implemented in the Great Lakes and any other waters infested, or likely to become infested in the near future, by the zebra mussel.

(c) Prevention

(1) In general

The Task Force shall establish and implement measures, within the program developed under subsection (a), to minimize the risk of introduction of aquatic nuisance species to waters of the United States, including—

- (A) identification of pathways by which aquatic organisms are introduced to waters of the United States;
- (B) assessment of the risk that an aquatic organism carried by an identified pathway may become an aquatic nuisance species; and
- (C) evaluation of whether measures to prevent introductions of aquatic nuisance species are effective and environmentally sound.

(2) Implementation

Whenever the Task Force determines that there is a substantial risk of unintentional in-

roduction of an aquatic nuisance species by an identified pathway and that the adverse consequences of such an introduction are likely to be substantial, the Task Force shall, acting through the appropriate Federal agency, and after an opportunity for public comment, carry out cooperative, environmentally sound efforts with regional, State and local entities to minimize the risk of such an introduction.

(d) Monitoring

The Task Force shall establish and implement monitoring measures, within the program developed under subsection (a), to—

- (1) detect unintentional introductions of aquatic nuisance species;
- (2) determine the dispersal of aquatic nuisance species after introduction; and
- (3) provide for the early detection and prevention of infestations of aquatic nuisance species in unaffected drainage basins.

(e) Control

(1) In general

The Task Force may develop cooperative efforts, within the program established under subsection (a), to control established aquatic nuisance species to minimize the risk of harm to the environment and the public health and welfare. For purposes of this chapter, control efforts include eradication of infestations, reductions of populations, development of means of adapting human activities and public facilities to accommodate infestations, and prevention of the spread of aquatic nuisance species from infested areas. Such control efforts shall be developed in consultation with affected Federal agencies, States, Indian Tribes, local governments, interjurisdictional organizations, and other appropriate entities. Control actions authorized by this section shall be based on the best available scientific information and shall be conducted in an environmentally sound manner.

(2) Decisions

The Task Force or any other affected agency or entity may recommend that the Task Force initiate a control effort. In determining whether a control program is warranted, the Task Force shall evaluate the need for control (including the projected consequences of no control and less than full control); the technical and biological feasibility and cost-effectiveness of alternative control strategies and actions; whether the benefits of control, including costs avoided, exceed the costs of the program; the risk of harm to non-target organisms and ecosystems, public health and welfare; and such other considerations the Task Force determines appropriate. The Task Force shall also determine the nature and extent of control of target aquatic nuisance species that is feasible and desirable.

(3) Programs

If the Task Force determines in accordance with paragraph (2) that control of an aquatic nuisance species is warranted, the Task Force shall develop a proposed control program to achieve the target level of control. A notice summarizing the proposed action and solicit-

ing comments shall be published in the Federal Register, in major newspapers in the region affected, and in principal trade publications of the industries affected. Within 180 days of proposing a control program, and after consultation with affected governmental and other appropriate entities and taking into consideration other comments received, the Task Force shall complete development of the proposed control program.

(f) Research

(1) Priorities

The Task Force shall, within the program developed under subsection (a), conduct research concerning—

- (A) the environmental and economic risks and impacts associated with the introduction of aquatic nuisance species into the waters of the United States;
- (B) the principal pathways by which aquatic nuisance species are introduced and dispersed;
- (C) possible methods for the prevention, monitoring and control of aquatic nuisance species; and
- (D) the assessment of the effectiveness of prevention, monitoring and control methods.

(2) Protocol

Within 90 days of November 29, 1990, the Task Force shall establish and follow a protocol to ensure that research activities carried out under this subchapter do not result in the introduction of aquatic nuisance species to waters of the United States.

(3) Grants for research

The Task Force shall allocate funds authorized under this chapter for competitive research grants to study all aspects of aquatic nuisance species, which shall be administered through the National Sea Grant College Program and the Cooperative Fishery and Wildlife Research Units. Grants shall be conditioned to ensure that any recipient of funds follows the protocol established under paragraph (2) of this subsection.

(g) Technical assistance

The Task Force shall, within the program developed under subsection (a), provide technical assistance to State and local governments and persons to minimize the environmental, public health, and safety risks associated with aquatic nuisance species, including an early warning system for advance notice of possible infestations and appropriate responses.

(h) Education

The Task Force shall, with the program developed under subsection (a), establish and implement educational programs through Sea Grant Marine Advisory Services and any other available resources that it determines to be appropriate to inform the general public, State governments, governments of political subdivisions of States, and industrial and recreational users of aquatic resources in connection with matters concerning the identification of aquatic nuisance species, and control methods for such spe-

cies, including the prevention of the further distribution of such species.

(i) Zebra mussel demonstration program

(1) Zebra mussel

(A) In general

The Task Force shall, within the program developed under subsection (a), undertake a program of prevention, monitoring, control, education and research for the zebra mussel to be implemented in the Great Lakes and any other waters of the United States infested or likely to become infested by the zebra mussel, including—

(i) research and development concerning the species life history, environmental tolerances and impacts on fisheries and other ecosystem components, and the efficacy of control mechanisms and means of avoiding or minimizing impacts;

(ii) tracking the dispersal of the species and establishment of an early warning system to alert likely areas of future infestations;

(iii) development of control plans in coordination with regional, State and local entities; and

(iv) provision of technical assistance to regional, State and local entities to carry out this section.

(B) Public facility research and development

The Assistant Secretary, in consultation with the Task Force, shall develop a program of research, technology development, and demonstration for the environmentally sound control of zebra mussels in and around public facilities. The Assistant Secretary shall collect and make available, through publications and other appropriate means, information pertaining to such control methods.

(C) Voluntary guidelines

Not later than 1 year after October 26, 1996, the Task Force shall develop and submit to the Secretary voluntary guidelines for controlling the spread of the zebra mussel and, if appropriate, other aquatic nuisance species through recreational activities, including boating and fishing. Not later than 4 months after the date of such submission, and after providing notice and an opportunity for public comment, the Secretary shall issue voluntary guidelines that are based on the guidelines developed by the Task Force under this subparagraph.

(2) Dispersal containment analysis

(A) Research

The Administrator of the Environmental Protection Agency, in cooperation with the National Science Foundation and the Task Force, shall provide research grants on a competitive basis for projects that—

(i) identify environmentally sound methods for controlling the dispersal of aquatic nuisance species, such as the zebra mussel; and

(ii) adhere to research protocols developed pursuant to subsection (f)(2).

(B) Authorization of appropriations

There are authorized to be appropriated to the Environmental Protection Agency to carry out this paragraph, \$500,000.

(3) Dispersal barrier demonstration

(A) In general

The Assistant Secretary, in consultation with the Task Force, shall investigate and identify environmentally sound methods for preventing and reducing the dispersal of aquatic nuisance species between the Great Lakes-Saint Lawrence drainage and the Mississippi River drainage through the Chicago River Ship and Sanitary Canal, including any of those methods that could be incorporated into the operation or construction of the lock system of the Chicago River Ship and Sanitary Canal.

(B) Report

Not later than 18 months after October 26, 1996, the Assistant Secretary shall issue a report to the Congress that includes recommendations concerning—

(i) which of the methods that are identified under the study conducted under this paragraph are most promising with respect to preventing and reducing the dispersal of aquatic nuisance species; and

(ii) ways to incorporate those methods into ongoing operations of the United States Army Corps of Engineers that are conducted at the Chicago River Ship and Sanitary Canal.

(C) Authorization of appropriations

There are authorized to be appropriated to the Department of the Army such sums as are necessary to carry out the dispersal barrier demonstration project directed by this paragraph.

(4) Contributions

To the extent allowable by law, in carrying out the studies under paragraphs (2) and (3), the Administrator of the Environmental Protection Agency and the Secretary of the Army may enter into an agreement with an interested party under which that party provides in kind or monetary contributions for the study.

(5) Technical assistance

The Great Lakes Environmental Research Laboratory of the National Oceanic and Atmospheric Administration shall provide technical assistance to appropriate entities to assist in the research conducted pursuant to this subsection.

(j) Implementation

(1) Regulations

The Director, the Secretary, and the Under Secretary may issue such rules and regulations as may be necessary to implement this section.

(2) Participation of others

The Task Force shall provide opportunities for affected Federal agencies which are not part of the Task Force, State and local government agencies, and regional and other enti-

ties with the necessary expertise to participate in control programs. If these other agencies or entities have sufficient authority or jurisdiction and expertise and where this will be more efficient or effective, responsibility for implementing all or a portion of a control program may be delegated to such agencies or entities.

(k) Reports

(1) Not later than 12 months after November 29, 1990, the Task Force shall submit a report describing the program developed under subsection (a), including the research protocol required under subsection (f)(2), to the Congress.

(2) On an annual basis after the submission of the report under paragraph (1), the Task Force shall submit a report to the Congress detailing progress in carrying out this section.

(Pub. L. 101-646, title I, §1202, Nov. 29, 1990, 104 Stat. 4766; Pub. L. 104-332, §2(e)(3), (4), (g), (h)(1), Oct. 26, 1996, 110 Stat. 4085, 4087, 4091; Pub. L. 109-234, title II, §2309, June 15, 2006, 120 Stat. 457.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (e)(1) and (f)(3), 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.

AMENDMENTS

2006—Subsec. (i)(3)(C). Pub. L. 109-234 substituted “such sums as are necessary to carry out the dispersal barrier demonstration project directed by this paragraph” for “, to carry out this paragraph, \$750,000”.

1996—Pub. L. 104-332, §2(h)(1), made technical amendment to Pub. L. 101-646, §1202, which enacted this section.

Subsec. (f)(1)(A). Pub. L. 104-332, §2(e)(3)(A), inserted “and impacts” after “economic risks”.

Subsec. (i). Pub. L. 104-332, §2(e)(3)(B), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and former subpars. (A) to (D) of par. (1) as cls. (i) to (iv), respectively, of subpar. (A), inserted new par. (1) heading, substituted “The Assistant Secretary, in consultation with the Task Force, shall develop a program of research, technology development, and demonstration for the environmentally sound control of zebra mussels in and around public facilities.” for “The Assistant Secretary, in consultation with the Task Force, shall develop a program of research and technology development for the environmentally sound control of zebra mussels in and around public facilities.” in subpar. (B), and added subpar. (C) and pars. (2) to (5).

Subsec. (j)(1). Pub. L. 104-332, §2(e)(4), substituted “The Director, the Secretary,” for “Not later than 18 months after November 29, 1990, the Director”.

Subsec. (k). Pub. L. 104-332, §2(g), substituted “Congress” for “appropriate Committees” in pars. (1) and (2).

§ 4723. Regional coordination

(a) Great Lakes panel

(1) In general

Not later than 30 days following November 29, 1990, the Task Force shall request that the Great Lakes Commission (established under

Article IV of the Great Lakes Compact to which the Congress granted consent in the Act of July 24, 1968, P.L. 90-419) convene a panel of Great Lakes region representatives from Federal, State and local agencies and from private environmental and commercial interests to—

(A) identify priorities for the Great Lakes region with respect to aquatic nuisance species;

(B) make recommendations to the Task Force regarding programs to carry out section 4722(i) of this title;

(C) assist the Task Force in coordinating Federal aquatic nuisance species program activities in the Great Lakes region;

(D) coordinate, where possible, aquatic nuisance species program activities in the Great Lakes region that are not conducted pursuant to this chapter;

(E) provide advice to public and private individuals and entities concerning methods of controlling aquatic nuisance species; and

(F) submit annually a report to the Task Force describing activities within the Great Lakes region related to aquatic nuisance species prevention, research,¹ control.

(2) Consultation

The Task Force shall request that the Great Lakes Fishery Commission provide information to the panel convened under this subsection on technical and policy matters related to the international fishery resources of the Great Lakes.

(3) Canadian participation

The panel convened under this subsection is encourage² to invite representatives from the Federal, provincial or territorial governments of Canada to participate as observers.

(b) Western regional panel

Not later than 30 days after October 26, 1996, the Task Force shall request a Western regional panel, comprised of Western region representatives from Federal, State, and local agencies and from private environmental and commercial interests, to—

(1) identify priorities for the Western region with respect to aquatic nuisance species;

(2) make recommendations to the Task Force regarding an education, monitoring (including inspection), prevention, and control program to prevent the spread of the zebra mussel west of the 100th Meridian pursuant to section 4722(i) of this title;

(3) coordinate, where possible, other aquatic nuisance species program activities in the Western region that are not conducted pursuant to this chapter;

(4) develop an emergency response strategy for Federal, State, and local entities for stemming new invasions of aquatic nuisance species in the region;

(5) provide advice to public and private individuals and entities concerning methods of preventing and controlling aquatic nuisance species infestations; and

(6) submit annually a report to the Task Force describing activities within the Western

¹ So in original. Probably should be followed by “and”.

² So in original. Probably should be “encouraged”.