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Ballast Water Management to Combat Invasive Species

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Summary

In recent years, many people have become increasingly aware that the globalization of trade, the increased speed of travel, the massive volume of cargo shipments, and rising tourism have combined to increase the chance of accidental introductions of foreign species into the United States. Aquatic species arrive through a variety of mechanisms — unintentionally when attached to vessel hulls or carried in vessel ballast water and intentionally when imported for aquaria display, as live seafood for human consumption, or as a transplant to increase sport fishing opportunities.

The arrival of zebra mussels in the Great Lakes and their subsequent damage to city water supplies and electric utilities has focused significant attention on ballast water discharge by cargo ships as a high-risk mechanism for species invasion. New management efforts attempt to address this concern. Congress is considering legislative proposals to amend and reauthorize the National Invasive Species Act, including specific provisions that would modify how ballast water is managed. This report provides background on various approaches to ballast water management and reviews current ballast water management laws and programs. This report will be updated as this issue evolves.

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Ballast Water Management to Combat Invasive Species

With increases in the number of people traveling, the speed and methods of travel, the types and volume of trade, the ability to move living plants and animals so that more of them survive the journey, and the different modes of transport for hitch-hiking organisms, invasive species have become a global concern. Although there are many ways in which species may invade,¹ this report focuses on ballast water discharge by cargo ships as one of the more significant mechanisms for biotic invasion of coastal and estuarine habitats as well as inland navigable waters.

The arrival of zebra mussels in the Great Lakes in the late 1980s and their subsequent damage to city water supplies and electric utilities² focused initial attention on ballast water as a source of invasive species. Reflecting the scope of the problem, the San Francisco Bay-Delta ecosystem is considered to be one of the most disrupted aquatic ecosystems in the United States, with colonization by more than 230 non-native species.³ Compounding the problem, species that invaded via other mechanisms (e.g., mitten crabs that are believed to have been an illegal seafood introduction) may be further spread through ballast water transport and vice versa (e.g., zebra mussels are spreading to new drainages via boats transported on trailers). In the Gulf of Mexico, ballast water has been implicated in the contamination of commercial oyster beds⁴ and the arrival of the Australian spotted jellyfish.⁵ Globally, it is estimated that more than 10,000 marine species each day may be transported across the oceans in the ballast water of cargo ships.⁶ The ctenophore *Mnemiopsis*

¹ For an in-depth discussion of invasive species and their various mechanisms of invasion, see CRS Report RL30123, *Invasive Non-Native Species: Background and Issues for Congress*, by M. Lynne Corn, Eugene H. Buck, Jean Rawson, Alex Segarra, and Eric Fischer. Zebra mussels and other species arriving in ballast water are specifically discussed in “A Gallery of Harmful Non-Native Plants and Animals” in that report.

² Colonies of zebra mussels accumulate and block water-intake pipes and screens of drinking water facilities, industrial facilities, power-generating plants, golf course irrigation pipes, and cooling systems of boat engines.

³ Information from the Natural Resources Defense Council webpage at [<http://www.nrdc.org/greengate/wildlife/invasivef.asp>], viewed on Apr. 7, 2004.

⁴ Fred C. Dobbs and Mounir Laroussi, “Microorganisms in Ships’ Ballast Water and Strategies for Their Control,” *Sustainable Development International*, v. 4 (April 2001), pp. 203-206.

⁵ Ben Raines, “New Jellyfish in the Northern Gulf of Mexico,” *Mobile Register*, Sept. 3, 2000, p. 1, viewed at [<http://nas.er.usgs.gov/coelenterates/phyllorhiza.html>] on Mar. 2, 2004.

⁶ G. Tracy Mehan, Assistant Administrator for Water, U.S. Environmental Protection (continued...)

leidyi was transported in ballast water from estuaries along the Atlantic coast of North America to the Black Sea, where it is blamed for a massive collapse of the commercial fish harvest. Around 1978, the American jack-knife clam *Ensis directus* was introduced through ballast water in the German Bight and has spread rapidly over the North Sea coast, where it has become one of the most common bivalves, replacing many native species.

The economic, social, recreational, and ecological losses/costs attributable to aquatic invasive species are difficult to quantify. While some costs have been estimated, such as the \$5 billion in damages to water pipes, boat hulls, and other hard surfaces by zebra mussels in the Great Lakes (§1001(a)(4) of the National Invasive Species Act (NISA); P.L. 104-332; 16 U.S.C. §§4701), others, such as the losses of native species and environment restoration to pre-invasion quality, are unknown. Congress is considering legislative proposals to reauthorize and amend NISA, including specific provisions that would modify how ballast water is managed.

Ballast Water Management

Ballast water is held in the ballast tanks and cargo holds of ships to provide stability and maneuverability during a voyage when ships are not carrying cargo, are not carrying heavy enough cargo, or require more stability due to rough seas.⁷ Ballast water may be either fresh or saline. Ballast water may also be carried so that a ship rides low enough in the water to pass under bridges and other structures. Ballast water management (BWM) for vessels includes all measures that aim to prevent unwanted aquatic nuisance species from being transported from foreign ports to U.S. waters in the ballast. Seaports in which ships exchange ballast water daily are at severe risk of invasions. Organisms transported to U.S. ports from foreign harbors with similar physiochemical characteristics (e.g., water temperatures, salinity regimes) pose an especially high risk of invasion. Even if only a tiny proportion of newly arriving non-native species survive in new habitats, such as San Francisco Bay, Chesapeake Bay, or Boston Harbor, the actual number of successful invasive species can be very large.

There are several different ways of managing ballast water. Currently, the most widely used is ballast water exchange. Ballast water exchange means that ships on their way to the next port release the lower-salinity coastal water they brought aboard and replace it with higher-salinity open-ocean water. Although this measure is not perfect, it reduces the number of potentially invasive species in the ballast tanks and replaces them with oceanic organisms that are less likely to survive in the lower-

⁶ (...continued)

Agency, testimony before the Senate Committee on Environment and Public Works, Subcommittee on Fisheries, Wildlife, and Water, June 17, 2003.

⁷ Massachusetts Institute of Technology Sea Grant, *Marine Bioinvasions Fact Sheet: Ballast Water*, Cambridge, MA, Dec. 4, 2002; viewed on Apr. 7, 2004, at [<http://massbay.mit.edu/exoticspecies/ballast/fact.html>].

salinity near-shore waters of the ship's next port.⁸ However, organisms with a wide tolerance for differing salinities may survive ballast water exchange, especially any such organisms that may reside in the unpumpable residual water and sediment remaining in the tanks during any ballast water exchange.

Another approach to BWB is treatment.⁹ Ballast water treatment is the subject of extensive current research and development, and several technologies and methodologies have been proposed. These include mechanical methods (e.g., filtration and separation), physical methods (e.g., sterilization by ultraviolet light, ozone, heat, electric current, or ultrasound), and chemical methods (using biocides). In addition, treatment may combine several of these methods.¹⁰

Treatment may be an appropriate management option on occasions when vessels temporarily operate without ballast — a “no-ballast-on-board” (NOBOB) situation. When a ship is carrying no ballast water, it presents unique treatment problems because large numbers of organisms can reside in the unpumpable residual water and sediment remaining in the ballast tanks. Few of the tested methodologies have been applied to the control of organisms in NOBOB situations.¹¹ The treatment option favored by many ship operators because of its intrinsic simplicity and relatively low cost is the biocide approach, whereby chemical agents are added to the ballast water to minimize the number of (i.e., kill) viable organisms. This approach also has the potential to address the NOBOB condition.¹² Concerns remain relating to establishing and enforcing standards for the appropriate disposal of biocide-treated ballast water and sediments.

Although estimates of the costs of ballast treatment may be imprecise and vary from vessel to vessel, there is some general agreement on average costs. It may cost an estimated \$400,000 per vessel for modification of container/bulk vessels to use onshore ballast water treatment facilities at California ports.¹³ More generally, the

⁸ Smithsonian Environmental Research Center, *Invasive Species*; viewed on Apr. 7, 2004, at [<http://www.serc.si.edu/watershed/may2001/invasivespecies.htm>].

⁹ A detailed discussion and evaluation of various ballast water treatment options is presented in Chapter 4 (“Shipboard Treatment Options”) of Commission on Engineering and Technical Systems, *Stemming the Tide: Controlling Introductions of Nonindigenous Species by Ships’ Ballast Water*, National Academy of Sciences (Washington, DC: 1996), 141 pp.

¹⁰ For example, Australian researchers established a pilot plant to sterilize ballast water using a combination of filtration, ultraviolet light, and sonic disintegration. For more information, see David Salt, “Shipboard Pests get Sterile Treatment,” *ABC Science Online*, Sept. 30, 2003; viewed at [http://www.abc.net.au/science/news/enviro/EnviroRepublish_956770.htm] on Jan. 23, 2004.

¹¹ The Coast Guard is studying methods to address NOBOB concerns; for more information, see 70 *Fed. Reg.* 1448-1449 (Jan. 7, 2005).

¹² David T. Stocks, *Ballast Water Research at Fleet Technology Limited*, BMT Fleet Technology Limited (Kanata, Ontario, Canada: undated), 4 pp.; viewed on Apr. 7, 2004, at [http://www.fleetech.com/Ballast_Water/Ballast_Water_Research.pdf].

¹³ URS/Dames & Moore, *Feasibility of Onshore Ballast Water Treatment at California* (continued...)

cost of retrofitting vessels to treat ballast water has been estimated at between \$200,000 and \$310,000 per vessel for mechanical treatment and around \$300,000 for chemical treatment.¹⁴ Most of this expense will be borne by foreign shipping companies, as the U.S. flag fleet is a small percentage of the global fleet,¹⁵ and by consumers of products imported by ship. The likelihood of compliance by the foreign flag fleet was increased by the February 2004 conclusion of an international agreement on ballast water management. (See “International Efforts,” below.)

Current U.S. Law

Attempts to address ballast water concerns in the United States began with the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA; Title I of P.L. 101-646; 16 U.S.C. §§4701, et seq.), which established a federal program to prevent the introduction and to control the spread of unintentionally introduced aquatic nuisance species. The U.S. Coast Guard, U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (FWS), Army Corps of Engineers, and National Oceanic and Atmospheric Administration (NOAA) shared responsibilities for implementing this effort, acting cooperatively as members of an Aquatic Nuisance Species (ANS) Task Force to conduct studies and report to Congress to (1) identify areas where ballast water exchange can take place without causing environmental damage; and (2) determine the need for controls on vessels entering U.S. waters other than the Great Lakes. Under §1101 of NANPCA, a Great Lakes BWM program (voluntary in its first two years) became mandatory in 1992. This section directed the Coast Guard to issue regulations (33 CFR Part 151) to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the ballast water of vessels and established civil and criminal penalties for violating these regulations. The act also encourages the Secretary of Transportation (but now the Secretary of Homeland Security) to negotiate with foreign countries, through the International Maritime Organization, to prevent and control the unintentional introduction of aquatic nuisance species.

In 1996, the National Invasive Species Act (NISA) amended NANPCA to create a national ballast management program modeled after the Great Lakes program wherein all ships entering U.S. waters (after operating outside the U.S. Exclusive Economic Zone) are directed to undertake high seas (i.e., mid-ocean) ballast exchange or alternative measures pre-approved by the Coast Guard as equally or more effective. While not initially enforced on a ship-by-ship basis, this national program was to have become mandatory within three years of the date the Coast

¹³ (...continued)

Ports, study conducted on behalf of the California Association of Port Authorities (San Francisco, CA: Sept. 2000), Table 4.1, available on Mar. 8, 2004, at [<http://www.epa.gov/owow/mts/capareport/41.html>].

¹⁴ Frans J. Tjallingii, *Market Opportunities for Ballast Water Treatment*, Royal Haskoning, International Ballast Technology Investment Fair, Chicago, IL, Sept. 21, 2001, available at [<http://www.nemw.org/fairtjallingii.pdf>] on Mar. 8, 2004.

¹⁵ As of July 2003, U.S. flag vessels comprised 1.65% of the global merchant fleet tonnage, according to statistics from U.S. Maritime Administration, viewed on Mar. 10, 2004, at [http://www.marad.dot.gov/Marad_Statistics/mfw-7-03.htm].

Guard issued its voluntary guidelines¹⁶ if ships did not show adequate compliance with the program¹⁷ in the absence of enforcement. The National Ballast Information Clearinghouse (NBIC) was developed jointly by the Coast Guard and the Smithsonian Environmental Research Center to synthesize, analyze, and interpret national data concerning BWM. During the first two years (July 1999 through June 2001), the NBIC found that nationwide compliance with ballast exchange reporting requirements was low, with only 30.4% of vessels entering the U.S. Exclusive Economic Zone (EEZ) filing reports with the NBIC.¹⁸ On March 4, 2002, the Coast Guard published an advanced notice of proposed rulemaking, seeking comments on development of a ballast water treatment goal and an interim ballast water treatment standard as part of regulations that would make guidelines for ballast exchange mandatory.¹⁹ (See “Recent Developments,” below.)

NISA encouraged negotiations with foreign governments to develop and implement an international program for preventing the introduction and spread of invasive species in ballast water. This act required a Coast Guard study and report to the Congress on the effectiveness of existing shoreside ballast water facilities used by crude oil tankers in the coastal trade off Alaska, as well as studies of Lake Champlain, the Chesapeake Bay, San Francisco Bay, Honolulu Harbor, the Columbia River system, and estuaries of national significance.²⁰ Under NISA, a Ballast Water Management Demonstration Program was established to promote the research and development of technological alternatives to ballast water exchange.

NISA has been criticized as inadequate and faulted for several alleged shortcomings, including agency weakness or delay in implementing some of its provisions.²¹ Since NISA exempted most coastwise vessel traffic from ballast water exchange guidelines, vessels traveling short distances between U.S. ports (e.g., from San Francisco Bay, which is highly invaded, to Puget Sound, which is less so) are exempt from controls. Others are critical of the provisions of 16 U.S.C. §4711(k)(2)(A) giving the vessel owner a blanket exemption to ignore any mandatory regulations if the master determines that the vessel might not be able to safely conduct a ballast water exchange on the open ocean. Whereas earlier provisions applicable to the Great Lakes provided a safety exemption, the master/captain of a vessel was required to report the problem to the Coast Guard and conduct alternate

¹⁶ 64 *Fed. Reg.* 26672-26690 (May 17, 1999). These voluntary guideline regulations were effective July 1, 1999.

¹⁷ If the voluntary program did not result in sufficient compliance, reporting of BWM practices would become mandatory for nearly all vessels entering U.S. waters (33 CFR 151.2040).

¹⁸ G. M. Ruiz, et al., *Status and Trends of Ballast Water Management in the United States: First Biennial Report of the National Ballast Information Clearinghouse* (Edgewater, MD: Smithsonian Environmental Research Center, Nov. 16, 2001), p. 4.

¹⁹ 67 *Fed. Reg.* 9632-9638 (Mar. 4, 2002).

²⁰ As defined for the National Estuary Program in 33 U.S.C. §1330.

²¹ Letter of Feb. 11, 1999, to Hon. Carol Browner, Administrator of the U.S. Environmental Protection Agency, from Representatives George Miller, Jim Saxton, and 16 other Members of the U.S. House of Representatives.

BWM measures, often negotiated on a case-by-case basis. Critics believe the NISA language has eliminated any incentive to change ballast water piping systems or adopt other management or treatment options to deal with the problem safely. Finally, NISA has been criticized for its apparent failure to actually prevent additional introductions of damaging organisms into the Great Lakes, despite this being the one area where the requirements for managing ballast water have been the most stringent for the longest time.²²

Agency Programs

Under NANPCA, the Coast Guard is responsible for developing and implementing a BWM program to prevent the unintentional introduction and dispersal of nonindigenous aquatic species into waters of the United States from ship ballast water. This is presently accomplished through a mandatory BWM program for the Great Lakes ecosystem and voluntary guidelines for the remainder of U.S. waters. Relevant regulations, published at 33 CFR Part 151, Subparts C and D, went into effect in 1993. As stated in the Secretary of Transportation's November 2001 *United States Coast Guard Report to Congress on the Voluntary National Guidelines for Ballast Water Management*,²³ the Coast Guard plans to develop regulations requiring active BWM of all ships that enter U.S. waters after operating beyond the EEZ, and will establish sanctions for failure to comply. The Coast Guard will also continue its efforts to establish a quantitative ballast water treatment performance standard; protocols for testing, verifying, and reporting on treatment technologies; and a program to facilitate experimental shipboard installation and operation of promising technologies.

Currently, the Coast Guard enforces mandatory requirements for ballast water management only for the Great Lakes. Ballast water reporting data for inbound vessels must be submitted via fax either directly to the Captain of the Port (COTP) Buffalo or U.S. Coast Guard's Marine Safety Detachment (MSD) Massena, or via the Saint Lawrence Seaway Development Corporation (SLSDC) to MSD Massena at least 24 hours before arrival (33 CFR 151.2040). Compliance with these requirements is essentially 100%. Every vessel that reports that it is carrying ballast water on board (BOB) while transiting to the Great Lakes undergoes ballast water inspections by either MSD Massena at the locks in Massena, NY, or by the SLSDC in Montreal. Compliance with the mandatory ballast water requirements has averaged approximately 92% over the past five years for those vessels declaring BOB. Those vessels found to not have conducted proper exchange are ordered not to discharge ballast water in the Lakes. For these vessels, or if the vessel declares that it intends to retain its ballast water on board while in the Great Lakes system, then MSD Massena will again board the vessel after it has made port calls in the Lakes and passed the lock in Massena on its outbound transit to ensure the vessel has

²² Union of Concerned Scientists, *The National Invasive Species Act: An Information Update* (Cambridge, MA: August 2002); available at [<http://www.ucsusa.org/documents/nisa.pdf>], viewed on Jan. 16, 2004.

²³ This report was available at [http://dmses.dot.gov/docimages/pdf84/211672_web.pdf] on Apr. 7, 2004.

not discharged while in the Lakes. To date, all vessels have complied with the order not to discharge.²⁴

The Department of State negotiated with the International Maritime Organization to develop an international convention to control the spread of invasive species from the exchange of ships' ballast water. (See "International Efforts," below.)

Through both the National Sea Grant College program and a BWM technology development program, NOAA has funded research on alternatives to ballast water exchange as methods of BWM.²⁵ NOAA's Great Lakes Environmental Research Lab (GLERL) targets prevention and control to stop the inflow and spread of new aquatic organisms, with particular emphasis on ship ballast. GLERL, with combined funding from NOAA and several other agencies, developed and provides leadership for the Great Lakes NOBOB and Ballast Exchange research program, focusing on the biological assessment of ballast tank residuals and the experimental determination of effectiveness of ballast exchange. In this program, GLERL scientists collaborate with scientists at several universities and the Smithsonian Environmental Research Center. In a related project, scientists at GLERL and the University of Michigan are evaluating two chemicals for use on residuals in NOBOB tanks. In FY2003, GLERL started a new project to develop a model of ballast tank flow during ballast tank exchange.

The Department of Defense (DOD) is promulgating joint regulations with the EPA covering discharges from DOD vessels (40 CFR 1700) to implement §312(n) of the Clean Water Act (33 U.S.C. §1322(n)). When complete, they will set discharge standards for vessel ballast water to address the environmental effect of non-native species introduction via that ballast water (as well as addressing chemical pollution from other Armed Forces vessel discharges). The regulations are being developed in three phases. The first, completed in May 1999, determined which ballast water discharges would require control. The second, currently in progress, will set performance standards, and the third will promulgate regulations for meeting those standards.

The Smithsonian Environmental Research Center performs research to examine patterns of ballast water delivery and measures species transfer associated with shipping. In cooperation with the Coast Guard, the center established the National Ballast Information Clearinghouse (NBIC)²⁶ to measure the changing patterns of ballast water delivery and management for vessels arriving in U.S. ports and to synthesize national data on patterns and impacts of alien species in coastal ecosystems.

²⁴ Personal communication with Jill R. Teixeira, Lieutenant Junior Grade, U.S. Coast Guard, Office of Congressional & Governmental Affairs, Washington, DC, Mar. 30, 2004.

²⁵ The most recent request for proposals for ballast water treatment technology testing and demonstration projects was published by NOAA at 69 *Fed. Reg.* 2577-2579 (Jan. 16, 2004).

²⁶ For more information on the NBIC, see [<http://invasions.si.edu/NBIC/ballast.html>], viewed on Apr. 7, 2004.

In addition to federal programs and sometimes in response to perceived deficiencies in federal regulation, several states have chosen to regulate aspects of ballast water management, including Maryland,²⁷ California,²⁸ Oregon,²⁹ and Washington.³⁰

International Efforts

In July 1991, the International Maritime Organization's (IMO's) Marine Environmental Protection Committee (MEPC) issued voluntary *International Guidelines for Preventing the Introduction of Unwanted Aquatic Organisms and Pathogens for Ships' Ballast Water and Sediment Discharges*, adopted in Resolution (50) 31 by a diplomatic conference of the IMO in November 1993. IMO members were requested to follow these guidelines, which also called for exchange of ballast water in the open ocean (to reduce transfer of species from port to port). A review conducted by Australia in 1993 revealed that few countries had implemented the guidelines. In 1994, the MEPC established a ballast water working group to draft regulations for the control and management of ships' ballast water. These draft regulations were debated at the November 1998 and June 1999 MEPC meetings. IMO subsequently proposed these management protocols as a formal IMO instrument. This instrument requires all ratifying member nations to follow the regulations, which would include open-ocean exchange.

On February 13, 2004, an *International Convention for the Control and Management of Ships' Ballast Water and Sediments* was adopted at the International Conference on Ballast Water Management for Ships in London, England. This Convention will enter into force 12 months after ratification by 30 nations, representing 35% of the world merchant shipping tonnage. The United States was one of the major proponents of this convention, which will require all ships to implement a Ballast Water and Sediments Management Plan. In addition, all ships must carry a Ballast Water Record Book and will be required to conduct BWM procedures in conformity with a specified standard. These standards will be phased in for various vessels, depending upon when they were constructed.³¹ Resistance by vessel owners to the new international requirements for ballast water treatment is tempered by their interest in global standards under the IMO Convention as opposed to the increasing number of national ballast water programs developed around different approaches for addressing this concern.

²⁷ See [<http://www.mde.state.md.us/businessinfocenter/pollutionprevention/ballast%20water%20management/index.asp>] for details on Maryland's program, viewed on Apr. 8, 2004.

²⁸ See [http://www.slc.ca.gov/Division_Pages/MFD/MFD_Programs/Ballast_Water/Documents/KeyCompAB433Rvs.pdf], viewed on Apr. 8, 2004, for details on California's program.

²⁹ See [http://www.deq.state.or.us/wmc/cleanup/factsheets/Ballast_Water_Management.pdf], viewed on Apr. 8, 2004, for details on Oregon's program.

³⁰ See [<http://www.wdfw.wa.gov/fish/nuisance/ballast.htm>], viewed on Apr. 8, 2004, for details on Washington's program.

³¹ Details on this new Convention were available on Mar. 1, 2004, at [<http://globallast.imo.org/index.asp?page=mepc.htm&menu=true>].

Bilaterally with Canada, the United States is cooperating through the North American Commission for Environmental Cooperation (CEC),³² the Great Lakes Commission, and the International Joint Commission to better understand, coordinate, and address ballast water management concerns. Improved ballast water management is one component of the CEC's project on "Closing the Pathways of Aquatic Invasive Species across North America."³³ The Great Lakes Commission convened the "Great Lakes Panel on Aquatic Nuisance Species" in late 1991 to coordinate efforts, including ballast water management.³⁴ In addition, the International Joint Commission (IJC) views invasive species management as an important component of water quality.³⁵

Recent Developments

On January 6, 2003, the Coast Guard proposed penalties for those who fail to submit ballast water management reports.³⁶ BWM reports are required by 33 U.S.C. §151 Subpart D for most vessels entering U.S. waters. The June 2002 Coast Guard Report to Congress had concluded that reporting compliance was insufficient to allow an accurate assessment of voluntary BWM. The Coast Guard published final regulations on June 14, 2004.³⁷

On July 30, 2003, the Coast Guard proposed mandatory BWM practices for all vessels with ballast tanks bound for ports or places within the United States or entering U.S. waters, but excluding domestic port-to-port voyages.³⁸ These regulations would extend BWM requirements already in place for vessels entering the Great Lakes and Hudson River to all U.S. ports and waters. The Coast Guard published final regulations on July 28, 2004.³⁹

On September 9, 2003, the EPA announced that it was denying a 1999 petition by the Pacific Environmental Advocacy Center, Center for Marine Conservation, San Francisco Bay Keeper, and a number of other concerned groups to require regulation of vessel ballast water discharges through Clean Water Act permits, arguing that the

³² Established under the authority of the North American Free Trade Agreement.

³³ Additional information on this project was available at [http://www.cec.org/programs_projects/conserv_biodiv/project/index.cfm?projectID=20&varlan=english] on Jan. 13, 2004.

³⁴ Additional information on this panel was available at [<http://www.glc.org/ans/>] on Jan. 13, 2004.

³⁵ Additional information on these concerns was available from the IJC's annual report, available at [<http://www.ijc.org/php/publications/html/11br/english/report/chapter3/>] on Jan. 13, 2004.

³⁶ 68 *Fed. Reg.* 523-530 (Jan. 6, 2003).

³⁷ 69 *Fed. Reg.* 32864-32871 (June 14, 2004).

³⁸ 68 *Fed. Reg.* 44691-44696 (July 30, 2003).

³⁹ 69 *Fed. Reg.* 44952-44961 (July 28, 2004).

Coast Guard was the more appropriate regulatory agency.⁴⁰ This decision does not alter the development and implementation of the joint EPA-DOD regulations covering discharges from DOD vessels discussed above because this DOD effort is specifically authorized in statute. In late December 2003, three Pacific Coast environmental groups filed suit, seeking to force the EPA to regulate ballast water discharges under the Clean Water Act.⁴¹

On September 26, 2003, the U.S. Coast Guard announced its intent to prepare a Programmatic Environmental Impact Statement for proposed regulatory action to establish a ballast water discharge standard.⁴² The standard would establish the required level of environmental protection necessary to prevent introductions and combat the spread of invasive species from ballast water discharges. Comments were accepted on this proposal through December 26, 2003.

On January 2, 2004, the U.S. Coast Guard announced the beginning of a program to facilitate the installation of experimental shipboard ballast water treatment systems on both foreign and domestic vessels.⁴³ This Shipboard Technology Evaluation Program (STEP) aims to promote research and development of shipboard ballast water treatment systems through regulatory incentives, creating more options for vessel owners seeking alternatives to ballast water exchange. Regulatory incentives would grant conditional equivalencies for accepted vessels in the STEP that might not meet discharge standards mandated by future regulations.

On August 5, 2004, the U.S. Coast Guard announced its interest in establishing a program to approve ballast water treatment systems to assure that approved systems meet ballast water discharge standards the Coast Guard anticipates implementing in the near future.⁴⁴

Congressional Action

Congressional hearings on ballast water issues and implementation of NISA were held in both the 107th and 108th Congresses.⁴⁵ Certain testimony at these

⁴⁰ 68 *Fed. Reg.* 53165-53166 (Sept. 9, 2003). A copy of the EPA decision was available at [http://www.epa.gov/npdes/pubs/ballast_report_petition_response.pdf], viewed on Apr. 7, 2004.

⁴¹ Cathy Zollo, "Environmental Groups Seek EPA Rules for Ballast Water," *Naples Daily News*, Dec. 24, 2003, viewed on Jan. 14, 2004, at [http://www.naplesnews.com/npdn/news/article/0,2071,NPDN_14940_2527955,00.html].

⁴² 68 *Fed. Reg.* 55559-55563 (Sept. 26, 2003).

⁴³ For additional information, see [http://www.uscg.mil/hq/g-m/nvic/04/NVIC_01-04.pdf], viewed on Mar. 10, 2005.

⁴⁴ 69 *Fed. Reg.* 47453-47454 (Aug. 5, 2004).

⁴⁵ U.S. Congress, Committee on Resources, Subcommittee on Fisheries Conservation, Wildlife, and Oceans and Committee on Science, Subcommittee on Environment, Technology, and Standards, *H.R. 5395 and H.R. 5396*, Joint legislative hearing, 107th Cong., 2d sess., (Washington, DC: Nov. 14, 2002), 80 pp.; U.S. Congress, Committee on (continued...)

hearings has been particularly critical of the slow progress in promulgating regulations to implement NISA. Updated information on bills introduced to address various BWM issues in the 109th Congress can be found in CRS Issue Brief IB10139, *Fishery, Aquaculture, and Marine Mammal Legislation in the 109th Congress*, by Eugene H. Buck, under the “Invasive Species” heading.

⁴⁵ (...continued)

Resources, Subcommittee on Fisheries Conservation, Wildlife, and Oceans, and Subcommittee on National Parks, Recreation, and Public Lands, *The Growing Problem of Invasive Species*, joint legislative hearing, 108th Cong., 1st sess. (Washington, DC: Apr. 29, 2003), 133 pp.; an as-yet-unpublished hearing of June 17, 2003, by the Senate Committee on Environment and Public Works, Subcommittee on Fisheries, Wildlife, and Water, on S. 525 to reauthorize NISA; and an as-yet-unpublished joint hearing of Mar. 25, 2004, by the House Committee on Transportation and Infrastructure, Subcommittees on Coast Guard and Maritime Transportation and on Water Resources and Environment, on Ballast Water Management: New International Standards and National Invasive Species Act Reauthorization.