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**STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS --  
(Senate - February 10, 2005)**

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From the zebra mussel fouling the facilities and shores of the Great Lakes, to the noxious algae that choke the coral reefs of Hawaii, aquatic invasive species pose a serious threat to delicate marine ecosystems and human health. The economic costs are also staggering--the direct and indirect costs of

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aquatic invasive species to the economy of the United States amount to billions of dollars each year.

We must find an effective solution to this problem, while at the same time ensuring that our maritime industry can continue to operate in a cost-effective manner. We will need to rely on the steady collaborative efforts of industry, science, government, and coastal communities as we move forward.

The bill I introduce today lays the foundation for such progress. It establishes standards for ballast water treatment that will be effective but on a schedule that our maritime fleet can realistically achieve. It recognizes safety as a paramount concern, and allows flexibility in ballast exchange practices to safeguard vessels and their passengers and crew. Looking to the future, my bill will also encourage the development and adoption of new ballast water treatment technologies, as well as innovative technologies to address other vessel sources of invasives such as hull fouling, through a grant program.

The bill closely tracks and is consistent with an agreement recently negotiated in the International Maritime Organization. It would phase-in ballast water treatment requirements on the same schedule as that adopted by the IMO agreement, and require ballast water exchange to be used until treatment systems are in place. Importantly, the international agreement includes a provision assuring that parties can adopt more stringent measures than those included in the agreement. This provision was sought by the United States and is important to assure the sovereignty of nations in addressing

their needs while striving for international cooperation. In light of this provision, the bill includes a standard for treatment that is more effective than that adopted by the international community to ensure that the impacts in the United States are adequately prevented.

Finally, the bill would require a report on other vessel pathways of invasive species, including hull fouling, and the development of standards to reduce the introduction of invasive species through such pathways. This issue is particularly important for Hawaii.

I hope that my colleagues will join me in supporting this bill. I ask unanimous consent that the text of the bill be printed in the **RECORD**.

There being no objection, the bill was ordered to be printed in the **RECORD**, as follows:

S. 363

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### **SECTION 1. SHORT TITLE.**

This Act may be cited as the ``Ballast Water Management Act of 2005''.

#### **SEC. 2. FINDINGS.**

The Congress finds the following:

(1) The introduction of aquatic invasive species into the Nation's waters is one of the most urgent issues facing the marine environment in the United States.

(2) The direct and indirect costs of aquatic invasive species to the economy of the United States amount to billions of dollars per year.

(3) Invasive species are thought to have been involved in 70 percent of the last century's extinctions of native aquatic species.

(4) Invasive aquatic species are a significant problem in all regions of the United States, including Hawaii, Alaska, San Francisco Bay, the Great Lakes, the Southeast, and the Chesapeake Bay.

(5) Ballast water from ships is one of the largest pathways for the introduction and spread of aquatic invasive species.

(6) It has been estimated that some 10,000 non-indigenous aquatic organisms travel around the globe each day in the ballast water of cargo ships.

(7) Over 2 billion gallons of ballast water are discharged in United States waters each year. Ballast water may be the source of the largest volume of foreign organisms released on a daily basis into American ecosystems.

(8) Ballast water has been found to transport not only invasive plants and animals but human diseases as well, such as cholera.

(9) Invasive species may also be introduced by other vessel conduits, including the hulls of ships.

(10) Invasive aquatic species may originate in other countries, or from distinct regions in the United States.

(11) An average of 72 percent of all fish species introduced in the Southeast have become established, many of which are native to the United States but transplanted outside their native ranges.

(12) The introduction of non-indigenous species has been closely correlated with the disappearance of indigenous species in Hawaii and other islands.

(13) Despite the efforts of more than 20 State, Federal, and private agencies, unwanted alien pests are entering Hawaii at an alarming rate----about 2 million times more rapid than the natural rate.

(14) Current Federal programs are insufficient to effectively address this growing problem.

(15) Preventing aquatic invasive species from being introduced is the most cost-effective approach for addressing this issue, because once established, they are costly and sometimes impossible to control.

### **SEC. 3. BALLAST WATER MANAGEMENT.**

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

#### **``SEC. 1101. BALLAST WATER MANAGEMENT.**

##### **``(a) VESSELS TO WHICH SECTION APPLIES.--**

**``(1) IN GENERAL.**--This section applies to a vessel that is designed or constructed

to carry ballast water; and

((A) is a vessel of the United States (as defined in section 2101(46) of title 46, United States Code); or

((B) is a foreign vessel that--

((i) is en route to a United States port; or

((ii) has departed from a United States port and is within the exclusive economic zone.

((2) **EXCEPTIONS.**--Notwithstanding paragraph (1), this section does not apply to--

((A) permanent ballast water in a sealed tank on a vessel that is not subject to discharge;

((B) a vessel of the Armed Forces; or

((C) a vessel, or category of vessels, exempted by the Secretary under paragraph (4).

((3) **STANDARDS FOR VESSELS OF THE ARMED FORCES.**--With respect to a vessel of the Armed Forces that is designed or constructed to carry ballast water, the Secretary of Defense, after consultation with the Administrator of the Environmental Protection Agency and the Secretary, shall promulgate ballast water and sediment management standards for such vessels that, so far as is reasonable and practicable, achieve environmental results that are comparable to those achieved by the requirements of this section in waters subject to the jurisdiction of the United States. In promulgating those standards, the Secretary of Defense may take into account the standards promulgated for such vessels under section 312 of the Clean Water Act (33 U.S.C. 1322) to the extent that compliance with those standards would meet the requirements of this Act.

((4) **VESSEL EXEMPTIONS BY SECRETARY.**--The Secretary may exempt a vessel, or category of vessels, from the application of this section if the Secretary determines, after consultation with the Administrator of the Environmental Protection Agency and the Administrator of the National Oceanic and Atmospheric Administration, that ballast water discharge from the vessel or category of vessels will not have an adverse impact (as defined in section 1003(1) of this Act), based on factors including the origin and destination of the voyages undertaken by such vessel or category of vessels.

**“(5) COAST GUARD ASSESSMENT AND REPORT.--**Within 180 days after the date of enactment of the Ballast Water Management Act of 2005, the Commandant of the Coast Guard shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure containing--

“(A) an assessment of the magnitude of ballast water operations from vessels designed or constructed to carry ballast water that are not described in paragraph (1) that are transiting waters subject to the jurisdiction of the United States; and

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

**“(b) UPTAKE AND DISCHARGE OF BALLAST WATER AND SEDIMENT.--**

**“(1) PROHIBITION.--**The operator of a vessel to which this section applies may not conduct the uptake or discharge of ballast water and sediment except as provided in this section.

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

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

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

“(ii) saving a life at sea.

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

“(i) all reasonable precautions to prevent or minimize ballast water and sediment discharge have been taken before and after the damage occurs, the discovery of the damage, and the discharge; and

“(ii) the owner or officer in charge of the vessel did not willfully or recklessly cause the damage.

“(C) The uptake or discharge is solely for the purpose of avoiding or minimizing the discharge of pollution from the vessel.

“(D) The uptake and subsequent discharge on the high seas of the same ballast water and sediment.

((E) The uptake or discharge of ballast water and sediment occurs at the same location where the whole of the ballast water and sediment that is discharged was taken up and there is no mixing with unmanaged ballast water and sediment from another area.

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((3) **SPECIAL RULE FOR THE GREAT LAKES.**--Paragraph (2) does not apply to a vessel subject to the regulations under subsection (e)(2) until the vessel is required to conduct ballast water treatment in accordance with subsection (f) of this section.

((c) **VESSEL BALLAST WATER MANAGEMENT PLAN.**--

((1) **IN GENERAL.**--A vessel to which this section applies shall conduct all its ballast water management operations in accordance with a ballast water management plan that--

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

((B) is approved by the Secretary.

((2) **APPROVAL CRITERIA.**--The Secretary may not approve a ballast water management plan unless the Secretary determines that the plan--

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

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

((C) describes in detail procedures for disposal of sediment at sea and on shore;

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

((E) contains the reporting requirements for vessels established under this section; and

((F) meets all other requirements prescribed by the Secretary.

((3) **COPY OF PLAN ON BOARD VESSEL.**--The owner or operator of a vessel to which this section applies shall maintain a copy of the vessel's ballast water management plan on board at all times.

**``(d) VESSEL BALLAST WATER RECORD BOOK.--**

**``(1) IN GENERAL.--**The owner or operator of a vessel to which this section applies shall maintain a ballast water record book on board the vessel in which--

**``(A)** each operation involving ballast water is fully recorded without delay, in accordance with regulations promulgated by the Secretary; and

**``(B)** each such operation is described in detail, including the location and circumstances of, and the reason for, the operation.

**``(2) AVAILABILITY.--**The ballast water record book--

**``(A)** shall be kept readily available for examination by the Secretary at all reasonable times; and

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

**``(3) RETENTION PERIOD.--**The ballast water record book shall be retained--

**``(A)** on board the vessel for a period of 2 years after the date on which the last entry in the book is made; and

**``(B)** under the control of the vessel's owner for an additional period of 3 years.

**``(4) REGULATIONS.--**In the regulations prescribed under this section, the Secretary shall require, at a minimum, that--

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

**``(B)** each completed page in the ballast water record book be signed and dated by the master of the vessel.

**``(5) ALTERNATIVE MEANS OF RECORDKEEPING.--**The Secretary may provide by regulation for alternative methods of recordkeeping, including electronic recordkeeping, to comply with the requirements of this subsection.

**``(e) BALLAST WATER EXCHANGE REQUIREMENTS.--**

**``(1) IN GENERAL.--**Until a vessel conducts ballast water treatment in accordance with the requirements of subsection (f) of this section, the operator of a vessel to which this section applies may not conduct the uptake or discharge of ballast water unless the

operator conducts ballast water exchange, in accordance with regulations prescribed by the Secretary, in a manner that results in an efficiency of at least 95 percent volumetric exchange of the ballast water for each ballast water tank.

**“(2) SPECIAL RULE FOR VESSELS IN THE GREAT LAKES.--**

**“(A) IN GENERAL.--**Notwithstanding any other provision of this subsection, under regulations prescribed by the Secretary to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the ballast water of vessels, operators of 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 shall--

“(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; or

“(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 1102(a)(1).

**“(B) ADDITIONAL MATTERS COVERED BY THE REGULATIONS.--**The regulations shall--

“(i) 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.);

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

“(iii) 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;

“(iv) protect the safety of--

“(I) each vessel; and

“(II) the crew and passengers of each vessel;

“(v) take into consideration different operating conditions; and

“(vi) be based on the best scientific information available.

“(C) **HUDSON RIVER PORT.**--The regulations under this paragraph also apply to vessels that enter a United States port on the Hudson River north of the George Washington Bridge.

“(D) **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 paragraph.

“(3) **EXCHANGE AREAS.**--

“(A) **IN GENERAL.**--Except as provided in subparagraphs (B), (C), and (D), the operator of a vessel to which this section applies shall conduct ballast water exchange in accordance with regulations prescribed by the Secretary--

“(i) at least 200 nautical miles from the nearest land; and

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

“(B) **MINIMUM DISTANCE AND DEPTH.**--

“(i) **IN GENERAL.**--Except as provided in subparagraph (C), if the operator of a vessel is unable to conduct ballast water exchange in accordance with subparagraph (A), the ballast water exchange shall be conducted in water that is--

“(I) as far as possible from land;

“(II) at least 50 nautical miles from land; and

“(III) in water of at least 200 meters in depth.

“(ii) **LIMITATION.**--The operator of a vessel may not conduct ballast water exchange in accordance with clause (i) in any area with respect to which the Secretary has determined, after consultation with the Administrators of the Environmental Protection Agency and the National Oceanic and Atmospheric Administration, that ballast water exchange in the area will have an adverse impact, notwithstanding the fact that the area meets the distance and depth criteria of clause (i).

“(C) **EXCHANGE IN DESIGNATED AREA.**--

“(i) **IN GENERAL.**--If the operator of a vessel is unable to conduct ballast water exchange in accordance with subparagraph (B), the operator of the vessel may conduct

ballast water exchange in an area that does not meet the distance and depth criteria of subparagraph (B) in such areas as may be designated by the Administrator of the National Oceanic and Atmospheric Administration, determined in consultation with the Secretary and the Administrator of the Environmental Protection Agency, for that purpose.

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