

Legislative Update -- February 15, 2005

Status of Invasive Species Legislation

On February 10, 2005, Senator Stevens (R-Alaska), Senator Inouye (D-Hawaii), Senator Lautenberg (D-New Jersey) and Senator Akaka (D-Hawaii) introduced the Ballast Water Management Act of 2005 (BMA). The bill imposes the identical treatment standards that were proposed in the 2004 draft of the bill. Those standards are 100 times more stringent for most microbes (and 3 times more stringent for colony forming bacteria such as *vibrio cholera*) than the treatment requirements contemplated by the pending International Maritime Organization treaty.

In many other respects the bill is an attempt to legislate passage of the IMO Treaty's requirements. The proposed implementation dates track the requirements of the draft treaty:

- a. Ships carrying less than 5,000 cubic meters of ballast water, the construction of which begins after January 1, 2009 will have to comply as of that date.
- b. Ships carrying 5,000 cubic meters or more of ballast water, the construction of which begins after January 1, 2012 will have to comply as of that date.
- c. Ships carrying more than 1,500 cubic meters of ballast water but less than 5,000 cubic meters, whose construction began before January 1, 2009 will have to comply no later than January 1, 2014.
- d. As of January 1, 2016 all ships carrying more than 1,500 cubic meters but less than 5,000 cubic meters of ballast water or carrying more than 5,000 cubic meters of ballast water, the construction of which began after January 1, 2009 and before January 1, 2012 will be required to comply. This is the retrofitting requirement.

The experimental program provisions (the Treaty's version of the Coast Guard's STEP program) are also followed. That is, the Inouye-Stevens bill proposes an experimental test program far more restrictive, and less attractive to ship owners, than did the Coast Guard, last year.

The Inouye-Stevens bill is the only pending invasive species legislation at this time. The Senators and Representatives who took the lead in drafting the National Aquatic Invasive Species Act (NAIS) last session have not yet reintroduced that legislation.¹ During meetings that Nutech and BP held with the relevant Congressional Committee staffs last week, we were told that the NAIS bill will be reintroduced later this Session. Whether the introduction of this legislation causes the sponsors of the original NAIS legislation to move more quickly remains to be seen.

Unlike the NAIS bill, that will be referred to the Senate Environment & Public Works Committee, the Stevens-Inouye bill has been referred to the Senate Commerce Committee which is

¹ Senator Voinovich (R-Ohio) and Senator Levin (D-Michigan) and Representative Gilchrest (R-Maryland) and Representative Ehlers, (R-Michigan).

chaired by Senator Stevens. Since the Chairmen sets the Committee's legislative agenda (and 3 of the bill's sponsors are members of that Committee) it is possible that the Stevens-Inouye bill could be scheduled for hearings before the NAIS bill is re-introduced. (The Committee's hearings schedule and agenda will not be finalized until next month.) Such hearings would focus both Congressional and media attention on the overall invasive species issue and make it more likely that an invasive species bill will be enacted later this Session.

Nutech's Vice President & General Counsel, Joel Mandelman, spoke with the Chief Minority Counsel to the Commerce Committee about its plans for the bill, on Monday. He was told that the Committee sees the Inouye Stevens bill as the implementing legislation for the IMO Treaty (albeit with more stringent compliance standards) and that the Committee is "quite serious" about moving the bill irrespective of what the EPW Committee does with the NAIS legislation. Mr. Mandelman will meet with both Senator Stevens Chief Counsel and the Committee's Democratic Counsel to discuss possible amendments to the Ballast Water Management Act, later this month.