

CLEAN HULL ACT OF 2009

NOVEMBER 7, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. OBERSTAR, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 3618]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 3618) to provide for implementation of the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

H.R. 3618, the “Clean Hull Act of 2009”, provides for the implementation of the International Convention on the Control of Harmful Anti-Fouling Systems on Ships 2001, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The fouling of a vessel’s surface can produce many serious consequences.¹ For example, fouling on a vessel’s hull increases the ship’s weight and slows its progress through the water, causing the vessel to burn additional fuel. Untreated, a deep draft tank vessel’s hull can accumulate up to 6,000 tons of fouling material in less than six months of exposure to sea water.² Such fouling can increase a vessel’s fuel consumption by up to 40 percent, causing sig-

¹ Biological fouling is defined by the International Maritime Organization (IMO) as the unwanted accumulation of microorganisms, algae, mussels, plants, or other “biological material” on structures that are “immersed in water”. There are more than 4,000 species of biological organisms that can foul an immersed surface.

² IMO, *Anti-Fouling Systems*, (2002).

nificant economic and environmental impacts.³ Antifouling is the process of removing or preventing the accumulation of biological fouling organisms. It is estimated that total expenditures on antifouling applications for commercial and recreational vessels exceeds \$700 million a year.⁴

In the 1960s, antifouling coatings based on tributyltin (TBT) were developed. This product was so successful that, by the 1970s, it was the standard antifouling application throughout the shipping industry. As the number of vessels using antifouling paints containing TBT increased, scientists began to find high concentrations of TBT in marinas, ports and harbors that had a large number of boats and vessels. Eventually, high TBT levels were discovered in the open seas and oceanic waters. TBT has been noted as “the most toxic substance ever deliberately introduced into the marine environment.”⁵

In October 2001, IMO adopted the International Convention on the Control of Harmful Anti-fouling Systems on Ships, which entered into force on September 17, 2008, after 25 States representing 25 percent of the international commercial shipping tonnage adopted the Convention.

Countries that became parties to the Convention were required to ban the new application of TBT coatings by January 1, 2003, and to ensure that all vessels that had a TBT-based coating removed the coating or covered it with a barrier through which it could not leach by January 1, 2008. Parties to the Convention must also ensure that no vessel of a party using antifouling paint containing TBT will be allowed in their ports, shipyard, or offshore terminal.

In the United States, antifouling systems containing organotins, including TBT, are currently regulated under the Organotin Anti-Fouling Paint Control Act of 1988 (OAPCA), 33 U.S.C. §§ 2401–2410 (2009). The OAPCA prohibits organotin-based antifouling paints on vessels less than 25 meters (excluding aluminum hulls, outboard motors, and external drive units), and limits the leaching rate of antifouling paints on larger vessels. Under the OAPCA, the sale, purchase, and application of antifouling paint containing organotins were banned.

In 2008, the Senate ratified the Convention and the Bush administration submitted draft legislation to implement the requirements of the Convention for purposes of U.S. law. The United States will not become a party to the Convention until implementing legislation is enacted.

It is important for the United States to become a party to the Convention to not only replace the OAPCA, but also to ban vessels using antifouling paint containing TBT from entering the country and continuing to pollute the marine environment.

³ AMBIO, *What is Biofouling and How Will the AMBIO Project Help to Solve it Through Nanotechnology* (2002).

⁴ *Id.*

⁵ Antarctic Treaty Consultative Meeting 2006, *The Use of Anti-fouling Biocide Paints by National Antarctic Program Vessels* (2006).

SUMMARY OF THE LEGISLATION

Section 1. Short title

Section 1 states that the Act may be referred to as “The Clean Hull Act of 2009.”

TITLE I—GENERAL PROVISIONS

Sec. 101. Definitions

Section 101 defines several terms for purposes of the Act.

Sec. 102. Covered vessels

Section 102 requires that, after the Convention enters into force for the United States, the Act shall apply to a vessel documented under chapter 121 of title 46, United States Code, or one that is operated under authority of the United States wherever located; any vessel permitted by a Federal agency to operate on the Outer Continental Shelf; or any other vessel if it is in the internal waters of the United States, in any port, shipyard, offshore terminal or other place in the United States, lightering in the territorial sea or anchoring in the territorial sea of the United States.

This section also lists the vessels excluded from the Act, including any warship, naval auxiliary or other ship owned or operated by a foreign State, and used, for the time being, only on government non-commercial service and any warship, naval auxiliary or any other ship owned or operated by the United States and used for the time being only on Government non-commercial service, provided that the Administrator of the Environmental Protections Agency (Administrator) may determine that some or all of the requirements under this Act shall apply to one or more classes of such ships, but any such determination by the Administrator is subject to the concurrence of the head of the Federal department or agency under which such ships operate. In no event shall these requirements apply to combat-related ships.

Sec. 104. Administration and enforcement

Section 104 requires the Secretary of the department in which the Coast Guard is operating (Secretary) to administer and enforce the Convention and this Act, with respect to vessels, unless otherwise specified. This section requires the Administrator to administer and enforce title III of this Act, with the exception of sections 301(b) and 301(c) and authorizes the Administrator and Secretary to prescribe and enforce regulations as may be necessary to carry out their respective responsibilities under this Act.

Sec. 105. Compliance with international law

Section 105 requires that any action taken under this Act be taken in accordance with treaties to which the United States is a party and other international obligations of the United States.

Sec. 106. Utilization of personnel, facilities or equipment of other federal departments and agencies

Section 106 authorizes the Secretary and Administrator, by agreement, to utilize personnel, facilities or equipment of other Federal departments and agencies, with or without reimbursement

to administer the Convention, this Act, or any regulations thereunder.

TITLE II—IMPLEMENTATION OF THE CONVENTION

Sec. 201. Certificates

Section 210(a) requires any vessel of at least 400 gross tonnage that engages in one or more international voyages (except fixed or floating platforms, floating storage units (FSUs) and floating production, storage and offloading (FPSOs)) to carry an International Antifouling System Certificate upon the Convention's entry into force in the United States.

This section also requires a ship of at least 400 gross tons that engages in one or more international voyages (except fixed or floating platforms, FSUs and FPSOs) that has completed a successful survey required by the Convention, to be issued an International Antifouling System Certificate upon the Convention's entry into force in the United States. The Secretary is authorized to issue the Certificate required by this section, or may delegate the authority to an organization the Secretary determines is qualified to undertake such responsibility.

This section also states that the Certificate required by this section shall be maintained as required by the Secretary and authorizes a Certificate issued by a country that is a party to the Convention to have the same validity as a Certificate issued by the Secretary under this section.

Notwithstanding subsection (a), section 201 allows a ship of 400 gross tonnage and above, having the nationality of or entitled to fly the flag of a country that is not a party to the Convention, to demonstrate compliance through other documentation deemed acceptable by the Secretary.

Sec. 202. Declaration

Section 202 requires a vessel of 24 meters or more in length, but less than 400 gross tons, engaged on an international voyage (except fixed or floating platforms, FSUs and FPSOs) to carry a declaration signed by the owner or owner's authorized agent. The declaration shall be accompanied by appropriate documentation, such as paint receipt or a contractor invoice, or contain an appropriate endorsement and must contain a clear statement that the antifouling system on the ship complies with the Convention. The Secretary is authorized to prescribe the form and other requirements of the declaration.

Sec. 203. Other compliance documentation

Section 203 authorizes the Secretary to require vessels to hold other documentation deemed necessary to verify compliance with this Act in addition to the requirements under sections 201 and 202.

Sec. 204. Process for considering additional controls

Section 204 authorizes the Administrator to participate in the technical group, described in article 7 of the Convention, and in any other body convened pursuant to the Convention for the consideration of new or additional controls on antifouling systems;

evaluate any risks of adverse effects on non-target organisms or human health presented by a given antifouling system; undertake an assessment of relevant environmental, technical and economic considerations necessary to evaluate any proposals for new or additional controls of antifouling systems, including benefits in the United States and elsewhere, associated with the production and uses of the subject antifouling system; and develop recommendations based on such assessment.

This section requires the Secretary of State to convene a public meeting of the Shipping Coordinating Committee upon referral of any antifouling system to the technical group described in article 7 of the Convention, for consideration of new or additional controls. The purpose of the meeting will be to receive information and comments regarding controls on such antifouling system. Advanced notice of such meeting shall be published in the Federal Register and on the State Department's website by the Secretary of State. The Administrator shall assemble and maintain a public docket containing notices pertaining to such meeting, any comments responding to such notices, the minutes of such meeting, and materials presented at such meeting.

The Administrator shall promptly make any report by the technical group described in the Convention available to the public through the docket established pursuant to this section and announce the availability of such report in the Federal Register. The Administrator shall provide an opportunity for a public comment for a period of not less than 30 days from the time the availability of the report is announced in the Federal Register. Where practicable, the Administrator shall take such comments into consideration in developing recommendations pursuant to this section.

Sec. 205. Scientific and technical research and monitoring; communication and information

Section 205 authorizes the Secretary, Administrator, and the Administrator of the National Oceanic and Atmospheric Administration to each undertake scientific and technical research and monitoring pursuant to article 8 of the Convention and to promote the availability of relevant information concerning the scientific and technical activities undertaken in accordance with the Convention; marine scientific and technological programs and their objectives; and the effects observed from any monitoring and assessment programs relating to antifouling systems.

Sec. 206. Communication and exchange of information

Section 206 requires the Administrator to provide, to any party to the Convention who requests it, relevant information on which the decision to regulate was based, including information provided for in annex 3 to the Convention, or other information suitable for making an appropriate evaluation of the antifouling system; provided that, this section shall not be construed to authorize the provision of information whose disclosure is otherwise prohibited by law.

TITLE III—PROHIBITIONS AND ENFORCEMENT AUTHORITY

Sec. 301. Prohibitions

Notwithstanding any other provision of law, section 301 prohibits a person from selling or distributing organotin or an antifouling system containing organotin; manufacturing, processing, or using organotin to formulate an antifouling system; or applying an antifouling system containing organotin on any ship to which this Act applies.

This section also prohibits vessels from bearing any antifouling system containing organotin on its hull or outer surface, regardless of when the system was applied, unless that vessel bears an overcoating that forms a barrier to organotin leaching from the underlying antifouling system.

However, these hull restrictions do not apply to fixed and floating platforms, FSUs, or FPSOs that were constructed prior to January 1, 2003, and that have not been in dry dock on or after that date.

In addition, this section does not apply to the sale, distribution, or use pursuant to any agreement between the Administrator and any person that results in an earlier prohibition or cancellation date than specified in this Act, or the manufacture, processing, formulation, sale, distribution, or use of organotin or antifouling systems containing organotin used or intended for use only for sonar domes or in conductivity sensors in oceanographic instruments.

Sec. 302. Investigations and inspections by secretary

Section 302 authorizes the Secretary to conduct investigations and inspections regarding a vessel's compliance with this Act or the Convention. If an investigation is being conducted under this section, the Secretary may issue subpoenas to require the attendance of witnesses and the production of documents and other evidence. If a person refuses to obey a subpoena issued to them, the Secretary may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance. After the investigation is completed, the Secretary may take whatever further action considered by the Secretary to be appropriate under the Convention or this Act. The Secretary may cooperate with other parties to the Convention to detect violations and enforce the Convention. This section does not affect or alter requirements under any other laws.

Sec. 303. EPA enforcement

For purposes of enforcing the provisions of title III, section 303 authorizes officers or employees of the Environmental Protection Agency or of any State designated by the Administrator to enter any location, at reasonable times, where organotin or antifouling systems containing organotin are held with the authority to inspect and obtain samples of any container or labeling for organotin or other substance or system regulated under the Convention. In case of refusal to obey a subpoena issued to any person, the Administrator may request the Attorney General to compel compliance.

Consistent with section 104 of this Act, whenever any organotin or other substance or system is found by the Administrator and there is reason to believe that a seller, manufacturer, distributor

or user has violated or is in violation of any provisions of this Act, or that such organotin or other substance or system has been or is intended to be manufactured, distributed, sold, or used in violation of this Act, the Administrator may issue a stop manufacture, sale, use or removal order to any other person who owns, controls or has custody of such organotin or substance or system regulated under the Convention. After receipt of such order, no person shall manufacture, sell, distribute, use or remove the organotin or other substance or system described in the order except in accordance with the order.

Sec. 304. Additional authority of the administrator

Section 304 authorizes the Administrator, in consultation with the Secretary, to establish, as necessary, terms and conditions regarding the removal and disposal of antifouling systems prohibited or restricted under this Act.

TITLE IV—ACTION UPON VIOLATION, PENALTIES AND REFERRALS

Sec. 401. Criminal enforcement

Section 410 establishes criminal enforcement such that any person who knowingly violates the Convention, this Act, or any regulation issued thereunder shall be fined under title 18, or imprisoned not more than six (6) years, or both.

Sec. 402. Civil enforcement

Section 402 establishes civil penalties for violations of the Convention, this Act, or any relevant regulations. After notice and an opportunity for a hearing, violators are liable for a civil penalty of not more than \$37,500 for each violation. Section 402 also provides a civil penalty not to exceed \$50,000 for each false, fictitious, or fraudulent statement or representation to the Secretary under the Convention, this Act, or any relevant regulations. Each day or instance of a continuing violation constitutes a separate violation. The provisions of this section do not limit or affect the authority of the United States, under 18 U.S.C. § 1001. Section 402 establishes a lesser civil penalty for violations that are committed by an owner or operator of a recreational vessel. Such penalties may not exceed \$5,000 for each violation.

For purposes of this section, the Secretary or Administrator shall determine the amount of the penalty, taking into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, the economic impact of the penalty on the violator, the economic benefit to the violator and other matters as justice may require.

Section 402 also provides a reward for any person who gives information that leads to the assessment or imposition of a civil penalty. The amount of the reward shall be equal to not more than one-half of any penalties.

If any person fails to pay an assessment of an administrative civil penalty after it has become final or fails to comply with an order issued under this Act, the Secretary or Administrator, as appropriate, may refer the matter to the U.S. Attorney General for collection in any appropriate district court of the United States.

Before referring any civil penalty that is subject to assessment or has been assessed under this section to the Attorney General, the Secretary, or Administrator may compromise, modify, or remit, the civil penalty with or without conditions.

Any person who fails to pay on a timely basis an assessment of a civil administrative penalty shall be liable to the United States for 11 percent interest on the penalty, attorney's fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter.

Sec. 403. Liability in rem

Section 403 requires that a vessel operated in violation of the Convention, this Act, or any regulation issued thereunder to be liable *in rem* for any fine imposed under section 18, United States Code, or civil penalty assessed pursuant to section 402, and may be proceeded against in the U.S. District court of any district in which the ship may be found.

Sec. 404. Vessel clearance or permits; refusal or revocation; bond or other surety

Section 404 authorizes any vessel subject to the Convention, or this Act, or its owner, operator, or person in charge to be liable for a fine or civil penalty under section 402 or 403. If reasonable cause exists to believe the vessel, its owner, operator or person in charge may be subject to a fine or civil penalty under section 402 or 403, the Secretary may refuse or revoke the clearance required by 46 U.S.C. § 60105. Clearance may be granted upon the filing of a bond or other surety satisfactory to the Secretary.

Sec. 405. Warnings, detentions, dismissals, exclusion

Section 405 authorizes the Secretary to warn, detain, dismiss, or exclude the vessel from any port or offshore terminal under the jurisdiction of the United States if the vessel is detected to be in violation of the Convention, this Act or any relevant regulations.

This section also requires that if action is taken against a vessel registered in another country, the Secretary, in consultation with the Secretary of State, shall make the notifications required by the Convention.

Sec. 406. Referrals for appropriate action by foreign country

Notwithstanding sections 401, 402, 403, and 405, section 406 states that, if a violation of the Convention is committed by a vessel registered in or of the nationality of a country that is party to the Convention or by a vessel operated under the authority of a country that is a party to the Convention, the Secretary, acting in coordination with the Secretary of State, may refer the matter to the government of the country of the vessel's registry or nationality, or under whose authority the vessel is operating for appropriate action, rather than taking the actions otherwise required or authorized by this title.

Sec. 407. Remedies not affected

Section 407 requires that nothing in this Act shall limit, deny, amend, modify, or repeal any other remedy available to the United States. Also, nothing in this Act shall limit, deny, amend, modify, or repeal the rights under existing law, of any State, territory or possession of the United States, or political subdivision to regulate antifouling system. Compliance with the requirements of any State or political subdivision thereof respecting antifouling paint or any other antifouling system shall not relieve any person of the obligation to comply with the provisions of this Act.

Sec. 408. Repeal

Section 408 repeals The Organotin Antifouling Paint Control Act of 1988 (33 U.S.C. 2401 et seq.).

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

In the 111th Congress, the Subcommittee on Coast Guard and Maritime Transportation held a legislative hearing on June 10, 2009, entitled “Control of Anti-Fouling Systems on Ships”, to receive testimony regarding the control of antifouling systems on ocean-going vessels. The purpose of the hearing was to examine antifouling systems that have been applied to ships in the past and discuss the contamination that such systems have released into the marine environment. The hearing examined the International Convention on the Control of Harmful Anti-fouling Systems on Ships, which established a comprehensive regulatory framework to enable assessments of the safety of new antifouling systems to be made before they are approved for use.

On September 23, 2009, Representative James L. Oberstar introduced H.R. 3618. This bill has not been introduced in a previous Congress.

On September 24, 2009, the Committee on Transportation and Infrastructure met in open session to consider H.R. 3618, and ordered the bill reported favorably to the House by voice vote with a quorum present.

RECORD VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with consideration of H.R. 3618, or ordering the bill reported. A motion to order H.R. 3618 reported favorably to the House was agreed to by voice vote with a quorum present.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and section 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included in the report.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objective of this legislation are to implement the International Convention on the Control of Harmful Anti-fouling Systems on Ships, and to regulate the use of antifouling paints in the United States.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 3618 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 19, 2009.

Hon. JAMES L. OBERSTAR,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3618, the Clean Hull Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 3618—Clean Hull Act of 2009

H.R. 3618 would implement the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001. Under the bill, both the U.S. Coast Guard and the Environmental Protection Agency (EPA) would establish regulations to enforce the convention, which addresses water pollution caused by paints and other treatments to eliminate unwanted organisms from ship hulls.

Based on information provided by the two agencies, CBO estimates that implementing H.R. 3618 would have no significant effect on the federal budget. We expect that EPA costs (to enforce regulations regarding the manufacture and distribution of hull treatments that are harmful to the environment) and Coast Guard

expenses (to enforce regulations on vessel owners or operators that use such treatments) would be minimal because the agencies already have enforcement responsibilities under the convention. Those responsibilities would not change significantly under the bill.

The bill also would establish new criminal and civil penalties. CBO estimates that any new revenues resulting from penalties or related direct spending (of criminal penalties from the Crime Victims Fund) would be less than \$500,000 annually.

CBO has not reviewed H.R. 3618 for the presence of intergovernmental or private-sector mandates because section 4 of the Unfunded Mandates Reform Act excludes from the application of that act legislative provisions that are necessary for the ratification or implementation of international treaty obligations. CBO has determined that the legislation falls within that exclusion because it would implement an international treaty.

The CBO staff contact for this estimate is Deborah Reis. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH HOUSE RULE XXI

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits, as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. H.R. 3618 does not contain any earmarks, limited tax benefits, or limited tariff benefits under clause 9(e), 9(f), or 9(g) of rule XXI.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (P.L. 104-4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 3618 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (P.L. 104-1).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets):

**ORGANOTIN ANTIFOULING PAINT CONTROL ACT OF
1988**

[SECTION 1. SHORT TITLE.

[This Act may be cited as the “Organotin Antifouling Paint Control Act of 1988”.

[SEC. 2. FINDINGS; PURPOSE.

[(a) FINDINGS.—The Congress finds the following:

[(1) Antifouling paints containing organotin biocides are used to prevent the build-up of barnacles and other encrusting organisms on vessels.

[(2) Laboratory and field studies show that organotin is very toxic to marine and freshwater organisms at very low levels.

[(3) Vessels that are less than 25 meters in length and are coated with organotin antifouling paint account for a large amount of the organotin released into the aquatic environment.

[(4) The Environmental Protection Agency has determined that concentrations of organotin currently in the waters of the United States may pose unreasonable risks to oysters, clams, fish, and other aquatic life.

[(b) PURPOSE.—The purpose of this Act is to protect the aquatic environment by reducing immediately the quantities of organotin entering the waters of the United States.

[SEC. 3. DEFINITIONS.

[For purposes of this Act:

[(1) The term “Administrator” means the Administrator of the Environmental Protection Agency.

[(2) The term “antifouling paint” means a coating, paint, or treatment that is applied to a vessel to control fresh water or marine fouling organisms.

[(3) The term “estuary” means a body of water having an unimpaired connection with open sea, where the sea water is measurably diluted with fresh water derived from land drainage, and such term includes the Chesapeake Bay and estuary-type areas of the Great Lakes.

[(4) The term “organotin” means any compound of tin used as a biocide in an antifouling paint.

[(5) The term “person” means any individual, and partnership, association, corporation, or organized group of persons whether incorporated or not, or any government entity, including the military.

[(6) The term “qualified antifouling paint containing organotin” means an antifouling paint containing organotin that—

[(A) is allowed to be used under the terms of the final decision referred to in section 12(c); or

[(B) until such final decision takes effect, is certified by the Administrator under section 6 as having a release rate of not more than 4.0 micrograms per square centimeter per day.

[(7) The term “release rate” means the rate at which organotin is released from an antifouling paint over the long term, as determined by the Administrator, using—

[(A) the American Society for Testing Materials (ASTM) standard test method which the Environmental Protection Agency required in its July 29, 1986, data call-in notice on tributyltin compounds used in antifouling paints; or

[(B) any similar test method specified by the Administrator.

[(8) The term “retail” means the transfer of title to tangible personal property other than for resale, after manufacturing or processing.

[(9) The term “Secretary” means the Secretary of the Navy.

[(10) The term “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States.

[(11) The term “vessel” includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

[SEC. 4. PROHIBITION ON THE APPLICATION OF ORGANOTIN ANTIFOULING PAINTS ON CERTAIN VESSELS.

[(a) PROHIBITION.—Subject to section 12(d), and except as provided in subsection (b), no person in any State may apply to a vessel that is less than 25 meters in length an antifouling paint containing organotin.

[(b) EXCEPTIONS.—Subsection (a) shall not prohibit the application of a qualified antifouling paint containing organotin on—

[(1) the aluminum hull of a vessel that is less than 25 meters in length; or

[(2) the outboard motor or lower drive unit of a vessel that is less than 25 meters in length.

[SEC. 5. PROHIBITION OF CERTAIN ORGANOTIN ANTIFOULING PAINTS AND ORGANOTIN ADDITIVES USED TO MAKE SUCH PAINTS.

[(a) INTERIM PROHIBITION OF CERTAIN ORGANOTIN ANTIFOULING PAINTS.—Subject to section 12(d), no person in any State may—

[(1) sell or deliver to, or purchase or receive from, another person an antifouling paint containing organotin; or

[(2) apply to a vessel an antifouling paint containing organotin;

unless the antifouling paint is certified by the Administrator as being a qualified antifouling paint containing organotin.

[(b) PROHIBITION OF CERTAIN ORGANOTIN ADDITIVES.—Subject to section 12(d), no person in any State may sell or deliver to, or purchase or receive from, another person at retail any substance containing organotin for the purpose of adding such substance to paint to create an antifouling paint.

[SEC. 6. CERTIFICATION.

[(a) INITIAL CERTIFICATION.—Not later than 90 days after the date of the enactment of this Act, the Administrator shall certify each antifouling paint containing organotin that the Administrator determines has a release rate of not more than 4.0 micrograms per square centimeter per day on the basis of the information submitted to the Environmental Protection Agency before the date of the enactment of this Act in response to its July 29, 1986, data call-in notice on tributyltin or any other data call-in notice.

[(b) SUBSEQUENT CERTIFICATION.—After the initial period of certification required by subsection (a), and not later than 90 days after the receipt of information with regard to an antifouling paint containing organotin submitted—

[(1) in response to a data call-in referred to in subsection (a);

or

[(2) under any provision of law;

the Administrator shall certify such paint if, on the basis of such information, the Administrator determines that such paint has a release rate of not more than 4.0 micrograms per square centimeter per day.

[SEC. 7. MONITORING AND RESEARCH OF ECOLOGICAL EFFECTS.

[(a) ESTUARINE MONITORING.—The Administrator, in consultation with the Under Secretary of Commerce for Oceans and Atmosphere, shall monitor the concentrations of organotin in the water column, sediments, and aquatic organisms of representative estuaries and near-coastal waters in the United States. This monitoring program shall remain in effect until 10 years after the date of the enactment of this Act. The Administrator shall submit a report annually to the Speaker of the House of Representatives and to the President pro tempore of the Senate detailing the results of such monitoring program for the preceding year.

[(b) NAVY HOME PORT MONITORING.—The Secretary shall provide for periodic monitoring, not less than quarterly, of waters serving as the home port for any Navy vessel coated with an antifouling paint containing organotin to determine the concentration of organotin in the water column, sediments, and aquatic organisms of such waters.

[(c) NAVY RESEARCH OF ECOLOGICAL EFFECTS.—The Secretary shall continue existing Navy programs evaluating the laboratory toxicity and environmental risks associated with the use of antifouling paints containing organotin.

[(d) ASSISTANCE TO STATES.—To the extent practicable, the Administrator shall assist States in monitoring waters in such States for the presence of organotin and in analyzing samples taken during such monitoring.

[(e) FIVE-YEAR REPORT.—At the end of the 5-year period beginning on the date of the enactment of this Act, the Administrator

shall submit a report to the Speaker of the House of Representatives and to the President pro tempore of the Senate providing an assessment of—

[(1) the effectiveness of existing laws and rules concerning organotin compounds in ensuring protection of human health and the environment;

[(2) compliance with water quality criteria established pursuant to section 9 of this Act and any applicable water quality standards; and

[(3) recommendations for additional measures to protect human health and the environment.

[SEC. 8. ALTERNATIVE ANTIFOULANT RESEARCH.

[(a) RESEARCH.—The Secretary and the Administrator shall conduct research into chemical and nonchemical alternatives to antifouling paints containing organotin.

[(b) REPORT.—At the end of the 4-year period beginning on the date of the enactment of this Act, the Administrator, in consultation with the Secretary, shall submit a report to the Speaker of the House of Representatives and to the President pro tempore of the Senate detailing the results of the research conducted pursuant to subsection (a).

[SEC. 9. WATER QUALITY CRITERIA DOCUMENT.

[Not later than March 30, 1989, the Administrator shall issue a final water quality criteria document concerning organotin compounds pursuant to section 304(a) of the Federal Water Pollution Control Act (33 U.S.C. 1314(a)).

[SEC. 10. PENALTIES.

[(a) CIVIL PENALTIES.—(1) Any person violating section 4 or 5 shall be assessed a civil penalty of not more than \$5,000 for each offense.

[(2) After notice and an opportunity for a hearing, a person found by the Administrator to have violated section 4 or 5 is liable to the United States Government for the civil penalty assessed under subsection (a). The amount of the civil penalty shall be assessed by the Administrator by written notice. In determining the amount of the penalty, the Administrator shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

[(3) The Administrator may compromise, modify, or remit, with or without consideration, a civil penalty assessed under this section until the assessment is referred to the Attorney General.

[(4) If a person fails to pay an assessment of a civil penalty after it has become final, the Administrator may refer the matter to the Attorney General for collection in the appropriate United States district court.

[(b) CRIMINAL PENALTIES.—Any person knowingly violating section 4 or 5 shall be fined not more than \$25,000, or imprisoned for not more than one year, or both.

[SEC. 11. OTHER AUTHORITIES; STATE LAWS.

[(a) OTHER AUTHORITIES OF THE ADMINISTRATOR.—Nothing in this Act shall limit or prevent the Administrator from establishing

a lower permissible release rate for organotin under authorities other than this Act.

[(b) STATE LAWS.—Nothing in this Act shall preclude or deny any State or political subdivision thereof the right to adopt or enforce any requirement regarding antifouling paint or any other substance containing organotin. Compliance with the requirements of any State or political subdivision thereof respecting antifouling paint or any other substance containing organotin shall not relieve any person of the obligation to comply with the provisions of this Act.

[SEC. 12. EFFECTIVE DATES; USE OF EXISTING STOCKS.

[(a) IN GENERAL.—Except as provided in subsection (b), this Act shall take effect on the date of its enactment.

[(b) TERMINATION OF INTERIM PROHIBITION.—Section 5(a) shall remain in effect until a final decision regarding the release of organotin into the aquatic environment by antifouling paints, pursuant to the process initiated by the Administrator's Position Document 1 dated January 8, 1986—

[(1) is issued by the Administrator; and

[(2) takes effect.

[(c) FINAL DECISION DEFINED.—For purposes of subsection (b), a final decision shall be considered to have taken effect upon the date of the expiration of the time for making any appeal with respect to such decision or, in the case of any such appeal, the resolution of such appeal.

[(d) USE OF EXISTING STOCKS.—Notwithstanding the prohibitions contained in sections 4 and 5, the Administrator, not later than 90 days after the date of the enactment of this Act, shall provide reasonable times—

[(1) not to exceed 180 days after the date of the enactment of this Act, for the continued sale, delivery, purchase, and receipt of any antifouling paints containing organotin and organotin additives that exist before the date of the enactment of this Act; and

[(2) not to exceed one year after the date of the enactment of this Act, for the application of any antifouling paints containing organotin and organotin additives that exist before the date of the enactment of this Act.]

COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES, COMMITTEE ON SCIENCE
AND TECHNOLOGY,

Washington, DC, September 28, 2009.

Hon. JAMES L. OBERSTAR,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN OBERSTAR: I write to you regarding H.R. 3618, the Clean Hull Act of 2009. This legislation was initially referred to both the Committee on Transportation and Infrastructure and the Committee on Science and Technology.

I recognize and appreciate your desire to bring this legislation before the House in an expeditious manner, and, accordingly, I will waive further consideration of this bill in Committee. However,

agreeing to waive consideration of this bill should not be construed as the Committee on Science and Technology waiving its jurisdiction over H.R. 3618, or any similar legislation.

Further, I request your support for the appointment of Science and Technology Committee conferees during any House-Senate conference convened on this, or any similar legislation. I also ask that a copy of this letter and your response be placed in the legislative report on H.R. 3618 and the *Congressional Record* during consideration of this bill.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,

BART GORDON,
Chairman.

HOUSE OF REPRESENTATIVES, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,

Washington, DC, September 29, 2009.

Hon. Bart Gordon,
Chairman, Committee on Science and Technology, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN GORDON: I write to you regarding H.R. 3618, the "Clean Hull Act of 2009".

I appreciate your willingness to waive rights to further consideration of H.R. 3618, notwithstanding the jurisdictional interest of the Committee on Science and Technology. Of course this waiver does not prejudice any further jurisdictional claims by your Committee over this or similar legislation. Further, I will support your request to be represented in a House-Senate conference on those provisions over which the Committee on Science and Technology has jurisdiction in H.R. 3618.

This exchange of letters will be placed in the Committee Report on H.R. 3618 and inserted in the *Congressional Record* as part of the consideration of this legislation in the House. Thank you for the cooperative spirit in which you have worked regarding this matter and others between our respective committees.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,

JAMES L. OBERSTAR,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
Washington, DC, November 12, 2009.

Hon. JAMES L. OBERSTAR,
Chairman, Committee on Transportation and Infrastructure, Rayburn Bldg. House of Representatives, Washington, DC.

DEAR CHAIRMAN OBERSTAR: I write to you regarding H.R. 3618, the "Clean Hull Act of 2009."

H.R. 3618 contains provisions that fall within the jurisdiction of the Committee on Homeland Security. I recognize and appreciate your desire to bring this legislation before the House in an expedi-

tious manner and, accordingly, I will not seek a sequential referral of the bill. However, agreeing to waive consideration of this bill should not be construed as the Committee on Homeland Security waiving, altering, or otherwise affecting its jurisdiction over subject matters contained in the bill which fall within its Rule X jurisdiction.

Further, I request your support for the appointment of an appropriate number of Members of the Committee on Homeland Security to be named as conferees during any House-Senate conference convened on H.R. 3618 or similar legislation. I also ask that a copy of this letter and your response be included in the legislative report on H.R. 3618 and in the *Congressional Record* during floor consideration of this bill.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,

BENNIE G. THOMPSON,
Chairman.

HOUSE OF REPRESENTATIVES, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,

Washington, DC, November 12, 2009.

Hon. BENNIE G. THOMPSON,
Chairman, Committee on Homeland Security, Ford House Office Building, Washington, DC.

DEAR CHAIRMAN THOMPSON: I write to you regarding H.R. 3618, the "Clean Hull Act of 2009".

I agree that provisions in H.R. 3618 are of jurisdictional interest to the Committee on Homeland Security. I acknowledge that by forgoing a sequential referral, your Committee is not relinquishing its jurisdiction and I will fully support your request to be represented in a House-Senate conference on those provisions over which the Committee on Homeland Security has jurisdiction in H.R. 3618.

This exchange of letters will be inserted in the Committee Report on H.R. 3618 and in the *Congressional Record* as part of the consideration of this legislation in the House.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,

JAMES L. OBERSTAR,
Chairman.