Written Statement of
Peter T. Jenkins
Director of International Conservation, Defenders of Wildlife

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Madam Chairwoman and members of the subcommittee, I am Peter Jenkins, Director of International Conservation for Defenders of Wildlife. Thank you for this opportunity to speak with you today about the ongoing threat of non-native, invasive, aquatic species to our nation, and about the Federal government's response to them. Later in my testimony I also will speak about the preferred legislative solution to this threat offered by the National Environmental Coalition on Invasive Species, to which Defenders of Wildlife belongs.

Defenders of Wildlife was founded in 1947 and is a national non-profit organization with more than 500,000 members and supporters dedicated to the protection and restoration of all wild animals and plants in their natural communities. I come before you today to express our profound concern that we must act decisively to protect our nation's diverse native wildlife and plant resources - including our threatened and endangered species – from the threat of harmful invasive species, and to protect our economy from needless damage from this threat as well.

My personal involvement with invasive species began in 1990, working as Attorney and Policy Analyst, in the Food and Renewable Resources Program in Congress's former Office of Technology Assessment (OTA). I was a co-author of the 1993 report, *Harmful Non-Indigenous Species in the United States*, produced after a two-year massive study effort, which remains to this day an invaluable tool for fully grasping the scope of the severe challenge this nation faces from invasive species. (That report is out of print but still available online at: www.wws.princeton.edu/ota/ns20/alpha_f.html .)

Madam Chairwoman and members of the subcommittee, I am pleased to recall that the OTA report was requested in 1990 by the predecessors to this subcommittee - the then House Merchant Marine and Fisheries Committee's former Subcommittee on Fisheries and Wildlife Conservation and the Environment, and its former Subcommittee on Oceanography and the Great Lakes. The OTA study was further requested by Rep. John

Dingell, with endorsement by Rep. Jim Saxton, who sits on this subcommittee today, and former Rep. Amo Houghton.

The OTA report recommended several policy options to Congress to strengthen national laws for aquatic invasives. However, I am afraid to say that 14 years later the results have been marginal at best as far as preventing new imports of harmful aquatic species. In particular, the OTA report emphasized the need to adopt a more stringent and uniform national regulatory policy on prevention of harmful imports. Fourteen years later, the only progress towards this has come from a 1999 Executive Order by President Clinton and the National Invasive Species Council's (NISC) Management Plan of 2001. Both of these lack any new regulatory mandates, are unenforceable, and are routinely ignored by agencies. To have the force of law a national policy must be adopted by Congress.

The OTA report discussed the option of pre-import assessment, or "screening," for species proposed for importation in the pet, aquarium, aquaculture, live seafood, and other industries. That policy option has not been implemented and the country is still inadequately protected from harmful invasive species.

The United States' policy of allowing non-native aquatic species to be imported without first being screened for potential invasiveness or disease risk flies in the face of both common sense and scientific recommendations. The need for screening has been noted in every major report on invasive species policy for more than a decade. Development of such an aquatic imports screening process was a high priority in the 2001 NISC National Invasive Species Management Plan. However, there has been extremely little progress to date and NISC appears to have abandoned the effort entirely. I can vouch for this as I am a member of the NISC Aquatic Organism Screening Work Group and it has not met in over **two and 1/2 years**! For major categories of aquatic species the basic statutory authority is lacking under which pre-import screening could be implemented.

BACKGROUND FACTS

It is easy to provide numerous case studies of harmful invaders, but the first comprehensive assessment of all the animal species intentionally and legally imported into the country -- and the risks they pose -- is contained in the recent report by Defenders of Wildlife, on which I was lead author. That report is called, *Broken Screens - The Regulation of Live Animal Imports in the United States*, and I am delivering copies to the Subcommittee in this hearing. (Attached hereto as Attachment 1 is a page with website links to that full 56-page report, its 4 page Summary, and other supporting information; see www.defenders.org/animalimports.) Last week Defenders provided a copy of the full report and its summary to the office of each Member of Congress.

While Defenders' *Broken Screens* report addresses both terrestrial and aquatic animals together, I will briefly summarize its key findings on just aquatic animal imports:

- while many imported species are not identified to species level in the public records, we can confidently say that about 900 different, identified non-native, aquatic species

(vertebrate and invertebrate) were imported from 2000 through 2004, representing close to one billion individual organisms, primarily tropical fish

- Defenders' preliminary risk screening found that over 80 of those 900 imported species (or about 9%) presented potential risks of becoming invasive species and/or spreading disease, according to readily-accessible scientific sources. A more detailed screening would undoubtedly find even more risky species.

Two high-profile examples of imported wildlife that have become invasive include:

- **Red lionfish,** an aggressive, poison-spined, tropical pet fish originating from Indo-Pacific areas. They have formed wild populations off our Atlantic coast, where they sting divers and fishers, and harm native marine species as well. This is the first documented establishment of a non-native marine fish thought to have originated via private pet fish releases.

- **Suckermouth catfish,** which have become established in Florida, Texas, Nevada, Hawaii and specimens have been reported from at least six other states (Arizona, Colorado, Connecticut, Florida, Louisiana, and Pennsylvania). Suckermouth catfish create branching, horizontal burrows in stream or pond banks up to 4 feet deep. Their distinctive feeding and reproductive behaviors, coupled with high population densities, pose significant threats to native fish communities and aquatic habitats. According to a U.S. Army Corps of Engineers assessment, they "present a cumulative series of threats to aquatic ecosystems unprecedented in recent history."

Without additional protective regulations, more harmful aquatic species invasions like the red lionfish and the suckermouth catfish are virtually certain to occur, from among the 900+ different identified aquatic species we know are being imported, among the many other species that were not fully identified in the public records, and among the novel species that surely will be imported in future years. In short, our current regulatory approach provides the nation only a low level of protection from harmful imports.

With respect to non-native aquatic plants, the situation is as bad as it is for intentionally imported aquatic animals -- no risk screening is required and the reactive listing approach for Federal "noxious weeds" is grossly underfunded and slow. For example, the genus *Caulerpa* is well-recognized by marine plant experts as containing numerous aggressive invasive species. One of these species, *C. taxifolia*, an infamous, sea-suffocating Mediterranean invader with the nicknames "marine Astroturf" or "killer algae," has already invaded once in the United States, in southern California, where it eventually was eradicated after an extremely difficult, multi-million dollar, underwater fumigation effort.

In April 2003, I personally wrote and filed a detailed petition to USDA, under the petition provisions of the Federal Noxious Weed Act (FNWA), to list the whole *Caulerpa* genus as Federal noxious weeds and to broaden the current, very narrow, weed listing for *C. taxifolia.* That petition was endorsed by more than 105 scientists, officials, and others, including the leading national conservation organizations involved with noxious weeds and their impacts.

Four and one-half years later, USDA has not even responded "yes" or "no" to our *Caulerpa* listing petition, much less actually acted to block the commercial imports of risky species within this genus. Plainly, that agency is giving almost no priority to preventing aquatic plant invaders, but, by statute it is the only agency that can prevent international imports of harmful, weedy plants.

Indeed, for both Lacey Act animal species listing and FNWA plant listings, the respective agencies – the U.S. Fish and Wildlife Service and USDA – only have between 1 and 2 FTEs each working on the entire issue. Clearly, more resources must be dedicated to protecting our nation from harmful invasive species.

Our system is broken badly. We are playing ecological and economic Russian roulette, with international imports as the weapon.

POLICY RECOMMENDATIONS

The single most important thing Congress can do to fix this problem is to adopt a uniform protective standard to apply to all intentionally imported aquatic species. That protective standard should be as follows:

> *Federal agencies shall only allow imports and interstate commerce in non-native aquatic animals and plants that have been assessed by a responsible Federal official and determined to pose no or a low likelihood of causing harm to the environment, the economy, public health, or animal or plant health in the United States.*

Due to the supremacy of federal laws governing both international and interstate commerce under the Constitution, Art. 1, § 8, states are relatively powerless to impose a "tighter screen" against importation of an aquatic plant or animal species initially allowed into the country under federal law. Further, even if they have stricter laws on the books, no mainland state regularly staffs international entry ports with inspectors seeking to enforce state laws against Federally-allowed imports. Any one State can do very little to protect itself from a species introduced initially in another State. In this age of globalized trade, it is almost impossible for a State to effectively police interstate commerce, as well as the massive, non-commercial, private transportation of aquatic plants and animals, after a potentially harmful species is allowed anywhere inside the nation's borders. In short, governing the importation and interstate movement of non-native species is a distinctly federal function.

Only Congress can provide the needed mandate to the federal agencies to follow a new protective standard. Further, Congress should provide the relatively modest resources needed to do pre-import screening. Defenders of Wildlife's entire preliminary risk screening effort for 2,241 imported animals only required about four months of work and cost less than $30,000 in staff time and expenses. It relied on readily-accessed scientific and regulatory information, as well as expert opinion. It points the way to what the Federal government can and should, at the bare minimum, do in the future.

Preliminary risk screening is not overly difficult and it will not only protect our environment and native species, it also will save the country many millions of dollars in the long-run. In sum, our current *laissez-faire* regulatory approach is not cost-effective. Australia, New Zealand, and others do pre-import screening, all in compliance with international law. (Defenders' recent white paper, *International Law on Precautionary Approaches to National Regulation of Live Animal Imports*, provides additional information.)

LEGISLATIVE SOLUTIONS – AND A STRONGER ROLE FOR THE ANSTF

What legislation is needed to protect us against harmful invasive species? A coordinated comprehensive approach to aquatic invasives will serve best, an approach addressing both intentional imports, as in the *Broken Screens* report, but also addressing unintentional imports arriving through the ballast water and other pathways too. Bills introduced in the last several Congresses, under the name The National Aquatic Invasive Species Act (NAISA), at least attempted to frame this needed comprehensive approach, although the screening provisions in those bills were too weak to adequately protect the nation.

Defenders of Wildlife belongs to a coalition that is urging the needed strong, comprehensive approach. That coalition is the National Environmental Coalition on Invasive Species (NECIS), consisting of Defenders, Environmental Defense, Great Lakes United, National Audubon Society, National Wildlife Federation, and the Union of Concerned Scientists. NECIS works to promote the prevention, control and eradication of invasive alien species, particularly through sound policy solutions, primarily at the Federal and international levels. Together, our organizations have several million individual members and supporters.

I speak for NECIS when I urge you to take up the "Healthy Waters" legislative provisions we have proposed to prevent and manage aquatic invasive species, a copy of which is included with my testimony (Attachment 2). The attached portion of the Healthy Waters provisions relates only to the issue I have addressed in my testimony, that is, pre-import screening. The proposed language addressing pre-import screening would clarify, update, and strengthen the screening section in the current NAISA bill introduced in the Senate, S. 725 (which, as of now, has no House companion bill). The pre-import screening section in S. 725 unfortunately excludes the vast majority of imported species from risk screening, focusing only on the small number of novel species that have never before been imported.

In contrast, the pre-import screening language in the Healthy Waters proposal would create the needed new system to ensure that aquatic plants and animals imported in the future do not present significant risks. Its screening provisions would implement the uniform national protective standard I urged earlier in my testimony. It would cover potentially all imported species, while still allowing for broad exemptions for obviously safe, long-imported species. It includes numerous provisions designed to reassure individuals that their ownership of pets, hobby fish, and so on will not be interfered with; assure businesses engaged in wild animal imports that the screening process will be fair and timely; clarify for federal agencies that any existing screening processes will be incorporated in the new system; and assure the public and stakeholders that the process will be science-based, fully transparent, and in compliance with applicable international law.

The Aquatic Nuisance Species Task Force (ANSTF), one focus of this oversight hearing, will have a stronger role if the Healthy Waters provisions are enacted. NECIS proposes the ANSTF should serve as the lead coordinating body on the new screening system – which will take 2 to 3 years to make operational – and work with the U.S. Fish and Wildlife Service to ensure successful implementation of this new precautionary approach for aquatic invasive species. Past aquatic invasive species bills have put the National Invasive Species Council (NISC) in the lead coordinating role, but NECIS believes that the ANSTF is much more suited. It is an entity created to meet the needs of a statute, not by an Executive Order (as is NISC), it has a focused aquatics mission, and it is has a history, within its narrow mission, of being able to produce results.

I urge you to consider the House Transportation and Infrastructure Committee's recent work on ballast water bill language, as it could present a prime opportunity to achieve the needed coordinated comprehensive approach. That ballast water language, in Title V of H.R. 2830, the Coast Guard Authorization Act of 2007, could be combined with the Healthy Waters provisions on pre-import screening and with other favorable pathway management language as well.

CONCLUSION

The road to success for screening all intentionally imported aquatic species – and keeping the harmful ones out - is straightforward because the shipping ports, airports, and border crossings, where these legal and identified imports arrive, are limited to a few dozen in number. With enhanced direction from Congress and increased resources, federal agencies could readily close the gates to most harmful species. Indeed, compared to the other major pathways for harmful species introductions into the United States, intentional imports are the easiest to effectively regulate if Congress chooses to do so. This pathway does not pose the major technical and practical obstacles to success that regulating other invasion pathways does, such as ships' ballast water contaminated with microscopic organisms, or imported nursery plants bearing hidden pests and pathogens, or containers and wood packaging with "hitchhiking" insects hidden inside, or human travelers bearing new pathogens into the country. The "intentional imports" issue is "low-hanging fruit" in the world of invasive species prevention.

In addition to preventing new invasive species infestations, more resources must go to invasive species management programs, particularly in sensitive wildlife habitat. Defenders of Wildlife supports the Refuge Ecology Protection, Assistance, and Immediate Response Act, or "REPAIR" Act (H.R. 767) which establishes a grant program to spur public-private partnerships to battle invasive species, including aquatic invasives, on and around national wildlife refuges, and codifies a volunteer invasive species monitoring program. H.R. 767 would provide critical resources to alleviate the Number 1 common threat to wildlife refuges, as identified by refuge managers nationwide.

On behalf of Defenders of Wildlife, thank you for the opportunity to share our observations and perspectives on this critical issue, and to submit this testimony for the record at this hearing. Oversight of the ANSTF is valuable, but what the national really requires is new authorizing legislation and more resources to prevent harmful aquatic introductions through

all pathways, as well as more resources to battle existing invaders in critical areas like National Wildlife Refuges. We stand ready to work with this subcommittee and the rest of Congress to protect our nation from harmful invasive species.

Peter T. Jenkins, Defenders of Wildlife -- Attachment 1:

To download the full report *Broken Screens - The Regulation of Live Animal Imports in the United States*, its 4-page Summary, and additional information, see the Defenders of Wildlife Web page, www.defenders.org/animalimports . It also has links to the 10 items listed below:

Item 1) Identified Non-native Animal Species Imported into the U.S., by Taxa, 2000-2004. These are the non-native species identified in the LEMIS records to the species level, arranged by major taxonomic group.

Item 2) Alphabetical List of All Identified Non-native Animals Imported into the U.S., 2000-2004. This is an alphabetized master list of all the non-native species.

Item 3) Identified U.S. Native Animal Imports, by Taxa, 2000-2004. These are the species native to the United States, arranged by major taxonomic group.

Item 4) Partially Identified (Genus only) Animal Imports to the U.S, by Taxa, Only for Genera Not Represented on the Lists of Fully Identified Species, 2000-2004. These are genus records for imports that lacked identification to the species level. They do not duplicate genera included on the above species lists; the genera may include both U.S. native and non-native species.

Item 5) Preliminary Invasiveness and Disease Risk Annotations for Identified Non-native Animal Species Imported into the United States, 2000-2004. This table provides all the risk-annotated species on the non-native species import lists, grouped by taxa, and includes a key at the end to common abbreviations. This list is also printed in full in the full *Broken Screens* report as Appendix B.

Item 6) Global Register on Invasive Species (GRIS) Full Annotations for 191 Taxa Identified as Invasive or Potentially Invasive. This is the source for all of the risk annotations in the table in Item 5), above, labeled with the abbreviation "GRIS" that came from the database search conducted by the IUCN ISSG, on contract to Defenders for the *Broken Screens* report.

Item 7) Comparing U.S. Animal Import List to Global Invasive Species Data. This is the full March 2007 Consultant's Report by the IUCN ISSG to Defenders describing the GRIS database search with respect to animal imports into the U.S.

Item 8) Countries Exporting Live Animals to the United States, 2000-2004. This lists each of the source countries for U.S. imports.

Item 9) White Paper: *Economic Impacts of Live Animal Imports to the United States*. This paper by Defenders' natural resource economist, Timm Kroeger, Ph.D., covers the economic impacts of the live wild animal import trade and how to account for them.

Item 10) White Paper: *International Law on Precautionary Approaches to National Regulation of Live Animal Imports.* This paper by Defenders' director of international conservation, Peter T. Jenkins, assesses the role of international law, particularly the World Trade Organization's Sanitary and Phytosanitary Agreement, the Convention on Biological Diversity and the World Organization for Animal Health, as a backdrop to needed U.S. import policy reforms.

Peter T. Jenkins, Defenders of Wildlife -- Attachment 2:

National Environmental Coalition on Invasive Species

Defenders of Wildlife, Environmental Defense, Great Lakes United, National Audubon Society, National Wildlife Federation, Union of Concerned Scientists

The Healthy Waters Amendments to Prevent and Manage Aquatic Invasive Species

--- *PRE-IMPORT SCREENING-RELATED SECTIONS ONLY* ---

Summary/Rationale: Here we suggest elements (in both specific legislative language and in concept) that should be part of any comprehensive legislation on aquatic invasive species. On ballast water, for example, we suggest a way to build from the Ballast Water Management Act of 2005 (S. 363), but also include critical elements of the National Aquatic Invasive Species Act of 2005 (NAISA, S.770). Also, we suggest technical changes in several sections and update provisions that are no longer appropriate, four years after this legislation was first considered. We base our recommendations on the findings of two blue-ribbon scientific panels, in particular[1] and have also sought expert review for key portions of the text we suggest.

Summaries and Text

Bill Contents

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__. Preventing Intentional Imports of Aquatic Invasive Species

1. Pre-import Screening of New Species

A. Findings

Summary/Rationale: This section provides a concise set of findings appropriate to the provisions contained in both S.363 and S.770.

"Congress finds that:

(1) The introduction of aquatic invasive species into the Nation's waters is one of the worst threats to native species, aquatic ecosystems, and the industries and communities that depend upon them.

[1] Lodge, D.M., S. Williams, H. MacIsaac, K. Hayes, B. Leung, L. Loope, S. Reichard, R.N. Mack, P.B. Moyle, M. Smith, D.A. Andow, J.T. Carlton, and A. McMichael. 2006. "Biological invasions: recommendations for policy and management [Position Paper for the Ecological Society of America]." *Ecological Applications* 16:2035-2054; National Research Council. 2002. *Predicting Invasions of Nonindigenous Plants and Plant Pests*. (Washington, DC: National Academy Press).

(2) The direct and indirect costs of aquatic invasive species to the economy of the United States have been estimated at tens of billions of dollars per year.

(3) The rate of new invasions is expected to continue with the increase of international trade and commerce unless preventative measures are implemented.

(4) Climate change is projected to accelerate the spread and impact of aquatic invasive species already causing harm in the United States.

(5) Aquatic invasive species arrive via a variety of pathways, vectors, and routes and are causing harmful impacts in all 50 states, the District of Columbia and US territories.

(6) Preventing aquatic invasive species from being introduced is the most effective and least costly policy because, once established, new infestations are prohibitively expensive - and often impossible - to eradicate or control.

(7) Where prevention fails, ensuring coordinated early detection and rapid response to invasions is critical to limiting damage and the costs of control.

(8) Existing federal authority is failing to stop the spread of invasive species through ships' ballast water and other means and therefore current authority needs to be broadened, strengthened and coordinated.

(9) New authority is needed to ensure that intentionally imported aquatic species first undergo a preliminary risk screening prior to import to ensure those likely to be invasive are excluded, and to enhance federal and state efforts to detect and respond to new invasions.

(10) Relevant international treaties, including the United Nations Law of the Sea Convention, and the 2004 International Maritime Organization Ballast Convention, explicitly recognize the authority of states to enact more stringent domestic authority to prevent, minimize and ultimately eliminate the transfer of aquatic invasive species."

B. Definitions

Summary/Rationale: This section clarifies several important terms, including the distinction between "non-native" and "invasive" species - a difference crucial to industry groups. The definition of "invasive species" is modeled on the one in Executive Order 13112 – the definition used by the National Invasive Species Council and federal agencies, paving the way for more transparent and consistent federal policy.

Sec. 1003 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 is amended to substitute and/or add the following to the list of existing definitions:

AQUATIC ECOSYSTEMS.- The term "aquatic ecosystems" means freshwater, marine, and estuarine environments including inland waters and wetlands.

AQUATIC ORGANISMS. – The term "aquatic organisms" means living animals, plants, fungi, or microorganisms inhabiting or reproducing in aquatic

ecosystems, including seeds, eggs, spores, or other viable biological material thereof.

INVASIVE SPECIES. – The term "invasive species" means a non-native species whose introduction does or is likely to cause economic or environmental harm or harm to human health.

NON-NATIVE SPECIES. – The term "non-native species" means, with respect to a particular ecosystem, any species that is not native to that ecosystem.

SPECIES. – The term "species" means any fundamental category of taxonomic classification below the level of genus or subgenus and including a species, subspecies, and any recognized variety of animal, plant, fungus, or microorganism.

WATERS SUBJECT TO THE JURISDICTION OF THE UNITED STATES – The term "waters subject to the jurisdiction of the United States" means the navigable waters and the territorial sea of the United States, the exclusive economic zone, and the Great Lakes."

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D. Prevention of Intentional Imports of High-Risk Aquatic Species

1. Pre-Import Screening of New Species

Summary/Rationale: The United States does not require that species being imported be examined (or "screened") for invasiveness. This policy flies in the face of both common sense and scientific recommendations. The need for, and importance of, such a process has been noted in every major report on invasive species policy for more than a decade. Development of such a screening process was a high priority in the 2001 National Invasive Species Management Plan and for the National Invasive Species Council in FY05. However, there has been little progress to date, and for major categories of aquatic species statutory authority is lacking under which pre-import screening could be implemented. This section clarifies, updates, and strengthens the screening section in NAISA, S.770. That earlier section excluded the vast majority of imported species from screening, focusing only on entirely novel species that had never been "in trade" before.

This improved bill covers potentially all imported species, while allowing broad exemptions for obviously safe, long-imported species. It includes numerous provisions designed to ensure individuals that their ownership of pets, hobby fish, and so on is not threatened; to ensure businesses that the screening process will be fair and timely; to ensure agencies that any existing screening processes they may have will be acknowledged; and to ensure the public and stakeholders that the process will be science-based and fully transparent. It is drafted so as to comply with international treaties.

Sec. 1003 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4702) is amended to read as follows:

"SCREENING PROCESS FOR INTENTIONAL IMPORTS OF LIVE NON-NATIVE AQUATIC ORGANISMS TO THE UNITED STATES

(a) PURPOSES.- The purposes of the screening process established herein are to-

(1) prevent the introduction and establishment of harmful, non-native, aquatic invasive species in waters and aquatic areas of the United States and contiguous waters and aquatic areas of Canada and Mexico, including both species that have been previously imported into the United States and species that have not been previously imported, and including disease-carrying pathogens, parasites, and other organisms associated with any imported non-native aquatic species;

(2) establish a comprehensive, coordinated, process for evaluating and regulating all species of non-native aquatic plant and animals proposed for intentional import into the United States, a process designed to screen species that are not native anywhere in the nation, while having the minimum necessary impact to the legitimate industries that import non-native aquatic species, and while not threatening the ability of people to keep previously-owned aquatic organisms, whether animal or plant, that were legally acquired;

(3) provide a modern, scientific, screening and risk assessment process through which all Federal agencies with regulatory authority over the intentional import into the United States of any species of non-native aquatic plant or animal, and associated interstate commerce therein, shall utilize the best available scientific knowledge from the fields of biology, marine and freshwater ecology, veterinary medicine, public health, and other relevant fields in order to weigh the risks and potential benefits and to decide whether a species proposed for import should be allowed; and to

(4) invite maximum public participation; be self-supporting to a significant extent through fees charged to those who benefit from this trade; be responsive to new information; provide for regular Congressional oversight; and consider and promote the humane treatment of imported aquatic animals.

(b) IMPORT SCREENING GUIDELINES TO BE ISSUED.

(1) IN GENERAL. - Not later than 24 months after the date of enactment of this Act, the Aquatic Nuisance Species Task Force, after at least 5 public meetings nationwide, and after opportunities for public comment, and in consultation with the Director of the United States Fish and Wildlife Service (hereinafter, "the Director"), the heads of all Federal agencies with authority over imports of non-native aquatic species, the Invasive Species Council, States, tribes, regional bodies, aquatic invasive species experts, aquatic species disease experts, and other stakeholders,

shall issue guidelines, published in the Federal Register, for screening all proposed intentional imports of live, non-native, aquatic organisms into the United States. For purposes of this section only, the particular ecosystem of concern for screening non-native species is the entire United States, meaning that the guidelines are to be designed for screening only international imports of aquatic species that are not native anywhere in the nation.

(2) FACTORS.- When developing the guidelines under this subsection, and when later reviewing and revising the guidelines under subsection (i), the Task Force shall consider the purposes of this Act in subsection (a) and -

(A) the best available scientific knowledge from the fields of biology, marine and freshwater ecology, veterinary medicine, public health, and other relevant sciences with respect to the above factors, including, but not limited, to the most advanced science available for risk prediction and any risk assessment techniques developed by relevant U.S., other nations', and international organizations;

(B) the likelihood of the future spread of intentionally and unintentionally released species in the United States, including spread that may occur due to either human or natural agencies, and the potential for resulting economic or environmental harm, including but not limited to, harm to human, animal, or plant health;

(C) potential benefits associated with the species;

(D) likely future spread and impacts of any other species that may occur in association with a species proposed for import, including pathogens, parasites, shipment contaminants, and any other associated organisms;

(E) regional differences in the likelihood of invasion, spread, and associated impacts, including particularly vulnerable and unique areas;

(F) the potential for climate change to exacerbate the likelihood of invasion, spread, and associated impacts;

(G) the difficulty of controlling established populations of an aquatic invasive species in the wild, the difficulty of controlling aquatic disease outbreaks and parasitic infestations, and the environmental, economic, and health impacts of control efforts;

(H) the roles, if any, of captive breeding of, and interstate commerce in, non-native aquatic species in the United States in exacerbating or mitigating any risks those species may present,

(I) pertinent requirements of international trade treaties to which the United States is a party; and

(J) input from the public meetings, public comments, and consultations set forth in paragraph (1) of this subsection.

(3) ADDITIONAL REQUIREMENTS.– The screening guidelines shall at least include -

(A) guidelines for minimum information requirements in order for agencies to make the screening decisions under subsection (e);

(B) guidelines for minimizing unnecessary impacts on trade in those aquatic species that have been customarily imported to, or captive-bred in, the United States over many years, including providing exemptions from the screening requirements for –

(i) those specifically identified, long imported or long captive-bred, non-native species that are clearly not harmful to the economy, the environment, or to human, animal, or plant health; and

(ii) those specifically identified, long-imported or long captive-bred, non-native species that may be harmful but that already are so widespread nationally that future import prohibitions or restrictions clearly would have no practical utility;

(C) guidelines to ensure that decisions made under this Act are not interpreted to supersede pre-existing prohibited and restricted aquatic species lists, and do not alter any pre-existing quarantine requirements, or weaken any other environmental, health, sanitary or phytosanitary measure for aquatic species adopted under pre-existing Federal laws;

(D) guidelines for labels on shipping containers to require the identification of all live imported aquatic plants and animals by scientific name to the species level, provided that common names shall also be used when available but not in place of scientific names;

(E) guidelines for application forms by which any person or entity may request to import any non-native aquatic species, including approval for species that have never been imported before and for species that have been imported before but that are not exempt from screening under provision (b)(3)(B) of this subsection;

(F) guidelines for a simplified notification procedure and labeling guidelines to identify and facilitate subsequent imports of a species that occur after completion of the screening decision for that species under subsection (e);

(G) guidelines for setting application fees for proposed imports under subsection (j); and

(H) recognition of and support for any pre-existing screening guidelines for non-native aquatic species imports already formally adopted by Federal agencies, however only to the extent that such guidelines are consistent with the purposes and procedures in this Act.

(c) SCREENING CATEGORIES.- The screening process shall-

(1) be conducted at the species level using the species' scientific name, provided that common names shall also be used when available but not in place of scientific names; and

(2) designate whether a species proposed for import is a -

(A) "species with high or moderate probability of undesirable impacts" to areas within the boundaries of the United States or contiguous areas of neighboring countries;

(B) "species with clearly low or no probability of undesirable impacts" to areas within the boundaries of the United States or contiguous areas of neighboring countries; or a

(C) "species for which insufficient scientific information is available to determine the impact category" based on the minimum information guidelines to be issued pursuant to subsection (b)(3)(A).

(d) SCREENING PROCEDURES.-

(1) IN GENERAL. – Beginning not later than 6 months after the date of publication of the screening guidelines under subsection (b), all Federal agencies with regulatory authority over non-native aquatic species shall, in response to applications for approval for proposed imports into the United States, thereafter screen such species in accordance with the screening guidelines.

(2) SCREENING AUTHORITY AND DELEGATION.- The Director is hereby authorized to, and shall, evaluate, screen, and regulate the proposed import of any non-native aquatic species under this section for which no other Federal agency has authority to regulate the import of that species, or if an agency with authority delegates the screening to the Director under subsection (h).

(3) MULTIPLE JURISDICTION.- If more than 1 agency has jurisdiction over the import of a non-native aquatic species, the agencies shall conduct only 1 coordinated screening process for that species in accordance with the memorandum of understanding described in subsection (g).

(4) AGENCY-INITIATED SCREENING.– At his or her discretion, the Director or other head of any Federal agency with regulatory authority over non-native aquatic species may initiate a screening process for a species for which no other person or entity has filed an application for import approval. This may include, but is not limited to, screening of any non-native aquatic species that are being captive bred and raised in the United States, for which the screening shall determine whether the species should be, or continue to be, introduced into interstate commerce.

(e) SCREENING DECISIONS.- Beginning 30 months after the date of enactment of this Act, no further live organisms of any aquatic species shall be imported into the United States without either a prior screening decision for that species in accordance with this subsection or a specific exemption from screening

for that species in the published screening guidelines issued by the Aquatic Nuisance Species Task Force under subsection (b)(3)(B). Based on the screening process and in accordance with this Act, a Federal agency with authority over the import, or the Director, shall issue a written decision to -

(1) prohibit imports of any "species with high or moderate probability of undesirable impacts," as categorized under subsection (c)(2)(A), unless an exception is granted by the Director by written permit under subsection (f)(4) for specified shipments;

(2) allow imports of any "species with clearly low or no probability of undesirable impacts," as categorized under subsection (c)(2)(B);

(3) provisionally prohibit imports of any "species for which insufficient scientific information is available to determine the impact category," as categorized under subsection (c)(2)(C), unless an exception is granted by the Director by written permit under subsection (f)(4) for specified shipments; and further provided that this decision shall include a description by the agency of the information that would be needed to determine the impact category for that species; and

(4) seek to make determinations under this subsection not later than 180 days after receiving a fully completed application to import a live aquatic species.

(f) PROHIBITED ACTS AND EXCEPTIONS TO PROHIBITIONS.

(1) PROHIBITIONS REGARDING SHIPPING CONTAINERS.- It shall be unlawful to import any live aquatic organism into the United States that is not clearly and accurately labeled on the shipping container -

(A) by scientific name to the species level, pursuant to the labeling guidelines described in subsection (b)(3)(D); and

(B) as to the screening category decision made for that species, pursuant to the guidelines described in subsection (b)(3)(F).

(2) PROHIBITED ACTS.– It shall be unlawful and prohibited to import any live aquatic organism except as provided in this Act. It shall further be unlawful and prohibited to knowingly possess, release, sell or offer to sell, purchase or offer to purchase, barter for or offer to barter for, or provide or offer for breeding, any live aquatic organism, or any offspring, descendant, viable seed, viable egg, or other viable reproductive part thereof, that was imported or placed in interstate commerce in violation of this section. It is further unlawful to attempt any of these prohibited acts.

(3) EXCEPTION FOR "GRANDFATHERED" ORGANISMS.– Any person or entity in lawful prior possession of one or more live organisms, or viable seeds, viable eggs, or other viable reproductive parts thereof, of a species of aquatic plant or animal that is then prohibited under this section is not prohibited from continuing to possess them for their remaining existence. However, no person or entity may release such

individual organisms or their offspring, descendant, viable seed, viable egg, or other viable reproductive parts, or sell or offer to sell them, purchase or offer to purchase them, barter for or offer to barter for them, or provide or offer to provide them for breeding.

(4) EXCEPTION FOR QUALIFIED INSTITUTIONS.- The Director may, by written permit, allow limited exceptions to the prohibitions in this Act in order to allow the importation, interstate commerce, possession, sale, exchange, breeding, and captive holding of specified shipments or individuals of species that are otherwise prohibited under this section by accredited zoos, botanical gardens, and aquaria, and qualified educational, scientific, medical, veterinary, governmental, research, and other institutions, in those cases where the Director specifically finds that the exception will not undermine the purposes of this Act, and provided that the Director may impose any appropriate quarantine requirements and other restrictions necessary to prevent harm.

(g) MEMORANDUM OF UNDERSTANDING.-

(1) IN GENERAL.- The Aquatic Nuisance Species Task Force, the Director, and the heads of all agencies with regulatory authority over the import of live non-native aquatic organisms into the United States shall enter into a memorandum of understanding regarding the screening requirements of this section.

(2) CONTENTS.- The memorandum of understanding shall contain, at a minimum-

(A) a description of the relationship among and the responsibilities of the agencies, including a process designating a lead agency in cases in which multiple agencies may have regulatory authority over the screening of an aquatic species under this Act;

(B) the process by which the Director will accept delegations of screening duties from other agencies with authority that choose to delegate their screening duties under this Act to the Director, under subsection (h); and

(C) the process by which agencies with authority and the Aquatic Nuisance Species Task Force will coordinate, share, and make public the information relied on in their screening processes.

(h) DELEGATION TO DIRECTOR.- Any Federal agency with regulatory authority over live non-native aquatic organisms may delegate to the Director the screening duties under this Act.

(i) REVIEW AND REVISION.-

(1) IN GENERAL.- Six years after the date of enactment of this Act, and every 3 years thereafter, the Aquatic Nuisance Species Task Force, following at least 3 public meetings and opportunities for public comment, and in consultation with the Director, the heads of all Federal agencies with regulatory authority over non-native aquatic species, and in

consultation with the Invasive Species Council, States, tribes, regional bodies, aquatic invasive species experts, aquatic species disease experts, and other stakeholders, shall review and consider revisions to the screening guidelines under this section.

(2) REPORT.- The Task Force shall also report at the same time to Congress on -

(A) its evaluation of the effectiveness of the screening processes carried out under this section;

(B) the consistency of the application of the screening process by agencies; and

(C) recommendations for revisions of the process.

(j) FEES AUTHORIZED.– Beginning no later than 30 months after the date of enactment of this Act, the Director and the heads of other agencies with authority over live non-native aquatic species subject to screening under this Act shall set by regulation, and begin to collect, application fees to offset a substantial portion of that agency's cost of screening of proposed imports, to assist in ensuring that funding and resources are available to conduct the screening in a timely manner.

(k) INFORMATION AVAILABLE.- A Federal agency conducting a screening under this section shall make the results of the process available to the public through notices published in the Federal Register, website announcements, and any other appropriate means. The Aquatic Nuisance Species Task Force shall promulgate regularly updated lists of all aquatic species that have been screened, categorized, exempted, or otherwise regulated under this Act. No information about the identification, biology, risks, or related information for any screened or exempted species shall be withheld from public disclosure because of a claim that it is a trade secret, confidential business information, or other similar claim.

(l) CHANGING THE CATEGORY OF SPECIES.-

(1) IN GENERAL. – Beginning three years after the date of enactment of this Act, a petition may be submitted by any person to change the category of any species that has been previously exempted or previously evaluated for import under this Act, including but not limited to species that were provisionally prohibited as "species for which insufficient scientific information is available to determine the impact category," as categorized under subsection (c)(2)(C) and (e)(3), or that were previously evaluated under pre-existing regulatory authority other than this Act, provided that:

(A) the petition is addressed to the Federal agency with regulatory authority over import of that species or, if that is not determined, to the Director; and

(B) the petition contains new scientific information that was not considered when the species was previously categorized or exempted.

(2) RESPONSE TO PETITION.- The Federal agency with authority shall act on such petitions by:

(A) publishing in the Federal Register a notice of such petitions within 180 days of their submission, and soliciting public comments;
(B) making a decision on whether the petition presents sufficient reliable scientific information to warrant reconsideration of the category or exemption into which the species was assigned and, if so, to which other category the species will be assigned; and
(C) seeking to make such a decision within 180 days of the Federal Register notice described in subparagraph (A) through a notice of decision in the Federal Register and by informing the petitioner of the final action taken on the petition.

(m) RULEMAKING AUTHORITY.- The Director and each head of a Federal agency with regulatory authority over the import of live non-native aquatic organisms shall adopt such regulations as are necessary to implement this section.

(n) PUBLIC OUTREACH.- The Director and each head of a Federal agency with regulatory authority over the import of live non-native aquatic organisms shall make appropriate efforts, taking into account the agency's available resources, to notify known importers and captive breeders of non-native aquatic species, other stakeholders, and the public generally, of the requirements under this Act; and take other appropriate steps to minimize unnecessary disruptions to the import, interstate commerce in, captive breeding, and possession of non-native aquatic animals and plants affected by this Act, so long as consistent with the purposes of this Act.

(o) HUMANE CONSIDERATIONS.- The Director and each head of a Federal agency with authority over the import of live non-native aquatic organisms shall make appropriate efforts, taking into account the agency's available resources, to mitigate the possibility that the new requirements of this Act initially may temporarily result in more refusals of aquatic animal shipments at borders and ports of entry due to failure of the shipments to comply with this Act. They shall seek to ensure that adequate facilities, personnel, and information campaigns for shippers are in place to prevent any resulting humane problems.

(p) PENALTIES.-

(1) CIVIL PENALTY.- Any person that violates subsection (f) shall be liable for a civil penalty in an amount not to exceed $50,000.

(2) CRIMINAL PENALTY.- Any person that knowingly violates subsection (f) is guilty of a class C felony.

(q) EFFECT ON OTHER LAWS.-

(1) GENERAL.- Nothing in this section shall be construed to supersede pre-existing prohibited and restricted species lists, or any quarantine requirements that may apply to any species allowed to be imported under this Act, or any other environmental, health, sanitary, or phytosanitary

measures adopted for aquatic species under pre-existing Federal laws. Nothing in this Act shall be construed to affect any Federal agency duties or obligations under the Endangered Species Act, the Convention on International Trade in Endangered Species, or other Federal law or other international conservation agreement to which the United States is a party.

(2) MORE PROTECTIVE LAWS.- A State, the District of Columbia, or a territory of the United States may adopt a law, regulation, or policy that requires a more protective screening process for aquatic species that are not native to that State, District, or territory than the screening process established under this Act."