



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 14 2008

THE ADMINISTRATOR

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Madam Speaker:

The United States Environmental Protection Agency is pleased to submit the enclosed legislative proposal to implement an important new treaty for the protection of aquatic life and the marine environment. The International Convention on the Control of Harmful Anti-Fouling Systems on Ships was adopted at the International Maritime Organization in October 2001 and signed by the United States on December 12, 2002. The Convention is intended to reduce the negative environmental effects associated with anti-fouling systems. Anti-fouling systems, usually paints containing pesticidal ingredients, are used to prevent the growth of aquatic organisms, like algae and barnacles, on ships' hulls. The presence of these fouling organisms on hulls reduces fuel efficiency and increases air pollution. This proposal includes an amendment to the Organotin Antifouling Paint Control Act of 1988 (by replacing it in its entirety) to implement the Convention, and a section-by-section analysis of the amendment. This package is being submitted in parallel with the transmittal package seeking the advice and consent of the Senate for ratification of the Convention.

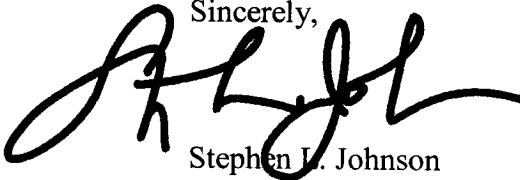
The leaching of pesticides from anti-fouling paints on hulls can have impacts beyond their intended effect. In particular, organotin anti-fouling paints, which have until recently dominated the market, are extremely toxic to "nontarget" organisms and remain in the aquatic environment for a long time after introduction. Organotin compounds are known endocrine disruptors and cause reproductive abnormalities in some marine species. The Convention, when it enters into force, will prohibit the use of organotin antifouling paints and mandate their removal from hulls (unless overcoated to prevent leaching), and will prevent vessels treated with organotins from entering our waters. In addition, the Convention establishes a process for future consideration of controls on other anti-fouling systems that may be harmful to the environment and human health.

The Convention will enter into force 12 months after it has been ratified by 25 countries that are the registries for ships accounting for a cumulative 25% share of world shipping tonnage. With Panama's ratification on September 17, 2007, 25 countries, representing approximately 38% of the world's shipping tonnage, have now ratified the Convention. Accordingly, the Convention will enter into force on September 17, 2008. The shipping industry has recognized the change that is coming and has been adopting alternatives to organotin. All U.S. pesticide registrations for organotin anti-fouling paints have been cancelled.

The U.S. Government played a leadership role in negotiating the Convention. U.S. ratification of the Convention will affirm our leadership role in international protection of the marine environment. In addition, it would be highly desirable for the U.S. to be a Party to the Convention when it enters into force, so that U.S. participation is ensured in the decision-making on proposals for future controls under the new treaty.

Thank you for consideration of this amendment to the Organotin Antifouling Paint Control Act of 1988. The Office of Management and Budget advises that enactment of this proposal would be in accordance with the President's program.

We look forward to working with you and all Members of Congress to enact this legislation. If you have any questions, please contact me or your staff may call Ms. Christina Moody in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-0260.

Sincerely,

Stephen L. Johnson

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 14 2008

THE ADMINISTRATOR

The Honorable Richard B. Cheney
The President of the Senate
Washington, D.C. 20510

Dear Mr. President:

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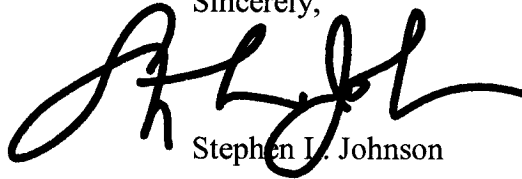
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Sincerely,

A handwritten signature in black ink, appearing to read 'S. L. Johnson', written in a cursive style.

Stephen L. Johnson

Enclosures

THE ANTI-FOULING SYSTEM CONTROL ACT OF 2007

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

SECTION 1. SHORT TITLE.

This Act may be cited as The Anti-Fouling System Control Act of 2007.

SECTION 2. AMENDMENTS TO THE ORGANOTIN ANTI-FOULING PAINT CONTROL ACT OF 1988

The title of the Organotin Antifouling Paint Control Act of 1988 (33 U.S.C. §§ 2401 - 2410) is renamed as "The Anti-Fouling System Control Act of 2007" and is amended by deleting all that appears after the title and by inserting the following:

"TITLE I. GENERAL PROVISIONS

Section 1. Purpose.

The purpose of this Act is to reduce or eliminate adverse effects on the marine environment and human health caused by anti-fouling systems, and to implement the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001.

Section 2. Definitions.

For purposes of this Act, except where otherwise specified,

- (1) "Administrator" means the Administrator of the Environmental Protection Agency.
- (2) "Anti-fouling system" means a coating, paint, surface treatment, surface or device that is used or intended to be used on a ship to control or prevent attachment of unwanted organisms.
- (3) "Convention" means the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001, including its Annexes, and including any amendments to the Convention or Annexes which have entered into force for the United States.
- (4) "Gross tonnage" means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 to the International Convention on Tonnage Measurement of Ships, 1969.
- (5) "International voyage" means a voyage by a ship entitled to fly the flag of one country to or from a port, shipyard, or offshore terminal under the jurisdiction of another country.
- (6) "Organotin" means any compound or additive of tin bound to an organic ligand, which is used or intended to be used as a biocide in an anti-fouling system.
- (7) "Person" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not, any department, agency or instrumentality of the United States, except as provided in Section 3(b)(2), or any other government entity.
- (8) "Secretary" means the Secretary of the Department in which the Coast Guard is operating.
- (9) "Sell or distribute" means to distribute, sell, offer for sale, hold for distribution, hold for sale,

hold for shipment, ship, deliver for shipment, release for shipment, import, export, hold for import, hold for export or receive and (having so received) deliver or offer to deliver.

(10) "Ship" means a vessel of any type whatsoever, including hydrofoil boats, air cushion vehicles, submersibles, floating craft, fixed or floating platforms, floating storage units (FSUs) and floating production, storage and off-loading units (FPSOs).

(11) "Territorial sea" means the territorial sea as described in Presidential Proclamation No. 5928 of December 27, 1988.

(12) "United States" means the several States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction; and

(13) "Use" includes application, re-application, installation, or any other employment of an anti-fouling system.

Section 3. Application.

(a) Included ships. This Act shall apply to any ship:

(1) of United States registry or nationality, or one operated under the authority of the United States, wherever located;

(2) any other ship (not specified in subparagraph 1), while:

(A) in the internal waters

(B) in any port, shipyard or offshore terminal

(C) lightering in the territorial sea or

(D) to the extent consistent with international law, while anchoring in the territorial sea of the United States.

(b) Excluded ships. This Act shall not apply to:

(1) 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

(2) 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 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 Department or Agency under which such ships operate. In no event shall these requirements apply to combat-related ships.

(c) This Act shall also apply to persons as specified in Section 13.

(d) Notwithstanding any other provision of law, no person may apply or otherwise use in a manner inconsistent with the Convention, an anti-fouling system on any ship to which this Act applies after the Convention enters into force for the United States.

Section 4. Administration and enforcement.

(a) Unless otherwise specified in this Act, with respect to ships, the Secretary shall administer and enforce the Convention and this Act.

(b) Except with respect to section 13(b) and (c), the Administrator shall administer and enforce title III of this Act.

(c) The Administrator and the Secretary are each authorized to prescribe and enforce regulations as may be necessary to carry out their respective responsibilities under this Act.

Section 5. Compliance with international law.

Any action taken under this Act shall be taken in accordance with treaties to which the United States is a party and other international obligations of the United States.

Section 6. Utilization of personnel, facilities, or equipment of other Federal departments and agencies.

The Secretary and Administrator may utilize by agreement, with or without reimbursement, personnel, facilities, or equipment of other Federal departments and agencies in administering the Convention, this Act, or any regulations thereunder.

TITLE II. IMPLEMENTATION OF THE CONVENTION

Section 7. Certificates.

(a) Upon entry into force of the Convention, any ship of 400 gross tonnage and above that engages in one or more international voyages (except fixed or floating platforms, FSUs, and FSPOs) shall obtain an International Anti-fouling System Certificate.

(b) Upon entry into force of the Convention, on a finding that a successful survey required by the Convention has been completed, a ship of 400 gross tonnage and above that engages in one or more international voyages (except fixed or floating platforms, FSUs, and FSPOs) shall be issued an International Anti-fouling System Certificate. The Secretary is authorized to issue Certificates required by this section. The Secretary may delegate this authority to an organization that the Secretary determines is qualified to undertake such responsibility.

(c) The Certificate shall be maintained as required by the Secretary.

(d) A Certificate issued by a country which is a Party to the Convention has the same validity as a Certificate issued by the Secretary under this section.

(e) Notwithstanding subsection (a), 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, may demonstrate compliance through other appropriate documentation deemed acceptable by the Secretary.

Section 8. Declaration.

- (a) Upon entry into force of the Convention, a ship of 24 meters or more in length, but less than 400 gross tonnage, engaged on an international voyage (except fixed or floating platforms, FSUs, and FSPOs) must carry a Declaration signed by the owner or owner's authorized agent. Such Declaration shall be accompanied by appropriate documentation, such as a paint receipt or a contractor invoice, or contain an appropriate endorsement.
- (b) The Declaration must contain a clear statement that the anti-fouling system on the ship complies with the Convention. The Secretary is authorized to prescribe the form and other requirements of the Declaration.

Section 9. Other compliance documentation.

Notwithstanding sections 7 and 8 of this title, the Secretary may require ships to hold other documentation deemed necessary to verify compliance with this Act.

Section 10. Process for considering additional controls.

- (a) The Administrator may, as appropriate:
 - (1) 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 anti-fouling systems;
 - (2) evaluate any risks of adverse effects on non-target organisms or human health presented by a given anti-fouling system such that the amendment of Annex 1 of the Convention may be warranted;
 - (3) undertake an assessment of relevant environmental, technical, and economic considerations necessary to evaluate any proposals for new or additional controls on anti-fouling systems under the Convention, including benefits in the United States and elsewhere, associated with the production and uses in the United States and elsewhere, of the subject anti-fouling system; and
 - (4) develop recommendations based on such assessment.
- (b) Upon referral of any anti-fouling system to the technical group described in Article 7 of the Convention for consideration of new or additional controls, the Secretary of State shall convene a public meeting of the Shipping Coordinating Committee, for the purpose of receiving information and comments regarding controls on such anti-fouling system. The Secretary of State shall publish advance notice of such meeting in the Federal Register and on the State Department's website. 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.
- (c) 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 paragraph (b) and announce the availability of such report in the Federal Register. The Administrator shall provide

an opportunity for 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 paragraph (a).

Section 11. Scientific and technical research and monitoring; communication and information.

The Secretary, Administrator and Administrator of NOAA are authorized to undertake scientific and technical research and monitoring pursuant to Article 8 of the Convention and to promote the availability of relevant information concerning:

- (a) Scientific and technical activities undertaken in accordance with the Convention;
- (b) Marine scientific and technological programs and their objectives; and
- (c) The effects observed from any monitoring and assessment programs relating to anti-fouling systems.

Section 12. Communication and exchange of information.

With respect to those anti-fouling systems regulated by the Administrator, the Administrator shall provide to those Parties to the Convention who request 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 anti-fouling system; provided that this section shall not be construed to authorize the provision of information whose disclosure is otherwise prohibited by law.

TITLE III. ANTI-FOULING SYSTEMS CONTAINING ORGANOTIN

Section 13. Prohibitions.

- (a) Notwithstanding any other provision of law, no person may:
 - (1) sell or distribute in domestic or international commerce organotin or an anti-fouling system containing organotin;
 - (2) manufacture, process, or use organotin to formulate an anti-fouling system; or
 - (3) apply an anti-fouling system containing organotin on any ship to which this Act applies.
- (b) Except as provided in subsection (c), as of January 1, 2008, no ship shall bear on its hull or outer surface any anti-fouling system containing organotin, regardless of when such system was applied, unless that ship bears an overcoating which forms a barrier to organotin leaching from the underlying anti-fouling system.
- (c) Subsection (b) shall not apply to fixed and floating platforms, FSUs or FSPOs which were constructed prior to January 1, 2003, and which have not been in dry dock on or after that date.

(d) This Section shall not apply to:

- (1) the sale, distribution, or use pursuant to any agreement between the Administrator and any person which results in an earlier prohibition or cancellation date than specified in this Act, or
- (2) the manufacture, processing, formulation, sale, distribution, or use of organotin or anti-fouling systems containing organotin used or intended for use only for sonar domes or in conductivity sensors in oceanographic instruments.

Section 14. Additional authority of the Administrator.

The Administrator, in consultation with the Secretary, may establish, as necessary, terms and conditions regarding the removal and disposal of anti-fouling systems prohibited or restricted under this Act.

TITLE IV. ENFORCEMENT AND VIOLATIONS

Section 15. General prohibition, cooperation and enforcement, detection and monitoring measures.

- (a) It is unlawful to act in violation of the Convention, this Act, or any regulation issued thereunder.
- (b) The Secretary is authorized to cooperate with other parties to the Convention in the detection of violations and in enforcement of the Convention. Nothing in this subparagraph affects or alters requirements under any other law.

Section 16. Investigations and inspections.

- (a) The Secretary is authorized to conduct investigations and inspections regarding a ship's compliance with this Act or the Convention.
- (b) Upon receipt of information that, with respect to a ship, a violation of the Convention or this Act has occurred, the Secretary may cause the matter to be investigated. In any investigation under this section, the Secretary may issue subpoenas to require the attendance of any witness and the production of documents and other evidence. In case of refusal to obey a subpoena issued to any person, the Secretary may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance.
- (c) Upon completion of the investigation, the Secretary may take whatever further action the Secretary considers appropriate under the Convention or this Act.

Section 17. EPA enforcement.

- (a) Inspections, subpoenas. For purposes of enforcing the provisions of Title III, officers or employees of the Environmental Protection Agency or of any State duly designated by the Administrator are authorized to enter at reasonable times (A) any location where organotin or anti-

fouling systems containing organotin are held or may be held for distribution, sale or use, for the purpose of inspecting and obtaining samples of organotin packaged, labeled, and released for shipment, and samples of any containers or labeling for such organotin, or (B) any location where there is being held or may be held organotin which has been banned for the purpose of determining compliance with the Convention, this Act, or any regulation issued thereunder. In any investigation under this section, the Administrator may issue subpoenas to require the attendance of any witness and the production of documents and other evidence. In case of refusal to obey a subpoena issued to any person, the Administrator may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance.

(b) Stop sale, use, or removal orders. Consistent with section 4 of this Act, whenever any organotin is found by the Administrator and there is reason to believe that a seller, distributor or user has violated or is in violation of any provisions of Title III, or that such organotin has been or is intended to be distributed, sold, or used in violation of any such provision, the Administrator may issue a stop sale, use or removal order to any person who owns, controls or has custody of such organotin and after receipt of such order no person shall sell, distribute, use or remove the organotin described in the order except in accordance with the provisions of the order.

TITLE V. ACTION UPON VIOLATION, PENALTIES, AND REFERRALS

Section 18. Criminal enforcement.

Any person who knowingly violates the Convention, this Act, or any regulation issued thereunder shall be fined under Title 18, United States Code, or imprisoned not more than six (6) years, or both.

Section 19. Civil enforcement.

- (a) Any person who is found by the Secretary or the Administrator, as appropriate, after notice and an opportunity for a hearing, to have:
- (1) violated the Convention, this Act, or any regulation issued thereunder shall be liable to the United States for a civil administrative penalty, not to exceed \$32,500 for each violation; or
 - (2) made a false, fictitious, or fraudulent statement or representation in any matter in which a statement or representation is required to be made to the Secretary under the Convention, this Act, or any regulations issued thereunder, shall be liable to the United States for a civil administrative penalty, not to exceed \$50,000 for each statement or representation. This subsection shall not limit or affect the authority of the United States under section 1001 of title 18, United States Code.
- (b) The amount of the civil administrative penalty shall be assessed by the Secretary or Administrator, as appropriate, by written notice.
- (c) Any person who violates the Convention, this Act, or any regulation issued thereunder shall be subject to a civil judicial penalty not to exceed \$32,500 per day for each violation.

(d) A civil administrative or judicial penalty imposed under paragraphs (a)(1) or (c) against the owner or operator of a recreational vessel, as that term is defined in 46 U.S.C. 2101, for a violation of the Convention, this Act, or any regulation issued thereunder, involving that recreational vessel, shall not exceed \$5000.

(e) Any action to impose a civil judicial penalty under this section may be brought in the district court of the United States for the district in which the defendant is located, resides, or transacts business, and such court shall have jurisdiction to assess such penalty. Such action may be brought by the Attorney General at the request of the Secretary or Administrator, as appropriate.

(f) Each day of a continuing violation shall constitute a separate violation. In determining the amount of the penalty, the Secretary or Administrator, or court, shall take 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. An amount equal to not more than one-half of such penalties may be paid to the person giving information leading to the assessment or imposition of such penalties.

(g) Prior to referral to the Attorney General, the Secretary or Administrator, as appropriate, may compromise, modify, or remit, with or without conditions, any civil administrative penalty which is subject to assessment or which has been assessed under this section.

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

(2) Any person who fails to pay on a timely basis an assessment of a civil administrative penalty shall be required to pay, in addition to such amount and interest, attorneys 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 which are unpaid as of the beginning of such quarter.

Section 20. Liability in rem.

A ship operated in violation of the Convention, this Act, or any regulation issued thereunder is liable in rem for any fine imposed under section 18 or civil penalty assessed pursuant to section 19, and may be proceeded against in the United States district court of any district in which the ship may be found.

Section 21. Ship clearance or permits; refusal or revocation; bond or other surety.

If any ship subject to the Convention, or this Act, its owner, operator, or person in charge is liable for a fine or civil penalty under sections 18 or 19, or if reasonable cause exists to believe that the ship, its owner, operator, or person in charge may be subject to a fine or civil penalty under sections 18 or 19, the Secretary may refuse or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91). Clearance may be granted upon the filing of a bond or other surety

satisfactory to the Secretary.

Section 22. Warnings, detentions, dismissals, exclusion.

(a) If a ship is detected to be in violation of the Convention, this Act or any regulation issued thereunder, the Secretary may warn, detain, dismiss, or exclude the ship from any port or offshore terminal under the jurisdiction of the United States.

(b) If action is taken pursuant to paragraph (a), the Secretary, in consultation with the Secretary of State, shall make the notifications required by the Convention.

Section 23. Referrals for appropriate action by foreign country.

Notwithstanding sections 18, 19, 20 or 22, if a violation of the Convention is committed by a ship registered in or of the nationality of a country Party to the Convention, or one operated under the authority of a country 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 ship's registry or nationality, or under whose authority the ship is operating for appropriate action, rather than taking the actions otherwise required or authorized by this Title.

Section 24. Remedies not affected.

(a) Nothing in this Act shall limit, deny, amend, modify, or repeal any other remedy available to the United States.

(b) Nothing in this Act shall limit, deny, amend, modify, or repeal the rights under existing law, of any U.S. State or political subdivision to regulate anti-fouling paint or any other anti-fouling system. Compliance with the requirements of any U.S. State or political subdivision thereof respecting anti-fouling paint or any other anti-fouling system shall not relieve any person of the obligation to comply with the provisions of this Act.

Analysis of Proposed Amendments to the Organotin Antifouling Paint Control Act

SECTION 1. SHORT TITLE.

This name of this Act is the Anti-Fouling System Control Act of 2007.

SECTION 2. AMENDMENTS TO THE ORGANOTIN ANTIFOULING PAINT CONTROL ACT OF 1988

This Bill amends the Organotin Antifouling Paint Control Act of 1988 (33 U.S.C. §§ 2401 – 2410), or OAPCA, which imposes restrictions on organotin anti-fouling compounds. The Bill is modeled after the Act to Prevent Pollution from Ships (APPS) and implements the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001. The whole text of OAPCA is replaced with the proposed text.

TITLE I. GENERAL PROVISIONS

Section 1. Purpose.

The purpose of the Anti-Fouling System Control Act (the Act) is to implement the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 (the Convention), and to reduce or eliminate adverse effects on the marine environment and human health caused by anti-fouling systems.

Section 2. Definitions.

Some of the definitions listed in OAPCA are not included in the Act. The following describes definitions used in the Act.

- (2) The term “anti-fouling system” is defined more broadly than in OAPCA in that it describes a) systems other than paints used to prevent fouling, and b) systems used on ships or intended to be used on ships (as a means to identify such systems before application).
- (3) The term “Convention” includes the Convention and any amendments to the Convention or Annexes which have entered into force for the United States.
- (6) The term “organotin” refers to organotin compounds that serve as biocides in anti-fouling systems, to distinguish them from the small amounts of lower toxicity organotins used as catalysts in low surface tension, nonbiocidal antifouling systems.
- (8) The term “Secretary” refers to the Secretary of the Department under which the Coast Guard is operating. In OAPCA, the term refers to the Secretary of the Navy.
- (9) The phrase “sell or distribute” defines the range of activities associated with export, import, or other commerce in organotin biocides or anti-fouling systems

Section 3. Application.

This Section defines the scope of application of the Act. The Act applies to U.S. ships wherever located, and to foreign ships while located in U.S. internal waters, ports, shipyards, or offshore terminals, or while transferring cargo (lightering) in the territorial sea. Foreign ships anchoring in the territorial sea are also covered, to the extent consistent with international law. The section also contains a sovereign immunity provision.

Section 4. Administration and enforcement.

The respective responsibilities and authorities under the Act for the Administrator and the Secretary are set forth.

Section 5. Compliance with international law.

Any action taken under the Act must comport with treaties to which the United States is a party and other international obligations of the United States.

Section 6. Utilization of personnel, facilities, or equipment of other Federal departments and agencies.

This standard clause authorizes the Secretary and Administrator to borrow resources from other Federal entities in order to administer the Act.

TITLE II. IMPLEMENTATION OF THE CONVENTION

Section 7. Certificates.

Ships of 400 gross tons or more must obtain and maintain certificates, to verify whether or not the anti-fouling systems used on such ships comply with the Act. Ships of non-Parties may demonstrate their compliance with other documentation the Secretary determines is acceptable.

Section 8. Declaration.

Certain ships of less than 400 gross tons must carry a declaration that the anti-fouling system used on the ship complies with the Act.

Section 9. Other compliance documentation.

The Secretary may require additional documentation to verify compliance with the Act.

Section 10. Process for considering additional controls.

This Section sets forth a procedure for considering additional controls on anti-fouling systems under the Convention. The Administrator (inter alia) is authorized to evaluate the risks

associated with an anti-fouling system and its potential benefits in developing recommendations on a proposal for new or additional controls. Opportunities must be made for public comment on the proposed controls, and the Administrator must consider such comments in developing the recommendations.

Section 11. Scientific and technical research and monitoring; communication and information.

The Secretary, Administrator, and Administrator of NOAA may undertake research relevant to anti-fouling systems, and to share the findings with interested parties, e.g., monitoring data on the environmental effects of anti-fouling system use.

Section 12. Communication and exchange of information.

The Administrator will provide requesting Parties with information on anti-fouling systems regulated by EPA, including that utilized in decision-making on such systems. This Section does not authorize the release of information otherwise prohibited by law.

TITLE III. ANTI-FOULING SYSTEMS CONTAINING ORGANOTIN

Section 13. Prohibitions.

This Section prohibits a) the domestic or international sale or distribution of organotin compounds intended for use as biocides in anti-fouling systems, or such systems themselves; b) the formulation of anti-fouling systems with organotin biocides; and c) the application of such anti-fouling systems on ships to which the Act applies. Sonar domes and conductivity sensors in oceanographic instruments containing organotin biocides are exempted from prohibition. Most ships are prohibited from bearing organotin anti-fouling systems on their surfaces after January 1, 2008, unless they are overcoated to prevent organotin from leaching from the underlying antifouling system.

Section 14. Additional authority of the Administrator.

The Administrator is authorized, in consultation with the Secretary, to regulate the removal and disposal of anti-fouling systems covered by the Act. This section is not intended to authorize the Administrator to regulate activities conducted on board a ship, related to its operations. Rather, it is intended to authorize the Administrator to regulate activities during the actual physical process of removing anti-fouling systems and all activities related to their disposal.

TITLE IV. ENFORCEMENT AND VIOLATIONS

Section 15. General prohibition, cooperation and enforcement, detection and monitoring measures.

Conduct in violation of the Convention, the Act, or any regulation issued there under, is prohibited. The Secretary may work with other Parties to enforce the Convention.

Section 16. Investigations and inspections.

This Section confers investigative and inspection authority on the Secretary. The provision is similar to Article 1907(b) in the Act to Prevent Pollution from Ships (33 U.S.C. § 1901 *et seq.*).

Section 17. EPA enforcement.

This Section confers specific enforcement authorities on the Administrator, with respect to the sale, distribution, or use of organotin anti-fouling systems and biocides.

TITLE V. ACTION UPON VIOLATION, PENALTIES, AND REFERRALS

Section 18. Criminal enforcement.

This Section prescribes criminal penalties for knowing violation of the Act.

Section 19. Civil enforcement.

This Section establishes civil penalties for violations of the Act.

Section 20. Liability in rem.

A ship operated in violation of this Act is liable in rem for any resulting fine or penalty.

Section 21. Ship clearance or permits; refusal or revocation; bond or other surety.

This Section authorizes the Secretary to refuse customs clearance for a ship that is liable for a fine or penalty under the Act, or reasonably is believed to be liable.

Section 22. Warnings, detentions, dismissals, exclusion.

The Secretary may exclude, from any port or offshore terminal under U.S. jurisdiction, any ship that violates the Act. The Government under whose authority such a ship is operating must be notified.

Section 23. Referrals for appropriate action by foreign country.

The Secretary may refer enforcement of a violation to the State of a ship's registry when that State is a Party to the Convention.

Section 24. Remedies not affected.

The Act is not intended to abridge any other remedy available under Federal law. This Section preserves the rights of U.S. States to take additional action to regulate anti-fouling systems under existing law.