

February 11, 1999

The Honorable Carol Browner  
Administrator, Environmental Protection Agency  
Washington, D.C. 20460

Dear Administrator Browner:

On February 3, 1999, the Clinton Administration announced an Executive Order on Invasive Species. It asks federal agencies to use relevant existing programs and authorities to address the growing problem of harmful species introduced into our nation's ecosystems. The President's proposed budget includes a significant increase in funding for dealing with invasive species. Many aquatic nuisance species (ANS) arrive through ballast water exchange, and they have inflicted billions of dollars in economic damage as well as ecological devastation. Efforts have been made to control the introduction of ANS in ballast water discharge through the Non-indigenous Aquatic Nuisance Prevention and Control Act of 1990 and the National Invasive Species Act of 1996. However, because compliance is voluntary in marine coastal waters, these laws have been ineffective in stemming ballast-water introductions in the vast majority of our nation's ports and waterways.

Several of us represent the San Francisco Bay area, often described as the most invaded aquatic ecosystem in North America, and all of us recognize the damage non-native organisms have caused to aquatic environments and water supplies nationally. For example, the Chinese mitten crab was discovered in San Francisco Bay in 1992 and has exploded in population and range since then. The U.S. Fish and Wildlife service has designated the crab an "injurious species" based on the damage it can cause to crops, levees, water pumps, screens used to protect fish, fishing nets, and human health.

We urge you to consider revisions to Clean Water Act regulations to manage and prevent the continued introduction of invasive species in ballast water. A group of scientists and concerned citizens recently petitioned the EPA to regulate the exotic species commonly found in ballast water as pollutants. Currently, most ballast water discharges in U.S. waters are exempt from Clean Water Act regulations as a result of a rule promulgated by the EPA in 1973. This rule, 40 C.F. R. § 122.3(a), exempts "discharges incidental to the normal operation of a vessel" from National Pollution Discharge Elimination System permit requirements. The repeal of this exemption could be critical in implementing an effective national strategy to combat the introduction of aquatic nuisance species.

This regulation was promulgated during a time when the impacts of ANS and the vectors for their introduction were poorly understood. We now know that ballast water often contains harmful plant and animal species and also bacteria and viruses. Changes in modern shipping practices and growth in global trade ensure that if unchecked, ballast water introductions will continue to be a serious threat to coastal ecology and human health.

We ask you to report back to us as to the feasibility of using the Clean Water Act to reduce introductions of ANS through ballast water discharges. Please identify impediments, if any, to using this approach and include an evaluation of how it may fit into a national strategy to control invasive species.

We greatly appreciate the Administration's efforts to combat invasive species and we look forward to your response.

Sincerely,

George Miller, Ranking Democrat, Committee on  
Resources  
Jim Saxton, Chairman, Subcommittee on Fisheries  
Conservation, Wildlife, and Oceans  
Eni Faleomavaega  
Frank Pallone  
Peter DeFazio  
Tom Campbell  
William Delahunt  
Ana Eshoo

Sam Farr  
Bob Filner  
Barbara Lee  
Edward Markey  
Jim McDermott  
Nancy Pelosi  
Carlos Romero-Barcelo  
Ellen Tauscher  
Mike Thompson  
Lynn Woolsey