

S.L.C.  


AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To provide for the establishment of nationally uniform and environmentally sound standards governing discharges incidental to the normal operation of a vessel.

**IN THE SENATE OF THE UNITED STATES—114th Cong., 2d Sess.**

**S. 2829**

To amend and enhance certain maritime programs of the Department of Transportation, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. RUBIO (for himself and Mr. SULLIVAN)

Viz:

1 At the appropriate place, insert the following:  
2 **TITLE \_\_\_\_\_—VESSEL INCIDENTAL**  
3 **DISCHARGE ACT**

4 **SEC. \_01. SHORT TITLE.**

5 This title may be cited as the “Vessel Incidental Dis-  
6 charge Act”.

7 **SEC. \_02. FINDINGS; PURPOSE.**

8 (a) FINDINGS.—Congress makes the following find-  
9 ings:

10 (1) Since the enactment of the Act to Prevent  
11 Pollution from Ships (22 U.S.C. 1901 et seq.) in

1       1980, the United States Coast Guard has been the  
2       principal Federal authority charged with admin-  
3       istering, enforcing, and prescribing regulations relat-  
4       ing to the discharge of pollutants from vessels en-  
5       gaged in maritime commerce and transportation.

6               (2) The Coast Guard estimates there are ap-  
7       proximately 12,000,000 State-registered recreational  
8       vessels, 75,000 commercial fishing vessels, and  
9       33,000 freight and tank barges operating in United  
10      States waters.

11              (3) From 1973 to 2005, certain discharges inci-  
12      dental to the normal operation of a vessel were ex-  
13      empted by regulation from otherwise applicable per-  
14      mitting requirements.

15              (4) During the 32 years during which this regu-  
16      latory exemption was in effect, Congress enacted  
17      several statutes to deal with the regulation of dis-  
18      charges incidental to the normal operation of a ves-  
19      sel, including—

20                      (A) the Act to Prevent Pollution from  
21                      Ships (33 U.S.C. 1901 et seq.) in 1980;

22                      (B) the Nonindigenous Aquatic Nuisance  
23                      Prevention and Control Act of 1990 (16 U.S.C.  
24                      4701 et seq.);

1 (C) the National Invasive Species Act of  
2 1996 (110 Stat. 4073);

3 (D) section 415 of the Coast Guard Au-  
4 thorization Act of 1998 (112 Stat. 3434) and  
5 section 623 of the Coast Guard and Maritime  
6 Transportation Act of 2004 (33 U.S.C. 1901  
7 note), which established interim and permanent  
8 requirements, respectively, for the regulation of  
9 vessel discharges of certain bulk cargo residue;

10 (E) title XIV of division B of Appendix D  
11 of the Consolidated Appropriations Act, 2001  
12 (114 Stat. 2763), which prohibited or limited  
13 certain vessel discharges in certain areas of  
14 Alaska;

15 (F) section 204 of the Maritime Transpor-  
16 tation Security Act of 2002 (33 U.S.C. 1902a),  
17 which established requirements for the regula-  
18 tion of vessel discharges of agricultural cargo  
19 residue material in the form of hold washings;

20 (G) title X of the Coast Guard Authoriza-  
21 tion Act of 2010 (33 U.S.C. 3801 et seq.),  
22 which provided for the implementation of the  
23 International Convention on the Control of  
24 Harmful Anti-Fouling Systems on Ships, 2001;  
25 and

1 (II) the amendment made by section 2 of  
2 the Clean Boating Act of 2008 adding sub-  
3 section (r) to section 402 of the Federal Water  
4 Pollution Control Act (33 U.S.C. 1342(r)),  
5 which exempts recreational vessels from Na-  
6 tional Pollutant Discharge Elimination System  
7 permit requirements.

8 (b) PURPOSE.—The purpose of this title is to provide  
9 for the establishment of nationally uniform and environ-  
10 mentally sound standards and requirements for the man-  
11 agement of discharges incidental to the normal operation  
12 of a vessel.

13 **SEC. 03. DEFINITIONS.**

14 In this title:

15 (1) ADMINISTRATOR.—The term “Adminis-  
16 trator” means the Administrator of the Environ-  
17 mental Protection Agency.

18 (2) AQUATIC NUISANCE SPECIES.—The term  
19 “aquatic nuisance species” means a nonindigenous  
20 species (including a pathogen) that threatens the di-  
21 versity or abundance of native species or the ecologi-  
22 cal stability of navigable waters or commercial, agri-  
23 cultural, aquacultural, or recreational activities de-  
24 pendent on such waters.

25 (3) BALLAST WATER.—

1 (A) IN GENERAL.—The term “ballast  
2 water” means any water and water-suspended  
3 matter taken aboard a vessel—

4 (i) to control or maintain trim, list,  
5 draught, stability, or stresses of the vessel;  
6 or

7 (ii) during the cleaning, maintenance,  
8 or other operation of a ballast water treat-  
9 ment technology of the vessel.

10 (B) EXCLUSIONS.—The term “ballast  
11 water” does not include any substance that is  
12 added to water described in subparagraph (A)  
13 that is not directly related to the operation of  
14 a properly functioning ballast water treatment  
15 technology under this title.

16 (4) BALLAST WATER DISCHARGE STANDARD.—  
17 The term “ballast water discharge standard” means  
18 the numerical ballast water discharge standard set  
19 forth in section 151.2030 of title 33, Code of Fed-  
20 eral Regulations or section 151.1511 of title 33,  
21 Code of Federal Regulations, as applicable, or a re-  
22 vised numerical ballast water discharge standard es-  
23 tablished under subsection (a)(1)(B), (b), or (c) of  
24 section \_\_05.

1           (5) BALLAST WATER MANAGEMENT SYSTEM;  
2 MANAGEMENT SYSTEM.—The terms “ballast water  
3 management system” and “management system”  
4 mean any system, including all ballast water treat-  
5 ment equipment and associated control and moni-  
6 toring equipment, used to process ballast water to  
7 kill, remove, render harmless, or avoid the uptake or  
8 discharge of organisms.

9           (6) BIOCIDES.—The term “biocide” means a  
10 substance or organism, including a virus or fungus,  
11 that is introduced into or produced by a ballast  
12 water management system to reduce or eliminate  
13 aquatic nuisance species as part of the process used  
14 to comply with a ballast water discharge standard  
15 under this title.

16           (7) DISCHARGE INCIDENTAL TO THE NORMAL  
17 OPERATION OF A VESSEL.—

18           (A) IN GENERAL.—The term “discharge  
19 incidental to the normal operation of a vessel”  
20 means—

21           (i) a discharge into navigable waters  
22 from a vessel of—

23           (I)(aa) ballast water, graywater,  
24 bilge water, cooling water, oil water  
25 separator effluent, anti-fouling hull

1 coating leachate, boiler or economizer  
2 blowdown, byproducts from cathodic  
3 protection, controllable pitch propeller  
4 and thruster hydraulic fluid, distilla-  
5 tion and reverse osmosis brine, eleva-  
6 tor pit effluent, firemain system efflu-  
7 ent, freshwater layup effluent, gas  
8 turbine wash water, motor gasoline  
9 and compensating effluent, refrigera-  
10 tion and air condensate effluent, sea-  
11 water pumping biofouling prevention  
12 substances, boat engine wet exhaust,  
13 sonar dome effluent, exhaust gas  
14 scrubber washwater, or stern tube  
15 packing gland effluent; or

16 (bb) any other pollutant associ-  
17 ated with the operation of a marine  
18 propulsion system, shipboard maneu-  
19 vering system, habitability system, or  
20 installed major equipment, or from a  
21 protective, preservative, or absorptive  
22 application to the hull of a vessel;

23 (II) weather deck runoff, deck  
24 wash, aqueous film forming foam ef-  
25 fluent, chain locker effluent, non-oily

1 machinery wastewater, underwater  
2 ship husbandry effluent, welldeck ef-  
3 fluent, or fish hold and fish hold  
4 cleaning effluent; or

5 (III) any effluent from a properly  
6 functioning marine engine; or

7 (ii) a discharge of a pollutant into  
8 navigable waters in connection with the  
9 testing, maintenance, or repair of a sys-  
10 tem, equipment, or engine described in  
11 subclause (I)(bb) or (III) of clause (i)  
12 whenever the vessel is waterborne.

13 (B) EXCLUSIONS.—The term “discharge  
14 incidental to the normal operation of a vessel”  
15 does not include—

16 (i) a discharge into navigable waters  
17 from a vessel of—

18 (I) rubbish, trash, garbage, incin-  
19 erator ash, or other such material dis-  
20 charged overboard;

21 (II) oil or a hazardous substance  
22 as those terms are defined in section  
23 311 of the Federal Water Pollution  
24 Control Act (33 U.S.C. 1321);



1 (III) sewage as defined in section  
2 312(a)(6) of the Federal Water Pollu-  
3 tion Control Act (33 U.S.C.  
4 1322(a)(6)); or

5 (IV) graywater referred to in sec-  
6 tion 312(a)(6) of the Federal Water  
7 Pollution Control Act (33 U.S.C.  
8 1322(a)(6));

9 (ii) an emission of an air pollutant re-  
10 sulting from the operation onboard a vessel  
11 of a vessel propulsion system, motor driven  
12 equipment, or incinerator; or

13 (iii) a discharge into navigable waters  
14 from a vessel when the vessel is operating  
15 in a capacity other than as a means of  
16 transportation on water.

17 (8) GEOGRAPHICALLY LIMITED AREA.—The  
18 term “geographically limited area” means an area—

19 (A) with a physical limitation, including  
20 limitation by physical size and limitation by au-  
21 thorized route such as the Great Lakes and St.  
22 Lawrence River, that prevents a vessel from op-  
23 erating outside the area, as determined by the  
24 Secretary; or

1 (B) that is ecologically homogeneous, as  
2 determined by the Secretary, in consultation  
3 with the heads of other Federal departments or  
4 agencies as the Secretary considers appropriate.

5 (9) MANUFACTURER.—The term “manufac-  
6 turer” means a person engaged in the manufacture,  
7 assemblage, or importation of ballast water treat-  
8 ment technology.

9 (10) NAVIGABLE WATERS.—The term “navi-  
10 gable waters” has the meaning given the term in  
11 section 2.36 of title 33, Code of Federal Regula-  
12 tions, as in effect on the date of the enactment of  
13 this Act.

14 (11) SECRETARY.—The term “Secretary”  
15 means the Secretary of the department in which the  
16 Coast Guard is operating.

17 (12) VESSEL.—The term “vessel” means every  
18 description of watercraft or other artificial contriv-  
19 ance used, or practically or otherwise capable of  
20 being used, as a means of transportation on water.

21 **SEC. 04. REGULATION AND ENFORCEMENT.**

22 (a) IN GENERAL.—

23 (1) ESTABLISHMENT.—The Secretary, in con-  
24 sultation with the Administrator, shall establish, im-  
25 plement, and enforce uniform national standards

1 and requirements for the regulation of discharges in-  
2 cidental to the normal operation of a vessel.

3 (2) BASIS.—Except as provided under para-  
4 graph (3), the standards and requirements estab-  
5 lished under paragraph (1)—

6 (A) with respect to ballast water, shall be  
7 based upon the best available technology that is  
8 economically achievable;

9 (B) with respect to discharges incidental to  
10 the normal operation of a vessel other than bal-  
11 last water, shall be based on best management  
12 practices (including practices, limitations, or  
13 concentrations); and

14 (C) shall supersede any permitting require-  
15 ment or prohibition on discharges incidental to  
16 the normal operation of a vessel under any  
17 other provision of law.

18 (3) RULE OF CONSTRUCTION.—The standards  
19 and requirements established under paragraph (1)  
20 shall not supersede regulations, in place on the date  
21 of the enactment of this Act or established by a rule-  
22 making proceeding after such date of enactment,  
23 which cover a discharge in a national marine sanc-  
24 tuary or in a marine national monument.

1 (b) ADMINISTRATION AND ENFORCEMENT.—The  
2 Secretary shall administer and enforce the uniform na-  
3 tional standards and requirements under this title. Each  
4 State may enforce the uniform national standards and re-  
5 quirements under this title.

6 (c) SANCTIONS.—

7 (1) CIVIL PENALTIES.—

8 (A) BALLAST WATER.—Any person who  
9 violates a regulation issued pursuant to this  
10 title regarding a discharge incidental to the nor-  
11 mal operation of a vessel of ballast water shall  
12 be liable for a civil penalty in an amount not to  
13 exceed \$25,000. Each day of a continuing viola-  
14 tion constitutes a separate violation.

15 (B) OTHER DISCHARGE.—Any person who  
16 violates a regulation issued pursuant to this  
17 title regarding a discharge incidental to the nor-  
18 mal operation of a vessel other than ballast  
19 water shall be liable for a civil penalty in an  
20 amount not to exceed \$10,000. Each day of a  
21 continuing violation constitutes a separate viola-  
22 tion.

23 (C) IN REM LIABILITY.—A vessel operated  
24 in violation of a regulation issued under this  
25 title shall be liable in rem for any civil penalty

1           assessed under this subsection for that viola-  
2           tion.

3           (2) CRIMINAL PENALTIES.—

4                 (A) BALLAST WATER.—Any person who  
5           knowingly violates a regulation issued pursuant  
6           to this title regarding a discharge incidental to  
7           the normal operation of a vessel of ballast water  
8           shall be punished by a fine of not more than  
9           \$100,000, imprisonment for not more than 2  
10          years, or both.

11                (B) OTHER DISCHARGE.—Any person who  
12          knowingly violates a regulation issued pursuant  
13          to this title regarding a discharge incidental to  
14          the normal operation of a vessel other than bal-  
15          last water shall be punished by a fine of not  
16          more than \$50,000, imprisonment for not more  
17          than 1 year, or both.

18                (3) REVOCATION OF CLEARANCE.—The Sec-  
19          retary is authorized to withhold or revoke the clear-  
20          ance of a vessel required under section 60105 of title  
21          46, United States Code, if the owner or operator of  
22          the vessel is in violation of a regulation issued pur-  
23          suant to this Act.

24                (4) EXCEPTION TO SANCTIONS.—It shall be an  
25          affirmative defense to any charge of a violation of

1 this title that compliance with this title would, be-  
2 cause of adverse weather, equipment failure, or any  
3 other relevant condition, have threatened the safety  
4 or stability of a vessel, its crew, or its passengers.

5 **SEC. \_05. UNIFORM NATIONAL STANDARDS AND REQUIRE-**  
6 **MENTS FOR THE REGULATION OF DIS-**  
7 **CHARGES INCIDENTAL TO THE NORMAL OP-**  
8 **ERATION OF A VESSEL.**

9 (a) REQUIREMENTS.—

10 (1) BALLAST WATER MANAGEMENT REQUIRE-  
11 MENTS.—

12 (A) IN GENERAL.—Notwithstanding any  
13 other provision of law, the requirements set  
14 forth in the final rule, Standards for Living Or-  
15 ganisms in Ships' Ballast Water Discharged in  
16 U.S. Waters (77 Fed. Reg. 17254 (March 23,  
17 2012), as corrected at 77 Fed. Reg. 33969  
18 (June 8, 2012)), shall be the management re-  
19 quirements for a ballast water discharge inci-  
20 dental to the normal operation of a vessel until  
21 the Secretary revises the ballast water discharge  
22 standard under subsection (b) or adopts a more  
23 stringent standard under subparagraph (B).

24 (B) ADOPTION OF MORE STRINGENT  
25 STANDARD.—If the Secretary makes a deter-

1           mination in favor of a State petition under sec-  
2           tion 610, the Secretary shall adopt the more  
3           stringent ballast water discharge standard spec-  
4           ified in the statute or regulation that is the  
5           subject of that State petition instead of the bal-  
6           last water discharge standard in the final rule  
7           described under subparagraph (A).

8           (2) INITIAL MANAGEMENT REQUIREMENTS FOR  
9           DISCHARGES OTHER THAN BALLAST WATER.—Not  
10          later than 2 years after the date of enactment of  
11          this Act, the Secretary, in consultation with the Ad-  
12          ministrator, shall issue a final rule establishing best  
13          management practices for discharges incidental to  
14          the normal operation of a vessel other than ballast  
15          water.

16          (b) REVISED BALLAST WATER DISCHARGE STAND-  
17          ARD; 8-YEAR REVIEW.—

18               (1) IN GENERAL.—Subject to the feasibility re-  
19          view under paragraph (2), not later than January 1,  
20          2024, the Secretary, in consultation with the Admin-  
21          istrator, shall issue a final rule revising the ballast  
22          water discharge standard under subsection (a)(1) so  
23          that a ballast water discharge incidental to the nor-  
24          mal operation of a vessel will contain—

1 (A) less than 1 organism that is living or  
2 has not been rendered harmless per 10 cubic  
3 meters that is 50 or more micrometers in min-  
4 imum dimension;

5 (B) less than 1 organism that is living or  
6 has not been rendered harmless per 10 milli-  
7 liters that is less than 50 micrometers in min-  
8 imum dimension and more than 10 micrometers  
9 in minimum dimension;

10 (C) concentrations of indicator microbes  
11 that are less than—

12 (i) 1 colony-forming unit of  
13 toxicogenic *Vibrio cholera* (serotypes O1  
14 and O139) per 100 milliliters or less than  
15 1 colony-forming unit of that microbe per  
16 gram of wet weight of zoological samples;

17 (ii) 126 colony-forming units of *Esch-*  
18 *erichia coli* per 100 milliliters; and

19 (iii) 33 colony-forming units of intes-  
20 tinal enterococci per 100 milliliters; and

21 (D) concentrations of such additional indi-  
22 cator microbes and of viruses as may be speci-  
23 fied in regulations issued by the Secretary in  
24 consultation with the Administrator and such



1 other Federal agencies as the Secretary and the  
2 Administrator consider appropriate.

3 (2) FEASIBILITY REVIEW.—

4 (A) IN GENERAL.—Not less than 2 years  
5 before January 1, 2024, the Secretary, in con-  
6 sultation with the Administrator, shall complete  
7 a review to determine the feasibility of achiev-  
8 ing the revised ballast water discharge standard  
9 under paragraph (1).

10 (B) CRITERIA FOR REVIEW OF BALLAST  
11 WATER DISCHARGE STANDARD.—In conducting  
12 a review under subparagraph (A), the Secretary  
13 shall consider whether revising the ballast water  
14 discharge standard will result in a scientifically  
15 demonstrable and substantial reduction in the  
16 risk of introduction or establishment of aquatic  
17 nuisance species, taking into account—

18 (i) improvements in the scientific un-  
19 derstanding of biological and ecological  
20 processes that lead to the introduction or  
21 establishment of aquatic nuisance species;

22 (ii) improvements in ballast water  
23 management systems, including—

- 1 (I) the capability of such man-  
2 agement systems to achieve a revised  
3 ballast water discharge standard;
- 4 (II) the effectiveness and reli-  
5 ability of such management systems  
6 in the shipboard environment;
- 7 (III) the compatibility of such  
8 management systems with the design  
9 and operation of a vessel by class,  
10 type, and size;
- 11 (IV) the commercial availability  
12 of such management systems; and
- 13 (V) the safety of such manage-  
14 ment systems;
- 15 (iii) improvements in the capabilities  
16 to detect, quantify, and assess the viability  
17 of aquatic nuisance species at the con-  
18 centrations under consideration;
- 19 (iv) the impact of ballast water man-  
20 agement systems on water quality; and
- 21 (v) the costs, cost-effectiveness, and  
22 impacts of—
- 23 (I) a revised ballast water dis-  
24 charge standard, including the poten-  
25 tial impacts on shipping, trade, and

1 other uses of the aquatic environment;

2 and

3 (II) maintaining the existing bal-  
4 last water discharge standard, includ-  
5 ing the potential impacts on water-re-  
6 lated infrastructure, recreation, propa-  
7 gation of native fish, shellfish, and  
8 wildlife, and other uses of navigable  
9 waters.

10 (C) LOWER REVISED DISCHARGE STAND-  
11 ARD.—

12 (i) IN GENERAL.—If the Secretary, in  
13 consultation with the Administrator, deter-  
14 mines on the basis of the feasibility review  
15 and after an opportunity for a public hear-  
16 ing that no ballast water management sys-  
17 tem can be certified under section \_\_06 to  
18 comply with the revised ballast water dis-  
19 charge standard under paragraph (1), the  
20 Secretary shall require the use of the man-  
21 agement system that achieves the perform-  
22 ance levels of the best available technology  
23 that is economically achievable.

24 (ii) IMPLEMENTATION DEADLINE.—If  
25 the Secretary, in consultation with the Ad-

1 administrator, determines that the manage-  
2 ment system under clause (i) cannot be im-  
3 plemented before the implementation dead-  
4 line under paragraph (3) with respect to a  
5 class of vessels, the Secretary shall extend  
6 the implementation deadline for that class  
7 of vessels for not more than 36 months.

8 (iii) COMPLIANCE.—If the implemen-  
9 tation deadline under paragraph (3) is ex-  
10 tended, the Secretary shall recommend ac-  
11 tion to ensure compliance with the ex-  
12 tended implementation deadline under  
13 clause (ii).

14 (D) HIGHER REVISED DISCHARGE STAND-  
15 ARD.—

16 (i) IN GENERAL.—If the Secretary, in  
17 consultation with the Administrator, deter-  
18 mines that a ballast water management  
19 system exists that exceeds the revised bal-  
20 last water discharge standard under para-  
21 graph (1) with respect to a class of vessels  
22 and is the best available technology that is  
23 economically achievable, the Secretary shall  
24 revise the ballast water discharge standard

1 for that class of vessels to incorporate the  
2 higher discharge standard.

3 (ii) IMPLEMENTATION DEADLINE.—If  
4 the Secretary, in consultation with the Ad-  
5 ministrator, determines that the manage-  
6 ment system under clause (i) can be imple-  
7 mented before the implementation deadline  
8 under paragraph (3) with respect to a  
9 class of vessels, the Secretary shall accel-  
10 erate the implementation deadline for that  
11 class of vessels. If the implementation  
12 deadline under paragraph (3) is acceler-  
13 ated, the Secretary shall provide not less  
14 than 24 months notice before the acceler-  
15 ated deadline takes effect.

16 (3) IMPLEMENTATION DEADLINE.—The revised  
17 ballast water discharge standard under paragraph  
18 (1) shall apply to a vessel beginning on the date of  
19 the first drydocking of the vessel on or after Janu-  
20 ary 1, 2024, but not later than December 31, 2026.

21 (4) REVISED DISCHARGE STANDARD COMPLI-  
22 ANCE DEADLINES.—

23 (A) IN GENERAL.—The Secretary may es-  
24 tablish a compliance deadline for compliance by  
25 a vessel (or a class, type, or size of vessel) with

1 a revised ballast water discharge standard  
2 under this subsection.

3 (B) PROCESS FOR GRANTING EXTEN-  
4 SIONS.—In issuing regulations under this sub-  
5 section, the Secretary shall establish a process  
6 for an owner or operator to submit a petition  
7 to the Secretary for an extension of a compli-  
8 ance deadline with respect to the vessel of the  
9 owner or operator.

10 (C) PERIOD OF EXTENSIONS.—An exten-  
11 sion issued under subparagraph (B) may be for  
12 a period of not to exceed 18 months from the  
13 date of the applicable deadline under subpara-  
14 graph (A) and may be renewed for additional  
15 periods of not to exceed 18 months each, except  
16 that the total period of extension may not ex-  
17 ceed 5 years.

18 (D) FACTORS.—In issuing a compliance  
19 deadline or reviewing a petition under this  
20 paragraph, the Secretary shall consider, with  
21 respect to the ability of an owner or operator to  
22 meet a compliance deadline, the following fac-  
23 tors:

1 (i) Whether the management system  
2 to be installed is available in sufficient  
3 quantities to meet the compliance deadline.

4 (ii) Whether there is sufficient ship-  
5 yard or other installation facility capacity.

6 (iii) Whether there is sufficient avail-  
7 ability of engineering and design resources.

8 (iv) Vessel characteristics, such as en-  
9 gine room size, layout, or a lack of in-  
10 stalled piping.

11 (v) Electric power generating capacity  
12 aboard the vessel.

13 (vi) Safety of the vessel and crew.

14 (vii) Any other factors the Secretary  
15 considers appropriate, including the avail-  
16 ability of a ballast water reception facility  
17 or other means of managing ballast water.

18 (E) CONSIDERATION OF PETITIONS.—

19 (i) DETERMINATIONS.—The Secretary  
20 shall approve or deny a petition for an ex-  
21 tension of a compliance deadline submitted  
22 by an owner or operator under this para-  
23 graph.

24 (ii) DEADLINE.—If the Secretary does  
25 not approve or deny a petition referred to

1           in clause (i) on or before the last day of  
2           the 90-day period beginning on the date of  
3           submission of the petition, the petition  
4           shall be deemed approved.

5           (c) FUTURE REVISIONS OF VESSEL INCIDENTAL  
6 DISCHARGE STANDARDS; DECENNIAL REVIEWS.—

7           (1) REVISED BALLAST WATER DISCHARGE  
8 STANDARDS.—The Secretary, in consultation with  
9 the Administrator, shall complete a review, 10 years  
10 after the issuance of a final rule under subsection  
11 (b) and every 10 years thereafter, to determine  
12 whether further revision of the ballast water dis-  
13 charge standard would result in a scientifically de-  
14 monstrable and substantial reduction in the risk of  
15 the introduction or establishment of aquatic nui-  
16 sance species.

17           (2) REVISED STANDARDS FOR DISCHARGES  
18 OTHER THAN BALLAST WATER.—The Secretary, in  
19 consultation with the Administrator, may include in  
20 a decennial review under this subsection best man-  
21 agement practices for discharges (including prac-  
22 tices, limitations, or concentrations) covered by sub-  
23 section (a)(2). The Secretary shall initiate a rule-  
24 making to revise 1 or more best management prac-  
25 tices for such discharges after a decennial review if



1 the Secretary, in consultation with the Adminis-  
2 trator, determines that revising 1 or more of such  
3 practices would substantially reduce the impacts on  
4 navigable waters of discharges incidental to the nor-  
5 mal operation of a vessel other than ballast water.

6 (3) CONSIDERATIONS.—In conducting a review  
7 under paragraph (1), the Secretary, the Adminis-  
8 trator, and the heads of other Federal agencies as  
9 the Secretary considers appropriate, shall consider  
10 the criteria under section \_\_05(b)(2)(B).

11 (4) REVISION AFTER DECENNIAL REVIEW.—  
12 The Secretary shall initiate a rulemaking to revise  
13 the current ballast water discharge standard after a  
14 decennial review if the Secretary, in consultation  
15 with the Administrator, determines that revising the  
16 current ballast water discharge standard would re-  
17 sult in a scientifically demonstrable and substantial  
18 reduction in the risk of the introduction or establish-  
19 ment of aquatic nuisance species.

20 (d) ALTERNATIVE BALLAST WATER MANAGEMENT  
21 REQUIREMENTS.—Nothing in this title may be construed  
22 to preclude the Secretary from authorizing the use of al-  
23 ternate means or methods of managing ballast water (in-  
24 cluding flow-through exchange, empty/refill exchange, and  
25 transfer to treatment facilities in place of a vessel ballast

1 water management system required under this section) if  
2 the Secretary, in consultation with the Administrator, de-  
3 termines that such means or methods would not pose a  
4 greater risk of introduction of aquatic nuisance species in  
5 navigable waters than the use of a ballast water manage-  
6 ment system that achieves the applicable ballast water dis-  
7 charge standard.

8 (e) GREAT LAKES REQUIREMENTS.—In addition to  
9 the other standards and requirements imposed by this sec-  
10 tion, in the case of a vessel that enters the Great Lakes  
11 through the St. Lawrence River after operating outside  
12 the exclusive economic zone of the United States the Sec-  
13 retary, in consultation with the Administrator, shall estab-  
14 lish a requirement that the vessel conduct saltwater flush-  
15 ing of all ballast water tanks onboard prior to entry.

16 **SEC. 06. TREATMENT TECHNOLOGY CERTIFICATION.**

17 (a) CERTIFICATION REQUIRED.—No manufacturer of  
18 a ballast water management system shall sell, offer for  
19 sale, or introduce or deliver for introduction into interstate  
20 commerce, or import into the United States for sale or  
21 resale, a ballast water management system for a vessel  
22 unless it has been certified under this section.

23 (b) CERTIFICATION PROCESS.—

1           (1) EVALUATION.—Upon application of a man-  
2           ufacturer, the Secretary shall evaluate a ballast  
3           water management system with respect to—

4                   (A) the effectiveness of the management  
5                   system in achieving the current ballast water  
6                   discharge standard when installed on a vessel  
7                   (or a class, type, or size of vessel);

8                   (B) the compatibility with vessel design  
9                   and operations;

10                  (C) the effect of the management system  
11                  on vessel safety;

12                  (D) the impact on the environment;

13                  (E) the cost effectiveness; and

14                  (F) any other criteria the Secretary con-  
15                  siders appropriate.

16           (2) APPROVAL.—If after an evaluation under  
17           paragraph (1) the Secretary determines that the  
18           management system meets the criteria, the Sec-  
19           retary may certify the management system for use  
20           on a vessel (or a class, type, or size of vessel).

21           (3) SUSPENSION AND REVOCATION.—The Sec-  
22           retary shall establish, by regulation, a process to  
23           suspend or revoke a certification issued under this  
24           section.

25           (c) CERTIFICATION CONDITIONS.—

1           (1) IMPOSITION OF CONDITIONS.—In certifying  
2 a ballast water management system under this sec-  
3 tion, the Secretary, in consultation with the Admin-  
4 istrator, may impose any condition on the subse-  
5 quent installation, use, or maintenance of the man-  
6 agement system onboard a vessel as is necessary  
7 for—

8           (A) the safety of the vessel, the crew of the  
9 vessel, and any passengers aboard the vessel;

10           (B) the protection of the environment; or

11           (C) the effective operation of the manage-  
12 ment system.

13           (2) FAILURE TO COMPLY.—The failure of an  
14 owner or operator to comply with a condition im-  
15 posed under paragraph (1) shall be considered a vio-  
16 lation of this section.

17           (d) PERIOD FOR USE OF INSTALLED TREATMENT  
18 EQUIPMENT.—Notwithstanding anything to the contrary  
19 in this title or any other provision of law, the Secretary  
20 shall allow a vessel on which a management system is in-  
21 stalled and operated to meet a ballast water discharge  
22 standard under this title to continue to use that system,  
23 notwithstanding any revision of a ballast water discharge  
24 standard occurring after the management system is or-  
25 dered or installed until the expiration of the service life

1 of the management system, as determined by the Sec-  
2 retary, if the management system—

3 (1) is maintained in proper working condition,  
4 as determined by the Secretary; and

5 (2) continues to meet the discharge standard in  
6 effect at the time of installation.

7 (e) CERTIFICATES OF TYPE APPROVAL FOR THE  
8 TREATMENT TECHNOLOGY.—

9 (1) ISSUANCE.—If the Secretary approves a  
10 ballast water management system for certification  
11 under subsection (b), the Secretary shall issue a cer-  
12 tificate of type approval for the management system  
13 to the manufacturer in such form and manner as the  
14 Secretary determines appropriate.

15 (2) CERTIFICATION CONDITIONS.—A certificate  
16 of type approval issued under paragraph (1) shall  
17 specify each condition imposed by the Secretary  
18 under subsection (c).

19 (3) OWNERS AND OPERATORS.—A manufac-  
20 turer that receives a certificate of type approval for  
21 the management system under this subsection shall  
22 provide a copy of the certificate to each owner and  
23 operator of a vessel on which the management sys-  
24 tem is installed.

1 (f) INSPECTIONS.—An owner or operator who re-  
2 ceives a copy of a certificate under subsection (e)(3) shall  
3 retain a copy of the certificate onboard the vessel and  
4 make the copy of the certificate available for inspection  
5 at all times while the owner or operator is utilizing the  
6 management system.

7 (g) BIOCIDES.—The Secretary may not approve a  
8 ballast water management system under subsection (b)  
9 if—

10 (1) it uses a biocide or generates a biocide that  
11 is a pesticide, as defined in section 2 of the Federal  
12 Insecticide, Fungicide, and Rodenticide Act (7  
13 U.S.C. 136), unless the biocide is registered under  
14 that Act or the Secretary, in consultation with Ad-  
15 ministrator, has approved the use of the biocide in  
16 such management system; or

17 (2) it uses or generates a biocide the discharge  
18 of which causes or contributes to a violation of a  
19 water quality standard under section 303 of the  
20 Federal Water Pollution Control Act (33 U.S.C.  
21 1313).

22 (h) PROHIBITION.—

23 (1) IN GENERAL.—Except as provided in para-  
24 graph (2), the use of a ballast water management  
25 system by an owner or operator of a vessel shall not

1 satisfy the requirements of this title unless it has  
2 been approved by the Secretary under subsection  
3 (b).

4 (2) EXCEPTIONS.—

5 (A) COAST GUARD SHIPBOARD TECH-  
6 NOLOGY EVALUATION PROGRAM.—An owner or  
7 operator may use a ballast water management  
8 system that has not been certified by the Sec-  
9 retary to comply with the requirements of this  
10 section if the technology is being evaluated  
11 under the Coast Guard Shipboard Technology  
12 Evaluation Program.

13 (B) BALLAST WATER MANAGEMENT SYS-  
14 TEMS CERTIFIED BY FOREIGN ENTITIES.—An  
15 owner or operator may use a ballast water man-  
16 agement system that has not been certified by  
17 the Secretary to comply with the requirements  
18 of this section if the management system has  
19 been certified by a foreign entity and the cer-  
20 tification demonstrates performance and safety  
21 of the management system equivalent to the re-  
22 quirements of this section, as determined by the  
23 Secretary.

24 (i) TESTING PROTOCOLS.—Not later than 180 days  
25 after the date of the enactment of this Act, the Secretary,

1 in consultation with the Administrator, shall issue require-  
2 ments for land-based and shipboard testing protocols or  
3 criteria for—

4 (1) certifying the performance of each ballast  
5 water management system under this section; and

6 (2) certifying laboratories to evaluate such  
7 treatment technologies.

8 **SEC. 07. EXEMPTIONS.**

9 (a) INCIDENTAL DISCHARGES.—Except in a National  
10 Marine Sanctuary or a Marine National Monument, no  
11 permit shall be required or prohibition enforced under any  
12 other provision of law for, nor shall any standards regard-  
13 ing a discharge incidental to the normal operation of a  
14 vessel under this title apply to—

15 (1) a discharge incidental to the normal oper-  
16 ation of a vessel if the vessel is less than 79 feet in  
17 length and engaged in commercial service (as such  
18 terms are defined in section 2101(5) of title 46,  
19 United States Code); or

20 (2) a discharge incidental to the normal oper-  
21 ation of a vessel if the vessel is a fishing vessel, in-  
22 cluding a fish processing vessel and a fish tender  
23 vessel, (as defined in section 2101 of title 46, United  
24 States Code).



1 (b) DISCHARGES INTO NAVIGABLE WATERS.—No  
2 permit shall be required or prohibition enforced under any  
3 other provision of law for, nor shall any standards regard-  
4 ing a discharge incidental to the normal operation of a  
5 vessel under this title apply to—

6 (1) any discharge into navigable waters from a  
7 vessel authorized by an on-scene coordinator in ac-  
8 cordance with part 300 of title 40, Code of Federal  
9 Regulations, or part 153 of title 33, Code of Federal  
10 Regulations;

11 (2) any discharge into navigable waters from a  
12 vessel that is necessary to secure the safety of the  
13 vessel or human life, or to suppress a fire onboard  
14 the vessel or at a shoreside facility; or

15 (3) a vessel of the armed forces of a foreign na-  
16 tion when engaged in noncommercial service.

17 (c) RECREATIONAL VESSEL DISCHARGES.—No per-  
18 mit shall be required, nor shall any standards be estab-  
19 lished, regarding a discharge incidental to the normal op-  
20 eration of a recreational vessel (as defined in section  
21 2101(25) of title 46, United States Code) under this title.

22 (d) BALLAST WATER DISCHARGES.—No permit shall  
23 be required or prohibition enforced under any other provi-  
24 sion of law for, nor shall any ballast water discharge  
25 standard under this title apply to—

1 (1) a ballast water discharge incidental to the  
2 normal operation of a vessel determined by the Sec-  
3 retary to—

4 (A) operate exclusively within a geographi-  
5 cally limited area;

6 (B) take up and discharge ballast water  
7 exclusively within 1 Captain of the Port Zone  
8 established by the Coast Guard unless the Sec-  
9 retary determines such discharge poses a sub-  
10 stantial risk of introduction or establishment of  
11 an aquatic nuisance species;

12 (C) operate pursuant to a geographic re-  
13 striction issued as a condition under section  
14 3309 of title 46, United States Code, or an  
15 equivalent restriction issued by the country of  
16 registration of the vessel; or

17 (D) continuously take on and discharge  
18 ballast water in a flow-through system that  
19 does not introduce aquatic nuisance species into  
20 navigable waters;

21 (2) a ballast water discharge incidental to the  
22 normal operation of a vessel consisting entirely of  
23 water sourced from a United States public water  
24 system that meets the requirements under the Safe  
25 Drinking Water Act (42 U.S.C. 300f et seq.) or

1 from a foreign public water system determined by  
2 the Administrator to be suitable for human con-  
3 sumption; or

4 (3) a ballast water discharge incidental to the  
5 normal operation of a vessel in an alternative com-  
6 pliance program established pursuant to section  
7 \_\_08.

8 (e) VESSELS WITH PERMANENT BALLAST WATER.—  
9 No permit shall be required or prohibition enforced re-  
10 garding a ballast water discharge incidental to the normal  
11 operation of a vessel under any other provision of law for,  
12 nor shall any ballast water discharge standard under this  
13 title apply to, a vessel that carries all of its permanent  
14 ballast water in sealed tanks that are not subject to dis-  
15 charge.

16 (f) VESSELS OF THE ARMED FORCES.—Nothing in  
17 this title may be construed to apply to—

18 (1) a vessel owned or operated by the Depart-  
19 ment of Defense (other than a time-chartered or  
20 voyage-chartered vessel); or

21 (2) a vessel of the Coast Guard, as designated  
22 by the Secretary of the department in which the  
23 Coast Guard is operating.

1 **SEC. \_08. ALTERNATIVE COMPLIANCE PROGRAM.**

2 (a) IN GENERAL.—The Secretary, in consultation  
3 with the Administrator, may promulgate regulations es-  
4 tablishing 1 or more compliance programs as an alter-  
5 native to ballast water management regulations issued  
6 under section \_05 for a vessel that—

7 (1) has a maximum ballast water capacity of  
8 less than 8 cubic meters; or

9 (2) is less than 3 years from the end of the use-  
10 ful life of the vessel, as determined by the Secretary.

11 (b) RULEMAKING.—

12 (1) FACILITY STANDARDS.—Not later than 1  
13 year after the date of the enactment of this Act, the  
14 Administrator, in consultation with the Secretary,  
15 shall promulgate standards for—

16 (A) the reception of ballast water from a  
17 vessel into a reception facility; and

18 (B) the disposal or treatment of the ballast  
19 water under paragraph (1).

20 (2) TRANSFER STANDARDS.—The Secretary, in  
21 consultation with the Administrator, is authorized to  
22 promulgate standards for the arrangements nec-  
23 essary on a vessel to transfer ballast water to a facil-  
24 ity.

1 **SEC. \_09. JUDICIAL REVIEW.**

2 (a) IN GENERAL.—An interested person may file a  
3 petition for review of a final regulation promulgated under  
4 this title in the United States Court of Appeals for the  
5 District of Columbia Circuit.

6 (b) DEADLINE.—A petition shall be filed not later  
7 than 120 days after the date that notice of the promulga-  
8 tion appears in the Federal Register.

9 (c) EXCEPTION.—Notwithstanding subsection (b), a  
10 petition that is based solely on grounds that arise after  
11 the deadline to file a petition under subsection (b) has  
12 passed may be filed not later than 120 days after the date  
13 that the grounds first arise.

14 **SEC. \_10. EFFECT ON STATE AUTHORITY.**

15 (a) IN GENERAL.—No State or political subdivision  
16 thereof may adopt or enforce any statute or regulation of  
17 the State or political subdivision with respect to a dis-  
18 charge incidental to the normal operation of a vessel after  
19 the date of enactment of this Act.

20 (b) SAVINGS CLAUSE.—Notwithstanding subsection  
21 (a), the Governor of a State may petition the Secretary  
22 to adopt a national ballast water discharge standard that  
23 is more stringent than the ballast water performance  
24 standard under section \_\_\_\_05(a)(1)(A) upon a showing  
25 that—

1 (1) compliance with the proposed ballast water  
2 discharge standard can in fact be achieved and de-  
3 tected by a ballast water management system that  
4 is economically achievable and operationally prac-  
5 ticable;

6 (2) the proposed ballast water discharge stand-  
7 ard is consistent with obligations under relevant  
8 international treaties or agreements to which the  
9 United States is a party; and

10 (3) any other factors that the Secretary, in con-  
11 sultation with the Administrator, deems relevant.

12 (c) PETITION PROCESS.—

13 (1) SUBMISSION.—The Governor of a State  
14 shall submit a petition to the Secretary requesting  
15 the Secretary to review the statute or regulation.

16 (2) CONTENTS; TIMING.—A petition submitted  
17 under paragraph (1) shall be accompanied by the  
18 scientific and technical information on which the pe-  
19 tition is based.

20 (3) DETERMINATIONS.—The Secretary shall  
21 make a determination on a petition under this sub-  
22 section not later than 90 days after the date that  
23 the Secretary determines that a complete petition  
24 has been received.

1 **SEC. 11. APPLICATION WITH OTHER STATUTES.**

2 (a) **EXCLUSIVE STATUTORY AUTHORITY.**—Except as  
3 otherwise provided in this section and notwithstanding any  
4 other provision of law, this title shall be the exclusive stat-  
5 utory authority for regulation by the Federal Government  
6 of discharges incidental to the normal operation of a vessel  
7 to which this title applies.

8 (b) **EFFECT OF EXISTING REGULATIONS.**—Except as  
9 provided under section 05(a)(1)(A), any regulation in  
10 effect on the date immediately preceding the effective date  
11 of this Act relating to any permitting requirement for or  
12 prohibition on discharges incidental to the normal oper-  
13 ation of a vessel to which this title applies—

14 (1) shall be deemed to be a regulation issued  
15 pursuant to the authority of this title; and

16 (2) shall remain in full force and effect unless  
17 or until superseded by new regulations issued under  
18 this title.

19 (c) **ACT TO PREVENT POLLUTION FROM SHIPS.**—  
20 The Act to Prevent Pollution from Ships (33 U.S.C. 1901  
21 et seq.) shall be the exclusive statutory authority for the  
22 regulation by the Federal Government of any discharge  
23 or emission that is covered under the International Con-  
24 vention for the Prevention of Pollution from Ships, 1973,  
25 as modified by the Protocol of 1978, done at London Feb-  
26 ruary 17, 1978. Nothing in this title may be construed

1 to alter or amend such Act or any regulation issued pursu-  
2 ant to the authority of such Act.

3 (d) TITLE X OF THE COAST GUARD AND MARITIME  
4 TRANSPORTATION ACT OF 2010.—Title X of the Coast  
5 Guard and Maritime Transportation Act of 2010 (33  
6 U.S.C. 3801 et seq.) shall be the exclusive statutory au-  
7 thority for the regulation by the Federal Government of  
8 any anti-fouling system that is covered under the Inter-  
9 national Convention on the Control of Harmful Anti-Foul-  
10 ing Systems on Ships, 2001. Nothing in this title may be  
11 construed to alter or amend such title X or any regulation  
12 issued pursuant to the authority under such title.

13 **SEC. 12. RELATIONSHIP TO OTHER LAWS.**

14 Section 1205 of the Nonindigenous Aquatic Nuisance  
15 Prevention and Control Act of 1990 (16 U.S.C. 4725) is  
16 amended—

17 (1) by striking “All actions” and inserting the  
18 following:

19 “(a) IN GENERAL.—Except as provided in subsection  
20 (b), all actions”; and

21 (2) by adding at the end the following:

22 “(b) VESSEL INCIDENTAL DISCHARGES.—Notwith-  
23 standing subsection (a), the Vessel Incidental Discharge  
24 Act shall be the exclusive statutory authority for the regu-



1 lation by the Federal Government of discharges incidental  
2 to the normal operation of a vessel.”.

3 **SEC. 13. SAVINGS PROVISION.**

4 Any action taken by the Federal Government under  
5 this Act shall be in full compliance with its obligations  
6 under applicable provisions of international law.