



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., 1st Sess.

S. 1611

To authorize appropriations for the Coast Guard for fiscal years 2016 and 2017, 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. SULLIVAN

Viz:

1 At the end, add the following:

2 **TITLE VIII—VESSEL INCIDENTAL**
3 **DISCHARGE ACT**

4 **SEC. 801. SHORT TITLE.**

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

7 **SEC. 802. FINDINGS; PURPOSE.**

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

10 (1) Beginning with enactment of the Act to
11 Prevent Pollution from Ships in 1980 (22 U.S.C.

1 1901 et seq.), the United States Coast Guard has
2 been the principal Federal authority charged with
3 administering, enforcing, and prescribing regulations
4 relating to the discharge of pollutants from vessels
5 engaged in maritime commerce and transportation.

6 (2) The Coast Guard estimates there are ap-
7 proximately 21,560,000 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) Over the 32 years during which this regu-
16 latory exemption was in effect, Congress enacted
17 statutes on a number of occasions dealing with the
18 regulation of discharges incidental to the normal op-
19 eration of a vessel, 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 and

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

1 (b) PURPOSE.—The purpose of this title is to provide
2 for the establishment of nationally uniform and environ-
3 mentally sound standards and requirements for the man-
4 agement of discharges incidental to the normal operation
5 of a vessel.

6 **SEC. 803. DEFINITIONS.**

7 In this title:

8 (1) ADMINISTRATOR.—The term “Adminis-
9 trator” means the Administrator of the Environ-
10 mental Protection Agency.

11 (2) AQUATIC NUISANCE SPECIES.—The term
12 “aquatic nuisance species” means a nonindigenous
13 species (including a pathogen) that threatens the di-
14 versity or abundance of native species or the ecologi-
15 cal stability of navigable waters or commercial, agri-
16 cultural, aquacultural, or recreational activities de-
17 pendent on such waters.

18 (3) BALLAST WATER.—

19 (A) IN GENERAL.—The term “ballast
20 water” means any water, including any sedi-
21 ment suspended in such water, taken aboard a
22 vessel—

23 (i) to control trim, list, draught, sta-
24 bility, or stresses of the vessel; or

1 (ii) during the cleaning, maintenance,
2 or other operation of a ballast water treat-
3 ment technology of the vessel.

4 (B) EXCLUSIONS.—The term “ballast
5 water” does not include any pollutant that is
6 added to water described in subparagraph (A)
7 that is not directly related to the operation of
8 a properly functioning ballast water treatment
9 technology under this title.

10 (4) BALLAST WATER PERFORMANCE STAND-
11 ARD.—The term “ballast water performance stand-
12 ard” means the numerical ballast water discharge
13 standard set forth in section 151.2030 of title 33,
14 Code of Federal Regulations or section 151.1511 of
15 title 33, Code of Federal Regulations, as applicable,
16 or a revised numerical ballast water performance
17 standard established under subsection (a)(1)(B), (b),
18 or (c) of section 805 of this title.

19 (5) BALLAST WATER TREATMENT TECHNOLOGY
20 OR TREATMENT TECHNOLOGY.—The term “ballast
21 water treatment technology” or “treatment tech-
22 nology” means any mechanical, physical, chemical,
23 or biological process used, alone or in combination,
24 to remove, render harmless, or avoid the uptake or

1 discharge of aquatic nuisance species within ballast
2 water.

3 (6) BIOCIDES.—The term “biocides” means a
4 substance or organism, including a virus or fungus,
5 that is introduced into or produced by a ballast
6 water treatment technology to reduce or eliminate
7 aquatic nuisance species as part of the process used
8 to comply with a ballast water performance standard
9 under this title.

10 (7) DISCHARGE INCIDENTAL TO THE NORMAL
11 OPERATION OF A VESSEL.—

12 (A) IN GENERAL.—The term “discharge
13 incidental to the normal operation of a vessel”
14 means—

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

17 (I)(aa) ballast water, graywater,
18 bilge water, cooling water, oil water
19 separator effluent, anti-fouling hull
20 coating leachate, boiler or economizer
21 blowdown, byproducts from cathodic
22 protection, controllable pitch propeller
23 and thruster hydraulic fluid, distilla-
24 tion and reverse osmosis brine, eleva-
25 tor pit effluent, firemain system efflu-

1 ent, freshwater layup effluent, gas
2 turbine wash water, motor gasoline
3 and compensating effluent, refrigera-
4 tion and air condensate effluent, sea-
5 water pumping biofouling prevention
6 substances, boat engine wet exhaust,
7 sonar dome effluent, exhaust gas
8 scrubber washwater, or stern tube
9 packing gland effluent; or

10 (bb) any other pollutant associ-
11 ated with the operation of a marine
12 propulsion system, shipboard maneu-
13 vering system, habitability system, or
14 installed major equipment, or from a
15 protective, preservative, or absorptive
16 application to the hull of a vessel;

17 (II) weather deck runoff, deck
18 wash, aqueous film forming foam ef-
19 fluent, chain locker effluent, non-oily
20 machinery wastewater, underwater
21 ship husbandry effluent, weldeck ef-
22 fluent, or fish hold and fish hold
23 cleaning effluent; or

24 (III) any effluent from a properly
25 functioning marine engine; or

1 (ii) a discharge of a pollutant into
2 navigable waters in connection with the
3 testing, maintenance, or repair of a sys-
4 tem, equipment, or engine described in
5 subclause (I)(bb) or (III) of clause (i)
6 whenever the vessel is waterborne.

7 (B) EXCLUSIONS.—The term “discharge
8 incidental to the normal operation of a vessel”
9 does not include—

10 (i) a discharge into navigable waters
11 from a vessel of—

12 (I) rubbish, trash, garbage, incin-
13 erator ash, or other such material dis-
14 charged overboard;

15 (II) oil or a hazardous substance
16 as those terms are defined in section
17 311 of the Federal Water Pollution
18 Control Act (33 U.S.C. 1321);

19 (III) sewage as defined in section
20 312(a)(6) of the Federal Water Pollu-
21 tion Control Act (33 U.S.C.
22 1322(a)(6)); or

23 (IV) graywater referred to in sec-
24 tion 312(a)(6) of the Federal Water

1 Pollution Control Act (33 U.S.C.
2 1322(a)(6));

3 (ii) an emission of an air pollutant re-
4 sulting from the operation onboard a vessel
5 of a vessel propulsion system, motor driven
6 equipment, or incinerator; or

7 (iii) a discharge into navigable waters
8 from a vessel when the vessel is operating
9 in a capacity other than as a means of
10 transportation on water.

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

13 (A) with a physical limitation, including
14 limitation by physical size and limitation by au-
15 thorized route such as the Great Lakes and St.
16 Lawrence River, that prevents a vessel from op-
17 erating outside the area, as determined by the
18 Secretary; or

19 (B) that is ecologically homogeneous, as
20 determined by the Secretary, in consultation
21 with the heads of other Federal departments or
22 agencies as the Secretary considers appropriate.

23 (9) MANUFACTURER.—The term “manufac-
24 turer” means a person engaged in the manufacture,

1 assemblage, or importation of ballast water treat-
2 ment technology.

3 (10) SECRETARY.—The term “Secretary”
4 means the Secretary of the department in which the
5 Coast Guard is operating.

6 (11) VESSEL.—The term “vessel” means every
7 description of watercraft or other artificial contriv-
8 ance used, or practically or otherwise capable of
9 being used, as a means of transportation on water.

10 **SEC. 804. REGULATION AND ENFORCEMENT.**

11 (a) IN GENERAL.—The Secretary, in consultation
12 with the Administrator, shall establish and implement en-
13 forceable uniform national standards and requirements for
14 the regulation of discharges incidental to the normal oper-
15 ation of a vessel. The standards and requirements shall—

16 (1) be based upon the best available technology
17 economically achievable; and

18 (2) supersede any permitting requirement or
19 prohibition on discharges incidental to the normal
20 operation of a vessel under any other provision of
21 law.

22 (b) ADMINISTRATION AND ENFORCEMENT.—The
23 Secretary shall administer and enforce the uniform na-
24 tional standards and requirements under this title. Each

1 State may enforce the uniform national standards and re-
2 quirements under this title.

3 **SEC. 805. UNIFORM NATIONAL STANDARDS AND REQUIRE-**
4 **MENTS FOR THE REGULATION OF DIS-**
5 **CHARGES INCIDENTAL TO THE NORMAL OP-**
6 **ERATION OF A VESSEL.**

7 (a) REQUIREMENTS.—

8 (1) BALLAST WATER MANAGEMENT REQUIRE-
9 MENTS.—

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

23 (B) ADOPTION OF MORE STRINGENT
24 STATE STANDARD.—If the Secretary makes a
25 determination in favor of a State petition under

1 section 810, the Secretary shall adopt the more
2 stringent ballast water performance standard
3 specified in the statute or regulation that is the
4 subject of that State petition in lieu of the bal-
5 last water performance standard in the final
6 rule described under subparagraph (A).

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

15 (b) REVISED BALLAST WATER PERFORMANCE
16 STANDARD; 8-YEAR REVIEW.—

17 (1) IN GENERAL.—Subject to the feasibility re-
18 view under paragraph (2), not later than January 1,
19 2022, the Secretary, in consultation with the Admin-
20 istrator, shall issue a final rule revising the ballast
21 water performance standard under subsection (a)(1)
22 so that a ballast water discharge incidental to the
23 normal operation of a vessel will contain—

24 (A) less than 1 organism that is living or
25 has not been rendered harmless per 10 cubic

1 meters that is 50 or more micrometers in min-
2 imum dimension;

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

8 (C) concentrations of indicator microbes
9 that are less than—

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

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

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

19 (D) concentrations of such additional indi-
20 cator microbes and of viruses as may be speci-
21 fied in regulations issued by the Secretary in
22 consultation with the Administrator and such
23 other Federal agencies as the Secretary and the
24 Administrator consider appropriate.

25 (2) FEASIBILITY REVIEW.—

1 (A) IN GENERAL.—Not less than 2 years
2 before January 1, 2022, the Secretary, in con-
3 sultation with the Administrator, shall complete
4 a review to determine the feasibility of achiev-
5 ing the revised ballast water performance stand-
6 ard under paragraph (1).

7 (B) CRITERIA FOR REVIEW OF BALLAST
8 WATER PERFORMANCE STANDARD.—In con-
9 ducting a review under subparagraph (A), the
10 Secretary shall consider whether revising the
11 ballast water performance standard will result
12 in a scientifically demonstrable and substantial
13 reduction in the risk of introduction or estab-
14 lishment of aquatic nuisance species, taking
15 into account—

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

20 (ii) improvements in ballast water
21 treatment technology, including—

22 (I) the capability of such treat-
23 ment technology to achieve a revised
24 ballast water performance standard;

1 (II) the effectiveness and reli-
2 ability of such treatment technology in
3 the shipboard environment;

4 (III) the compatibility of such
5 treatment technology with the design
6 and operation of a vessel by class,
7 type, and size;

8 (IV) the commercial availability
9 of such treatment technology; and

10 (V) the safety of such treatment
11 technology;

12 (iii) improvements in the capabilities
13 to detect, quantify, and assess the viability
14 of aquatic nuisance species at the con-
15 centrations under consideration;

16 (iv) the impact of ballast water treat-
17 ment technology on water quality; and

18 (v) the costs, cost-effectiveness, and
19 impacts of—

20 (I) a revised ballast water per-
21 formance standard, including the po-
22 tential impacts on shipping, trade,
23 and other uses of the aquatic environ-
24 ment; and

1 (II) maintaining the existing bal-
2 last water performance standard, in-
3 cluding the potential impacts on
4 water-related infrastructure, recre-
5 ation, propagation of native fish,
6 shellfish, and wildlife, and other uses
7 of navigable waters.

8 (C) LOWER REVISED PERFORMANCE
9 STANDARD.—

10 (i) IN GENERAL.—If the Secretary, in
11 consultation with the Administrator, deter-
12 mines on the basis of the feasibility review
13 and after an opportunity for a public hear-
14 ing that no ballast water treatment tech-
15 nology can be certified under section 806
16 to comply with the revised ballast water
17 performance standard under paragraph
18 (1), the Secretary shall require the use of
19 the treatment technology that achieves the
20 performance levels of the best treatment
21 technology available.

22 (ii) IMPLEMENTATION DEADLINE.—If
23 the Secretary, in consultation with the Ad-
24 ministrator, determines that the treatment
25 technology under clause (i) cannot be im-

1 plemented before the implementation dead-
2 line under paragraph (3) with respect to a
3 class of vessels, the Secretary shall extend
4 the implementation deadline for that class
5 of vessels for not more than 36 months.

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

12 (D) HIGHER REVISED PERFORMANCE
13 STANDARD.—

14 (i) IN GENERAL.—If the Secretary, in
15 consultation with the Administrator, deter-
16 mines that ballast water treatment tech-
17 nology exists that exceeds the revised bal-
18 last water performance standard under
19 paragraph (1) with respect to a class of
20 vessels, the Secretary shall revise the bal-
21 last water performance standard for that
22 class of vessels to incorporate the higher
23 performance standard.

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

1 administrator, determines that the treatment
2 technology under clause (i) can be imple-
3 mented before the implementation deadline
4 under paragraph (3) with respect to a
5 class of vessels, the Secretary shall accel-
6 erate the implementation deadline for that
7 class of vessels. If the implementation
8 deadline under paragraph (3) is accel-
9 erated, the Secretary shall provide not less
10 than 24 months notice before the accel-
11 erated deadline takes effect.

12 (3) IMPLEMENTATION DEADLINE.—The revised
13 ballast water performance standard under paragraph
14 (1) shall apply to a vessel beginning on the date of
15 the first drydocking of the vessel on or after Janu-
16 ary 1, 2022, but not later than December 31, 2024.

17 (4) REVISED PERFORMANCE STANDARD COM-
18 PLIANCE DEADLINES.—

19 (A) IN GENERAL.—The Secretary may es-
20 tablish a compliance deadline for compliance by
21 a vessel (or a class, type, or size of vessel) with
22 a revised ballast water performance standard
23 under this subsection.

24 (B) PROCESS FOR GRANTING EXTEN-
25 SIONS.—In issuing regulations under this sub-

1 section, the Secretary shall establish a process
2 for an owner or operator to submit a petition
3 to the Secretary for an extension of a compli-
4 ance deadline with respect to the vessel of the
5 owner or operator.

6 (C) PERIOD OF EXTENSIONS.—An exten-
7 sion issued under subparagraph (B) may—

8 (i) apply for a period of not to exceed
9 18 months from the date of the applicable
10 deadline under subparagraph (A); and

11 (ii) be renewable for an additional pe-
12 riod of not to exceed 18 months.

13 (D) FACTORS.—In issuing a compliance
14 deadline or reviewing a petition under this
15 paragraph, the Secretary shall consider, with
16 respect to the ability of an owner or operator to
17 meet a compliance deadline, the following fac-
18 tors:

19 (i) Whether the treatment technology
20 to be installed is available in sufficient
21 quantities to meet the compliance deadline.

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

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

1 (iv) Vessel characteristics, such as en-
2 gine room size, layout, or a lack of in-
3 stalled piping.

4 (v) Electric power generating capacity
5 aboard the vessel.

6 (vi) Safety of the vessel and crew.

7 (E) CONSIDERATION OF PETITIONS.—

8 (i) DETERMINATIONS.—The Secretary
9 shall approve or deny a petition for an ex-
10 tension of a compliance deadline submitted
11 by an owner or operator under this para-
12 graph.

13 (ii) DEADLINE.—If the Secretary does
14 not approve or deny a petition referred to
15 in clause (i) on or before the last day of
16 the 90-day period beginning on the date of
17 submission of the petition, the petition
18 shall be deemed approved.

19 (c) FUTURE REVISIONS OF VESSEL INCIDENTAL
20 DISCHARGE STANDARDS; DECENNIAL REVIEWS.—

21 (1) REVISED BALLAST WATER PERFORMANCE
22 STANDARDS.—The Secretary, in consultation with
23 the Administrator, shall complete a review, 10 years
24 after the issuance of a final rule under subsection
25 (b) and every 10 years thereafter, to determine

1 whether further revision of the ballast water per-
2 formance standard would result in a scientifically de-
3 monstrable and substantial reduction in the risk of
4 the introduction or establishment of aquatic nui-
5 sance species.

6 (2) REVISED STANDARDS FOR DISCHARGES
7 OTHER THAN BALLAST WATER.—The Secretary, in
8 consultation with the Administrator, may include in
9 a decennial review under this subsection best man-
10 agement practices for discharges covered by sub-
11 section (a)(2). The Secretary shall initiate a rule-
12 making to revise 1 or more best management prac-
13 tices for such discharges after a decennial review if
14 the Secretary, in consultation with the Adminis-
15 trator, determines that revising 1 or more of such
16 practices would substantially reduce the impacts on
17 navigable waters of discharges incidental to the nor-
18 mal operation of a vessel other than ballast water.

19 (3) CONSIDERATIONS.—In conducting a review
20 under paragraph (1), the Secretary, the Adminis-
21 trator, and the heads of other appropriate Federal
22 agencies as determined by the Secretary, shall con-
23 sider the criteria under section 805(b)(2)(B).

24 (4) REVISION AFTER DECENNIAL REVIEW.—
25 The Secretary shall initiate a rulemaking to revise

1 the current ballast water performance standard after
2 a decennial review if the Secretary, in consultation
3 with the Administrator, determines that revising the
4 current ballast water performance standard would
5 result in a scientifically demonstrable and substan-
6 tial reduction in the risk of the introduction or es-
7 tablishment of aquatic nuisance species.

8 (d) 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. 806. TREATMENT TECHNOLOGY CERTIFICATION.**

17 (a) CERTIFICATION REQUIRED.—Beginning 1 year
18 after the date that the requirements for testing protocols
19 are issued under subsection (i), no manufacturer of a bal-
20 last water treatment technology shall sell, offer for sale,
21 or introduce or deliver for introduction into interstate
22 commerce, or import into the United States for sale or
23 resale, a ballast water treatment technology for a vessel
24 unless the treatment technology has been certified under
25 this section.

1 (b) CERTIFICATION PROCESS.—

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

5 (A) the effectiveness of the treatment tech-
6 nology in achieving the current ballast water
7 performance standard when installed on a ves-
8 sel (or a class, type, or size of vessel);

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

11 (C) the effect of the treatment technology
12 on vessel safety;

13 (D) the impact on the environment;

14 (E) the cost effectiveness; and

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

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

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

1 (c) CERTIFICATION CONDITIONS.—

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

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

11 (B) the protection of the environment; or

12 (C) the effective operation of the treatment
13 technology.

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

18 (d) PERIOD FOR USE OF INSTALLED TREATMENT
19 EQUIPMENT.—Notwithstanding anything to the contrary
20 in this title or any other provision of law, the Secretary
21 shall allow a vessel on which a system is installed and op-
22 erated to meet a ballast water performance standard
23 under this title to continue to use that system, notwith-
24 standing any revision of a ballast water performance
25 standard occurring after the system is ordered or installed

1 until the expiration of the service life of the system, as
2 determined by the Secretary, so long as the system—

3 (1) is maintained in proper working condition;

4 and

5 (2) is maintained and used in accordance with
6 the manufacturer's specifications and any treatment
7 technology certification conditions imposed by the
8 Secretary under this section.

9 (e) CERTIFICATES OF TYPE APPROVAL FOR THE
10 TREATMENT TECHNOLOGY.—

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

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

21 (3) OWNERS AND OPERATORS.—A manufac-
22 turer that receives a certificate of type approval for
23 the treatment technology under this subsection shall
24 provide a copy of the certificate to each owner and

1 operator of a vessel on which the treatment tech-
2 nology is installed.

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

9 (g) BIOCIDES.—The Secretary may not approve a
10 ballast water treatment technology under subsection (b)
11 if—

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

19 (2) it uses or generates a biocide the discharge
20 of which causes or contributes to a violation of a
21 water quality standard under section 303 of the
22 Federal Water Pollution Control Act (33 U.S.C.
23 1313).

24 (h) PROHIBITION.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the use of a ballast water treatment tech-
3 nology by an owner or operator of a vessel shall not
4 satisfy the requirements of this title unless it has
5 been approved by the Secretary under subsection
6 (b).

7 (2) EXCEPTIONS.—

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

16 (B) BALLAST WATER TREATMENT TECH-
17 NOLOGIES CERTIFIED BY FOREIGN ENTITIES.—
18 An owner or operator may use a ballast water
19 treatment technology that has not been certified
20 by the Secretary to comply with the require-
21 ments of this section if the technology has been
22 certified by a foreign entity and the certification
23 demonstrates performance and safety of the
24 treatment technology equivalent to the require-

1 ments of this section, as determined by the Sec-
2 retary.

3 (i) TESTING PROTOCOLS.—Not later than 180 days
4 after the date of enactment of this Act, the Administrator,
5 in consultation with the Secretary, shall issue require-
6 ments for land-based and shipboard testing protocols or
7 criteria for—

8 (1) certifying the performance of each ballast
9 water treatment technology under this section; and

10 (2) certifying laboratories to evaluate such
11 treatment technologies.

12 **SEC. 807. EXEMPTIONS.**

13 (a) IN GENERAL.—No permit shall be required or
14 prohibition enforced under any other provision of law for,
15 nor shall any standards regarding a discharge incidental
16 to the normal operation of a vessel under this title apply
17 to—

18 (1) a discharge incidental to the normal oper-
19 ation of a vessel if the vessel is less than 79 feet in
20 length and engaged in commercial service (as de-
21 fined in section 2101(5) of title 46, United States
22 Code);

23 (2) a discharge incidental to the normal oper-
24 ation of a vessel if the vessel is a fishing vessel, in-
25 cluding a fish processing vessel and a fish tender

1 vessel, (as defined in section 2101 of title 46, United
2 States Code);

3 (3) a discharge incidental to the normal oper-
4 ation of a vessel if the vessel is a recreational vessel
5 (as defined in section 2101(25) of title 46, United
6 States Code);

7 (4) the placement, release, or discharge of
8 equipment, devices, or other material from a vessel
9 for the sole purpose of conducting research on the
10 aquatic environment or its natural resources in ac-
11 cordance with generally recognized scientific meth-
12 ods, principles, or techniques;

13 (5) any discharge into navigable waters from a
14 vessel authorized by an on-scene coordinator in ac-
15 cordance with part 300 of title 40, Code of Federal
16 Regulations, or part 153 of title 33, Code of Federal
17 Regulations;

18 (6) any discharge into navigable waters from a
19 vessel that is necessary to secure the safety of the
20 vessel or human life, or to suppress a fire onboard
21 the vessel or at a shoreside facility; or

22 (7) a vessel of the armed forces of a foreign na-
23 tion when engaged in noncommercial service.

24 (b) BALLAST WATER DISCHARGES.—No permit shall
25 be required or prohibition enforced under any other provi-

1 sion of law for, nor shall any ballast water performance
2 standards under this title apply to—

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

6 (A) operate exclusively within a geographi-
7 cally limited area;

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

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

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

23 (2) a ballast water discharge incidental to the
24 normal operation of a vessel consisting entirely of
25 water suitable for human consumption; or

1 (3) a ballast water discharge incidental to the
2 normal operation of a vessel in an alternative com-
3 pliance program established pursuant to section 808.

4 (c) **VESSELS WITH PERMANENT BALLAST WATER.**—

5 No permit shall be required or prohibition enforced under
6 any other provision of law for, nor shall any ballast water
7 performance standard under this title apply to, a vessel
8 that carries all of its permanent ballast water in sealed
9 tanks that are not subject to discharge.

10 (d) **VESSELS OF THE ARMED FORCES.**—Nothing in
11 this title shall be construed to apply to a vessel as follows:

12 (1) A vessel owned or operated by the Depart-
13 ment of Defense (other than a time-chartered or
14 voyage-chartered vessel).

15 (2) A vessel of the Coast Guard, as designated
16 by the Secretary of the department in which the
17 Coast Guard is operating.

18 **SEC. 808. ALTERNATIVE COMPLIANCE PROGRAM.**

19 (a) **IN GENERAL.**—The Secretary, in consultation
20 with the Administrator, may promulgate regulations es-
21 tablishing 1 or more compliance programs as an alter-
22 native to ballast water management regulations issued
23 under section 805 for a vessel that—

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

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

3 or

4 (3) discharges ballast water into a facility for
5 the reception of ballast water that meets standards
6 promulgated by the Administrator, in consultation
7 with the Secretary.

8 (b) PROMULGATION OF FACILITY STANDARDS.—Not
9 later than 1 year after the date of enactment of this Act,
10 the Administrator, in consultation with the Secretary,
11 shall promulgate standards for—

12 (1) the reception of ballast water from a vessel
13 into a reception facility; and

14 (2) the disposal or treatment of the ballast
15 water under paragraph (1).

16 **SEC. 809. JUDICIAL REVIEW.**

17 (a) IN GENERAL.—An interested person may file a
18 petition for review of a final regulation promulgated under
19 this title in the United States Court of Appeals for the
20 District of Columbia Circuit.

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

24 (c) EXCEPTION.—Notwithstanding subsection (b), a
25 petition that is based solely on grounds that arise after

1 the deadline to file a petition under subsection (b) has
2 passed may be filed not later than 120 days after the date
3 that the grounds first arise.

4 **SEC. 810. EFFECT ON STATE AUTHORITY.**

5 (a) IN GENERAL.—No State or political subdivision
6 thereof may adopt or enforce any statute or regulation of
7 the State or political subdivision with respect to a dis-
8 charge incidental to the normal operation of a vessel after
9 the date of enactment of this Act.

10 (b) SAVINGS CLAUSE.—Notwithstanding subsection
11 (a), a State or political subdivision thereof may adopt or
12 enforce a statute or regulation of the State or political
13 subdivision with respect to ballast water discharges inci-
14 dental to the normal operation of a vessel that specifies
15 a ballast water performance standard that is more strin-
16 gent than the ballast water performance standard under
17 section 805(a)(1)(A) if the Secretary, after consultation
18 with the Administrator and any other Federal department
19 or agency the Secretary considers appropriate, makes a
20 determination that—

21 (1) compliance with any performance standard
22 specified in the statute or regulation can in fact be
23 achieved and detected;

1 (2) the technology and systems necessary to
2 comply with the statute or regulation are commer-
3 cially available; and

4 (3) the statute or regulation is consistent with
5 obligations under relevant international treaties or
6 agreements to which the United States is a party.

7 (e) PETITION PROCESS.—

8 (1) SUBMISSION.—The Governor of a State
9 seeking to adopt or enforce a statute or regulation
10 under subsection (b) shall submit a petition to the
11 Secretary requesting the Secretary to review the
12 statute or regulation.

13 (2) CONTENTS; TIMING.—A petition shall be ac-
14 companied by the scientific and technical informa-
15 tion on which the petition is based, and may be sub-
16 mitted within 1 year of the date of enactment of this
17 Act and every 10 years thereafter.

18 (3) DETERMINATIONS.—The Secretary shall
19 make a determination on a petition under this sub-
20 section not later than 90 days after the date that
21 the petition is received.

22 **SEC. 811. APPLICATION WITH OTHER STATUTES.**

23 Notwithstanding any other provision of law, this title
24 shall be the exclusive statutory authority for regulation by
25 the Federal Government of discharges incidental to the

1 normal operation of a vessel to which this title applies.
2 Except as provided under section 805(a)(1)(A), any regu-
3 lation in effect on the date immediately preceding the ef-
4 fective date of this Act relating to any permitting require-
5 ment for or prohibition on discharges incidental to the
6 normal operation of a vessel to which this title applies
7 shall be deemed to be a regulation issued pursuant to the
8 authority of this title and shall remain in full force and
9 effect unless or until superseded by new regulations issued
10 hereunder.