

113TH CONGRESS
2D SESSION

S. 2094

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

MARCH 6, 2014

Mr. BEGICH (for himself, Mr. RUBIO, Ms. AYOTTE, Mr. BLUNT, Mr. BOOZMAN, Mr. CASEY, Mr. COCHRAN, Ms. COLLINS, Ms. HIRONO, Ms. LANDRIEU, Mrs. MCCASKILL, Mr. MARKEY, Ms. MURKOWSKI, Mr. NELSON, Mr. PRYOR, Mr. ROCKEFELLER, Mr. SCHATZ, Mr. THUNE, Mr. TOOMEY, Mr. VITTER, Ms. WARREN, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Vessel Incidental Discharge Act”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
 Sec. 2. Findings; purpose.
 Sec. 3. Definitions.
 Sec. 4. Regulation and enforcement.
 Sec. 5. Uniform national standards and requirements for the regulation of discharges incidental to the normal operation of a vessel.
 Sec. 6. Treatment technology certification.
 Sec. 7. Exemptions.
 Sec. 8. Alternative compliance program.
 Sec. 9. Judicial review.
 Sec. 10. Effect on State authority.
 Sec. 11. Application with other statutes.

1 **SEC. 2. FINDINGS; PURPOSE.**

2 (a) FINDINGS.—Congress makes the following find-
 3 ings:

4 (1) Beginning with enactment of the Act to
 5 Prevent Pollution from Ships in 1980 (22 U.S.C.
 6 1901 et seq.), the United States Coast Guard has
 7 been the principal Federal authority charged with
 8 administering, enforcing, and prescribing regulations
 9 relating to the discharge of pollutants from vessels
 10 engaged in maritime commerce and transportation.

11 (2) The Coast Guard estimates there are ap-
 12 proximately 21,560,000 State-registered recreational
 13 vessels, 75,000 commercial fishing vessels, and
 14 33,000 freight and tank barges operating in United
 15 States waters.

16 (3) From 1973 to 2005, certain discharges inci-
 17 dental to the normal operation of a vessel were ex-
 18 empted by regulation from otherwise applicable per-
 19 mitting requirements.

1 (4) Over the 32 years during which this regu-
2 latory exemption was in effect, Congress enacted
3 statutes on a number of occasions dealing with the
4 regulation of discharges incidental to the normal op-
5 eration of a vessel, including—

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

8 (B) the Nonindigenous Aquatic Nuisance
9 Prevention and Control Act of 1990 (16 U.S.C.
10 4701 et seq.);

11 (C) the National Invasive Species Act of
12 1996 (110 Stat. 4073);

13 (D) section 415 of the Coast Guard Au-
14 thorization Act of 1998 (112 Stat. 3434) and
15 section 623 of the Coast Guard and Maritime
16 Transportation Act of 2004 (33 U.S.C. 1901
17 note), which established interim and permanent
18 requirements, respectively, for the regulation of
19 vessel discharges of certain bulk cargo residue;

20 (E) title XIV of division B of Appendix D
21 of the Consolidated Appropriations Act, 2001
22 (114 Stat. 2763), which prohibited or limited
23 certain vessel discharges in certain areas of
24 Alaska;

1 (F) section 204 of the Maritime Transpor-
2 tation Security Act of 2002 (33 U.S.C. 1902a),
3 which established requirements for the regula-
4 tion of vessel discharges of agricultural cargo
5 residue material in the form of hold washings;
6 and

7 (G) title X of the Coast Guard Authoriza-
8 tion Act of 2010 (33 U.S.C. 3801 et seq.),
9 which provided for the implementation of the
10 International Convention on the Control of
11 Harmful Anti-Fouling Systems on Ships, 2001.

12 (b) PURPOSE.—The purpose of this Act is to provide
13 for the establishment of nationally uniform and environ-
14 mentally sound standards and requirements for the man-
15 agement of discharges incidental to the normal operation
16 of a vessel.

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

19 (1) ADMINISTRATOR.—The term “Adminis-
20 trator” means the Administrator of the Environ-
21 mental Protection Agency.

22 (2) AQUATIC NUISANCE SPECIES.—The term
23 “aquatic nuisance species” means a nonindigenous
24 species (including a pathogen) that threatens the di-
25 versity or abundance of native species or the ecologi-

1 cal stability of navigable waters or commercial, agri-
2 cultural, aquacultural, or recreational activities de-
3 pendent on such waters.

4 (3) BALLAST WATER.—

5 (A) IN GENERAL.—The term “ballast
6 water” means any water, including any sedi-
7 ment suspended in such water, taken aboard a
8 vessel—

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

11 (ii) during the cleaning, maintenance,
12 or other operation of a ballast water treat-
13 ment technology of the vessel.

14 (B) EXCLUSIONS.—The term “ballast
15 water” does not include any pollutant that is
16 added to water described in subparagraph (A)
17 that is not directly related to the operation of
18 a properly functioning ballast water treatment
19 technology under this Act.

20 (4) BALLAST WATER PERFORMANCE STAND-
21 ARD.—The term “ballast water performance stand-
22 ard” means the numerical ballast water discharge
23 standard set forth in section 151.2030 of title 33,
24 Code of Federal Regulations or section 151.1511 of
25 title 33, Code of Federal Regulations, as applicable,

1 or a revised numerical ballast water performance
2 standard established under subsection (a)(1)(B), (b),
3 or (c) of section 5 of this Act.

4 (5) BALLAST WATER TREATMENT TECHNOLOGY
5 OR TREATMENT TECHNOLOGY.—The term “ballast
6 water treatment technology” or “treatment tech-
7 nology” means any mechanical, physical, chemical,
8 or biological process used, alone or in combination,
9 to remove, render harmless, or avoid the uptake or
10 discharge of aquatic nuisance species within ballast
11 water.

12 (6) BIOCIDES.—The term “biocides” means a
13 substance or organism, including a virus or fungus,
14 that is introduced into or produced by a ballast
15 water treatment technology to reduce or eliminate
16 aquatic nuisance species as part of the process used
17 to comply with a ballast water performance standard
18 under this Act.

19 (7) DISCHARGE INCIDENTAL TO THE NORMAL
20 OPERATION OF A VESSEL.—

21 (A) IN GENERAL.—The term “discharge
22 incidental to the normal operation of a vessel”
23 means—

24 (i) a discharge into navigable waters
25 from a vessel of—

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

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

1 (II) weather deck runoff, deck
2 wash, aqueous film forming foam ef-
3 fluent, chain locker effluent, non-oily
4 machinery wastewater, underwater
5 ship husbandry effluent, welldeck ef-
6 fluent, or fish hold and fish hold
7 cleaning effluent; or

8 (III) any effluent from a properly
9 functioning marine engine; or

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

16 (B) EXCLUSIONS.—The term “discharge
17 incidental to the normal operation of a vessel”
18 does not include—

19 (i) a discharge into navigable waters
20 from a vessel of—

21 (I) rubbish, trash, garbage, incin-
22 erator ash, or other such material dis-
23 charged overboard;

24 (II) oil or a hazardous substance
25 as those terms are defined in section

1 311 of the Federal Water Pollution
2 Control Act (33 U.S.C. 1321);

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

7 (IV) graywater referred to in sec-
8 tion 312(a)(6) of the Federal Water
9 Pollution Control Act (33 U.S.C.
10 1322(a)(6));

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

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

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

21 (A) with a physical limitation, including
22 limitation by physical size and limitation by au-
23 thorized route, that prevents a vessel from oper-
24 ating outside the area, as determined by the
25 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) SECRETARY.—The term “Secretary”
10 means the Secretary of the department in which the
11 Coast Guard is operating.

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

16 **SEC. 4. REGULATION AND ENFORCEMENT.**

17 (a) IN GENERAL.—The Secretary, in consultation
18 with the Administrator, shall establish and implement en-
19 forceable uniform national standards and requirements for
20 the regulation of discharges incidental to the normal oper-
21 ation of a vessel. The standards and requirements shall—

22 (1) be based upon the best available technology
23 economically achievable; and

24 (2) supersede any permitting requirement or
25 prohibition on discharges incidental to the normal

1 operation of a vessel under any other provision of
2 law.

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

8 **SEC. 5. UNIFORM NATIONAL STANDARDS AND REQUIRE-**
9 **MENTS FOR THE REGULATION OF DIS-**
10 **CHARGES INCIDENTAL TO THE NORMAL OP-**
11 **ERATION OF A VESSEL.**

12 (a) REQUIREMENTS.—

13 (1) BALLAST WATER MANAGEMENT REQUIRE-
14 MENTS.—

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

1 more stringent State standard under subpara-
2 graph (B) of this paragraph.

3 (B) ADOPTION OF MORE STRINGENT
4 STATE STANDARD.—If the Secretary makes a
5 determination in favor of a State petition under
6 section 10, the Secretary shall adopt the more
7 stringent ballast water performance standard
8 specified in the statute or regulation that is the
9 subject of that State petition in lieu of the bal-
10 last water performance standard in the final
11 rule described under subparagraph (A).

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

20 (b) REVISED BALLAST WATER PERFORMANCE
21 STANDARD; 8-YEAR REVIEW.—

22 (1) IN GENERAL.—Subject to the feasibility re-
23 view under paragraph (2), not later than January 1,
24 2022, the Secretary, in consultation with the Admin-
25 istrator, shall issue a final rule revising the ballast

1 water performance standard under subsection (a)(1)
2 so that a ballast water discharge incidental to the
3 normal operation of a vessel will contain—

4 (A) less than 1 living organism per 10
5 cubic meters that is 50 or more micrometers in
6 minimum dimension;

7 (B) less than 1 living organism per 10 mil-
8 liters that is less than 50 micrometers in min-
9 imum dimension and more than 10 micrometers
10 in minimum dimension;

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

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

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

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

22 (D) concentrations of such additional indi-
23 cator microbes and of viruses as may be speci-
24 fied in regulations issued by the Secretary in
25 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, 2022, 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 performance stand-
9 ard under paragraph (1).

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

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

23 (ii) improvements in ballast water
24 treatment technology, including—

1 (I) the capability of such treat-
2 ment technology to achieve a revised
3 ballast water performance standard;

4 (II) the effectiveness and reli-
5 ability of such treatment technology in
6 the shipboard environment;

7 (III) the compatibility of such
8 treatment technology with the design
9 and operation of a vessel by class,
10 type, and size;

11 (IV) the commercial availability
12 of such treatment technology; and

13 (V) the safety of such treatment
14 technology;

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 treat-
20 ment technology on water quality; and

21 (v) the costs, cost-effectiveness, and
22 impacts of—

23 (I) a revised ballast water per-
24 formance standard, including the po-
25 tential impacts on shipping, trade,

1 and other uses of the aquatic environ-
2 ment; and

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

10 (C) LOWER REVISED PERFORMANCE
11 STANDARD.—

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 treatment tech-
17 nology can be certified under section 6 to
18 comply with the revised ballast water per-
19 formance standard under paragraph (1),
20 the Secretary shall require the use of the
21 treatment technology that achieves the per-
22 formance levels of the best treatment tech-
23 nology available.

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

1 administrator, determines that the treatment
2 technology 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 PERFORMANCE
15 STANDARD.—

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

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

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

19 (4) REVISED PERFORMANCE STANDARD COM-
20 PLIANCE DEADLINES.—

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

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

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

10 (i) apply for a period of not to exceed
11 18 months from the date of the applicable
12 deadline under subparagraph (A); and

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

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

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

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

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

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

6 (v) Electric power generating capacity
7 aboard the vessel.

8 (vi) Safety of the vessel and crew.

9 (E) CONSIDERATION OF PETITIONS.—

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

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

21 (c) FUTURE REVISIONS OF VESSEL INCIDENTAL
22 DISCHARGE STANDARDS; DECENNIAL REVIEWS.—

23 (1) REVISED BALLAST WATER PERFORMANCE
24 STANDARDS.—The Secretary, in consultation with
25 the Administrator, shall complete a review, 10 years

1 after the issuance of a final rule under subsection
2 (b) and every 10 years thereafter, to determine
3 whether further revision of the ballast water per-
4 formance standard would result in a scientifically de-
5 monstrable and substantial reduction in the risk of
6 the introduction or establishment of aquatic nui-
7 sance species.

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

21 (3) CONSIDERATIONS.—In conducting a review
22 under paragraph (1), the Secretary, the Adminis-
23 trator, and the heads of other appropriate Federal
24 agencies as determined by the Secretary, shall con-
25 sider the criteria under section 5(b)(2)(B).

1 (4) REVISION AFTER DECENNIAL REVIEW.—
2 The Secretary shall initiate a rulemaking to revise
3 the current ballast water performance standard after
4 a decennial review if the Secretary, in consultation
5 with the Administrator, determines that revising the
6 current ballast water performance standard would
7 result in a scientifically demonstrable and substan-
8 tial reduction in the risk of the introduction or es-
9 tablishment of aquatic nuisance species.

10 **SEC. 6. TREATMENT TECHNOLOGY CERTIFICATION.**

11 (a) CERTIFICATION REQUIRED.—Beginning 60 days
12 after the date that the requirements for testing protocols
13 are issued under subsection (i), no manufacturer of a bal-
14 last water treatment technology shall sell, offer for sale,
15 or introduce or deliver for introduction into interstate
16 commerce, or import into the United States for sale or
17 resale, a ballast water treatment technology for a vessel
18 unless the treatment technology has been certified under
19 this section.

20 (b) CERTIFICATION PROCESS.—

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

24 (A) the effectiveness of the treatment tech-
25 nology in achieving the current ballast water

1 performance standard when installed on a ves-
2 sel (or a class, type, or size of vessel);

3 (B) the compatibility with vessel design
4 and operations;

5 (C) the effect of the treatment technology
6 on vessel safety;

7 (D) the impact on the environment;

8 (E) the cost effectiveness; and

9 (F) any other criteria the Secretary con-
10 siders appropriate.

11 (2) APPROVAL.—If after an evaluation under
12 paragraph (1) the Secretary determines that the
13 treatment technology meets the criteria, the Sec-
14 retary may certify the treatment technology for use
15 on a vessel (or a class, type, or size of vessel).

16 (3) SUSPENSION AND REVOCATION.—The Sec-
17 retary shall establish, by regulation, a process to
18 suspend or revoke a certification issued under this
19 section.

20 (c) CERTIFICATION CONDITIONS.—

21 (1) IMPOSITION OF CONDITIONS.—In certifying
22 a ballast water treatment technology under this sec-
23 tion, the Secretary, in consultation with the Admin-
24 istrator, may impose any condition on the subse-
25 quent installation, use, or maintenance of the treat-

1 ment technology onboard a vessel as is necessary
2 for—

3 (A) the safety of the vessel, the crew of the
4 vessel, and any passengers aboard the vessel;

5 (B) the protection of the environment; or

6 (C) the effective operation of the treatment
7 technology.

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

12 (d) PERIOD FOR USE OF INSTALLED TREATMENT
13 EQUIPMENT.—Notwithstanding anything to the contrary
14 in this Act or any other provision of law, the Secretary
15 shall allow a vessel on which a system is installed and op-
16 erated to meet a ballast water performance standard
17 under this Act to continue to use that system, notwith-
18 standing any revision of a ballast water performance
19 standard occurring after the system is ordered or installed
20 until the expiration of the service life of the system, as
21 determined by the Secretary, so long as the system—

22 (1) is maintained in proper working condition;

23 and

24 (2) is maintained and used in accordance with
25 the manufacturer's specifications and any treatment

1 technology certification conditions imposed by the
2 Secretary under this section.

3 (e) CERTIFICATES OF TYPE APPROVAL FOR THE
4 TREATMENT TECHNOLOGY.—

5 (1) ISSUANCE.—If the Secretary approves a
6 ballast water treatment technology for certification
7 under subsection (b), the Secretary shall issue a cer-
8 tificate of type approval for the treatment technology
9 to the manufacturer in such form and manner as the
10 Secretary determines appropriate.

11 (2) CERTIFICATION CONDITIONS.—A certificate
12 of type approval issued under paragraph (1) shall
13 specify each condition imposed by the Secretary
14 under subsection (c).

15 (3) OWNERS AND OPERATORS.—A manufac-
16 turer that receives a certificate of type approval for
17 the treatment technology under this subsection shall
18 provide a copy of the certificate to each owner and
19 operator of a vessel on which the treatment tech-
20 nology is installed.

21 (f) INSPECTIONS.—An owner or operator who re-
22 ceives a copy of a certificate under subsection (e)(3) shall
23 retain a copy of the certificate onboard the vessel and
24 make the copy of the certificate available for inspection

1 at all times while the owner or operator is utilizing the
2 treatment technology.

3 (g) BIOCIDES.—The Secretary may not approve a
4 ballast water treatment technology under subsection (b)
5 if—

6 (1) it uses a biocide or generates a biocide that
7 is a pesticide, as defined in section 2 of the Federal
8 Insecticide, Fungicide, and Rodenticide Act (7
9 U.S.C. 136), unless the biocide is registered under
10 that Act or the Secretary, in consultation with Ad-
11 ministrators, has approved the use of the biocide in
12 such treatment technology; or

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

18 (h) PROHIBITION.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), the use of a ballast water treatment tech-
21 nology by an owner or operator of a vessel shall not
22 satisfy the requirements of this Act unless it has
23 been approved by the Secretary under subsection
24 (b).

25 (2) EXCEPTIONS.—

1 (A) COAST GUARD SHIPBOARD TECH-
2 NOLOGY EVALUATION PROGRAM.—An owner or
3 operator may use a ballast water treatment
4 technology that has not been certified by the
5 Secretary to comply with the requirements of
6 this section if the technology is being evaluated
7 under the Coast Guard Shipboard Technology
8 Evaluation Program.

9 (B) BALLAST WATER TREATMENT TECH-
10 NOLOGIES CERTIFIED BY FOREIGN ENTITIES.—
11 An owner or operator may use a ballast water
12 treatment technology that has not been certified
13 by the Secretary to comply with the require-
14 ments of this section if the technology has been
15 certified by a foreign entity and the certification
16 demonstrates performance and safety of the
17 treatment technology equivalent to the require-
18 ments of this section, as determined by the Sec-
19 retary.

20 (i) TESTING PROTOCOLS.—Not later than 180 days
21 after the date of enactment of this Act, the Administrator,
22 in consultation with the Secretary, shall issue require-
23 ments for land-based and shipboard testing protocols or
24 criteria for—

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

3 (2) certifying laboratories to evaluate such
4 treatment technologies.

5 **SEC. 7. EXEMPTIONS.**

6 (a) IN GENERAL.—No permit shall be required or
7 prohibition enforced under any other provision of law for,
8 nor shall any standards regarding a discharge incidental
9 to the normal operation of a vessel under this Act apply
10 to—

11 (1) a discharge incidental to the normal oper-
12 ation of a vessel if the vessel is less than 79 feet in
13 length and engaged in commercial service (as de-
14 fined in section 2101(5) of title 46, United States
15 Code);

16 (2) a discharge incidental to the normal oper-
17 ation of a vessel if the vessel is a fishing vessel, in-
18 cluding a fish processing vessel and a fish tender
19 vessel, (as defined in section 2101 of title 46, United
20 States Code);

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

1 (4) the placement, release, or discharge of
2 equipment, devices, or other material from a vessel
3 for the sole purpose of conducting research on the
4 aquatic environment or its natural resources in ac-
5 cordance with generally recognized scientific meth-
6 ods, principles, or techniques;

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

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

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

18 (b) BALLAST WATER DISCHARGES.—No permit shall
19 be required or prohibition enforced under any other provi-
20 sion of law for, nor shall any ballast water performance
21 standards under this Act apply to—

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

1 (A) operate exclusively within a geographi-
2 cally limited area;

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

9 (C) operate pursuant to a geographic re-
10 striction issued as a condition under section
11 3309 of title 46, United States Code, or an
12 equivalent restriction issued by the country of
13 registration of the vessel; or

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

18 (2) a ballast water discharge incidental to the
19 normal operation of a vessel consisting entirely of
20 water suitable for human consumption; or

21 (3) a ballast water discharge incidental to the
22 normal operation of a vessel in an alternative com-
23 pliance program established pursuant to section (8).

24 (c) VESSELS WITH PERMANENT BALLAST WATER.—
25 No permit shall be required or prohibition enforced under

1 any other provision of law for, nor shall any ballast water
2 performance standard under this Act apply to, a vessel
3 that carries all of its permanent ballast water in sealed
4 tanks that are not subject to discharge.

5 (d) VESSELS OF THE ARMED FORCES.—Nothing in
6 this Act shall be construed to apply to a vessel of the
7 Armed Forces, as defined in section 101(a) of title 10,
8 United States Code.

9 **SEC. 8. ALTERNATIVE COMPLIANCE PROGRAM.**

10 (a) IN GENERAL.—The Secretary, in consultation
11 with the Administrator, may promulgate regulations es-
12 tablishing 1 or more compliance programs as an alter-
13 native to ballast water management regulations issued
14 under section 5 for a vessel that—

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

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

19 or

20 (3) discharges ballast water into a facility for
21 the reception of ballast water that meets standards
22 promulgated by the Administrator, in consultation
23 with the Secretary.

24 (b) PROMULGATION OF FACILITY STANDARDS.—Not
25 later than 1 year after the date of enactment of this Act,

1 the Administrator, in consultation with the Secretary,
2 shall promulgate standards for—

3 (1) the reception of ballast water from a vessel
4 into a reception facility; and

5 (2) the disposal or treatment of the ballast
6 water under paragraph (1).

7 **SEC. 9. JUDICIAL REVIEW.**

8 (a) IN GENERAL.—An interested person may file a
9 petition for review of a final regulation promulgated under
10 this Act in the United States Court of Appeals for the
11 District of Columbia Circuit.

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

15 (c) EXCEPTION.—Notwithstanding subsection (b), a
16 petition that is based solely on grounds that arise after
17 the deadline to file a petition under subsection (b) has
18 passed may be filed not later than 120 days after the date
19 that the grounds first arise.

20 **SEC. 10. EFFECT ON STATE AUTHORITY.**

21 (a) IN GENERAL.—No State or political subdivision
22 thereof may adopt or enforce any statute or regulation of
23 the State or political subdivision with respect to a dis-
24 charge incidental to the normal operation of a vessel after
25 the date of enactment of this Act.

1 (b) SAVINGS CLAUSE.—Notwithstanding subsection
2 (a), a State or political subdivision thereof may enforce
3 a statute or regulation of the State or political subdivision
4 with respect to ballast water discharges incidental to the
5 normal operation of a vessel that specifies a ballast water
6 performance standard that is more stringent than the bal-
7 last water performance standard under section 5(a)(1)(A)
8 and is in effect on the date of enactment of this Act if
9 the Secretary, after consultation with the Administrator
10 and any other Federal department or agency the Secretary
11 considers appropriate, makes a determination that—

12 (1) compliance with any performance standard
13 specified in the statute or regulation can in fact be
14 achieved and detected;

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

18 (3) the statute or regulation is consistent with
19 obligations under relevant international treaties or
20 agreements to which the United States is a party.

21 (c) PETITION PROCESS.—

22 (1) SUBMISSION.—The Governor of a State
23 seeking to enforce a statute or regulation under sub-
24 section (b) shall submit a petition requesting the
25 Secretary to review the statute or regulation.

1 (2) CONTENTS; DEADLINE.—A petition shall—

2 (A) be accompanied by the scientific and
3 technical information on which the petition is
4 based; and

5 (B) be submitted to the Secretary not later
6 than 90 days after the date of enactment of
7 this Act.

8 (3) DETERMINATIONS.—The Secretary shall
9 make a determination on a petition under this sub-
10 section not later than 90 days after the date that
11 the petition is received.

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

13 Notwithstanding any other provision of law, this Act
14 shall be the exclusive statutory authority for regulation by
15 the Federal Government of discharges incidental to the
16 normal operation of a vessel to which this Act applies. Ex-
17 cept as provided under section 5(a)(1)(A), any regulation
18 in effect on the date immediately preceding the effective
19 date of this Act relating to any permitting requirement
20 for or prohibition on discharges incidental to the normal
21 operation of a vessel to which this Act applies shall be
22 deemed to be a regulation issued pursuant to the authority
23 of this Act and shall remain in full force and effect unless
24 or until superseded by new regulations issued hereunder.

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