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112TH CONGRESS
1ST SESSION

H. R. 2840

To amend the Federal Water Pollution Control Act to regulate discharges from commercial vessels, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 2, 2011

Mr. LOBIONDO (for himself, Mr. MICA, and Mr. GIBBS) introduced the following bill

SEPTEMBER 6, 2011

Referred to the Committee on Transportation and Infrastructure

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A BILL

To amend the Federal Water Pollution Control Act to regulate discharges from commercial vessels, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Commercial Vessel Discharges Reform Act of 2011''.

SEC. 2. DISCHARGES FROM COMMERCIAL VESSELS.

Title III of the Federal Water Pollution Control Act (33 U.S.C. 1311 et seq.) is amended by adding at the end the following:

"SEC. 321. DISCHARGES FROM COMMERCIAL VESSELS.

"(a) DEFINITIONS.—In this section, the following definitions apply:

"(1) AQUATIC NUISANCE SPECIES.—The term 'aquatic nuisance species' means a nonindigenous species (including a pathogen) that threatens the diversity or abundance of native species or the ecological stability of navigable waters or commercial, agricultural, aquacultural, or recreational activities dependent on such waters.

"(2) BALLAST WATER.—

"(A) IN GENERAL.—The term 'ballast water' means any water (including any sediment suspended in such water) taken aboard a commercial vessel—

"(i) to control trim, list, draught, stability, or stresses of the vessel; or

"(ii) during the cleaning, maintenance, or other operation of a ballast water treatment system of the vessel.

"(B) EXCLUSION.—The term 'ballast water' does not include any pollutant that is

added to water described in subparagraph (A) that is not directly related to the operation of a properly functioning ballast water treatment technology certified under subsection (e).

"(3) BALLAST WATER CAPACITY.—The term 'ballast water capacity' means the total volumetric capacity of the ballast water treatment system of a commercial vessel.

"(4) BALLAST WATER PERFORMANCE STANDARD.—The term 'ballast water performance standard' or 'performance standard' means a numerical ballast water performance standard specified under subsection (c) or established under subsection (d).

"(5) BALLAST WATER TREATMENT SYSTEM.—The term 'ballast water treatment system' means any equipment on board a commercial vessel (including all compartments, piping, spaces, tanks, and multi-use compartments, piping, spaces, and tanks) designed for loading, carrying, treating, or discharging ballast water.

"(6) BALLAST WATER TREATMENT TECHNOLOGY.—The term 'ballast water treatment technology' or 'treatment technology' means any mechanical, physical, chemical, or biological process used, either singularly or in combination, to remove,

render harmless, or avoid the uptake or discharge of aquatic nuisance species within ballast water.

"(7) BIOCIDE.—The term 'biocide' means a substance or organism, including a virus or fungus, that is introduced into, or produced by, a ballast water treatment technology as part of the treatment process used to comply with a ballast water performance standard under this section.

"(8) COMMERCIAL VESSEL.—The term 'commercial vessel' means every description of watercraft, or other artificial contrivance used or capable of being used as a means of transportation on water, that is engaged in commercial service (as defined under section 2101 of title 46, United States Code).

"(9) CONSTRUCTED.—The term 'constructed' means a state of construction of a commercial vessel at which—

"(A) the keel is laid;

"(B) construction identifiable with the specific vessel begins;

"(C) assembly of the vessel has begun comprising at least 50 tons or 1 percent of the estimated mass of all structural material of the vessel, whichever is less; or

"(D) the vessel undergoes a major conversion.

"(10) DISCHARGE INCIDENTAL TO THE NORMAL OPERATION OF A COMMERCIAL VESSEL.—

"(A) IN GENERAL.—The term 'discharge incidental to the normal operation of a commercial vessel' means—

"(i) a discharge into navigable waters from a commercial vessel of—

"(I)(aa) graywater (except graywater referred to in section 312(a)(6)), bilge water, cooling water, oil water separator effluent, anti-fouling hull coating leachate, boiler or economizer blowdown, byproducts from cathodic protection, controllable pitch propeller and thruster hydraulic fluid, distillation and reverse osmosis brine, elevator pit effluent, firemain system effluent, freshwater layup effluent, gas turbine wash water, motor gasoline and compensating effluent, refrigeration and air condensate effluent, seawater pumping biofouling prevention substances, boat engine wet

exhaust, sonar dome effluent, exhaust gas scrubber washwater, or stern tube packing gland effluent; or

''(bb) any other pollutant associated with the operation of a marine propulsion system, shipboard maneuvering system, habitability system, or installed major equipment, or from a protective, preservative, or absorptive application to the hull of a commercial vessel;

''(II) weather deck runoff, deck wash, aqueous film forming foam effluent, chain locker effluent, non-oily machinery wastewater, underwater ship husbandry effluent, welldeck effluent, or fish hold and fish hold cleaning effluent; or

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

''(ii) a discharge of a pollutant into navigable waters in connection with the testing, maintenance, and repair of a system, equipment, or engine described in subclause (I)(bb) or (III) of clause (i)

whenever the commercial vessel is waterborne.

"(B) EXCLUSION.—The term 'discharge incidental to the normal operation of a commercial vessel' does not include—

"(i) a discharge into navigable waters from a commercial vessel of—

"(I) ballast water;

"(II) rubbish, trash, garbage, incinerator ash, or other such material discharged overboard;

"(III) oil or a hazardous substance within the meaning of section 311; or

"(IV) sewage within the meaning of section 312; or

"(ii) an emission of an air pollutant resulting from the operation onboard a commercial vessel of a vessel propulsion system, motor driven equipment, or incinerator.

"(11) GEOGRAPHICALLY LIMITED AREA.—The term 'geographically limited area' means an area—

"(A) with a physical limitation, such as a navigation lock, that prevents a commercial vessel from operating outside the area; or

"(B) that is ecologically homogeneous, as determined by the Secretary, in consultation with the Administrator.

"(12) MAJOR CONVERSION.—The term 'major conversion' means a conversion of a commercial vessel that—

"(A) changes its ballast water capacity by at least 15 percent; or

"(B) is projected to prolong the life of the commercial vessel by at least 10 years, as determined by the Secretary.

"(13) MANUFACTURER.—The term 'manufacturer' means a person engaged in the manufacturing, assembling, or importation of a ballast water treatment technology.

"(14) NONINDIGENOUS SPECIES.—The term 'nonindigenous species' means a species or other viable biological material that enters an ecosystem beyond its historic range.

"(15) OWNER OR OPERATOR.—The term 'owner or operator' means a person owning, operating, or chartering by demise a commercial vessel.

"(16) SECRETARY.—The term 'Secretary' means the Secretary of the department in which the Coast Guard is operating.

"(b) GENERAL PROVISIONS.—

"(1) BALLAST WATER DISCHARGE REQUIREMENTS FOR COMMERCIAL VESSELS.—An owner or operator may discharge ballast water from a commercial vessel into navigable waters only if—

"(A) the discharge—

"(i) meets the ballast water performance standard;

"(ii) is made pursuant to the safety exemption established by subsection (c)(2);

"(iii) meets the requirements of an alternative method of compliance established for the commercial vessel under subsection (f);

"(iv) is made pursuant to a determination that the commercial vessel meets the requirements relating to geographically limited areas under subsection (g); or

"(v) is made into an onshore or offshore facility that meets applicable standards, as described in subsection (h); and

"(B) the owner or operator discharges the ballast water in accordance with a ballast water management plan approved under subsection (i).

"(2) APPLICABILITY.—

"(A) COVERED VESSELS.—Paragraph (1) shall apply to the owner or operator of a commercial vessel that is designed, constructed, or adapted to carry ballast water if the commercial vessel is—

"(i) documented under the laws of the United States; or

"(ii) operating in navigable waters.

"(B) EXEMPTED VESSELS.—Paragraph (1) shall not apply to the owner or operator of—

"(i) a commercial vessel that carries all of its ballast water in sealed tanks that are not subject to discharge;

"(ii) a commercial vessel that continuously takes on and discharges ballast water in a flow-through system;

"(iii) any vessel in the National Defense Reserve Fleet that is scheduled to be disposed of through scrapping or sinking;

"(iv) a commercial vessel that discharges ballast water consisting solely of water—

"(I) taken aboard from a municipal or commercial source; and

"(II) that, at the time the water is taken aboard, meets the applicable regulations or permit requirements for such source under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) and section 402 of this Act; or

"(v) a commercial vessel that is 3 years or fewer from the end of its useful life, as determined by the Secretary, on the date on which the regulations issued under paragraph (3) become effective for the vessel pursuant to the implementation schedule issued under paragraph (3)(B).

"(C) LIMITATION.—An exemption under subparagraph (B)(v) shall cease to be effective on the date that is 3 years after the date on which the regulations under paragraph (3) become effective for the commercial vessel pursuant to the implementation schedule issued under paragraph (3)(B).

"(3) ISSUANCE OF REGULATIONS.—

"(A) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Administrator, shall issue final regulations to implement the requirements of this section.

"(B) IMPLEMENTATION SCHEDULE.—Regulations issued under this paragraph shall include an implementation schedule by commercial vessel class, type, or size.

"(C) PROPOSED RULE.—For the purposes of chapter 5 of title 5, United States Code, the proposed rulemaking published by the Coast Guard on August 28, 2009 (74 Fed. Reg. 44632; relating to standards for living organisms in ships' ballast water discharged in U.S. waters), shall serve as a proposed rule for the purposes of issuing regulations under this section.

"(c) BALLAST WATER PERFORMANCE STANDARD FOR COMMERCIAL VESSELS.—

"(1) IN GENERAL.—To meet the ballast water performance standard, an owner or operator shall—

"(A) conduct ballast water treatment before discharging ballast water from the com-

mercial vessel into navigable waters using a ballast water treatment technology certified for the vessel (or class, type, or size of vessel) under subsection (e); and

"(B) ensure that any ballast water so discharged meets, at a minimum, the numerical ballast water performance standard set forth in the International Convention for the Control and Management of Ships' Ballast Water and Sediments, as adopted on February 13, 2004, or a revised numerical ballast water performance standard established under subsection (d).

"(2) SAFETY EXEMPTION.—Notwithstanding paragraph (1), an owner or operator may discharge ballast water without regard to a ballast water performance standard if—

"(A) the discharge is done solely to ensure the safety of life at sea;

"(B) the discharge is accidental and the result of damage to the commercial vessel or its equipment and—

"(i) all reasonable precautions to prevent or minimize the discharge have been taken; and

"(ii) the owner or operator did not willfully or recklessly cause such damage; or

"(C) the discharge is solely for the purpose of avoiding or minimizing discharge from the vessel of pollution that would otherwise violate applicable Federal or State law.

"(d) REVIEW OF PERFORMANCE STANDARD.—

"(1) IN GENERAL.—Not later than January 1, 2016, and every 10 years thereafter, the Administrator, in consultation with the Secretary, shall complete a review to determine whether revising the ballast water performance standard would result in a scientifically demonstrable and substantial reduction in the risk of the introduction and establishment of aquatic nuisance species.

"(2) CONSIDERATIONS.—In conducting the review, the Administrator shall consider—

"(A) improvements in the scientific understanding of biological and ecological processes that lead to the introduction and establishment of aquatic nuisance species;

"(B) improvements in ballast water treatment technology, including—

"(i) the capability of such technology to achieve a revised ballast water performance standard;

"(ii) the effectiveness and reliability of such technology in the shipboard environment;

"(iii) the compatibility of such technology with the design and operation of commercial vessels by class, type, and size;

"(iv) the commercial availability of such technology; and

"(v) the safety of such technology;

"(C) improvements in the capabilities to detect, quantify, and assess the viability of aquatic nuisance species at the concentrations under consideration;

"(D) the impact of ballast water treatment technology on water quality; and

"(E) the costs, cost-effectiveness, and impacts of—

"(i) a revised ballast water performance standard, including the potential impacts on shipping, trade, and other uses of the aquatic environment; and

"(ii) maintaining the existing ballast water performance standard, including the potential impacts on water-related infrastructure, recreation, the propagation of native fish, shellfish, and wildlife, and other uses of navigable waters.

"(3) REVISION OF PERFORMANCE STANDARD.—

"(A) RULEMAKING.—If, pursuant to a review conducted under paragraph (1), the Administrator, in consultation with the Secretary, determines that revising the ballast water performance standard would result in a scientifically demonstrable and substantial reduction in the risk of the introduction and establishment of aquatic nuisance species, the Administrator shall undertake a rulemaking to revise the performance standard.

"(B) LIMITATION.—The Administrator may not issue a revised performance standard pursuant to this paragraph unless it is at least 3 orders of magnitude more stringent than the performance standard in effect on the date that the review is completed.

"(4) STATE PETITION FOR REVIEW OF PERFORMANCE STANDARDS.—

"(A) IN GENERAL.—The Governor of a State may submit a petition requesting that the Administrator review a ballast water performance standard if there is significant new information that could reasonably indicate the performance standard could be revised to result in a scientifically demonstrable and substantial reduction in the risk of the introduction and establishment of aquatic nuisance species.

"(B) TIMING.—A Governor may not submit a petition under subparagraph (A) during the 1-year period following the date of completion of a review under paragraph (1).

"(C) REQUIRED INFORMATION.—A petition submitted to the Administrator under subparagraph (A) shall include the scientific and technical information on which the petition is based.

"(D) REVIEW AND REPORTING.—Not later than 30 days after the date of receipt of a petition from a Governor under subparagraph (A), the Administrator shall make publicly available a copy of the petition, including the scientific and technical information provided by the Governor under subparagraph (C).

"(E) REVIEW AND REVISION OF PERFORMANCE STANDARDS.—

"(i) IN GENERAL.—If, after receiving a petition submitted by a Governor under subparagraph (A) for review of a performance standard, the Administrator, in consultation with the Secretary, determines that the petition warrants additional action, the Administrator may—

"(I) in consultation with the Secretary, initiate a review of the performance standard under paragraph (1); and

"(II) with the concurrence of the Secretary, revise the performance standard through a rulemaking under paragraph (3)(A), subject to the limitation in paragraph (3)(B).

"(ii) TREATMENT OF MORE THAN ONE PETITION AS A SINGLE PETITION.—The Administrator may treat more than one petition as a single petition for review.

"(e) TREATMENT TECHNOLOGY CERTIFICATION.—

"(1) CERTIFICATION REQUIRED.—

"(A) CERTIFICATION PROCESS.—

"(i) EVALUATION.—Upon application of the manufacturer, the Secretary shall evaluate a ballast water treatment technology with respect to—

"(I) whether the treatment technology reliably meets the ballast water performance standard when installed on a commercial vessel (or class, type, or size of commercial vessel);

"(II) the effect of the treatment technology on commercial vessel safety; and

"(III) any other criteria the Secretary considers appropriate.

"(ii) CERTIFICATION.—If, after conducting the evaluation required by clause (i), the Secretary determines the treatment technology meets the criteria established under such clause, the Secretary may certify the treatment technology for use on a commercial vessel (or a class, type, or size of commercial vessel).

"(iii) SUSPENSION AND REVOCATION OF CERTIFICATION.—The Secretary shall, by regulation, establish a process to sus-

pend or revoke a certification issued under this subparagraph.

"(B) CERTIFICATES OF TYPE APPROVAL.—

"(i) ISSUANCE OF CERTIFICATES TO MANUFACTURER.—If the Secretary certifies a ballast water treatment technology under subparagraph (A), the Secretary shall issue to the manufacturer of the treatment technology, in such form and manner as the Secretary determines appropriate, a certificate of type approval for the treatment technology.

"(ii) CONDITIONS TO BE INCLUDED IN CERTIFICATES.—A certificate of type approval issued under clause (i) shall include any conditions that are imposed by the Secretary under paragraph (2).

"(iii) ISSUANCE OF COPIES OF CERTIFICATES TO OWNERS AND OPERATORS.—A manufacturer that receives a certificate of type approval under clause (i) for a ballast water treatment technology shall furnish a copy of the certificate to any owner or operator of a commercial vessel on

which the treatment technology is installed.

"(iv) INSPECTIONS.—An owner or operator who receives a copy of a certificate under clause (iii) for a ballast water treatment technology installed on a commercial vessel shall retain a copy of the certificate onboard the commercial vessel and make the copy of the certificate available for inspection at all times that such owner or operator is utilizing the treatment technology.

"(C) TREATMENT TECHNOLOGIES THAT USE OR GENERATE BIOCIDES.—The Secretary shall not certify a ballast water treatment technology that—

"(i) uses a biocide or generates a biocide that is a 'pesticide', as defined in section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136), unless the biocide is registered under such Act or the Administrator has approved the use of such biocide in such treatment technology; or

"(ii) uses or generates a biocide the discharge of which causes a violation of a water quality standard under section 303 of this Act.

"(D) PROHIBITION.—

"(i) IN GENERAL.—Except as provided by clause (ii), an owner or operator may not use a ballast water treatment technology to comply with the requirements of this section unless the Secretary has certified the treatment technology under subparagraph (A).

"(ii) EXCEPTIONS.—

"(I) COAST GUARD SHIPBOARD TECHNOLOGY EVALUATION PROGRAM.—An owner or operator may use a ballast water treatment technology that has not been certified by the Secretary to comply with the requirements of this section if the technology is being evaluated under the Coast Guard Shipboard Technology Evaluation Program.

"(II) BALLAST WATER TREATMENT TECHNOLOGIES CERTIFIED BY

FOREIGN ENTITIES.—An owner or operator may use a ballast water treatment technology that has not been certified by the Secretary to comply with the requirements of this section if the technology has been certified by a foreign entity and the certification demonstrates performance and safety of the treatment technology equivalent to the requirements of this subsection, as determined by the Secretary.

''(2) CERTIFICATION CONDITIONS.—

''(A) IMPOSITION OF CONDITIONS.—In certifying a ballast water treatment technology under this subsection, the Secretary, in consultation with the Administrator, may impose any condition on the subsequent installation, use, or maintenance of the treatment technology onboard a commercial vessel as is necessary for—

''(i) the safety of the vessel, the crew of the vessel, and any passengers aboard the vessel;

''(ii) the protection of the environment; and

"(iii) the effective operation of the treatment technology.

"(B) FAILURE TO COMPLY.—The failure of an owner or operator to comply with a condition imposed under subparagraph (A) is a violation of this section.

"(3) USE OF BALLAST WATER TREATMENT TECHNOLOGIES ONCE INSTALLED.—An owner or operator who installs a ballast water treatment technology that the Secretary has certified under paragraph (1) may use the treatment technology, notwithstanding any revisions to a ballast water performance standard occurring after the installation—

"(A) so long as the owner or operator—

"(i) maintains the treatment technology in proper working condition; and

"(ii) maintains and uses the treatment technology in accordance with—

"(I) the manufacturer's specifications; and

"(II) any conditions imposed by the Secretary under paragraph (2); and

"(B) for a period of time not to exceed the service life of the ballast water treatment tech-

nology or the commercial vessel, as determined by the Secretary, whichever is less.

"(4) TESTING PROTOCOLS.—Not later than 180 days after the date of enactment of this section, the Administrator, in consultation with the Secretary, shall issue guidelines specifying land-based and shipboard testing protocols or criteria for—

"(A) certifying the performance of ballast water treatment technologies under this subsection; and

"(B) certifying laboratories to evaluate such treatment technologies.

"(5) PROHIBITION.—Following the date on which the requirements of subsection (b)(1) apply with respect to a commercial vessel pursuant to the implementation schedule issued under subsection (b)(3)(B), no manufacturer of a ballast water treatment technology shall sell, offer for sale, or introduce or deliver for introduction into interstate commerce, or import into the United States for sale or resale, a ballast water treatment technology for the commercial vessel unless the technology has been certified under this subsection.

"(f) ALTERNATIVE METHODS OF COMPLIANCE.—

"(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Administrator, shall establish an alternative method of compliance with this section for—

"(A) a commercial vessel having a maximum ballast water capacity of less than 8 cubic meters; and

"(B) a commercial vessel for which the Secretary determines that the ballast water treatment technology that is certified under this section—

"(i) is not commercially available in sufficient quantities to meet the compliance deadline issued by the Secretary;

"(ii) is not able to be installed to meet the compliance deadline promulgated by the Secretary due to—

"(I) insufficient shipyard or other installation facility capacity;

"(II) insufficient availability of engineering and design resources;

"(III) vessel characteristics, such as engine room size, layout, or a lack of installed piping that makes the in-

stallation of the ballast water treatment technology impracticable; or

"(IV) insufficient generation capacity aboard the vessel to power the ballast water treatment technology; or

"(iii) would adversely affect the safe operation of the vessel.

"(2) FACTORS FOR CONSIDERATION.—In establishing an alternative method of compliance under paragraph (1), the Secretary shall consider—

"(A) the effectiveness of the alternative method in reducing the risk of the introduction and establishment of aquatic nuisance species relative to the performance standard; and

"(B) any other factor the Secretary considers appropriate.

"(3) BEST MANAGEMENT PRACTICES.—The Secretary may establish as an alternative method of compliance appropriate ballast water best management practices to minimize the introduction and establishment of aquatic nuisance species.

"(4) USE OF ALTERNATIVE METHOD.—

"(A) PETITION.—In order to use an alternative method of compliance established under paragraph (1)(B), an owner or operator shall

submit a petition to the Secretary requesting approval to use such alternative method.

"(B) APPROVAL.—If the Secretary determines that a commercial vessel for which a petition has been submitted under subparagraph (A) meets the criteria described in paragraph (1)(B), the Secretary may approve the petition and impose any conditions on such approval that the Secretary determines appropriate.

"(C) DEADLINE.—The Secretary shall make a determination under subparagraph (B) not later than 90 days after the date on which an owner or operator submits a petition under subparagraph (A). If the Secretary fails to make a determination by the end of the 90-day period, the petition shall be considered to be approved.

"(g) GEOGRAPHICALLY LIMITED AREAS.—

"(1) IN GENERAL.—Subsections (c), (e), and (i) shall not apply to a commercial vessel that, as determined by the Secretary—

"(A) operates exclusively within a geographically limited area; or

"(B) operates pursuant to a geographic restriction issued for the commercial vessel under section 3309 of title 46, United States Code.

"(2) PETITION FOR DETERMINATION BY THE SECRETARY.—Following the date of issuance of final regulations under subsection (b), an owner or operator may petition the Secretary for a determination under paragraph (1). Not later than 90 days after receipt of such a petition, the Secretary shall respond to the petitioner with a determination regarding whether the commercial vessel that is the subject of the petition meets the requirements of paragraph (1). If the Secretary fails to respond to a petition by the end of the 90-day period, the petition shall be considered to be granted.

"(3) NOTIFICATION.—The Secretary shall notify the Administrator and the Governor of each State the waters of which could be affected by the discharge of ballast water from a commercial vessel for which a petition has been granted under paragraph (2) of the granting of any such petition.

"(h) RECEPTION FACILITIES.—

"(1) IN GENERAL.—An owner or operator shall discharge ballast water in compliance with sub-

section (c) or (f) unless discharging ballast water into—

"(A) an onshore facility for the reception of ballast water that meets standards issued by the Administrator, in consultation with the Secretary; or

"(B) an offshore facility for the reception of ballast water that meets standards issued by the Secretary, in consultation with the Administrator.

"(2) ISSUANCE OF STANDARDS.—Not later than 2 years after the date of enactment of this section—

"(A) the Administrator, in consultation with the Secretary, shall issue the standards referred to in paragraph (1)(A); and

"(B) the Secretary, in consultation with the Administrator, shall issue the standards referred to in paragraph (1)(B).

"(3) SOLE METHOD OF DISCHARGE.—The Secretary, in consultation with the Administrator, and upon petition by an owner or operator, may issue to an owner or operator a certificate stating that a commercial vessel is in compliance with the requirements of subsection (b)(1)(A) if discharging ballast

water into a facility meeting the standards issued under this subsection is the sole method by which the owner or operator discharges ballast water from the commercial vessel.

"(i) COMMERCIAL VESSEL BALLAST WATER MANAGEMENT PLAN.—

"(1) IN GENERAL.—An owner or operator shall discharge ballast water in accordance with a ballast water management plan that—

"(A) meets requirements prescribed by the Secretary; and

"(B) is approved by the Secretary.

"(2) FOREIGN COMMERCIAL VESSELS.—The Secretary may approve a ballast water management plan for a foreign commercial vessel on the basis of a certificate of compliance issued by the country of registration of the commercial vessel if the requirements of the government of that country for a ballast water management plan are substantially equivalent to regulations issued by the Secretary.

"(3) RECORDKEEPING.—

"(A) IN GENERAL.—Except as provided by subparagraph (B), an owner or operator shall maintain in English and have available for inspection by the Secretary a ballast water record

book in which each operation of the commercial vessel involving a ballast water discharge is recorded in accordance with regulations issued by the Secretary.

"(B) ALTERNATIVE MEANS OF RECORDKEEPING.—The Secretary may provide for alternative methods of recordkeeping, including electronic recordkeeping, to comply with the requirements of this paragraph.

"(j) REGULATION OF BALLAST WATER DISCHARGES.—Effective on and after the date of enactment of this section—

"(1) the Administrator (or a State in the case of a permit program approved under section 402) shall not require any new permit or permit condition under section 402 for any discharge of ballast water from a commercial vessel into navigable waters; and

"(2) except as provided by subsection (k), a State or political subdivision thereof shall not adopt or enforce any law or regulation of the State or political subdivision with respect to such a discharge.

"(k) STATE AUTHORITY.—

"(1) STATE PROGRAMS.—The Governor of a State desiring to administer its own inspection and enforcement authority for ballast water discharges

within its jurisdiction may submit to the Secretary a complete description of the program the Governor proposes to establish and administer under State law. In addition, the Governor shall submit a statement from the State attorney general that the laws of the State provide adequate authority to carry out the described program.

"(2) APPROVAL.—The Secretary, with the concurrence of the Administrator, may approve a program of a State submitted under paragraph (1) providing for the State's own inspection and enforcement authority for ballast water discharges within its jurisdiction, if the Secretary determines that the State possesses adequate resources to—

"(A) inspect, monitor, and board a commercial vessel at any time, including the taking and testing of ballast water samples, to ensure the commercial vessel's compliance with this section;

"(B) ensure that any ballast water discharged within the waters subject to the jurisdiction of the State meets the requirements of this section;

"(C) establish adequate procedures for reporting violations of this section;

"(D) investigate and abate violations of this section, including the imposition of civil and criminal penalties consistent with this section; and

"(E) ensure that the Secretary and the Administrator receive notice of each violation of this section in an expeditious manner.

"(3) COMPLIANCE.—Any State program approved under paragraph (2) shall at all times be conducted in accordance with this subsection.

"(4) WITHDRAWAL OF APPROVAL.—Whenever the Secretary, in consultation with the Administrator, determines, after providing notice and the opportunity for a public hearing, that a State is not administering a program in accordance with the terms of the program as approved under paragraph (2), the Secretary shall notify the State, and, if appropriate corrective action is not taken within a period of time not to exceed 90 days, the Secretary, with the concurrence of the Administrator, shall withdraw approval of the program. The Secretary shall not withdraw approval of a program unless the Secretary has first notified the State and made public, in writing, the reasons for the withdrawal.

"(5) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall limit the authority of the Administrator or the Secretary to carry out inspections of any commercial vessel under subsection (m).

"(6) STATE LAWS.—Notwithstanding any other provision of this section, a State may enact such laws as are necessary to provide for the implementation of the State ballast water inspection and enforcement program provided under this subsection. The requirements for a ballast water inspection and enforcement program contained in such State law shall be substantively and procedurally equivalent to those required in this section, and any requirements relating to recordkeeping, reporting, and sampling or analysis contained in such State law shall be substantively and procedurally equivalent to the requirements of this section and its implementing regulations and guidance.

"(l) DISCHARGES INCIDENTAL TO THE NORMAL OPERATIONS OF A COMMERCIAL VESSEL.—

"(1) EVALUATION OF INCIDENTAL DISCHARGES.—

"(A) IN GENERAL.—Not later than 3 years after the date of enactment of this section, the

Administrator, in consultation with the Secretary, shall complete an evaluation of discharges incidental to the normal operation of a commercial vessel.

"(B) FACTORS.—In carrying out the evaluation, the Administrator shall analyze—

"(i) the characterization of the various types and composition of discharges incidental to the normal operation of a commercial vessel by different classes, types, and sizes of commercial vessels;

"(ii) the volume of such discharges for representative individual commercial vessels and by classes, types, and sizes of commercial vessels in the aggregate;

"(iii) the availability and feasibility of implementing technologies or best management practices for the control of such discharges;

"(iv) the characteristics of the receiving waters of such discharges;

"(v) the nature and extent of potential effects of such discharges on human health, welfare, and the environment;

"(vi) the extent to which such discharges are currently subject to and addressed by regulations under existing Federal laws or binding international obligations of the United States; and

"(vii) any additional factor that the Administrator considers appropriate.

"(2) REGULATION OF INCIDENTAL DISCHARGES.—Effective on and after the date of enactment of this section—

"(A) the Administrator (or a State in the case of a permit program approved under section 402) shall not require any new permit or permit conditions under section 402 for any discharge incidental to the normal operation of a commercial vessel; and

"(B) a State or political subdivision thereof shall not adopt or enforce any law or regulation of the State or political subdivision with respect to such a discharge.

"(m) INSPECTIONS AND ENFORCEMENT.—

"(1) IN GENERAL.—

"(A) COAST GUARD ENFORCEMENT.—The Secretary shall enforce the requirements of this section and may utilize by agreement, with or

without reimbursement, law enforcement officers or other personnel and facilities of the Administrator, other Federal agencies, and the States.

"(B) ENVIRONMENTAL PROTECTION AGENCY ACTIONS.—Notwithstanding any enforcement decisions of the Secretary under subparagraph (A), the Administrator may use the authorities provided in sections 308, 309, 312, and 504 whenever required to carry out this section.

"(2) COAST GUARD INSPECTIONS.—The Secretary may carry out inspections of any commercial vessel at any time, including the taking of ballast water samples, to ensure compliance with this section. The Secretary shall use all appropriate and practical measures of detection and environmental monitoring of such commercial vessels and shall establish adequate procedures for reporting violations of this section and accumulating evidence regarding such violations.

"(n) COMPLIANCE.—

"(1) DETENTION OF COMMERCIAL VESSEL.—The Secretary, by notice to the owner or operator, may detain the commercial vessel if the Secretary

has reasonable cause to believe that the commercial vessel does not comply with a requirement of this section or is being operated in violation of such a requirement.

"(2) SANCTIONS.—

"(A) CIVIL PENALTIES.—Any person who violates this section shall be liable for a civil penalty in an amount not to exceed $5,000 for each violation. Each day of a continuing violation constitutes a separate violation. A commercial vessel operated in violation of this section is liable in rem for any civil penalty assessed for that violation.

"(B) CRIMINAL PENALTIES.—Whoever knowingly violates this section shall be fined not less than $5,000 nor more than $50,000 for each day of a violation, or imprisoned not more than 3 years, or both.

"(C) REVOCATION OF CLEARANCE.—Upon request of the Secretary, the Secretary of Homeland Security shall withhold or revoke the clearance of a commercial vessel required by section 60105 of title 46, United States Code, if the owner or operator is in violation of this section.

"(3) ENFORCEMENT ACTIONS.—

"(A) ADMINISTRATIVE ACTIONS.—If the Secretary finds that a person has violated this section, the Secretary may assess a civil penalty for the violation. In determining the amount of the civil penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior violations, and such other matters as justice may require.

"(B) CIVIL ACTIONS.—At the request of the Secretary, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this section. Any court before which such an action is brought may award appropriate relief, including temporary or permanent injunctions and civil penalties.

"(4) EXCLUSION.—No person shall be found in violation of this section whose commission of prohibited acts is found by the Secretary to have been in the interest of the safe operation of the commercial vessel.

"(o) REGULATION UNDER OTHER SECTIONS OF THIS ACT.—This section shall not affect the regulation of discharges from a commercial vessel pursuant to section 311 or 312.".

SEC. 3. CONFORMING AND TECHNICAL AMENDMENTS.

(a) FEDERAL WATER POLLUTION CONTROL ACT.—

(1) EFFLUENT LIMITATIONS.—Section 301(a) of the Federal Water Pollution Control Act (33 U.S.C. 1311(a)) is amended by inserting "321," after "318,".

(2) REVIEW OF ADMINISTRATOR'S ACTIONS.—The first sentence of section 509(b)(1) of such Act (33 U.S.C. 1369(b)(1)) is amended—

(A) by striking "and (G)" and inserting "(G)"; and

(B) by inserting after "section 304(l)," the following: "and (H) in issuing any regulation or otherwise taking final agency action under section 321,".

(b) VESSEL GENERAL PERMIT.—

(1) EXPIRATION.—Notwithstanding the expiration date set forth in the Vessel General Permit, the Vessel General Permit shall expire as follows:

(A) The terms and conditions of section 6 of such permit or any law of a State (as defined

in section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362)) or political subdivision thereof regulating the discharge of ballast water or any discharge incidental to the normal operation of a commercial vessel within the meaning of section 321 of the Federal Water Pollution Control Act (as added by this Act), upon the date of enactment of this Act.

(B) For each commercial vessel, the terms and conditions of such permit (except the terms and conditions referred to in subparagraph (A)) applicable to a discharge of ballast water—

(i) on the date on which—

(I) a ballast water treatment technology certified under section 321(e) of the Federal Water Pollution Control Act (as added by this Act) is installed on the commercial vessel;

(II) an alternative method of compliance is established for the commercial vessel under section 321(f)(1)(A) of such Act or is approved for use on the commercial vessel under section 321(f)(4)(B) of such Act;

(III) a petition is granted for the commercial vessel under section 321(g) of such Act; or

(IV) a certificate is issued for the commercial vessel under section 321(h) of such Act; or

(ii) in any case not described in clause (i), on December 18, 2013.

(C) The terms and conditions of such permit (except the terms and conditions referred to in subparagraph (A)) applicable to discharges incidental to the normal operation of a covered vessel, on December 18, 2013.

(2) DISCHARGES INCIDENTAL TO THE NORMAL OPERATION OF COMMERCIAL VESSELS.—Notwithstanding the expiration date set forth in the Vessel General Permit, the terms and conditions of such permit (except the terms and conditions referred to in paragraphs (1)(A) and (1)(C)) applicable to discharges incidental to the normal operation of a commercial vessel shall remain in effect.

(3) DEFINITIONS.—In this subsection, the following definitions apply:

(A) COMMERCIAL VESSEL.—The term ''commercial vessel'' has the meaning given that

term in section 321(a) of the Federal Water Pollution Control Act (as added by this Act).

(B) COVERED VESSEL.—The term ''covered vessel'' has the meaning given that term in Public Law 110–299 (33 U.S.C. 1342 note).

(C) VESSEL GENERAL PERMIT.—The term ''Vessel General Permit'' means the Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels issued under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) by the Administrator of the Environmental Protection Agency for ballast water and other discharges incidental to the normal operation of vessels, as in effect on December 19, 2008, for all jurisdictions except Alaska and Hawaii, and February 6, 2009, for Alaska and Hawaii.

(c) REGULATION OF BALLAST WATER AND INCIDENTAL DISCHARGES FROM A COMMERCIAL VESSEL.—

(1) IN GENERAL.—Effective on the date of enactment of this Act, the following discharges shall not be regulated in any manner other than as specified in section 321 of the Federal Water Pollution Control Act (as added by this Act) and subsection (b) of this section:

(A) A discharge incidental to the normal operation of a commercial vessel.

(B) A discharge of ballast water from a commercial vessel.

(2) DEFINITIONS.—In this subsection, the terms ''ballast water'', ''commercial vessel'', and ''discharge incidental to the normal operation of a commercial vessel'' have the meanings given those terms in section 321(a) of the Federal Water Pollution Control Act (as added by this Act).

(d) NONINDIGENOUS AQUATIC NUISANCE PREVENTION AND CONTROL ACT OF 1990.—

(1) AQUATIC NUISANCE SPECIES IN WATERS OF THE UNITED STATES.—Effective on the date of issuance of final regulations under section 321(b) of the Federal Water Pollution Control Act (as added by this Act), section 1101 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711) is repealed.

(2) RELATIONSHIP TO OTHER LAWS.—Effective on the date of enactment of this Act, section 1205 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4725) is repealed.

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