

114TH CONGRESS  
1ST SESSION

# S. 373

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

FEBRUARY 4, 2015

Mr. RUBIO (for himself, Mr. THUNE, and Mr. NELSON) 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 in 1980 with the enactment of  
5 the Act to Prevent Pollution from Ships (33 U.S.C.  
6 1901 et seq.), the Coast Guard has been the prin-  
7 cipal Federal authority charged with administering,  
8 enforcing, and prescribing regulations relating to the  
9 discharge of pollutants from vessels engaged in mar-  
10 itime 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.

20 (4) Over the 32 years during which this regu-  
21 latory exemption was in effect, Congress enacted

1 statutes on a number of occasions dealing with the  
2 regulation of discharges incidental to the normal op-  
3 eration of a vessel, including—

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

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

9 (C) the National Invasive Species Act of  
10 1996 (Public Law 104–332; 110 Stat. 4073);

11 (D) section 415 of the Coast Guard Au-  
12 thorization Act of 1998 (Public Law 105–383;  
13 112 Stat. 3434) and section 623 of the Coast  
14 Guard and Maritime Transportation Act of  
15 2004 (Public Law 108–293; 33 U.S.C. 1901  
16 note), which established interim and permanent  
17 requirements, respectively, for the regulation of  
18 vessel discharges of certain bulk cargo residue;

19 (E) title XIV of division B of Appendix D  
20 of the Consolidated Appropriations Act, 2001  
21 (Public Law 106–554; 114 Stat. 2763A–315),  
22 which prohibited or limited certain vessel dis-  
23 charges in certain areas of Alaska;

24 (F) section 204 of the Maritime Transpor-  
25 tation Security Act of 2002 (33 U.S.C. 1902a),

1           which established requirements for the regula-  
2           tion of vessel discharges of agricultural cargo  
3           residue material in the form of hold washings;  
4           and

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

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

15       **SEC. 3. DEFINITIONS.**

16       In this Act:

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

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

1 cultural, aquacultural, or recreational activities de-  
2 pendent on such waters.

3 (3) BALLAST WATER.—

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

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

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

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

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

1 standard established under subsection (a)(1)(B), (b),  
2 or (c) of section 5 of this Act.

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

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

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

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

23 (i) a discharge into navigable waters  
24 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 by the final rule; correction  
21 of the Standards for Living Organisms in  
22 Ships' Ballast Water Discharged in U.S.  
23 Waters (77 Fed. Reg. 33969 (June 8, 2012)),  
24 shall be the management requirements for a  
25 ballast water discharge incidental to the normal

1 operation of a vessel until the Secretary revises  
2 the ballast water performance standard under  
3 subsection (b) or adopts a more stringent State  
4 standard under subparagraph (B) of this para-  
5 graph.

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

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

23 (b) REVISED BALLAST WATER PERFORMANCE  
24 STANDARD; 8-YEAR REVIEW.—

1           (1) IN GENERAL.—Subject to the feasibility re-  
2 view under paragraph (2), not later than January 1,  
3 2022, the Secretary, in consultation with the Admin-  
4 istrator, shall issue a final rule revising the ballast  
5 water performance standard under subsection (a)(1)  
6 so that a ballast water discharge incidental to the  
7 normal operation of a vessel will contain—

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

12           (B) less than 1 organism that is living or  
13 has not been rendered harmless per 10 milli-  
14 liters that is less than 50 micrometers in min-  
15 imum dimension and more than 10 micrometers  
16 in minimum dimension;

17           (C) concentrations of indicator microbes  
18 that are less than—

19           (i) 1 colony-forming unit of  
20 toxicogenic *Vibrio cholera* (serotypes O1  
21 and O139) per 100 milliliters or less than  
22 1 colony-forming unit of that microbe per  
23 gram of wet weight of zoological samples;

24           (ii) 126 colony-forming units of *escherichia coli* per 100 milliliters; and  
25

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

3 (D) concentrations of such additional indi-  
4 cator microbes and of viruses as may be speci-  
5 fied in regulations issued by the Secretary in  
6 consultation with the Administrator and such  
7 other Federal agencies as the Secretary and the  
8 Administrator consider appropriate.

9 (2) FEASIBILITY REVIEW.—

10 (A) IN GENERAL.—No later than January  
11 1, 2020, the Secretary, in consultation with the  
12 Administrator, shall complete a review to deter-  
13 mine the feasibility of achieving the revised bal-  
14 last water performance standard under para-  
15 graph (1).

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

- 1 (i) improvements in the scientific un-  
2 derstanding of biological and ecological  
3 processes that lead to the introduction or  
4 establishment of aquatic nuisance species;
- 5 (ii) improvements in ballast water  
6 treatment technology, including—
- 7 (I) the capability of such treat-  
8 ment technology to achieve a revised  
9 ballast water performance standard;
- 10 (II) the effectiveness and reli-  
11 ability of such treatment technology in  
12 the shipboard environment;
- 13 (III) the compatibility of such  
14 treatment technology with the design  
15 and operation of a vessel by class,  
16 type, and size;
- 17 (IV) the commercial availability  
18 of such treatment technology; and
- 19 (V) the safety of such treatment  
20 technology;
- 21 (iii) improvements in the capabilities  
22 to detect, quantify, and assess the viability  
23 of aquatic nuisance species at the con-  
24 centrations under consideration;

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

3 (v) the costs, cost-effectiveness, and  
4 impacts of—

5 (I) a revised ballast water per-  
6 formance standard, including the po-  
7 tential impacts on shipping, trade,  
8 and other uses of the aquatic environ-  
9 ment; and

10 (II) maintaining the existing bal-  
11 last water performance standard, in-  
12 cluding the potential impacts on  
13 water-related infrastructure, recre-  
14 ation, propagation of native fish,  
15 shellfish, and wildlife, and other uses  
16 of navigable waters.

17 (C) LOWER REVISED PERFORMANCE  
18 STANDARD.—

19 (i) IN GENERAL.—If the Secretary, in  
20 consultation with the Administrator, deter-  
21 mines on the basis of the feasibility review  
22 and after an opportunity for a public hear-  
23 ing that no ballast water treatment tech-  
24 nology can be certified under section 6 to  
25 comply with the revised ballast water per-

1 performance standard under paragraph (1),  
2 the Secretary shall require the use of the  
3 treatment technology that achieves the per-  
4 formance levels of the best treatment tech-  
5 nology available.

6 (ii) IMPLEMENTATION DEADLINE.—If  
7 the Secretary, in consultation with the Ad-  
8 ministrator, determines that the treatment  
9 technology under clause (i) cannot be im-  
10 plemented before the implementation dead-  
11 line under paragraph (3) with respect to a  
12 class of vessels, the Secretary shall extend  
13 the implementation deadline for that class  
14 of vessels for not more than 36 months.

15 (iii) COMPLIANCE.—If the implemen-  
16 tation deadline under paragraph (3) is ex-  
17 tended, the Secretary shall recommend ac-  
18 tion to ensure compliance with the ex-  
19 tended implementation deadline under  
20 clause (ii).

21 (D) HIGHER REVISED PERFORMANCE  
22 STANDARD.—

23 (i) IN GENERAL.—If the Secretary, in  
24 consultation with the Administrator, deter-  
25 mines that ballast water treatment tech-

1 nology exists that exceeds the revised bal-  
2 last water performance standard under  
3 paragraph (1) with respect to a class of  
4 vessels, the Secretary shall revise the bal-  
5 last water performance standard for that  
6 class of vessels to incorporate the higher  
7 performance standard.

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

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

1           (4) REVISED PERFORMANCE STANDARD COM-  
2           PLIANCE DEADLINES.—

3           (A) IN GENERAL.—The Secretary may es-  
4           tablish a compliance deadline for compliance by  
5           a vessel (or a class, type, or size of vessel) with  
6           a revised ballast water performance standard  
7           under this subsection.

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

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

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

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

22          (D) FACTORS.—In issuing a compliance  
23          deadline or reviewing a petition under this  
24          paragraph, the Secretary shall consider, with  
25          respect to the ability of an owner or operator to

1 meet a compliance deadline, the following fac-  
2 tors:

3 (i) Whether the treatment technology  
4 to be installed is available in sufficient  
5 quantities to meet the compliance deadline.

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

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

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

13 (v) Electric power generating capacity  
14 aboard the vessel.

15 (vi) Safety of the vessel and crew.

16 (E) CONSIDERATION OF PETITIONS.—

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

22 (ii) DEADLINE.—If the Secretary does  
23 not approve or deny a petition referred to  
24 in clause (i) on or before the last day of  
25 the 90-day period beginning on the date of

1                    submission of the petition, the petition  
2                    shall be deemed approved.

3            (c) FUTURE REVISIONS OF VESSEL INCIDENTAL  
4 DISCHARGE STANDARDS; DECENNIAL REVIEWS.—

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

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

1 navigable waters of discharges incidental to the nor-  
2 mal operation of a vessel other than ballast water.

3 (3) CONSIDERATIONS.—In conducting a review  
4 under paragraph (1), the Secretary, the Adminis-  
5 trator, and the heads of other appropriate Federal  
6 agencies as determined by the Secretary, shall con-  
7 sider the criteria under subsection (b)(2)(B).

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

17 **SEC. 6. TREATMENT TECHNOLOGY CERTIFICATION.**

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

1 unless the treatment technology has been certified under  
2 this section.

3 (b) CERTIFICATION PROCESS.—

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

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

11 (B) the compatibility with vessel design  
12 and operations;

13 (C) the effect of the treatment technology  
14 on vessel safety;

15 (D) the impact on the environment;

16 (E) the cost effectiveness; and

17 (F) any other criteria the Secretary con-  
18 siders appropriate.

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

24 (3) SUSPENSION AND REVOCATION.—The Sec-  
25 retary shall establish, by regulation, a process to

1 suspend or revoke a certification issued under this  
2 section.

3 (c) CERTIFICATION CONDITIONS.—

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

11 (A) the safety of the vessel, the crew of the  
12 vessel, and any passengers aboard the vessel;

13 (B) the protection of the environment; or

14 (C) the effective operation of the treatment  
15 technology.

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

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

1 standing any revision of a ballast water performance  
2 standard occurring after the system is ordered or installed  
3 until the expiration of the service life of the system, as  
4 determined by the Secretary, so long as the system—

5           (1) is maintained in proper working condition;

6           and

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

11           (e) CERTIFICATES OF TYPE APPROVAL FOR THE  
12 TREATMENT TECHNOLOGY.—

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

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

23           (3) OWNERS AND OPERATORS.—A manufac-  
24 turer that receives a certificate of type approval for  
25 the treatment technology under this subsection shall

1 provide a copy of the certificate to each owner and  
2 operator of a vessel on which the treatment tech-  
3 nology is installed.

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

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

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

20 (2) it uses or generates a biocide the discharge  
21 of which causes or contributes to a violation of a  
22 water quality standard under section 303 of the  
23 Federal Water Pollution Control Act (33 U.S.C.  
24 1313).

25 (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 Act 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. 7. 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 Act 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(11c) of title 46,  
2 United 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 Act 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 8.

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 Act 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 Act shall be construed to apply to a vessel of the  
12          Armed Forces, as defined in section 101(a) of title 10,  
13          United States Code.

14          **SEC. 8. ALTERNATIVE COMPLIANCE PROGRAM.**

15          (a) **IN GENERAL.**—The Secretary, in consultation  
16          with the Administrator, may promulgate regulations es-  
17          tablishing 1 or more compliance programs as an alter-  
18          native to ballast water management regulations issued  
19          under section 5 for a vessel that—

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

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

24                 or

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

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

9           (1) the reception of ballast water from a vessel  
10          into a reception facility; and

11          (2) the disposal or treatment of the ballast  
12          water under paragraph (1).

13 **SEC. 9. JUDICIAL REVIEW.**

14          (a) IN GENERAL.—An interested person may file a  
15          petition for review of a final regulation promulgated under  
16          this Act in the United States Court of Appeals for the  
17          District of Columbia Circuit.

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

21          (c) EXCEPTION.—Notwithstanding subsection (b), a  
22          petition that is based solely on grounds that arise after  
23          the deadline to file a petition under subsection (b) has  
24          passed may be filed not later than 120 days after the date  
25          that the grounds first arise.

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

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

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

18 (1) compliance with any performance standard  
19 specified in the statute or regulation can in fact be  
20 achieved and detected;

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

24 (3) the statute or regulation is consistent with  
25 obligations under relevant international treaties or  
26 agreements to which the United States is a party.

1 (c) PETITION PROCESS.—

2 (1) SUBMISSION.—The Governor of a State  
3 seeking to enforce a statute or regulation under sub-  
4 section (b) shall submit a petition requesting the  
5 Secretary to review the statute or regulation.

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

7 (A) be accompanied by the scientific and  
8 technical information on which the petition is  
9 based; and

10 (B) be submitted to the Secretary not later  
11 than 90 days after the date of enactment of  
12 this Act.

13 (3) DETERMINATIONS.—The Secretary shall  
14 make a determination on a petition under this sub-  
15 section not later than 90 days after the date that  
16 the petition is received.

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

18 Notwithstanding any other provision of law, this Act  
19 shall be the exclusive statutory authority for regulation by  
20 the Federal Government of discharges incidental to the  
21 normal operation of a vessel to which this Act applies. Ex-  
22 cept as provided under section 5(a)(1)(A), any regulation  
23 in effect on the date immediately preceding the effective  
24 date of this Act relating to any permitting requirement  
25 for or prohibition on discharges incidental to the normal

1 operation of a vessel to which this Act applies shall be  
2 deemed to be a regulation issued pursuant to the authority  
3 of this Act and shall remain in full force and effect unless  
4 or until superseded by new regulations issued hereunder.

○