IN THE SENATE OF THE UNITED STATES

JANUARY 17, 2017

Mr. WICKER (for himself, Mr. CASEY, Mr. RUBIO, Mr. NELSON, Mr. THUNE, Mr. SCHATZ, Mr. SULLIVAN, Mrs. MCCASKILL, Mrs. CAPITTO, Mr. CASIDY, Mr. CORNYN, Mr. INHOFE, Mr. BOOZMAN, Mr. BLUNT, Ms. COLLINS, Mr. YOUNG, Mr. KENNEDY, Mr. SHELBY, Mr. COONS, Mr. GRAHAM, and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation.

MARCH 30, 2017

Reported by Mr. THUNE, without amendment

A BILL

To amend and enhance certain maritime programs of the Department of Transportation.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Existing ballast water regulations.
Sec. 4. Ballast water discharge requirements.
Sec. 5. Review of ballast water discharge standard.
Sec. 6. Alternative compliance program.
Sec. 7. Reception facilities.
Sec. 8. Requirements for discharges incidental to the normal operation of a commercial vessel.
Sec. 9. Judicial review.
Sec. 10. State enforcement.
Sec. 11. Effect on State authority.
Sec. 12. Effect on other laws.

SEC. 2. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) 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 of the United States, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters.

(3) BALLAST WATER.—The term “ballast water” means any water and suspended matter
taken on board a commercial vessel to control or maintain trim, draught, stability, or stresses of the commercial vessel, regardless of how it is carried.

(4) **Ballast water discharge standard.**—

The term “ballast water discharge standard” means the numerical ballast water discharge standard set forth in section 151.2030 of title 33, Code of Federal Regulations, or section 151.1511 of such title, or a revised numerical ballast water discharge standard established under section 5, as applicable.

(5) **Ballast water management system.**—

The term “ballast water management system” means any system (including all ballast water treatment equipment and all associated control and monitoring equipment) that processes ballast water to kill, render harmless, or remove organisms.

(6) **Commercial vessel.**—

   (A) **In general.**—The term “commercial vessel” means a vessel (as defined in section 3 of title 1, United States Code) that is engaged in commercial service (as defined in section 2101 of title 46, United States Code).

   (B) **Exclusion.**—The term “commercial vessel” does not include a recreational vessel.
(7) 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 of the United States from a commercial vessel of—

(I)(aa) graywater, 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 piping 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) deck runoff, deck washdown, above the waterline hull cleaning effluent, 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 of the United States in connection with the testing, maintenance, or repair of a system, equipment, or engine described in subclause (I)(bb) or (III) of
clause (i) whenever the commercial vessel is waterborne.

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

(i) a discharge into navigable waters of the United States 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 (as such terms are defined in section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321)); or

(IV) sewage (as defined in section 312(a)(6) of the Federal Water Pollution Control Act (33 U.S.C. 1322(a)(6))); or

(ii) any emission of an air pollutant resulting from the operation onboard a commercial vessel of a commercial vessel propulsion system, motor driven equipment, or incinerator; or
(iii) any discharge into navigable waters of the United States from a commercial vessel when the commercial vessel is operating in a capacity other than as a means of transportation on water.


(9) Geographically Limited Area.—The term “geographically limited area” means an area—

(A) with a physical limitation that prevents a commercial vessel from operating outside the area, such as the Great Lakes and Saint Lawrence River, as determined by the Secretary; or

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

(10) Major Conversion.—The term “major conversion” has the meaning given such term in section 2101(14a) of title 46, United States Code.
(11) **Navigable waters of the United States.**—The term “Navigable waters of the United States” has the meaning given such term in section 2101(17a) of title 46, United States Code.

(12) **Owner or operator.**—The term “owner or operator” means a person owning, operating, or chartering by demise a commercial vessel.

(13) **Pollutant.**—The term “pollutant” has the meaning given such term in section 502(6) of the Federal Water Pollution Control Act (33 U.S.C. 1362(6)).

(14) **Recreational vessel.**—The term “recreational vessel” has the meaning given such term in section 2101(25) of title 46, United States Code.

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

**SEC. 3. EXISTING BALLAST WATER REGULATIONS.**

(a) **Effect on existing regulations.**—Any regulation issued pursuant to the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 that is in effect on the date immediately preceding the effective date of this Act, and that relates to a matter subject to regulation under this Act, shall remain in full force and effect.
unless or until superseded by a new regulation issued under this Act relating to such matter.

(b) Application of Other Regulations.—The regulations issued pursuant to the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.) relating to sanctions for violating a regulation under that Act shall apply to violations of a regulation issued under this Act.

SEC. 4. BALLAST WATER DISCHARGE REQUIREMENTS.

(a) In General.—

(1) Requirements.—Except as provided in paragraph (3), and subject to sections 151.2035 and 151.2036 of title 33, Code of Federal Regulations (as in effect on the date of the enactment of this Act), an owner or operator may discharge ballast water into navigable waters of the United States from a commercial vessel covered under subsection (b) only if—

(A) by applying the best available technology that is economically achievable, the discharge meets the ballast water discharge standard; and

(B) the owner or operator discharges the ballast water in accordance with other requirements established by the Secretary.
(2) COMMERCIAL VESSELS ENTERING THE GREAT LAKES SYSTEM.—If a commercial vessel enters the Great Lakes through the Saint Lawrence River after operating outside the exclusive economic zone of the United States or Canada, the owner or operator shall—

(A) comply with the requirements of—

(i) paragraph (1);

(ii) subpart C of part 151 of title 33, Code of Federal Regulations; and

(iii) section 401.30 of such title; and

(B) conduct a complete ballast water exchange in an area that is 200 nautical miles or more from any shore before the owner or operator may discharge ballast water while operating in the Saint Lawrence River or the Great Lakes, subject to any requirements the Secretary determines necessary with regard to such exchange, or any ballast water management system that is to be used in conjunction with such exchange, to ensure that any discharge of ballast water complies with the requirements under paragraph (1).

(3) SAFETY EXEMPTION.—Notwithstanding paragraphs (1) and (2), an owner or operator may
discharge any ballast water into navigable waters of
the United States from a commercial vessel if—

(A) the ballast water is discharged solely
to ensure the safety of life at sea;

(B) the ballast water is discharged accidentally as the result of damage to the commer-
cial vessel or its equipment and—

(i) all reasonable precautions to pre-
vent or minimize the discharge have been
taken; and

(ii) the owner or operator did not will-
fully or recklessly cause such damage; or

(C) the ballast water is discharged solely
for the purpose of avoiding or minimizing a dis-
charge from the commercial vessel of a pollut-
ant that would violate an applicable Federal or
State law.

(4) LIMITATION ON REQUIREMENTS.—In estab-
lishing requirements under this subsection, the Sec-
retary may not require the installation of a ballast
water management system on a commercial vessel
that—

(A) carries all of its ballast water in sealed
tanks that are not subject to discharge; or
(B) discharges ballast water solely into a reception facility described in section 7.

(b) **Applicability.**—

(1) **Covered vessels.**—Except as provided in paragraph (2), subsection (a) shall apply to any commercial vessel that is designed, constructed, or adapted to carry ballast water while such commercial vessel is operating in navigable waters of the United States.

(2) **Exempted vessels.**—Subsection (a) shall not apply to a commercial vessel—

(A) that continuously takes on and discharges ballast water in a flow-through system, if such system does not introduce aquatic nuisance species into navigable waters of the United States, as determined by the Secretary;

(B) that operates exclusively within a geographically limited area;

(C) that operates pursuant to a geographic restriction issued as a condition under section 3309 of title 46, United States Code, or an equivalent restriction issued by the country of registration of the commercial vessel;
(D) in the National Defense Reserve Fleet that is scheduled to be disposed of through scrapping or sinking;

(E) that discharges ballast water consisting solely of water taken aboard from a public or commercial source 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.); or

(F) in an alternative compliance program established pursuant to section 6.

(c) Type Approval of Ballast Water Management Systems That Render Ballast Water Organisms Incapable of Reproduction.—

(1) In General.—Notwithstanding chapter 5 of title 5, United States Code, part 151 of title 33, Code of Federal Regulations, and part 162 of title 46, Code of Federal Regulations, a ballast water management system that renders organisms in ballast water incapable of reproduction at the concentrations prescribed in the ballast water discharge standard shall be type approved by the Secretary, if—

(A) such system—
(i) undergoes type approval testing at an independent laboratory designated by the Secretary under such regulations; and

(ii) meets the requirements of subpart 162.060 of title 46, Code of Federal Regulations, other than the requirements related to staining methods or measuring the concentration of living organisms; and

(B) such laboratory uses a type approval testing method described in a final policy letter published under paragraph (2).

(2) TYPE APPROVAL TESTING METHODS.—

(A) DRAFT POLICY.—Not later than 60 days after the date of enactment of this Act, the Secretary shall publish a draft policy letter describing type approval testing methods capable of measuring the concentration of organisms in ballast water that are capable of reproduction.

(B) PUBLIC COMMENT.—The Secretary shall provide for a period of not more than 60 days for the public to comment on the draft policy letter published under paragraph (1).

(C) FINAL POLICY.—Not later than 150 days after the date of the enactment of this
Act, the Secretary shall publish a final policy letter describing type approval testing methods capable of measuring the concentration of organisms in ballast water that are capable of reproduction.

(D) REVISIONS.—The Secretary shall revise such policy letter as additional testing methods are determined by the Secretary to be capable of measuring the concentration of organisms in ballast water that are capable of reproduction.

(E) CONSIDERATIONS.—In developing a policy letter under this paragraph, the Secretary—

(i) shall consider a type approval testing method that uses organism grow out and most probable number statistical analysis to determine the concentration of organisms in ballast water that are capable of reproduction; and

(ii) shall not consider a type approval testing method that relies on a staining method that measures the concentration of organisms greater than or equal to 10 mi-
crometers and organisms less than or equal to 50 micrometers.

SEC. 5. REVIEW OF BALLAST WATER DISCHARGE STANDARD.

(a) Effectiveness Review.—

(1) In general.—The Secretary shall conduct reviews in accordance with this section to determine whether revising the ballast water discharge standard based on the application of the best available technology that is economically achievable would result in a reduction in the risk of the introduction or establishment of aquatic nuisance species.

(2) Required reviews.—Not later than January 1, 2022, and every 10 years thereafter, the Secretary, in consultation with the Administrator, shall complete a review under paragraph (1).

(3) State petitions for review.—

(A) In general.—The Governor of a State may submit a petition requesting the Secretary to conduct a review under paragraph (1) if there is significant new information that could reasonably indicate the ballast water discharge standard could be revised to result in a reduction in the risk of the introduction or 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 Secretary under subparagraph (A) shall include—

(i) a proposed ballast water discharge standard that would result in a reduction in the risk of the introduction or establishment of aquatic nuisance species;

(ii) information regarding any ballast water management systems that may achieve the proposed ballast water discharge standard;

(iii) the scientific and technical information on which the petition is based, including a description of the risk reduction that would result from the proposed ballast water discharge standard included under clause (i); and

(iv) any additional information the Secretary considers appropriate.

(D) Public Availability.—Upon receiving a petition under subparagraph (A), the Sec-
retary shall make publicly available a copy of
the petition, including the information included
under subparagraph (C).

(E) Treatment of More Than One Petition as a Single Petition.—The Secretary
may treat more than one petition submitted
under subparagraph (A) as a single such peti-
tion.

(F) Authority to Review.—After receiv-
ing a petition that meets the requirements of
this paragraph, the Secretary, in consultation
with the Administrator, may conduct a review
under paragraph (1).

(b) Practicability Review.—

(1) In General.—If the Secretary determines
under subsection (a) that revision of the ballast
water discharge standard would result in a reduction
in the risk of the introduction or establishment of
aquatic nuisance species, the Secretary, in consulta-
tion with the Administrator, shall conduct a prac-
ticability review to determine whether—

(A) a ballast water management system
that is capable of achieving the ballast water
discharge standard as proposed to be revised is
(B) testing protocols that can assure accurate measurement of compliance with the ballast water discharge standard as proposed to be revised can be practicably implemented.

(2) CRITERIA FOR PRACTICABILITY REVIEW.—

In conducting a practicability review under paragraph (1), the Secretary shall consider—

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

(B) improvements in ballast water management systems, including—

(i) the capability of such systems to achieve the ballast water discharge standard as proposed to be revised;

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

(iii) the compatibility of such systems with the design and operation of a commercial vessel by class, type, and size;
(iv) the commercial availability of such systems; and

(v) the safety of such systems;

(C) improvements in the capabilities to detect, quantify, and assess whether aquatic nuisance species are capable of reproduction under the ballast water discharge standard as proposed to be revised;

(D) the impact of ballast water management systems on water quality;

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

(i) a revised ballast water discharge standard; and

(ii) maintaining the existing ballast water discharge standard; and

(F) other criteria that the Secretary considers appropriate.

(3) INFORMATION FROM STATES.—In conducting a practicability review under paragraph (1), the Secretary shall solicit information from the States concerning matters the Secretary is required to consider under paragraph (2).

(c) REVISED BALLAST WATER DISCHARGE STANDARD.—The Secretary shall issue a rule to revise the ballast
water discharge standard if the Secretary, in consultation
with the Administrator, determines on the basis of the
practicability review under subsection (b) that—

(1) a ballast water management system that is
capable of achieving the ballast water discharge
standard as proposed to be revised is economically
achievable and operationally practicable; and

(2) testing protocols that can assure accurate
measurement of compliance with the ballast water
discharge standard as proposed to be revised can be
practically implemented.

(d) Revised Ballast Water Discharge Standard Effective Date and Compliance Deadline.—

(1) In general.—If the Secretary issues a
rule to revise the ballast water discharge standard
under subsection (c), the Secretary shall include in
such rule—

(A) an effective date for the revised ballast
discharge standard that is three years after the
date on which such rule is published in the Fed-
eral Register; and

(B) for the owner or operator of a com-
mmercial vessel that is constructed or completes
a major conversion on or after the date that is
three years after the date on which the rule is
published in the Federal Register, a deadline to comply with the revised ballast water discharge standard that is the first day on which such commercial vessel operates in navigable waters of the United States.

(2) EXTENSIONS.—The Secretary shall establish a process for an owner or operator to submit a petition to the Secretary for an extension of a compliance deadline under paragraph (1)(B).

(3) FACTORS.—In reviewing a petition under this subsection, the Secretary shall consider, with respect to the ability of an owner or operator to meet a compliance deadline—

(A) whether the ballast water management system to be installed, if applicable, is available in sufficient quantities to meet the compliance deadline;

(B) whether there is sufficient shipyard or other installation facility capacity;

(C) whether there is sufficient availability of engineering and design resources;

(D) commercial vessel characteristics, such as engine room size, layout, or a lack of installed piping;
(E) electric power generating capacity aboard the commercial vessel;

(F) the safety of the commercial vessel and crew; and

(G) any other factor that the Secretary determines appropriate.

(4) CONSIDERATION OF PETITIONS.—

(A) DETERMINATIONS.—The Secretary shall approve or deny a petition for an extension of a compliance deadline submitted by an owner or operator under this subsection.

(B) DEADLINE.—If the Secretary does not approve or deny a petition referred to in subparagraph (A) on or before the last day of the 90-day period beginning on the date of submission of the petition, the petition shall be deemed approved.

(5) PERIOD OF USE OF INSTALLED BALLAST WATER MANAGEMENT SYSTEM.—

(A) IN GENERAL.—Subject to subparagraph (B), an owner or operator shall be considered to be in compliance with the ballast water discharge standard if—

(i) the ballast water management system installed on the commercial vessel
complies with the ballast water discharge
standard in effect at the time of installa-
tion, notwithstanding any revisions to the
ballast water discharge standard occurring
after the installation;

(ii) the owner or operator maintains
the ballast water management system in
proper working condition, as determined by
the Secretary; and

(iii) the ballast water management
system continues to meet the ballast water
discharge standard applicable to the com-
mercial vessel at the time of installation,
as determined by the Secretary.

(B) LIMITATION.—Subparagraph (A) shall
cease to apply with respect to a commercial ves-
sel after—

(i) the expiration of the service life of
the ballast water management system of
the commercial vessel, as determined by
the Secretary;

(ii) the expiration of the service life of
the commercial vessel, as determined by
the Secretary; or
(iii) the completion of a major conversion of the commercial vessel.

SEC. 6. ALTERNATIVE COMPLIANCE PROGRAM.

The Secretary, in consultation with the Administrator, may issue a rule establishing one or more compliance programs that may be used by an owner or operator as an alternative to compliance with the requirements of section 4(a) for a commercial vessel that—

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

(2) is less than three years from the end of the service life of the commercial vessel, as determined by the Secretary.

SEC. 7. RECEPTION FACILITIES.

(a) IN GENERAL.—Notwithstanding the requirements under section 4(a), an owner or operator may discharge ballast water into an onshore or offshore facility for the reception of ballast water that meets the standards established by the Administrator, in consultation with the Secretary, under subsection (b).

(b) ISSUANCE OF STANDARDS.—Not later than one year after the date of the enactment of this Act, the Administrator, in consultation with the Secretary, shall publish a rule in the Federal Register that establishes reasonable and practicable standards for reception facilities to
mitigate adverse effects of aquatic nuisance species on navigable waters of the United States.

SEC. 8. REQUIREMENTS FOR DISCHARGES INCIDENTAL TO THE NORMAL OPERATION OF A COMMERCIAL VESSEL.

(a) In General.—Not later than two years after the date of the enactment of this Act, the Secretary, in consultation with the Administrator, shall publish a rule in the Federal Register that establishes best management practices for discharges incidental to the normal operation of a commercial vessel for commercial vessels that are—

(1) greater than or equal to 79 feet in length; and

(2) not fishing vessels, including fish processing vessels and fish tender vessels (as such terms are defined in section 2101 of title 46, United States Code).

(b) Transition.—

(1) In General.—Notwithstanding the expiration date for the General Permit, any practice, limitation, or concentration applicable to any discharge incidental to the normal operation of a commercial vessel that is required by the General Permit on the date of the enactment of this Act, and any reporting requirement required by the General Permit on such
date of enactment, shall remain in effect until the
effective date of a rule issued by the Secretary under
subsection (a).

(2) PART 6 CONDITIONS.—Notwithstanding
paragraph (1) and any other provision of law, the
terms and conditions of Part 6 of the General Per-
mit (relating to specific requirements for individual
States or Indian country lands) shall expire on the
date of the enactment of this Act.

(c) APPLICATION TO CERTAIN VESSELS.—

(1) APPLI CATION OF FEDERAL WATER POLLU-
TION CONTROL ACT.—No permit shall be required
under section 402 of the Federal Water Pollution
Control Act (33 U.S.C. 1342) or prohibition en-
forced under any other provision of law for, nor shall
any best management practice regarding a discharge
incidental to the normal operation of a commercial
vessel under this Act apply to, a discharge incidental
to the normal operation of a commercial vessel if the
commercial vessel is—

(A) less than 79 feet in length; or

(B) a fishing vessel, including a fish proc-
essing vessel and a fish tender vessel (as such
terms are defined in section 2101 of title 46,
United States Code).
(2) Application of General Permit.—The terms and conditions of the General Permit shall cease to apply to vessels described in subparagraphs (A) and (B) of paragraph (1) on the date of the enactment of this Act.

(d) State Petition for Revision of Best Management Practices.—

(1) In General.—The Governor of a State may submit a petition to the Secretary requesting that the Secretary revise a best management practice established under subsection (a) if there is significant new information that could reasonably indicate that—

(A) revising the best management practice would substantially reduce the adverse effects on navigable waters of the United States of discharges incidental to the normal operation of a commercial vessel; and

(B) the revised best management practice would be economically achievable and operationally practicable.

(2) Required Information.—A petition submitted to the Secretary under paragraph (1) shall include—
(A) the scientific and technical information
on which the petition is based; and
(B) any additional information the Sec-
retary considers appropriate.

(3) PUBLIC AVAILABILITY.—Upon receiving a
petition under paragraph (1), the Secretary shall
make publicly available a copy of the petition, in-
cluding the information included under paragraph
(2).

(4) TREATMENT OF MORE THAN ONE PETITION
AS A SINGLE PETITION.—The Secretary may treat
more than one petition submitted under paragraph
(1) as a single petition.

(5) REVISION OF BEST MANAGEMENT PRACTICES.—If, after reviewing a petition submitted by a
Governor under paragraph (1), the Secretary, in
consultation with the Administrator, determines that
revising a best management practice would substan-
tially reduce the adverse effects on navigable waters
of the United States of discharges incidental to the
normal operation of a commercial vessel, and the re-
vised best management practice would be economi-
cally achievable and operationally practicable, the
Secretary, in consultation with the Administrator,
may issue a rule to revise the best management
practice established under subsection (a).

SEC. 9. JUDICIAL REVIEW.

(a) In General.—A person may file a petition for
review of a final rule issued under this Act in the United
States Court of Appeals for the District of Columbia Cir-
cuit.

(b) Deadline.—

(1) In General.—A petition shall be filed
under this section not later than 120 days after the
date on which the rule to be reviewed is published
in the Federal Register.

(2) Exception.—Notwithstanding paragraph
(1), a petition that is based solely on grounds that
arise after the deadline to file a petition under para-
graph (1) has passed may be filed not later than
120 days after the date on which such grounds first
arise.

SEC. 10. STATE ENFORCEMENT.

The Secretary may enter into an agreement with the
Governor of a State to authorize the State to enforce the
provisions of this Act, as the Secretary considers appro-
priate.
SEC. 11. EFFECT ON STATE AUTHORITY.

(a) In General.—Except as provided in subsection (b) and as necessary to implement an agreement entered into under section 10, no State or political subdivision thereof may adopt or enforce any statute, regulation, or other requirement of the State or political subdivision with respect to—

(1) a discharge into navigable waters of the United States from a commercial vessel of ballast water; or

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

(b) Preservation of Authority.—Nothing in this Act may be construed as affecting the authority of a State or political subdivision thereof to adopt or enforce any statute, regulation, or other requirement with respect to any water or other substance discharged or emitted from a vessel in preparation for transport of the vessel by land from one body of water to another body of water.

SEC. 12. EFFECT ON OTHER LAWS.

(a) Application of Federal Water Pollution Control Act.—

(1) In General.—Except as provided in section 8(b), on or after the date of the enactment of this Act, the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) shall not apply to a dis-
charge into navigable waters of the United States of
ballast water from a commercial vessel or a dis-
charge incidental to the normal operation of a com-
mmercial vessel.

(2) Oil and Hazardous Substance Liability; Marine Sanitation Devices.—Nothing in this
Act may be construed as affecting the application to
a commercial vessel of section 311 or 312 of the
Federal Water Pollution Control Act (33 U.S.C.
1321 and 1322).

(b) Established Regimes.—Notwithstanding any
other provision of this Act, nothing in this Act may be
construed as affecting the authority of the Federal Gov-
ernment under—

(1) the Act to Prevent Pollution from Ships (33
U.S.C. 1901 et seq.) with respect to the regulation
by the Federal Government of any discharge or
emission that, on or after the date of enactment of
this Act, is covered under the International Conven-
tion for the Prevention of Pollution from Ships,
1973, as modified by the Protocol of 1978; and

(2) title X of the Coast Guard Authorization
Act of 2010 (33 U.S.C. 3801 et seq.) with respect
to the regulation by the Federal Government of any
anti-fouling system that, on or after the date of en-
actment of this Act, is covered under the International Convention on the Control of Harmful Anti-fouling Systems on Ships, done at London October 5, 2001.

(c) INTERNATIONAL LAW.—

(1) IN GENERAL.—Any action taken under this Act shall be taken in accordance with international law.

(2) STANDARDS.—Nothing in this Act may be construed to impose any design, equipment, or operation standard on a commercial vessel not documented under the laws of the United States and engaged in innocent passage unless the standard implements a generally accepted international rule, as determined by the Secretary.

(d) OTHER AUTHORITIES.—Nothing in this Act may construed as affecting the authority of the Secretary of Commerce or the Secretary of the Interior, as the case may be, to administer lands or waters under such Secretary’s administrative control.

(e) CONFORMING AMENDMENT.—Section 1205 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4725) is amended by adding at the end the following: “Ballast water and discharges incidental to the normal operation of a commercial vessel (as
1 such terms are defined in the Commercial Vessel Inci-
2 dental Discharge Act), shall be regulated pursuant to such
3 Act.”.
A BILL

To amend and enhance certain maritime programs of the Department of Transportation.

MARCH 30, 2017

Reported without amendment.

[Report No. 115-16]

S. 168

115TH CONGRESS

Calendar No. 27