

Calendar No. 27

115TH CONGRESS }
1st Session }

SENATE

{ REPORT
115-16

THE COMMERCIAL VESSEL INCIDENTAL
DISCHARGE ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 168



MARCH 30, 2017.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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THE COMMERCIAL VESSEL INCIDENTAL DISCHARGE ACT

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Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 168]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 168) to amend and enhance certain maritime programs of the Department of Transportation, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 168, the Commercial Vessel Incidental Discharge Act, is to provide for the establishment of nationally uniform and environmentally sound standards for the regulation of ballast water discharges and other discharges that are incidental to the normal operation of vessels.

BACKGROUND AND NEEDS

Ballast water discharged from vessels has been, and continues to be, of serious concern as one of several vectors for the introduction into ecosystems of aquatic invasive species. One of the best known examples of introduction of an aquatic invasive species via ballast water is that of the zebra mussel (*Dreissena polymorpha*). The zebra mussel is indigenous to freshwater lakes and rivers in Eastern Europe and Western Asia, but was discovered in North America in Lake St. Clair, which connects Lake Huron and Lake Erie, in 1988. It is generally accepted by the scientific community that the species arrived there in ballast water discharged by vessels coming from European ports. Since arriving in North America, the

zebra mussel has spread throughout and beyond the Great Lakes. The introduction of this nonindigenous filter-feeder has drastically altered ecosystems in the Great Lakes and elsewhere.

Although the problem of, and potential solution to, introduction of invasive species through ballast water are clear, the laws, including regulations, that govern ballast water management and the management of other discharges incidental to the normal operation of vessels could hardly be more confusing. Currently, these incidental discharges are regulated by a patchwork of Federal and State laws, including regulations. In 1973, when the Environmental Protection Agency (EPA) first implemented the National Pollutant Discharge Elimination System (NPDES) pursuant to section 402 of the Clean Water Act, it excluded discharges incidental to the normal operation of a vessel from the permitting requirement for the discharge of pollutants by point sources under NPDES.¹ At the time, the EPA reasoned that the exclusion was warranted because “this type of discharge generally causes little pollution and exclusion of vessel wastes from the permit requirements will reduce administrative costs drastically.”² This exemption remained in place until 2005 when the 9th Circuit Court of Appeals upheld a Federal district court ruling that the EPA’s 32 year old regulatory exclusion of vessel discharges from NPDES was *ultra vires* to the Clean Water Act.³

Separately, during the 3 decades in which the NPDES vessel exclusion was in place, Congress responded to growing concerns about zebra mussels and other aquatic invasive species in the United States by enacting the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990⁴ (NANPCA), and amendments thereto by the National Invasive Species Act⁵ (NISA) in 1996. NANPCA/NISA requires the Coast Guard, in coordination with the EPA and other relevant Federal agencies, to establish and administer a ballast water management program to prevent introduction and dispersal of nonindigenous species into the waters of the United States.

Also, prior to the overturn of the EPA’s regulatory exclusion of vessels from NPDES, the Coast Guard, in 2004, with the State Department, led the U.S. delegation to the International Maritime Organization (IMO) Diplomatic Conference on Ballast Water Management for Ships, at which the International Convention for the Control and Management of Ships’ Ballast Water and Sediments⁶ (Convention) was adopted. The Convention includes provisions for the experimental testing of prototype ballast water treatment systems on operating vessels that is largely based on the Coast Guard’s own Shipboard Technology Evaluation Program, implemented in January 2004.⁷ It also contains a provision advanced by the U.S. delegation for the sampling of ballast water discharged by

¹ National Pollutant Discharge Elimination System, 38 Fed. Reg. 13528, May 22, 1973, (to be codified at 40 C.F.R. §125).

² *Ibid.*

³ Northwest Environmental Advocates et al. v. U.S. Environmental Protection Agency (EPA), 537 F.3d 1006 (9th Cir. 2008).

⁴ Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, (Pub. Law 101-646, 104 Stat. 4761) (1990).

⁵ National Invasive Species Act, (Public Law No. 104-332, 110 Stat. 4073) (1996).

⁶ International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004, at <http://www.uscg.mil/hq/cg5/cg522/cg5224/docs/BWM-Treaty.pdf>.

⁷ *Ibid.*, Section D, Regulation D-4.

ships as a port State control activity, in order to help port States ensure foreign-flagged vessels' compliance with the Convention's treatment and other management requirements.⁸

Most importantly, the Convention includes a ballast water treatment standard based on the number of living organisms contained in discharged ballast water that is the most stringent standard scientifically proven to be achievable and detectable today. Specifically, Regulation D-2 requires that ballast water discharge contain (1) less than 10 viable organisms per cubic meter of ballast water that are greater than or equal to 50 micrometers in minimum dimension; and (2) less than 10 viable organisms per milliliter of ballast water that are less than 50 micrometers in minimum dimension and greater than or equal to 10 micrometers in minimum dimension.⁹ Regulation D-2 further requires that ballast water discharge contain only minimal concentrations of certain human health indicator microbes, as follows: (1) less than 1 colony-forming unit (CFU) of toxicogenic *Vibrio cholerae* (serotypes O1 and O139) per 100 milliliters of ballast water or less than 1 CFU per 1 gram (wet weight) of zooplankton samples; (2) less than 250 CFUs of *Escherichia coli* per 100 milliliters of ballast water; and (3) less than 100 CFUs of intestinal Enterococci per 100 milliliters of ballast water.¹⁰ On September 8, 2017, the Convention will come into effect, requiring ships in international trade to meet Regulation D-2.¹¹

Today, as a result of these independent developments, both the Coast Guard and EPA are regulating ballast water under separate, inconsistent, and sometimes directly conflicting sets of requirements: the Coast Guard under NANPCA/NISA and the EPA under the Clean Water Act and NPDES. While both the Coast Guard and the EPA have adopted Regulation D-2 as their treatment standard for ballast water, there is considerable confusion between Federal regulators and among vessel owner/operators over how to administer, and properly comply with, the Coast Guard and EPA's separate requirements.

As an example, both the Coast Guard and EPA require a ballast water management system (BWMS) aboard a vessel covered by their regulations. On the one hand, the Coast Guard's regulations generally require that a BWMS be type-approved by the Coast Guard.¹² In the case of a manufacturer whose BWMS has been approved by a foreign regulatory authority pursuant to Convention standards, that manufacturer may request a Coast Guard determination that its BWMS qualifies as an Alternate Management System (AMS). On the other hand, the EPA's Vessel General Permit (VGP) requires only that a BWMS "has been shown to be effective by testing conducted by an independent third party laboratory, test facility or test organization." Although a BWMS approved by the Coast Guard is deemed by the VGP to comply with its effectiveness requirement, a BWMS may also be tested and found effective

⁸ International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004, at <http://www.uscg.mil/hq/cg5/cg522/cg5224/docs/BWM-Treaty.pdf>.

⁹ *Ibid.*, Section D, Regulation D-2.

¹⁰ *Ibid.*

¹¹ MarEx, "Ballast Water Convention to Enter into Force in 2017," The Maritime Executive, September 8, 2016, at <http://www.maritime-executive.com/article/ballast-water-convention-to-enter-into-force-in-2017>.

¹² 33 C.F.R. §151.2025(a)(1) (2013).

under the VGP by another “laboratory, test facility, or test organization,”¹³ even though it has not been approved by the Coast Guard. Thus, a BWMS could end up being installed on a vessel in compliance with the VGP, even though it does not (and may never) comply with Coast Guard regulations.

Furthermore, as of February 2017, the Coast Guard has only approved one BWMS because the type-approval process has taken longer than expected. Coast Guard regulations allow for the extension of compliance deadlines to accommodate delays in type-approval, but the EPA’s VGP is vague as to how it will or will not apply when Coast Guard has granted a compliance date extension.¹⁴ The VGP took effect for most commercial vessels on December 19, 2013, while the first BWMS was not type-approved by the Coast Guard until December 2016.¹⁵ Additional systems are likely to be approved shortly, but it will still be some time before there are suitable systems for all vessels. Other questions exist about equipment, such as, are vessel owner/operators expected to install VGP-compliant BWMS that may or may not later be approved by the Coast Guard? The EPA’s only guidance in this regard is that, in cases where the vessel has received a compliance date extension from the Coast Guard, the vessel is not in compliance with the ballast water numeric discharge limit under the VGP, and the vessel is otherwise in compliance with the VGP, the EPA will, subject to additional case-by-case considerations, “consider such violations of the VGP ballast water numeric discharge limit a low enforcement priority.”¹⁶

Another example of the conflict and confusion between the two regimes is the EPA’s VGP requirement of ballast water exchange combined with the use of a BWMS for certain vessels that enter the Great Lakes after operating outside the U.S. Exclusive Economic Zone.¹⁷ This requirement stands in contrast to Coast Guard and IMO regulations, which do not require this combination of management methods. These inconsistent requirements are certain to cause confusion among vessel owner/operators, and particularly among owner/operators of foreign-flagged vessels. Some foreign vessel owner/operators have even suggested that this and other Clean Water Act requirements seem, to the extent they are inconsistent with IMO requirements, like thinly veiled non-tariff barriers to trade.

Challenges abound not only with respect to proper compliance with, but also proper enforcement of, these conflicting requirements. Most notable among them is the fact that the Coast Guard is both required to enforce its own ballast water management and

¹³Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels (VGP), December 19, 2013, Section 2.2.3.5.1.1, at http://www.epa.gov/npdes/pubs/vgp_permit2013.pdf.

¹⁴See id. Section 1.9.1 (stating only that “Regarding implementation dates of the limits found in Part 2.2.3.5 of the VGP, EPA advises that where the U.S. Coast Guard has granted or denied an extension request pursuant to 33 CFR 151.2036, that information will be considered by EPA, but is not binding on EPA.”).

¹⁵U.S. Coast Guard, “Ballast Water Management (BWM) Extension Program Update,” Marine Safety Information Bulletin, December 2, 2016, at <https://www.uscg.mil/msib/docs/014-16-12-2-2016.PDF>.

¹⁶Memorandum from Cynthia Giles, EPA Assistant Administrator, to Regional Vessel General Permit Enforcement and Program Directors, December 27, 2013, at <http://www2.epa.gov/sites/production/files/2013-12/documents/vesselgeneralpermit-erp.pdf>. VGP section 2.2.3.7.

¹⁷VGP, Section 2.2.3.7, http://www.epa.gov/npdes/pubs/vgp_permit2013.pdf.

other vessel operational requirements and the EPA's conflicting vessel operational requirements under the VGP.¹⁸

On top of this duplicative, inconsistent, and confusing Federal regime, subjecting vessels to NPDES also has opened the door for States to establish their own varying standards and requirements for vessel incidental discharges. The States of California, Michigan, Minnesota, Ohio, Oregon, and Washington are among those that already have promulgated their own ballast water management requirements that also apply to commercial vessels navigating in State waters.

In 2006, the State of California enacted a ballast water treatment standard at the recommendation of the California State Lands Commission (CSLC) that requires less than 0.01 living organisms measuring between 10 and 50 micrometers per milliliter of ballast water discharged (1000 times the IMO Regulation D-2) and requires zero detectable living organisms greater than 50 micrometers per milliliter of ballast water discharged.¹⁹ However, the State has continued to delay implementation of its requirement that vessel owner/operators install BWMS that meet these standards because no BWMS are available that meet California's treatment standards. In the CSLC staff's words:

More specifically, shipboard ballast water treatment systems cannot be considered available to meet the California performance standards because: 1) no ballast water treatment system has demonstrated efficacy for all of the California performance standards based on the best available data; 2) there are no suitable methods/technology to analyze ballast water samples to determine treatment system efficacy for some of the California performance standards; and 3) a lack of sampling/compliance protocols precludes the ability of the Commission to make a conclusive determination about the availability of shipboard ballast water treatment systems to meet the California performance standards.²⁰

The States of Oregon and Washington, meanwhile, have adopted a number of reporting, recordkeeping, and inspection requirements, as well as certain ballast water open sea exchange measures, but neither State has yet imposed a treatment standard under State law, as California has done. The State of Washington's Ballast Water Management statute requires that the Washington Department of Fish and Wildlife:

shall adopt by rule standards for the discharge of ballast water into the waters of the State and their implementation timelines. The standards are intended to ensure that the discharge of ballast water poses mini-

¹⁸Memorandum of Understanding between the U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, and the U.S. Coast Guard, Office of Marine Safety, Security and Stewardship, for Collaboration on Compliance Assistance, Compliance Monitoring, and Enforcement of Vessel General Permit Requirements on Vessels," February 11, 2011, http://www.uscg.mil/hq/cgvc/cvc1/general/vgp/CG_EPA_MOU.pdf.

¹⁹Cal. Pub. Res. Code 71205.3 (West 2014).

²⁰California State Lands Commission, 2014 Assessment of the Efficacy, Availability, and Environmental Impacts of Ballast Water Treatment Technologies for Use in California Waters, August 2014, at http://www.slc.ca.gov/spec%20pub/mfd/ballast_water/Documents/Reports/2014CSLC_BWTechReport_Final-2.pdf.

mal risk of introducing nonindigenous species. In developing these standards, the department shall consider the extent to which the requirement is technologically and practically feasible. Where practical and appropriate, the standards must be compatible with standards set by the United States Coast Guard, the Federal Clean Water Act, or the International Maritime Organization.²¹

The State of Oregon's ballast water management statute contains similar language regarding technological and practical feasibility.²² Oregon's statute also includes a requirement that its ballast water standards and procedures be, "[t]o the extent practicable . . . consistent with relevant rules adopted by the States of California and Washington."²³ But it is unclear how Oregon, or Washington for that matter, can reconcile its practicability-based approach to ballast water treatment with that of California, which has taken a very different approach.

In all, 25 States have certified the VGP subject to additional, individual State requirements. The potential compliance challenges posed by this situation are staggering. As an example, a commercial vessel owner/operator transiting the full length of the Mississippi River is required to comply not only with applicable Coast Guard requirements under NANPCA/NISA and the EPA's VGP requirements, but also with varying additional VGP permit requirements imposed by the States of Minnesota, Wisconsin, Iowa, Illinois, Missouri, and Arkansas.

Despite the wide latitude currently given to States to establish higher standards under the current regulatory regime, environmental groups have continued to sue the EPA. In an October 2015 decision, the U.S. Court of Appeals for the Second Circuit found that the EPA acted arbitrarily and capriciously because, among other reasons, it had not considered the possibility of on-shore treatment facilities for ballast water, even though none currently exist.²⁴ Because of the Second Circuit decision, the EPA is currently revising its standards and will likely update the VGP in 2018.

This complicated, inefficient, and confusing patchwork of Federal and State requirements will only continue to grow, confusing vessel owner/operators seeking in good faith to comply, confounding law enforcement authorities, unnecessarily impeding maritime commerce, and, most importantly, diminishing the overall effectiveness of U.S. efforts to prevent the introduction of aquatic invasive spe-

²¹ Wash. Rev. Code Ann. 77.120.030 (West 2014).

²² See Or. Rev. Stat. Ann. 783.635 (West 2014) (providing, in part, that "[t]he Environmental Quality Commission may adopt by rule standards and procedures that the commission considers necessary to carry out the provisions of ORS 783.625 to 783.640. The standards and procedures must minimize the risk of introducing aquatic invasive species into the waters of this State and *must be based on the availability of treatment technology*. Rules adopted under this subsection include, but are not limited to: Standards for the discharge of ballast water into the waters of this State and appropriate timelines for the implementation of the standards. In adopting the standards, the commission shall *consider the extent to which treatment technology is feasible, practicable and commercially available*, or expected to be available, by the proposed implementation timelines." (emphasis added)).

²³ *Ibid.*

²⁴ MarEx, "Ballast Water Convention to Enter into Force in 2017," *The Maritime Executive*, September 8, 2016, at <http://www.maritime-executive.com/article/ballast-water-convention-to-enter-into-force-in-2017>.

cies. Strong uniform national standards are necessary to effectively defend against invasive species brought to the United States in ballast water.

The Act would require the Secretary of the department in which the Coast Guard is operating (Secretary), in consultation with the Administrator of the EPA (Administrator), to establish and implement enforceable uniform national standards and requirements for the regulation of ballast water discharges and other discharges incidental to the normal operation of vessels. The new standards and requirements would be required to be based upon the best available technology economically achievable, and would generally supersede the current jumble of Federal and State incidental discharge requirements. Enforcement responsibilities with respect to these uniform national standards and requirements would be vested in the Secretary and the States.

SUMMARY OF PROVISIONS

S. 168 would require the Secretary, in consultation with the Administrator, to establish and implement uniform national standards for the regulation of ballast water discharges and other discharges incidental to the normal operation of vessels. The new standards would be based upon the best available technology economically achievable, and would generally supersede the current jumble of Federal and State incidental discharge requirements. The initial ballast water treatment standard under S. 168 would be the IMO Regulation D-2, the most stringent treatment standard scientifically proven to be achievable and detectable today. In 2022, the Secretary would be required to conduct a review to determine whether it is possible to increase the standard. Thereafter, decennial feasibility reviews would be required to determine whether further revisions of the ballast water standard would result in a reduction in the risk of the introduction of aquatic nuisance species. States would be allowed to petition for stricter ballast water and incidental discharge standards. Under the bill, if the Secretary determines those standards are feasible and protect the environment, they would become the new national standard. Enforcement responsibilities would be vested in the Secretary. States also would be authorized to enter into an agreement to enforce the standards and requirements established under the Act.

LEGISLATIVE HISTORY

During the 114th Congress, a provision similar to S. 168, S. 373, the Vessel Incidental Discharge Act, was reported out of Committee. It also was reported out of Committee as part of S. 2829, the Maritime Administration Authorization and Enhancement Act for Fiscal Year 2017.

A provision similar to S. 168 was also included in the House of Representatives-passed version of H.R. 4909, the National Defense Authorization Act (NDAA) of 2017 (section 3604). Forty-one Senators signed a letter to the Armed Services Chairmen and Ranking Members, asking that the provision be included in the NDAA conference report. Ultimately, the provision was not included because it lacked a direct defense nexus.

This Congress, S. 168, the Commercial Vessel Incidental Discharge Act, was introduced by Senator Wicker on January 17, 2017, with Senators Casey, Nelson, Rubio, Thune, McCaskill, Schatz, and Sullivan as cosponsors. On January 24, 2017, the Committee met in open Executive Session and, by voice vote, ordered S. 168 to be reported favorably without amendment.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 168—Commercial Vessel Incidental Discharge Act

S. 168 would amend the environmental standards for water that is discharged from ships and would permanently exempt certain smaller vessels from those standards. Under current law, the United States Coast Guard (USCG) and the Environmental Protection Agency (EPA) set and enforce those standards.

S. 168 also would change the procedures that the United States follows to review and regulate water discharged from certain vessels. The legislation would increase the administrative responsibilities of the USCG to implement some of the laws that govern water discharged from ships and require that the USCG carry out those responsibilities in consultation with the EPA. Under current law, most of those responsibilities are carried out by the EPA under the Clean Water Act.

Under the bill, the EPA would no longer issue water discharge permits to vessels. Based on information from the EPA, CBO estimates that the agency currently spends roughly \$1 million per year to implement its share of those responsibilities under the Clean Water Act. CBO expects that the USCG would spend a similar amount—\$5 million over the 2018–2022 period—upon assuming those responsibilities from the EPA. Thus, CBO estimates that transferring those responsibilities would result in no net cost to the federal government. USCG would issue permits, conduct enforcement actions, and review proposals from states for more stringent standards.

Enacting S. 168 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 168 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 168 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would preempt state and local laws that regulate ballast water and other discharges of vessels by establishing a national uniform standard and set of best management practices. Although it would limit the application of state and local regulations, the bill would impose no duty on state or local governments that would result in additional spending or a loss of revenues.

S. 168 contains no private-sector mandates as defined in UMRA. The CBO staff contact for this estimate is Jon Sperl. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 168 as reported does not create any new programs or impose any new regulatory requirements; therefore, it would not subject any individuals or businesses to new regulations. It would streamline regulatory compliance for the owners and operators of approximately 70,000 vessels with respect to ballast discharge. It also would permanently exempt approximately 120,000 vessels from incidental vessel discharge rules; thus, it would reduce the regulatory burden on the owners and operators of those vessels.

ECONOMIC IMPACT

Enactment of this legislation is not expected to have any significant adverse impacts on the Nation's economy and would reduce compliance costs for businesses.

PRIVACY

The bill would not impact the personal privacy of individuals.

PAPERWORK

By replacing myriad Federal and State vessel incidental discharge requirements with a single set of national requirements, S. 168 would likely reduce paperwork requirements for individuals and businesses.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents.

This section would designate the short title of this bill, as the "Commercial Vessel Incidental Discharge Act" and would provide a table of contents.

Section 2. Definitions.

This section would define terms, including as follows: "Administrator" as the Administrator of the EPA; "aquatic nuisance species" as nonindigenous species that threaten native species or activities dependent on navigable waters; "ballast water" as water taken on board a vessel to aid in stabilizing the vessel; "ballast water discharge standard" as the numerical standard described in sections 151.2030 or section 151.1511 of title 33 of the Code of Federal Regulations or established under section 5 of this Act, as applicable; "geographically limited area" as an area with a limitation by size or authorized route or is ecologically homogeneous; and "Secretary"

as the Secretary of the department in which the Coast Guard is operating.

Also, this section would define “discharge incidental to the normal operation of a commercial vessel” to mean a discharge into navigable waters of the United States of any pollutant associated with the operation of a marine propulsion system, shipboard maneuvering system, habitability system, or installed major equipment; any pollutant from an application to the hull of a vessel; any runoff from the deck, chain locker, well deck, or fish hold; and any effluent from a marine engine. It would not include trash, oil or hazardous substances, sewage, certain types of graywater, or air pollution.

Section 3. Existing ballast water regulations.

This section would preserve the existing regulations issued pursuant to the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.) until they are superseded by regulation issued under this Act. It also would provide that the sanctions under that Act would apply to violations under this Act.

Section 4. Ballast water discharge requirements.

This section would allow ballast water discharge into the navigable waters of the United States only if the water is treated using the best available technology and the discharge is in accordance with any other standards set by the Secretary. It also would establish certain requirements for vessels entering the Saint Lawrence River, including a requirement that such a vessel do a complete ballast water exchange offshore.

This section also would provide several exemptions from discharge requirements including if the discharge is necessary to ensure the safety of life at sea. It would prohibit the Secretary from requiring the installation of a BWMS on a vessel that carries all its ballast water in sealed tanks or discharges its ballast water into an on-shore facility. Vessels would be exempt from ballast water requirements if they continuously on-load and off-load ballast water, if they operate in a geographically limited area, or if they meet several other criteria.

This section would require the Secretary to issue a policy letter for describing type approval testing methods capable of measuring the concentration of organisms in ballast water that are capable of reproduction. In developing the policy letter, the Secretary would consider a type of 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.

Section 5. Review of ballast water discharge standard.

This section would require the Secretary to conduct reviews not later than January 1, 2022, and every 10 years thereafter, 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. It would grant the States the right to petition for a higher national standard and would specify the requirements for such a petition. This sec-

tion also would establish a practicality review for when the Secretary is considering a higher standard. This section would require the Secretary to issue a revised ballast water discharge standard if the standard is determined to be economically achievable and operationally practicable, and if testing protocols exist that could assure accurate implementation. It would establish a time period for vessels to request an extension and would allow a BWMS to be used for the service life of the equipment, even if more stringent regulations are later issued.

Section 6. Alternative compliance program.

This section would allow the Secretary to develop an alternative compliance program for vessels with very small amounts of ballast water or for vessels near the end of their service life.

Section 7. Reception facilities.

This section would allow the use of on-shore reception facilities for the discharge of ballast water and require the Administrator to determine standards for such facilities.

Section 8. Requirements for discharge incidental to the normal operation of a vessel.

This section would require the Secretary to establish best management practices for discharges incidental to the normal operation of a commercial vessel for commercial vessels greater than or equal to 79 feet in length. This section would allow for the existing VGP, with the exception of the State-specific requirements, to remain in place until the Secretary establishes best management practices. Vessels under 79 feet in length and fishing vessels would be excluded from these requirements, and the existing requirements of the VGP would cease to apply to those vessels. This section also would provide criteria for States to petition for revised best management practices for discharges incidental to the normal operation of a commercial vessel. If accepted, such best management practices would become the national standard.

Section 9. Judicial review.

This section would allow an interested person to file a petition for review of a final regulation in the United States Court of Appeals for the District of Columbia Circuit. Such an appeal would be required to be filed within 120 days of the appearance of the final regulation in the Federal Register, unless it were solely on grounds that arise after that 120 day period.

Section 10. State enforcement.

This section would allow the Secretary to enter into an agreement with a State to authorize the State to enforce this Act.

Section 11. Effect on State authority.

This section would prohibit States from adopting or enforcing any State statute or regulation with respect to incidental vessel discharge or ballast water standards after the date of enactment of this Act, except as provided in section 10. The authority of States to regulate 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 would not be affected.

Section 12. Effect on other laws.

This section would describe how this Act interacts with other relevant statutes. It would require standards developed under this Act be consistent with international law and preserve the right of the Secretary of the Interior and the Secretary of Commerce to administer lands and waters under those Secretaries' control.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

NONINDIGENOUS AQUATIC NUISANCE PREVENTION AND CONTROL ACT OF 1990

[Public Law 101-646; 104 Stat. 4761]

SEC. 1205. RELATIONSHIP TO OTHER LAWS.

[16 U.S.C. 4725]

All actions taken by Federal agencies in implementing the provisions of section 1202 shall be consistent with all applicable Federal, State, and local environmental laws. Nothing in this title shall affect the authority of any State or political subdivision thereof to adopt or enforce control measures for aquatic nuisance species, or diminish or affect the jurisdiction of any State over species of fish and wildlife. Compliance with the control and eradication measures of any State or political subdivision thereof regarding aquatic nuisance species shall not relieve any person of the obligation to comply with the provisions of this subtitle. *Ballast water and discharges incidental to the normal operation of a commercial vessel (as such terms are defined in the Commercial Vessel Incidental Discharge Act), shall be regulated pursuant to such Act.*

