

112TH CONGRESS
2D SESSION

S. 3332

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

IN THE SENATE OF THE UNITED STATES

JUNE 21, 2012

Mr. BEGICH (for himself, Ms. AYOTTE, Mr. BOOZMAN, Mr. INOUE, Mrs. McCASKILL, Ms. MURKOWSKI, Mr. ROCKEFELLER, Ms. SNOWE, Mr. VITTER, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

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

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 vessel incidental discharge standards.
 Sec. 6. Treatment technology certification.
 Sec. 7. Exemptions.
 Sec. 8. Alternative compliance program.
 Sec. 9. Judicial review.
 Sec. 10. Effect on State authority.
 Sec. 11. Application with other statutes.

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

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

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

11 (2) The Coast Guard estimates there are ap-
 12 proximately 12,700,000 State-registered recreational
 13 vessels, 78,000 commercial fishing vessels, and
 14 57,000 freight and tank barges operating in United
 15 States waters.

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

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

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

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

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

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

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

(F) section 204 of the Maritime Transportation Security Act of 2002 (33 U.S.C. 1902a), which established requirements for the regulation of incidental vessel discharges of agricultural cargo residue material in the form of hold washings; and

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

(b) PURPOSE.—The purpose of this Act is to provide for the establishment of nationally uniform and environmentally sound standards for discharges incidental to the normal operation of a vessel in the navigable waters of the United States.

SEC. 3. 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 ecologi-

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

4 (3) BALLAST WATER.—

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

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

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

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

20 (4) BALLAST WATER PERFORMANCE STAND-
21 ARD.—The term “ballast water performance stand-
22 ard” means the numerical ballast water performance
23 standard set forth in Regulation D–2 of the Inter-
24 national Convention for the Control and Manage-
25 ment of Ships’ Ballast Water and Sediments, adopt-

ed on February 13, 2004, or a revised numerical
ballast water performance standard established
under section 5.

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

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

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

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

(i) a discharge into navigable waters
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 for the regulation of
20 discharges incidental to the normal operation of a vessel.
21 The standards 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 enforce the standards and requirements
5 under this Act. Each State may enforce the standards and
6 requirements under this Act.

7 **SEC. 5. UNIFORM VESSEL INCIDENTAL DISCHARGE STAND-**
8 **ARDS.**

9 (a) INITIAL VESSEL INCIDENTAL DISCHARGE
10 STANDARDS.—

11 (1) INITIAL BALLAST WATER PERFORMANCE
12 STANDARD.—

13 (A) IN GENERAL.—Not later than 180
14 days after the date of enactment of this Act,
15 the Secretary, in consultation with the Adminis-
16 trator, shall issue a final rule for the regulation
17 of ballast water discharges incidental to the
18 normal operation of a vessel.

19 (B) PROPOSED RULE.—For the purposes
20 of chapter 5 of title 5, United States Code, the
21 notice of proposed rulemaking published by the
22 Coast Guard pursuant to the requirements of
23 chapter 5 of title 5, United States Code, on Au-
24 gust 28, 2009 (74 Fed. Reg. 44632; relating to
25 standards for living organisms in ships' ballast

1 water discharged in U.S. waters), shall serve as
 2 a proposed rule for the purpose of issuing the
 3 final rule under subparagraph (A).

4 (C) ADOPTION OF MORE STRINGENT
 5 STATE STANDARD.—If the Secretary makes a
 6 determination in favor of a State petition under
 7 section 10, the Secretary shall adopt the more
 8 stringent ballast water performance standard
 9 specified in the statute or regulation which is
 10 the subject of that State petition in the final
 11 rule issued under this paragraph.

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

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

21 (1) IN GENERAL.—Subject to the feasibility re-
 22 view under paragraph 2, not later than January 1,
 23 2020, the Secretary, in consultation with the Admin-
 24 istrator, shall issue a final rule revising the ballast
 25 water performance standard under subsection (a)(1)

1 so that a ballast water discharge incidental to the
2 normal operation of a vessel will contain—

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

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

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

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

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

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

21 (D) concentrations of such additional indi-
22 cator microbes and of viruses as may be speci-
23 fied in regulations issued by the Secretary in
24 consultation with the Administrator and such

1 other Federal agencies as the Secretary and the
2 Administrator deem appropriate.

3 (2) FEASIBILITY REVIEW.—

4 (A) IN GENERAL.—Not less than 2 years
5 before January 1, 2020, the Secretary, in con-
6 sultation with the Administrator, shall complete
7 a review to determine the feasibility of achiev-
8 ing the revised ballast water performance stand-
9 ard under paragraph (1).

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

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

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

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

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

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

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

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

15 (iii) improvements in the capabilities
 16 to detect, quantify, and assess the viability
 17 of aquatic nuisance species at the con-
 18 centrations under consideration;

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

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

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

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

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

10 (C) LOWER PERFORMANCE STANDARD.—

11 (i) IN GENERAL.—If the Secretary, in
12 consultation with the Administrator, deter-
13 mines on the basis of the feasibility review
14 and after an opportunity for a public hear-
15 ing that no ballast water treatment tech-
16 nology can be certified under section 6 to
17 comply with the revised ballast water per-
18 formance standard under paragraph (1),
19 the Secretary shall require the use of the
20 treatment technology that achieves the per-
21 formance levels of the best treatment tech-
22 nology available.

23 (ii) IMPLEMENTATION DEADLINE.—If
24 the Secretary, in consultation with the Ad-
25 ministrator, determines that the treatment

1 technology under clause (i) cannot be im-
2 plemented before the implementation dead-
3 line under paragraph (3) with respect to a
4 class of vessels, the Secretary shall extend
5 the implementation deadline for that class
6 of vessels for not more than 24 months.

7 (iii) COMPLIANCE.—If the implemen-
8 tation deadline under paragraph (3) is ex-
9 tended, the Secretary shall recommend ac-
10 tion to ensure compliance with the ex-
11 tended implementation deadline under
12 clause (ii).

13 (D) HIGHER PERFORMANCE STANDARD.—

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

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

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

12 (iii) DETERMINATIONS NOT MUTU-
 13 ALLY EXCLUSIVE.—The Secretary shall
 14 take action under both clauses (i) and (ii)
 15 if the Secretary, in consultation with the
 16 Administrator, makes determinations
 17 under both clauses (i) and (ii).

18 (3) IMPLEMENTATION.—The revised ballast
 19 water performance standard under paragraph (1)
 20 shall apply to a vessel beginning on the date of the
 21 first drydocking of the vessel on or after January 1,
 22 2020, but not later than December 31, 2022.

23 (c) FUTURE REVISIONS OF VESSEL INCIDENTAL
 24 DISCHARGE STANDARDS; DECENNIAL REVIEWS.—

1 (1) REVISED BALLAST WATER PERFORMANCE
2 STANDARDS.—Not later than 10 years after the
3 issuance of a final rule under subsection (b) and
4 every 10 years thereafter, the Secretary, in consulta-
5 tion with the Administrator shall complete a review
6 to determine whether further revision of the ballast
7 water performance standard would result in a sci-
8 entifically demonstrable and substantial reduction in
9 the risk of the introduction or establishment of
10 aquatic nuisance species.

11 (2) REVISED STANDARDS FOR DISCHARGES
12 OTHER THAN BALLAST WATER.—The Secretary, in
13 consultation with the Administrator, may include in
14 the decennial review under this subsection national
15 standards for discharges covered by subsection
16 (a)(2). The Secretary shall initiate a rulemaking to
17 revise one or more national standards for such dis-
18 charges after a decennial review if the Secretary, in
19 consultation with the Administrator, determines that
20 revising one or more of such standards would sub-
21 stantially reduce the impacts on navigable waters of
22 discharges incidental to the normal operation of a
23 vessel other than ballast water.

24 (3) CONSIDERATIONS.—In conducting a review
25 under paragraph (1), the Secretary, the Adminis-

1 trator, and the heads of other appropriate Federal
 2 agencies as determined by the Secretary, shall con-
 3 sider the criteria under section 5(b)(2)(B).

4 (4) REVISION AFTER DECENNIAL REVIEW.—

5 The Secretary shall initiate a rulemaking to revise
 6 the current ballast water performance standard after
 7 a decennial review if the Secretary, in consultation
 8 with the Administrator, determines that revising the
 9 current ballast water performance standard would
 10 result in a scientifically demonstrable and substan-
 11 tial reduction in the risk of the introduction or es-
 12 tablishment of aquatic nuisance species.

13 **SEC. 6. TREATMENT TECHNOLOGY CERTIFICATION.**

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

23 (b) CERTIFICATION PROCESS.—

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

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

8 (B) the compatibility with vessel design
9 and operations;

10 (C) the effect of the treatment technology
11 on vessel safety;

12 (D) the impact on the environment;

13 (E) the cost effectiveness; and

14 (F) any other criteria the Secretary con-
15 siders appropriate.

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

21 (3) SUSPENSION AND REVOCATION.—The Sec-
22 retary shall establish, by regulation, a process to
23 suspend or revoke a certification issued under this
24 section.

25 (c) CERTIFICATION CONDITIONS.—

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

8 (A) the safety of the vessel, the crew of the
9 vessel, and any passengers aboard the vessel;

10 (B) the protection of the environment; or

11 (C) the effective operation of the treatment
12 technology.

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

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

1 until the expiration of the service life of the system, as
2 determined by the Secretary, so long as the system—

3 (1) is maintained in proper working condition;
4 and

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

9 (e) CERTIFICATES OF TYPE APPROVAL FOR THE
10 TREATMENT TECHNOLOGY.—

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

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

21 (3) OWNERS AND OPERATORS.—A manufac-
22 turer that receives a certificate of type approval for
23 the treatment technology under this subsection shall
24 provide a copy of the certificate to each owner and

1 operator of a vessel on which the treatment tech-
2 nology is installed.

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

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

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

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

24 (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 vessel incidental discharge standards under
16 this Act apply to—

17 (1) a discharge incidental to the normal oper-
18 ation of a vessel if the vessel is less than 79 feet in
19 length and engaged in commercial service (as de-
20 fined in section 2101(5) of title 46, United States
21 Code);

22 (2) a discharge incidental to the normal oper-
23 ation of a vessel if the vessel is a fishing vessel, in-
24 cluding a fish processing vessel and a fish tender

1 vessel, (as defined in section 2101 of title 46, United
2 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 that
 8 carries all of its permanent ballast water in sealed tanks
 9 that are not subject to discharge.

10 (d) VESSELS OF THE ARMED FORCES.—Nothing in
 11 this Act shall be interpreted 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 one or more compliance programs as an alter-
 18 native to ballast water discharge regulations issued under
 19 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 specified in the notice of
14 proposed rulemaking referred to in section 5(a)(1)(B) and
15 is in effect on the date of enactment of this Act if the
16 Secretary, after consultation with the Administrator and
17 any other Federal department or agency the Secretary
18 considers appropriate, makes a determination that—

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

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

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

4 (c) PETITION PROCESS.—

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

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

10 (A) be accompanied by the scientific and
 11 technical information on which the petition is
 12 based; and

13 (B) be submitted to the Secretary not later
 14 than 90 days after the date of enactment of
 15 this Act.

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

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

21 Notwithstanding any other provision of law, this Act
 22 shall be the exclusive statutory authority for regulation by
 23 the Federal Government of discharges incidental to the
 24 normal operation of a vessel to which this Act applies. Any
 25 regulation in effect on the date immediately preceding the

1 effective date of this Act which is repealed or superseded
2 by this Act shall be deemed to be a regulation issued pur-
3 suant to the authority of this Act and shall remain in full
4 force and effect unless or until superseded by new regula-
5 tions issued thereunder.

