

113TH CONGRESS
2D SESSION

H. R. 5609

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 2014

Mr. HUNTER (for himself, Mr. CUMMINGS, Mr. LoBIONDO, Mr. RICHMOND, Mr. JONES, Mr. LUETKEMEYER, Mr. COOPER, Mr. JOLLY, Ms. HERRERA BEUTLER, Mr. YOUNG of Alaska, and Mr. ENYART) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

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

Sec. 1. Short title; table of contents.

- Sec. 2. Definitions.
- Sec. 3. Regulation and enforcement.
- Sec. 4. Uniform national standards and requirements for the regulation of discharges incidental to the normal operation of a vessel.
- Sec. 5. Treatment technology certification.
- Sec. 6. Exemptions.
- Sec. 7. Alternative compliance program.
- Sec. 8. Judicial review.
- Sec. 9. Effect on State authority.
- Sec. 10. Application with other statutes.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) ADMINISTRATOR.—The term “Adminis-
4 trator” means the Administrator of the Environ-
5 mental Protection Agency.

6 (2) AQUATIC NUISANCE SPECIES.—The term
7 “aquatic nuisance species” means a nonindigenous
8 species (including a pathogen) that threatens the di-
9 versity or abundance of native species or the ecologi-
10 cal stability of navigable waters or commercial, agri-
11 cultural, aquacultural, or recreational activities de-
12 pendent on such waters.

13 (3) BALLAST WATER.—

14 (A) IN GENERAL.—The term “ballast
15 water” means any water, including any sedi-
16 ment suspended in such water, taken aboard a
17 vessel—

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

1 (ii) during the cleaning, maintenance,
2 or other operation of a ballast water treat-
3 ment technology of the vessel.

4 (B) EXCLUSIONS.—The term “ballast
5 water” does not include any pollutant that is
6 added to water described in subparagraph (A)
7 that is not directly related to the operation of
8 a properly functioning ballast water treatment
9 technology under this Act.

10 (4) BALLAST WATER PERFORMANCE STAND-
11 ARD.—The term “ballast water performance stand-
12 ard” means the numerical ballast water discharge
13 standard set forth in section 151.2030 of title 33,
14 Code of Federal Regulations or section 151.1511 of
15 title 33, Code of Federal Regulations, as applicable,
16 or a revised numerical ballast water performance
17 standard established under subsection (a)(1)(B), (b),
18 or (c) of section 4 of this Act.

19 (5) BALLAST WATER TREATMENT TECHNOLOGY
20 OR TREATMENT TECHNOLOGY.—The term “ballast
21 water treatment technology” or “treatment tech-
22 nology” means any mechanical, physical, chemical,
23 or biological process used, alone or in combination,
24 to remove, render harmless, or avoid the uptake or

1 discharge of aquatic nuisance species within ballast
2 water.

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

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

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

15 (i) a discharge into navigable waters
16 from a vessel of—

17 (I)(aa) ballast water, graywater,
18 bilge water, cooling water, oil water
19 separator effluent, anti-fouling hull
20 coating leachate, boiler or economizer
21 blowdown, byproducts from cathodic
22 protection, controllable pitch propeller
23 and thruster hydraulic fluid, distilla-
24 tion and reverse osmosis brine, eleva-
25 tor pit effluent, firemain system efflu-

ent, freshwater layup effluent, gas turbine wash water, motor gasoline and compensating effluent, refrigeration and air condensate effluent, seawater pumping biofouling prevention substances, boat engine wet exhaust, sonar dome effluent, exhaust gas scrubber washwater, or stern tube packing gland effluent; or

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

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

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

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

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

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

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

(II) oil or a hazardous substance as those terms are defined in section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321);

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

(IV) graywater referred to in section 312(a)(6) of the Federal Water

1 Pollution Control Act (33 U.S.C.
2 1322(a)(6));

3 (ii) an emission of an air pollutant re-
4 sulting from the operation onboard a vessel
5 of a vessel propulsion system, motor driven
6 equipment, or incinerator; or

7 (iii) a discharge into navigable waters
8 from a vessel when the vessel is operating
9 in a capacity other than as a means of
10 transportation on water.

11 (8) GEOGRAPHICALLY LIMITED AREA.—The
12 term “geographically limited area” means an area—

13 (A) with a physical limitation, including
14 limitation by physical size and limitation by au-
15 thorized route, that prevents a vessel from oper-
16 ating outside the area, as determined by the
17 Secretary; or

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

22 (9) MANUFACTURER.—The term “manufac-
23 turer” means a person engaged in the manufacture,
24 assemblage, or importation of ballast water treat-
25 ment technology.

1 (10) SECRETARY.—The term “Secretary”
2 means the Secretary of the department in which the
3 Coast Guard is operating.

4 (11) VESSEL.—The term “vessel” means every
5 description of watercraft or other artificial contriv-
6 ance used, or practically or otherwise capable of
7 being used, as a means of transportation on water.

8 **SEC. 3. REGULATION AND ENFORCEMENT.**

9 (a) IN GENERAL.—The Secretary, in consultation
10 with the Administrator, shall establish and implement en-
11 forceable uniform national standards and requirements for
12 the regulation of discharges incidental to the normal oper-
13 ation of a vessel. The standards and requirements shall—

14 (1) be based upon the best available technology
15 economically achievable; and

16 (2) supersede any permitting requirement or
17 prohibition on discharges incidental to the normal
18 operation of a vessel under any other provision of
19 law.

20 (b) ADMINISTRATION AND ENFORCEMENT.—The
21 Secretary shall administer and enforce the uniform na-
22 tional standards and requirements under this Act. Each
23 State may enforce the uniform national standards and re-
24 quirements under this Act.

1 **SEC. 4. UNIFORM NATIONAL STANDARDS AND REQUIRE-**
2 **MENTS FOR THE REGULATION OF DIS-**
3 **CHARGES INCIDENTAL TO THE NORMAL OP-**
4 **ERATION OF A VESSEL.**

5 (a) REQUIREMENTS.—

6 (1) BALLAST WATER MANAGEMENT REQUIRE-
7 MENTS.—

8 (A) IN GENERAL.—Notwithstanding any
9 other provision of law, the requirements set
10 forth in the final rule, Standards for Living Or-
11 ganisms in Ships' Ballast Water Discharged in
12 U.S. Waters (77 Fed. Reg. 17254 (March 23,
13 2012)), as corrected at 77 Fed. Reg. 33969
14 (June 8, 2012)), shall be the management re-
15 quirements for a ballast water discharge inci-
16 dental to the normal operation of a vessel until
17 the Secretary revises the ballast water perform-
18 ance standard under subsection (b) or adopts a
19 more stringent State standard under subpara-
20 graph (B) of this paragraph.

21 (B) ADOPTION OF MORE STRINGENT
22 STATE STANDARD.—If the Secretary makes a
23 determination in favor of a State petition under
24 section 9, the Secretary shall adopt the more
25 stringent ballast water performance standard
26 specified in the statute or regulation that is the

1 subject of that State petition in lieu of the bal-
2 last water performance standard in the final
3 rule described under subparagraph (A).

4 (2) INITIAL MANAGEMENT REQUIREMENTS FOR
5 DISCHARGES OTHER THAN BALLAST WATER.—Not
6 later than 2 years after the date of enactment of
7 this Act, the Secretary, in consultation with the Ad-
8 ministrator, shall issue a final rule establishing best
9 management practices for discharges incidental to
10 the normal operation of a vessel other than ballast
11 water.

12 (b) REVISED BALLAST WATER PERFORMANCE
13 STANDARD; 8-YEAR REVIEW.—

14 (1) IN GENERAL.—Subject to the feasibility re-
15 view under paragraph (2), not later than January 1,
16 2022, the Secretary, in consultation with the Admin-
17 istrator, shall issue a final rule revising the ballast
18 water performance standard under subsection (a)(1)
19 so that a ballast water discharge incidental to the
20 normal operation of a vessel will contain—

21 (A) less than 1 living organism per 10
22 cubic meters that is 50 or more micrometers in
23 minimum dimension;

24 (B) less than 1 living organism per 10 mil-
25 liliters that is less than 50 micrometers in min-

imum dimension and more than 10 micrometers
in minimum dimension;

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

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

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

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

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

(2) FEASIBILITY REVIEW.—

(A) IN GENERAL.—Not less than 2 years
before January 1, 2022, the Secretary, in con-
sultation with the Administrator, shall complete
a review to determine the feasibility of achiev-

1 ing the revised ballast water performance stand-
2 ard under paragraph (1).

3 (B) CRITERIA FOR REVIEW OF BALLAST
4 WATER PERFORMANCE STANDARD.—In con-
5 ducting a review under subparagraph (A), the
6 Secretary shall consider whether revising the
7 ballast water performance standard will result
8 in a scientifically demonstrable and substantial
9 reduction in the risk of introduction or estab-
10 lishment of aquatic nuisance species, taking
11 into account—

12 (i) improvements in the scientific un-
13 derstanding of biological and ecological
14 processes that lead to the introduction or
15 establishment of aquatic nuisance species;

16 (ii) improvements in ballast water
17 treatment technology, including—

18 (I) the capability of such treat-
19 ment technology to achieve a revised
20 ballast water performance standard;

21 (II) the effectiveness and reli-
22 ability of such treatment technology in
23 the shipboard environment;

24 (III) the compatibility of such
25 treatment technology with the design

1 and operation of a vessel by class,
2 type, and size;

3 (IV) the commercial availability
4 of such treatment technology; and

5 (V) the safety of such treatment
6 technology;

7 (iii) improvements in the capabilities
8 to detect, quantify, and assess the viability
9 of aquatic nuisance species at the con-
10 centrations under consideration;

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

13 (v) the costs, cost-effectiveness, and
14 impacts of—

15 (I) a revised ballast water per-
16 formance standard, including the po-
17 tential impacts on shipping, trade,
18 and other uses of the aquatic environ-
19 ment; and

20 (II) maintaining the existing bal-
21 last water performance standard, in-
22 cluding the potential impacts on
23 water-related infrastructure, recre-
24 ation, propagation of native fish,

1 shellfish, and wildlife, and other uses
2 of navigable waters.

3 (C) LOWER REVISED PERFORMANCE
4 STANDARD.—

5 (i) IN GENERAL.—If the Secretary, in
6 consultation with the Administrator, deter-
7 mines on the basis of the feasibility review
8 and after an opportunity for a public hear-
9 ing that no ballast water treatment tech-
10 nology can be certified under section 5 to
11 comply with the revised ballast water per-
12 formance standard under paragraph (1),
13 the Secretary shall require the use of the
14 treatment technology that achieves the per-
15 formance levels of the best treatment tech-
16 nology available.

17 (ii) IMPLEMENTATION DEADLINE.—If
18 the Secretary, in consultation with the Ad-
19 ministrator, determines that the treatment
20 technology under clause (i) cannot be im-
21 plemented before the implementation dead-
22 line under paragraph (3) with respect to a
23 class of vessels, the Secretary shall extend
24 the implementation deadline for that class
25 of vessels for not more than 36 months.

1 (iii) COMPLIANCE.—If the implemen-
2 tation deadline under paragraph (3) is ex-
3 tended, the Secretary shall recommend ac-
4 tion to ensure compliance with the ex-
5 tended implementation deadline under
6 clause (ii).

7 (D) HIGHER REVISED PERFORMANCE
8 STANDARD.—

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

19 (ii) IMPLEMENTATION DEADLINE.—If
20 the Secretary, in consultation with the Ad-
21 ministrator, determines that the treatment
22 technology under clause (i) can be imple-
23 mented before the implementation deadline
24 under paragraph (3) with respect to a
25 class of vessels, the Secretary shall accel-

1 erate the implementation deadline for that
2 class of vessels. If the implementation
3 deadline under paragraph (3) is acceler-
4 ated, the Secretary shall provide not less
5 than 24 months notice before the acceler-
6 ated deadline takes effect.

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

12 (4) REVISED PERFORMANCE STANDARD COM-
13 PLIANCE DEADLINES.—

14 (A) IN GENERAL.—The Secretary may es-
15 tablish a compliance deadline for compliance by
16 a vessel (or a class, type, or size of vessel) with
17 a revised ballast water performance standard
18 under this subsection.

19 (B) PROCESS FOR GRANTING EXTEN-
20 SIONS.—In issuing regulations under this sub-
21 section, the Secretary shall establish a process
22 for an owner or operator to submit a petition
23 to the Secretary for an extension of a compli-
24 ance deadline with respect to the vessel of the
25 owner or operator.

1 (C) PERIOD OF EXTENSIONS.—An extension
2 issued under subparagraph (B) may—

3 (i) apply for a period of not to exceed
4 18 months from the date of the applicable
5 deadline under subparagraph (A); and

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

8 (D) FACTORS.—In issuing a compliance
9 deadline or reviewing a petition under this
10 paragraph, the Secretary shall consider, with
11 respect to the ability of an owner or operator to
12 meet a compliance deadline, the following fac-
13 tors:

14 (i) Whether the treatment technology
15 to be installed is available in sufficient
16 quantities to meet the compliance deadline.

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

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

21 (iv) Vessel characteristics, such as en-
22 gine room size, layout, or a lack of in-
23 stalled piping.

24 (v) Electric power generating capacity
25 aboard the vessel.

1 (vi) Safety of the vessel and crew.

2 (E) CONSIDERATION OF PETITIONS.—

3 (i) DETERMINATIONS.—The Secretary
4 shall approve or deny a petition for an ex-
5 tension of a compliance deadline submitted
6 by an owner or operator under this para-
7 graph.

8 (ii) DEADLINE.—If the Secretary does
9 not approve or deny a petition referred to
10 in clause (i) on or before the last day of
11 the 90-day period beginning on the date of
12 submission of the petition, the petition
13 shall be deemed approved.

14 (c) FUTURE REVISIONS OF VESSEL INCIDENTAL
15 DISCHARGE STANDARDS; DECENNIAL REVIEWS.—

16 (1) REVISED BALLAST WATER PERFORMANCE
17 STANDARDS.—The Secretary, in consultation with
18 the Administrator, shall complete a review, 10 years
19 after the issuance of a final rule under subsection
20 (b) and every 10 years thereafter, to determine
21 whether further revision of the ballast water per-
22 formance standard would result in a scientifically de-
23 monstrable and substantial reduction in the risk of
24 the introduction or establishment of aquatic nui-
25 sance species.

1 (2) REVISED STANDARDS FOR DISCHARGES
2 OTHER THAN BALLAST WATER.—The Secretary, in
3 consultation with the Administrator, may include in
4 a decennial review under this subsection best man-
5 agement practices for discharges covered by sub-
6 section (a)(2). The Secretary shall initiate a rule-
7 making to revise 1 or more best management prac-
8 tices for such discharges after a decennial review if
9 the Secretary, in consultation with the Adminis-
10 trator, determines that revising 1 or more of such
11 practices would substantially reduce the impacts on
12 navigable waters of discharges incidental to the nor-
13 mal operation of a vessel other than ballast water.

14 (3) CONSIDERATIONS.—In conducting a review
15 under paragraph (1), the Secretary, the Adminis-
16 trator, and the heads of other appropriate Federal
17 agencies as determined by the Secretary, shall con-
18 sider the criteria under section 4(b)(2)(B).

19 (4) REVISION AFTER DECENNIAL REVIEW.—
20 The Secretary shall initiate a rulemaking to revise
21 the current ballast water performance standard after
22 a decennial review if the Secretary, in consultation
23 with the Administrator, determines that revising the
24 current ballast water performance standard would
25 result in a scientifically demonstrable and substan-

1 tial reduction in the risk of the introduction or es-
2 tablishment of aquatic nuisance species.

3 **SEC. 5. TREATMENT TECHNOLOGY CERTIFICATION.**

4 (a) CERTIFICATION REQUIRED.—Beginning 60 days
5 after the date that the requirements for testing protocols
6 are issued under subsection (i), no manufacturer of a bal-
7 last water treatment technology shall sell, offer for sale,
8 or introduce or deliver for introduction into interstate
9 commerce, or import into the United States for sale or
10 resale, a ballast water treatment technology for a vessel
11 unless the treatment technology has been certified under
12 this section.

13 (b) CERTIFICATION PROCESS.—

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

17 (A) the effectiveness of the treatment tech-
18 nology in achieving the current ballast water
19 performance standard when installed on a ves-
20 sel (or a class, type, or size of vessel);

21 (B) the compatibility with vessel design
22 and operations;

23 (C) the effect of the treatment technology
24 on vessel safety;

25 (D) the impact on the environment;

1 (E) the cost effectiveness; and

2 (F) any other criteria the Secretary con-
3 siders appropriate.

4 (2) APPROVAL.—If after an evaluation under
5 paragraph (1) the Secretary determines that the
6 treatment technology meets the criteria, the Sec-
7 retary may certify the treatment technology for use
8 on a vessel (or a class, type, or size of vessel).

9 (3) SUSPENSION AND REVOCATION.—The Sec-
10 retary shall establish, by regulation, a process to
11 suspend or revoke a certification issued under this
12 section.

13 (c) CERTIFICATION CONDITIONS.—

14 (1) IMPOSITION OF CONDITIONS.—In certifying
15 a ballast water treatment technology under this sec-
16 tion, the Secretary, in consultation with the Admin-
17 istrator, may impose any condition on the subse-
18 quent installation, use, or maintenance of the treat-
19 ment technology onboard a vessel as is necessary
20 for—

21 (A) the safety of the vessel, the crew of the
22 vessel, and any passengers aboard the vessel;

23 (B) the protection of the environment; or

24 (C) the effective operation of the treatment
25 technology.

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

5 (d) PERIOD FOR USE OF INSTALLED TREATMENT
6 EQUIPMENT.—Notwithstanding anything to the contrary
7 in this Act or any other provision of law, the Secretary
8 shall allow a vessel on which a system is installed and op-
9 erated to meet a ballast water performance standard
10 under this Act to continue to use that system, notwith-
11 standing any revision of a ballast water performance
12 standard occurring after the system is ordered or installed
13 until the expiration of the service life of the system, as
14 determined by the Secretary, so long as the system—

15 (1) is maintained in proper working condition;

16 and

17 (2) is maintained and used in accordance with
18 the manufacturer's specifications and any treatment
19 technology certification conditions imposed by the
20 Secretary under this section.

21 (e) CERTIFICATES OF TYPE APPROVAL FOR THE
22 TREATMENT TECHNOLOGY.—

23 (1) ISSUANCE.—If the Secretary approves a
24 ballast water treatment technology for certification
25 under subsection (b), the Secretary shall issue a cer-

1 tificate of type approval for the treatment technology
2 to the manufacturer in such form and manner as the
3 Secretary determines appropriate.

4 (2) CERTIFICATION CONDITIONS.—A certificate
5 of type approval issued under paragraph (1) shall
6 specify each condition imposed by the Secretary
7 under subsection (c).

8 (3) OWNERS AND OPERATORS.—A manufac-
9 turer that receives a certificate of type approval for
10 the treatment technology under this subsection shall
11 provide a copy of the certificate to each owner and
12 operator of a vessel on which the treatment tech-
13 nology is installed.

14 (f) INSPECTIONS.—An owner or operator who re-
15 ceives a copy of a certificate under subsection (e)(3) shall
16 retain a copy of the certificate onboard the vessel and
17 make the copy of the certificate available for inspection
18 at all times while the owner or operator is utilizing the
19 treatment technology.

20 (g) BIOCIDES.—The Secretary may not approve a
21 ballast water treatment technology under subsection (b)
22 if—

23 (1) it uses a biocide or generates a biocide that
24 is a pesticide, as defined in section 2 of the Federal
25 Insecticide, Fungicide, and Rodenticide Act (7

1 U.S.C. 136), unless the biocide is registered under
2 that Act or the Secretary, in consultation with the
3 Administrator, has approved the use of the biocide
4 in such treatment technology; or

5 (2) it uses or generates a biocide the discharge
6 of which causes or contributes to a violation of a
7 water quality standard under section 303 of the
8 Federal Water Pollution Control Act (33 U.S.C.
9 1313).

10 (h) PROHIBITION.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the use of a ballast water treatment tech-
13 nology by an owner or operator of a vessel shall not
14 satisfy the requirements of this Act unless it has
15 been approved by the Secretary under subsection
16 (b).

17 (2) EXCEPTIONS.—

18 (A) COAST GUARD SHIPBOARD TECH-
19 NOLOGY EVALUATION PROGRAM.—An owner or
20 operator may use a ballast water treatment
21 technology that has not been certified by the
22 Secretary to comply with the requirements of
23 this section if the technology is being evaluated
24 under the Coast Guard Shipboard Technology
25 Evaluation Program.

1 (B) BALLAST WATER TREATMENT TECH-
2 NOLOGIES CERTIFIED BY FOREIGN ENTITIES.—

3 An owner or operator may use a ballast water
4 treatment technology that has not been certified
5 by the Secretary to comply with the require-
6 ments of this section if the technology has been
7 certified by a foreign entity and the certification
8 demonstrates performance and safety of the
9 treatment technology equivalent to the require-
10 ments of this section, as determined by the Sec-
11 retary.

12 (i) TESTING PROTOCOLS.—Not later than 180 days
13 after the date of enactment of this Act, the Administrator,
14 in consultation with the Secretary, shall issue require-
15 ments for land-based and shipboard testing protocols or
16 criteria for—

17 (1) certifying the performance of each ballast
18 water treatment technology under this section; and

19 (2) certifying laboratories to evaluate such
20 treatment technologies.

21 **SEC. 6. EXEMPTIONS.**

22 (a) IN GENERAL.—No permit shall be required or
23 prohibition enforced under any other provision of law for,
24 nor shall any standards regarding a discharge incidental

1 to the normal operation of a vessel under this Act apply
2 to—

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

8 (2) a discharge incidental to the normal oper-
9 ation of a vessel if the vessel is a fishing vessel, in-
10 cluding a fish processing vessel and a fish tender
11 vessel (as defined in section 2101 of title 46, United
12 States Code);

13 (3) a discharge incidental to the normal oper-
14 ation of a vessel if the vessel is a recreational vessel
15 (as defined in section 2101(25) of title 46, United
16 States Code);

17 (4) the placement, release, or discharge of
18 equipment, devices, or other material from a vessel
19 for the sole purpose of conducting research on the
20 aquatic environment or its natural resources in ac-
21 cordance with generally recognized scientific meth-
22 ods, principles, or techniques;

23 (5) any discharge into navigable waters from a
24 vessel authorized by an on-scene coordinator in ac-
25 cordance with part 300 of title 40, Code of Federal

1 Regulations, or part 153 of title 33, Code of Federal
2 Regulations;

3 (6) any discharge into navigable waters from a
4 vessel that is necessary to secure the safety of the
5 vessel or human life, or to suppress a fire onboard
6 the vessel or at a shoreside facility; or

7 (7) a vessel of the armed forces of a foreign na-
8 tion when engaged in noncommercial service.

9 (b) BALLAST WATER DISCHARGES.—No permit shall
10 be required or prohibition enforced under any other provi-
11 sion of law for, nor shall any ballast water performance
12 standards under this Act apply to—

13 (1) a ballast water discharge incidental to the
14 normal operation of a vessel determined by the Sec-
15 retary to—

16 (A) operate exclusively within a geographi-
17 cally limited area;

18 (B) take up and discharge ballast water
19 exclusively within 1 Captain of the Port Zone
20 established by the Coast Guard unless the Sec-
21 retary determines such discharge poses a sub-
22 stantial risk of introduction or establishment of
23 an aquatic nuisance species;

24 (C) operate pursuant to a geographic re-
25 striction issued as a condition under section

1 3309 of title 46, United States Code, or an
2 equivalent restriction issued by the country of
3 registration of the vessel; or

4 (D) continuously take on and discharge
5 ballast water in a flow-through system that
6 does not introduce aquatic nuisance species into
7 navigable waters;

8 (2) a ballast water discharge incidental to the
9 normal operation of a vessel consisting entirely of
10 water suitable for human consumption; or

11 (3) a ballast water discharge incidental to the
12 normal operation of a vessel in an alternative com-
13 pliance program established pursuant to section 7.

14 (c) VESSELS WITH PERMANENT BALLAST WATER.—
15 No permit shall be required or prohibition enforced under
16 any other provision of law for, nor shall any ballast water
17 performance standard under this Act apply to, a vessel
18 that carries all of its permanent ballast water in sealed
19 tanks that are not subject to discharge.

20 (d) VESSELS OF THE ARMED FORCES.—Nothing in
21 this Act shall be construed to apply to the following ves-
22 sels:

23 (1) A vessel owned or operated by the Depart-
24 ment of Defense (other than a time-chartered or
25 voyage-chartered vessel).

1 (2) A vessel of the Coast Guard, as designated
2 by the Secretary of the department in which the
3 Coast Guard is operating.

4 **SEC. 7. ALTERNATIVE COMPLIANCE PROGRAM.**

5 (a) IN GENERAL.—The Secretary, in consultation
6 with the Administrator, may promulgate regulations es-
7 tablishing 1 or more compliance programs as an alter-
8 native to ballast water management regulations issued
9 under section 4 for a vessel that—

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

12 (2) is less than 3 years from the end of the use-
13 ful life of the vessel, as determined by the Secretary;
14 or

15 (3) discharges ballast water into a facility for
16 the reception of ballast water that meets standards
17 promulgated by the Administrator, in consultation
18 with the Secretary.

19 (b) PROMULGATION OF FACILITY STANDARDS.—Not
20 later than 1 year after the date of enactment of this Act,
21 the Administrator, in consultation with the Secretary,
22 shall promulgate standards for—

23 (1) the reception of ballast water from a vessel
24 into a reception facility; and

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

3 **SEC. 8. JUDICIAL REVIEW.**

4 (a) IN GENERAL.—An interested person may file a
5 petition for review of a final regulation promulgated under
6 this Act in the United States Court of Appeals for the
7 District of Columbia Circuit.

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

11 (c) EXCEPTION.—Notwithstanding subsection (b), a
12 petition that is based solely on grounds that arise after
13 the deadline to file a petition under subsection (b) has
14 passed may be filed not later than 120 days after the date
15 that the grounds first arise.

16 **SEC. 9. EFFECT ON STATE AUTHORITY.**

17 (a) IN GENERAL.—No State or political subdivision
18 thereof may adopt or enforce any statute or regulation of
19 the State or political subdivision with respect to a dis-
20 charge incidental to the normal operation of a vessel after
21 the date of enactment of this Act.

22 (b) SAVINGS CLAUSE.—Notwithstanding subsection
23 (a), a State or political subdivision thereof may enforce
24 a statute or regulation of the State or political subdivision
25 with respect to ballast water discharges incidental to the

1 normal operation of a vessel that specifies a ballast water
2 performance standard that is more stringent than the bal-
3 last water performance standard under section 4(a)(1)(A)
4 and is in effect on the date of enactment of this Act if
5 the Secretary, after consultation with the Administrator
6 and any other Federal department or agency the Secretary
7 considers appropriate, makes a determination that—

8 (1) compliance with any performance standard
9 specified in the statute or regulation can in fact be
10 achieved and detected;

11 (2) the technology and systems necessary to
12 comply with the statute or regulation are commer-
13 cially available; and

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

17 (c) PETITION PROCESS.—

18 (1) SUBMISSION.—The Governor of a State
19 seeking to enforce a statute or regulation under sub-
20 section (b) shall submit a petition requesting the
21 Secretary to review the statute or regulation.

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

23 (A) be accompanied by the scientific and
24 technical information on which the petition is
25 based; and

1 (B) be submitted to the Secretary not later
2 than 90 days after the date of enactment of
3 this Act.

4 (3) DETERMINATIONS.—The Secretary shall
5 make a determination on a petition under this sub-
6 section not later than 90 days after the date that
7 the petition is received.

8 **SEC. 10. APPLICATION WITH OTHER STATUTES.**

9 Notwithstanding any other provision of law, this Act
10 shall be the exclusive statutory authority for regulation by
11 the Federal Government of discharges incidental to the
12 normal operation of a vessel to which this Act applies. Ex-
13 cept as provided under section 4(a)(1)(A), any regulation
14 in effect on the date immediately preceding the effective
15 date of this Act relating to any permitting requirement
16 for or prohibition on discharges incidental to the normal
17 operation of a vessel to which this Act applies shall be
18 deemed to be a regulation issued pursuant to the authority
19 of this Act and shall remain in full force and effect unless
20 or until superseded by new regulations issued hereunder.

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