

Calendar No. 171

114TH CONGRESS
1ST SESSION**S. 373****[Report No. 114–96]**

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2015

Mr. RUBIO (for himself, Mr. THUNE, Mr. NELSON, Mr. VITTER, Ms. AYOTTE, Mr. BOOZMAN, Mrs. CAPITO, Mr. BLUNT, Mr. MANCHIN, Mr. ISAKSON, Mr. COCHRAN, Mr. SHELBY, Mr. COONS, Mr. CASSIDY, Mr. WICKER, Mrs. McCASKILL, Mrs. SHAHEEN, Mr. SCHATZ, Mr. SULLIVAN, Mr. CASEY, Ms. COLLINS, Mr. CORNYN, Mr. INHOFE, Mr. GRAHAM, Mr. RISCH, and Ms. HIRONO) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

JULY 29, 2015

Reported by Mr. THUNE, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

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

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

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

Sec. 1: Short title; table of contents.
Sec. 2: Findings; purpose.
Sec. 3: Definitions.
Sec. 4: Regulation and enforcement.
Sec. 5: Uniform national standards and requirements for the regulation of dis-
charges incidental to the normal operation of a vessel.
Sec. 6: Treatment technology certification.
Sec. 7: Exemptions.
Sec. 8: Alternative compliance program.
Sec. 9: Judicial review.
Sec. 10: Effect on State authority.
Sec. 11: Application with other statutes.

6 **SEC. 2. FINDINGS; PURPOSE.**

7 (a) **FINDINGS.**—Congress makes the following find-
8 ings:

9 (1) Beginning in 1980 with the enactment of
10 the Act to Prevent Pollution from Ships (33 U.S.C.
11 1901 et seq.), the Coast Guard has been the prin-
12 cipal Federal authority charged with administering,
13 enforcing, and prescribing regulations relating to the
14 discharge of pollutants from vessels engaged in mar-
15 itime commerce and transportation.

16 (2) The Coast Guard estimates there are ap-
17 proximately 21,560,000 State-registered recreational
18 vessels, 75,000 commercial fishing vessels, and
19 33,000 freight and tank barges operating in United
20 States waters.

1 ~~(3) From 1973 to 2005, certain discharges inci-~~
 2 ~~dental to the normal operation of a vessel were ex-~~
 3 ~~empted by regulation from otherwise applicable per-~~
 4 ~~mitting requirements.~~

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

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

12 ~~(B) the Nonindigenous Aquatic Nuisance~~
 13 ~~Prevention and Control Act of 1990 (16 U.S.C.~~
 14 ~~4701 et seq.);~~

15 ~~(C) the National Invasive Species Act of~~
 16 ~~1996 (Public Law 104–332, 110 Stat. 4073);~~

17 ~~(D) section 415 of the Coast Guard Au-~~
 18 ~~thorization Act of 1998 (Public Law 105–383;~~
 19 ~~112 Stat. 3434) and section 623 of the Coast~~
 20 ~~Guard and Maritime Transportation Act of~~
 21 ~~2004 (Public Law 108–293, 33 U.S.C. 1901~~
 22 ~~note); which established interim and permanent~~
 23 ~~requirements, respectively, for the regulation of~~
 24 ~~vessel discharges of certain bulk cargo residue;~~

1 ~~(E)~~ title XIV of division B of Appendix D
 2 of the Consolidated Appropriations Act, 2001
 3 ~~(Public Law 106-554; 114 Stat. 2763A-315),~~
 4 which prohibited or limited certain vessel dis-
 5 charges in certain areas of Alaska;

6 ~~(F)~~ section 204 of the Maritime Transpor-
 7 tation Security Act of 2002 ~~(33 U.S.C. 1902a),~~
 8 which established requirements for the regula-
 9 tion of vessel discharges of agricultural cargo
 10 residue material in the form of hold washings;
 11 and

12 ~~(G)~~ title X of the Coast Guard Authoriza-
 13 tion Act of 2010 ~~(33 U.S.C. 3801 et seq.),~~
 14 which provided for the implementation of the
 15 International Convention on the Control of
 16 Harmful Anti-Fouling Systems on Ships, 2001.

17 ~~(b) PURPOSE.—~~The purpose of this Act is to provide
 18 for the establishment of nationally uniform and environ-
 19 mentally sound standards and requirements for the man-
 20 agement of discharges incidental to the normal operation
 21 of a vessel.

22 **SEC. 3. DEFINITIONS.**

23 In this Act:

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

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

11 (3) BALLAST WATER.—

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

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

18 (ii) during the cleaning, maintenance,
19 or other operation of a ballast water treat-
20 ment technology of the vessel.

21 (B) EXCLUSIONS.—The term “ballast
22 water” does not include any pollutant that is
23 added to water described in subparagraph (A)
24 that is not directly related to the operation of

1 a properly functioning ballast water treatment
2 technology under this Act.

3 ~~(4) BALLAST WATER PERFORMANCE STAND-~~
4 ~~ARD.—~~The term “ballast water performance stand-
5 ard” means the numerical ballast water discharge
6 standard set forth in section 151.2030 of title 33,
7 Code of Federal Regulations or section 151.1511 of
8 title 33, Code of Federal Regulations, as applicable,
9 or a revised numerical ballast water performance
10 standard established under subsection (a)(1)(B), (b),
11 or (c) of section 5 of this Act.

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

20 ~~(6) BIOCIDES.—~~The term “biocides” means a
21 substance or organism, including a virus or fungus,
22 that is introduced into or produced by a ballast
23 water treatment technology to reduce or eliminate
24 aquatic nuisance species as part of the process used

1 to comply with a ballast water performance standard
 2 under this Act.

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

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

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

10 (I)(aa) ballast water, graywater,
 11 bilge water, cooling water, oil water
 12 separator effluent, anti-fouling hull
 13 coating leachate, boiler or economizer
 14 blowdown, byproducts from cathodic
 15 protection, controllable pitch propeller
 16 and thruster hydraulic fluid, distilla-
 17 tion and reverse osmosis brine, eleva-
 18 tor pit effluent, firemain system efflu-
 19 ent, freshwater layup effluent, gas
 20 turbine wash water, motor gasoline
 21 and compensating effluent, refrigera-
 22 tion and air condensate effluent, sea-
 23 water pumping biofouling prevention
 24 substances, boat engine wet exhaust,
 25 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, weldeck 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 Pollution Control Act (33 U.S.C. 1322(a)(6));

(ii) an emission of an air pollutant resulting from the operation onboard a vessel of a vessel propulsion system, motor driven equipment, or incinerator; or

1 (iii) a discharge into navigable waters
 2 from a vessel when the vessel is operating
 3 in a capacity other than as a means of
 4 transportation on water.

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

7 (A) with a physical limitation, including
 8 limitation by physical size and limitation by au-
 9 thorized route, that prevents a vessel from oper-
 10 ating outside the area, as determined by the
 11 Secretary; or

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

16 (9) MANUFACTURER.—The term “manufac-
 17 turer” means a person engaged in the manufacture,
 18 assemblage, or importation of ballast water treat-
 19 ment technology.

20 (10) SECRETARY.—The term “Secretary”
 21 means the Secretary of the department in which the
 22 Coast Guard is operating.

23 (11) VESSEL.—The term “vessel” means every
 24 description of watercraft or other artificial contriv-

1 ance used, or practically or otherwise capable of
 2 being used, as a means of transportation on water.

3 **SEC. 4. REGULATION AND ENFORCEMENT.**

4 (a) ~~IN GENERAL.~~—The Secretary, in consultation
 5 with the Administrator, shall establish and implement en-
 6 forceable uniform national standards and requirements for
 7 the regulation of discharges incidental to the normal oper-
 8 ation of a vessel. The standards and requirements shall—

9 (1) be based upon the best available technology
 10 economically achievable; and

11 (2) supersede any permitting requirement or
 12 prohibition on discharges incidental to the normal
 13 operation of a vessel under any other provision of
 14 law.

15 (b) ~~ADMINISTRATION AND ENFORCEMENT.~~—The
 16 Secretary shall administer and enforce the uniform na-
 17 tional standards and requirements under this Act. Each
 18 State may enforce the uniform national standards and re-
 19 quirements under this Act.

20 **SEC. 5. UNIFORM NATIONAL STANDARDS AND REQUIRE-**
 21 **MENTS FOR THE REGULATION OF DIS-**
 22 **CHARGES INCIDENTAL TO THE NORMAL OP-**
 23 **ERATION OF A VESSEL.**

24 (a) ~~REQUIREMENTS.~~—

1 (1) BALLAST WATER MANAGEMENT REQUIRE-
2 MENTS.—

3 (A) IN GENERAL.—Notwithstanding any
4 other provision of law, the requirements set
5 forth in the final rule, Standards for Living Or-
6 ganisms in Ships' Ballast Water Discharged in
7 U.S. Waters (77 Fed. Reg. 17254 (March 23,
8 2012)), as corrected by the final rule; correction
9 of the Standards for Living Organisms in
10 Ships' Ballast Water Discharged in U.S.
11 Waters (77 Fed. Reg. 33969 (June 8, 2012)),
12 shall be the management requirements for a
13 ballast water discharge incidental to the normal
14 operation of a vessel until the Secretary revises
15 the ballast water performance standard under
16 subsection (b) or adopts a more stringent State
17 standard under subparagraph (B) of this para-
18 graph.

19 (B) ADOPTION OF MORE STRINGENT
20 STATE STANDARD.—If the Secretary makes a
21 determination in favor of a State petition under
22 section 10, the Secretary shall adopt the more
23 stringent ballast water performance standard
24 specified in the statute or regulation that is the
25 subject of that State petition in lieu of the bal-

1 last water performance standard in the final
 2 rule described under subparagraph (A).

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

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

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

20 ~~(A) less than 1 organism that is living or~~
 21 ~~has not been rendered harmless per 10 cubic~~
 22 ~~meters that is 50 or more micrometers in min-~~
 23 ~~imum dimension;~~

24 ~~(B) less than 1 organism that is living or~~
 25 ~~has not been rendered harmless per 10 milli-~~

liters that is less than 50 micrometers in minimum 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 *Escherichia coli* per 100 milliliters; and

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

(D) concentrations of such additional indicator microbes and of viruses as may be specified 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.—No later than January 1, 2020, the Secretary, in consultation with the Administrator, shall complete a review to determine the feasibility of achieving the revised bal-

last water performance standard under paragraph (1).

(B) CRITERIA FOR REVIEW OF BALLAST WATER PERFORMANCE STANDARD.—In conducting a review under subparagraph (A), the Secretary shall consider whether revising the ballast water performance standard will result in a scientifically demonstrable and substantial reduction in the risk of introduction or establishment of aquatic nuisance species, taking into account—

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

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

(I) the capability of such treatment technology to achieve a revised ballast water performance standard;

(II) the effectiveness and reliability of such treatment technology in the shipboard environment;

(III) the compatibility of such 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 6 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.

(iii) COMPLIANCE.—If the implementation deadline under paragraph (3) is extended, the Secretary shall recommend action to ensure compliance with the extended implementation deadline under clause (ii).

(D) HIGHER REVISED PERFORMANCE STANDARD.—

(i) IN GENERAL.—If the Secretary, in consultation with the Administrator, determines that ballast water treatment technology exists that exceeds the revised ballast water performance standard under paragraph (1) with respect to a class of vessels, the Secretary shall revise the ballast water performance standard for that class of vessels to incorporate the higher performance standard.

(ii) IMPLEMENTATION DEADLINE.—If the Secretary, in consultation with the Administrator, determines that the treatment technology under clause (i) can be implemented before the implementation deadline under paragraph (3) with respect to a 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 exten-
 2 sion 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 subsection (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. 6. TREATMENT TECHNOLOGY CERTIFICATION.**

4 (a) CERTIFICATION REQUIRED.—Beginning 1 year
 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 (c)(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

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

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

(h) PROHIBITION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the use of a ballast water treatment technology by an owner or operator of a vessel shall not satisfy the requirements of this Act unless it has been approved by the Secretary under subsection (b).

(2) EXCEPTIONS.—

(A) COAST GUARD SHIPBOARD TECHNOLOGY EVALUATION PROGRAM.—An owner or operator may use a ballast water treatment technology that has not been certified by the Secretary to comply with the requirements of this section if the technology is being evaluated under the Coast Guard Shipboard Technology Evaluation Program.

(B) BALLAST WATER TREATMENT TECH-

NOLOGIES CERTIFIED BY FOREIGN ENTITIES.—

An owner or operator may use a ballast water treatment technology that has not been certified by the Secretary to comply with the requirements of this section if the technology has been certified by a foreign entity and the certification demonstrates performance and safety of the treatment technology equivalent to the requirements of this section, as determined by the Secretary.

(i) TESTING PROTOCOLS.—Not later than 180 days

after the date of enactment of this Act, the Administrator, in consultation with the Secretary, shall issue requirements for land-based and shipboard testing protocols or criteria for—

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

(2) certifying laboratories to evaluate such treatment technologies.

SEC. 7. EXEMPTIONS.

(a) IN GENERAL.—No permit shall be required or prohibition enforced under any other provision of law for, 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(11e) of title 46,
12 United 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 8.

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 a vessel of the
 22 Armed Forces, as defined in section 101(a) of title 10,
 23 United States Code.

1 **SEC. 8. ALTERNATIVE COMPLIANCE PROGRAM.**

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

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

9 (2) is less than ~~3~~ years from the end of the use-
10 ful life of the vessel, as determined by the Secretary;
11 or

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

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

20 (1) the reception of ballast water from a vessel
21 into a reception facility; and

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

24 **SEC. 9. JUDICIAL REVIEW.**

25 (a) ~~IN GENERAL.~~—An interested person may file a
26 petition for review of a final regulation promulgated under

1 this Act in the United States Court of Appeals for the
2 District of Columbia Circuit.

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

6 (c) EXCEPTION.—Notwithstanding subsection (b), a
7 petition that is based solely on grounds that arise after
8 the deadline to file a petition under subsection (b) has
9 passed may be filed not later than 120 days after the date
10 that the grounds first arise.

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

12 (a) IN GENERAL.—No State or political subdivision
13 thereof may adopt or enforce any statute or regulation of
14 the State or political subdivision with respect to a dis-
15 charge incidental to the normal operation of a vessel after
16 the date of enactment of this Act.

17 (b) SAVINGS CLAUSE.—Notwithstanding subsection
18 (a), a State or political subdivision thereof may enforce
19 a statute or regulation of the State or political subdivision
20 with respect to ballast water discharges incidental to the
21 normal operation of a vessel that specifies a ballast water
22 performance standard that is more stringent than the bal-
23 last water performance standard under section 5(a)(1)(A)
24 and is in effect on the date of enactment of this Act if
25 the Secretary, after consultation with the Administrator

1 and any other Federal department or agency the Secretary
 2 considers appropriate, makes a determination that—

3 ~~(1)~~ compliance with any performance standard
 4 specified in the statute or regulation can in fact be
 5 achieved and detected;

6 ~~(2)~~ the technology and systems necessary to
 7 comply with the statute or regulation are commer-
 8 cially available; and

9 ~~(3)~~ the statute or regulation is consistent with
 10 obligations under relevant international treaties or
 11 agreements to which the United States is a party.

12 ~~(c) PETITION PROCESS.—~~

13 ~~(1) SUBMISSION.—~~The Governor of a State
 14 seeking to enforce a statute or regulation under sub-
 15 section ~~(b)~~ shall submit a petition requesting the
 16 Secretary to review the statute or regulation.

17 ~~(2) CONTENTS; DEADLINE.—~~A petition shall—

18 ~~(A)~~ be accompanied by the scientific and
 19 technical information on which the petition is
 20 based; and

21 ~~(B)~~ be submitted to the Secretary not later
 22 than 90 days after the date of enactment of
 23 this Act.

24 ~~(3) DETERMINATIONS.—~~The Secretary shall
 25 make a determination on a petition under this sub-

1 section not later than 90 days after the date that
2 the petition is received.

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

4 Notwithstanding any other provision of law, this Act
5 shall be the exclusive statutory authority for regulation by
6 the Federal Government of discharges incidental to the
7 normal operation of a vessel to which this Act applies. Ex-
8 cept as provided under section 5(a)(1)(A), any regulation
9 in effect on the date immediately preceding the effective
10 date of this Act relating to any permitting requirement
11 for or prohibition on discharges incidental to the normal
12 operation of a vessel to which this Act applies shall be
13 deemed to be a regulation issued pursuant to the authority
14 of this Act and shall remain in full force and effect unless
15 or until superseded by new regulations issued hereunder.

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

17 (a) *SHORT TITLE.*—*This Act may be cited as the “Ves-*
18 *sel Incidental Discharge Act”.*

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

Sec. 1. Short title; table of contents.

Sec. 2. Findings; purpose.

Sec. 3. Definitions.

Sec. 4. Regulation and enforcement.

Sec. 5. Uniform national standards and requirements for the regulation of dis-
charges incidental to the normal operation of a vessel.

Sec. 6. Treatment technology certification.

Sec. 7. Exemptions.

Sec. 8. Alternative compliance program.

Sec. 9. Judicial review.

Sec. 10. Effect on State authority.

Sec. 11. Application with other statutes.

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

2 (a) *FINDINGS.*—Congress makes the following findings:

3 (1) *Beginning with enactment of the Act to Pre-*
 4 *vent Pollution from Ships in 1980 (22 U.S.C. 1901*
 5 *et seq.), the United States Coast Guard has been the*
 6 *principal Federal authority charged with admin-*
 7 *istering, enforcing, and prescribing regulations relat-*
 8 *ing to the discharge of pollutants from vessels engaged*
 9 *in maritime commerce and transportation.*

10 (2) *The Coast Guard estimates there are ap-*
 11 *proximately 21,560,000 State-registered recreational*
 12 *vessels, 75,000 commercial fishing vessels, and 33,000*
 13 *freight and tank barges operating in United States*
 14 *waters.*

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

19 (4) *Over the 32 years during which this regu-*
 20 *latory exemption was in effect, Congress enacted stat-*
 21 *utes on a number of occasions dealing with the regu-*
 22 *lation of discharges incidental to the normal oper-*
 23 *ation of a vessel, including—*

24 (A) *the Act to Prevent Pollution from Ships*
 25 *(33 U.S.C. 1901 et seq.) in 1980;*

1 (B) *the Nonindigenous Aquatic Nuisance*
2 *Prevention and Control Act of 1990 (16 U.S.C.*
3 *4701 et seq.)*;

4 (C) *the National Invasive Species Act of*
5 *1996 (110 Stat. 4073)*;

6 (D) *section 415 of the Coast Guard Author-*
7 *ization Act of 1998 (112 Stat. 3434) and section*
8 *623 of the Coast Guard and Maritime Transpor-*
9 *tation Act of 2004 (33 U.S.C. 1901 note), which*
10 *established interim and permanent requirements,*
11 *respectively, for the regulation of vessel dis-*
12 *charges of certain bulk cargo residue*;

13 (E) *title XIV of division B of Appendix D*
14 *of the Consolidated Appropriations Act, 2001*
15 *(114 Stat. 2763), which prohibited or limited*
16 *certain vessel discharges in certain areas of Alas-*
17 *ka*;

18 (F) *section 204 of the Maritime Transpor-*
19 *tation Security Act of 2002 (33 U.S.C. 1902a),*
20 *which established requirements for the regulation*
21 *of vessel discharges of agricultural cargo residue*
22 *material in the form of hold washings; and*

23 (G) *title X of the Coast Guard Authoriza-*
24 *tion Act of 2010 (33 U.S.C. 3801 et seq.), which*
25 *provided for the implementation of the Inter-*

1 *national Convention on the Control of Harmful*
 2 *Anti-Fouling Systems on Ships, 2001.*

3 (b) *PURPOSE.*—*The purpose of this Act is to provide*
 4 *for the establishment of nationally uniform and environ-*
 5 *mentally sound standards and requirements for the man-*
 6 *agement of discharges incidental to the normal operation*
 7 *of a vessel.*

8 **SEC. 3. DEFINITIONS.**

9 *In this Act:*

10 (1) *ADMINISTRATOR.*—*The term “Adminis-*
 11 *trator” means the Administrator of the Environ-*
 12 *mental Protection Agency.*

13 (2) *AQUATIC NUISANCE SPECIES.*—*The term*
 14 *“aquatic nuisance species” means a nonindigenous*
 15 *species (including a pathogen) that threatens the di-*
 16 *versity or abundance of native species or the ecologi-*
 17 *cal stability of navigable waters or commercial, agri-*
 18 *cultural, aquacultural, or recreational activities de-*
 19 *pendent on such waters.*

20 (3) *BALLAST WATER.*—

21 (A) *IN GENERAL.*—*The term “ballast*
 22 *water” means any water, including any sedi-*
 23 *ment suspended in such water, taken aboard a*
 24 *vessel—*

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

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

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

12 (4) *BALLAST WATER PERFORMANCE STAND-*
13 *ARD.*—The term “ballast water performance stand-
14 ard” means the numerical ballast water discharge
15 standard set forth in section 151.2030 of title 33,
16 Code of Federal Regulations or section 151.1511 of
17 title 33, Code of Federal Regulations, as applicable,
18 or a revised numerical ballast water performance
19 standard established under subsection (a)(1)(B), (b),
20 or (c) of section 5 of this Act.

21 (5) *BALLAST WATER TREATMENT TECHNOLOGY*
22 *OR TREATMENT TECHNOLOGY.*—The term “ballast
23 water treatment technology” or “treatment tech-
24 nology” means any mechanical, physical, chemical, or
25 biological process used, alone or in combination, to

1 *remove, render harmless, or avoid the uptake or dis-*
 2 *charge of aquatic nuisance species within ballast*
 3 *water.*

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

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

13 (A) *IN GENERAL.*—*The term “discharge in-*
 14 *cidental to the normal operation of a vessel”*
 15 *means—*

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

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

1 *pit effluent, firemain system effluent,*
 2 *freshwater layup effluent, gas turbine*
 3 *wash water, motor gasoline and com-*
 4 *pensating effluent, refrigeration and*
 5 *air condensate effluent, seawater*
 6 *pumping biofouling prevention sub-*
 7 *stances, boat engine wet exhaust, sonar*
 8 *dome effluent, exhaust gas scrubber*
 9 *washwater, or stern tube packing gland*
 10 *effluent; or*

11 *(bb) any other pollutant associ-*
 12 *ated with the operation of a marine*
 13 *propulsion system, shipboard maneu-*
 14 *vering system, habitability system, or*
 15 *installed major equipment, or from a*
 16 *protective, preservative, or absorptive*
 17 *application to the hull of a vessel;*

18 *(II) weather deck runoff, deck*
 19 *wash, aqueous film forming foam efflu-*
 20 *ent, chain locker effluent, non-oily ma-*
 21 *chinery wastewater, underwater ship*
 22 *husbandry effluent, welldeck effluent, or*
 23 *fish hold and fish hold cleaning efflu-*
 24 *ent; or*

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

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

9 (B) *EXCLUSIONS.*—The term “discharge in-
10 cidental to the normal operation of a vessel” does
11 not include—

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

14 (I) rubbish, trash, garbage, incin-
15 erator ash, or other such material dis-
16 charged overboard;

17 (II) oil or a hazardous substance
18 as those terms are defined in section
19 311 of the Federal Water Pollution
20 Control Act (33 U.S.C. 1321);

21 (III) sewage as defined in section
22 312(a)(6) of the Federal Water Pollu-
23 tion Control Act (33 U.S.C.
24 1322(a)(6)); or

1 (IV) *graywater referred to in sec-*
 2 *tion 312(a)(6) of the Federal Water*
 3 *Pollution Control Act (33 U.S.C.*
 4 *1322(a)(6));*

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

9 (iii) *a discharge into navigable waters*
 10 *from a vessel when the vessel is operating in*
 11 *a capacity other than as a means of trans-*
 12 *portation on water.*

13 (8) *GEOGRAPHICALLY LIMITED AREA.—The term*
 14 *“geographically limited area” means an area—*

15 (A) *with a physical limitation, including*
 16 *limitation by physical size and limitation by*
 17 *authorized route such as the Great Lakes and St.*
 18 *Lawrence River, that prevents a vessel from op-*
 19 *erating outside the area, as determined by the*
 20 *Secretary; or*

21 (B) *that is ecologically homogeneous, as de-*
 22 *termined by the Secretary, in consultation with*
 23 *the heads of other Federal departments or agen-*
 24 *cies as the Secretary considers appropriate.*

1 (9) *MANUFACTURER.*—*The term “manufacturer”*
 2 *means a person engaged in the manufacture, assem-*
 3 *blage, or importation of ballast water treatment tech-*
 4 *nology.*

5 (10) *SECRETARY.*—*The term “Secretary” means*
 6 *the Secretary of the department in which the Coast*
 7 *Guard is operating.*

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

12 **SEC. 4. REGULATION AND ENFORCEMENT.**

13 (a) *IN GENERAL.*—*The Secretary, in consultation with*
 14 *the Administrator, shall establish and implement enforce-*
 15 *able uniform national standards and requirements for the*
 16 *regulation of discharges incidental to the normal operation*
 17 *of a vessel. The standards and requirements shall—*

18 (1) *be based upon the best available technology*
 19 *economically achievable; and*

20 (2) *supersede any permitting requirement or*
 21 *prohibition on discharges incidental to the normal op-*
 22 *eration of a vessel under any other provision of law.*

23 (b) *ADMINISTRATION AND ENFORCEMENT.*—*The Sec-*
 24 *retary shall administer and enforce the uniform national*
 25 *standards and requirements under this Act. Each State*

1 *may enforce the uniform national standards and require-*
 2 *ments under this Act.*

3 **SEC. 5. UNIFORM NATIONAL STANDARDS AND REQUIRE-**
 4 **MENTS FOR THE REGULATION OF DIS-**
 5 **CHARGES INCIDENTAL TO THE NORMAL OP-**
 6 **ERATION OF A VESSEL.**

7 *(a) REQUIREMENTS.—*

8 *(1) BALLAST WATER MANAGEMENT REQUIRE-*
 9 *MENTS.—*

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

23 *(B) ADOPTION OF MORE STRINGENT STATE*
 24 *STANDARD.—If the Secretary makes a deter-*
 25 *mination in favor of a State petition under sec-*

1 *tion 10, the Secretary shall adopt the more strin-*
 2 *gent ballast water performance standard speci-*
 3 *fied in the statute or regulation that is the sub-*
 4 *ject of that State petition in lieu of the ballast*
 5 *water performance standard in the final rule de-*
 6 *scribed under subparagraph (A).*

7 *(2) INITIAL MANAGEMENT REQUIREMENTS FOR*
 8 *DISCHARGES OTHER THAN BALLAST WATER.—Not*
 9 *later than 2 years after the date of enactment of this*
 10 *Act, the Secretary, in consultation with the Adminis-*
 11 *trator, shall issue a final rule establishing best man-*
 12 *agement practices for discharges incidental to the nor-*
 13 *mal operation of a vessel other than ballast water.*

14 *(b) REVISED BALLAST WATER PERFORMANCE STAND-*
 15 *ARD; 8-YEAR REVIEW.—*

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

23 *(A) less than 1 organism that is living or*
 24 *has not been rendered harmless per 10 cubic me-*

ters that is 50 or more micrometers in minimum dimension;

(B) less than 1 organism that is living or has not been rendered harmless per 10 milliliters that is less than 50 micrometers in minimum 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 *Escherichia coli* per 100 milliliters; and

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

(D) concentrations of such additional indicator microbes and of viruses as may be specified 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*.—

1 (A) *IN GENERAL.*—Not less than 2 years be-
 2 fore January 1, 2022, the Secretary, in consulta-
 3 tion with the Administrator, shall complete a re-
 4 view to determine the feasibility of achieving the
 5 revised ballast water performance standard
 6 under paragraph (1).

7 (B) *CRITERIA FOR REVIEW OF BALLAST*
 8 *WATER PERFORMANCE STANDARD.*—In con-
 9 ducting a review under subparagraph (A), the
 10 Secretary shall consider whether revising the bal-
 11 last water performance standard will result in a
 12 scientifically demonstrable and substantial re-
 13 duction in the risk of introduction or establish-
 14 ment of aquatic nuisance species, taking into ac-
 15 count—

16 (i) *improvements in the scientific un-*
 17 *derstanding of biological and ecological*
 18 *processes that lead to the introduction or es-*
 19 *tablishment of aquatic nuisance species;*

20 (ii) *improvements in ballast water*
 21 *treatment technology, including—*

22 (I) *the capability of such treat-*
 23 *ment technology to achieve a revised*
 24 *ballast water performance standard;*

1 (II) *the effectiveness and reli-*
 2 *ability of such treatment technology in*
 3 *the shipboard environment;*

4 (III) *the compatibility of such*
 5 *treatment technology with the design*
 6 *and operation of a vessel by class, type,*
 7 *and size;*

8 (IV) *the commercial availability*
 9 *of such treatment technology; and*

10 (V) *the safety of such treatment*
 11 *technology;*

12 (iii) *improvements in the capabilities*
 13 *to detect, quantify, and assess the viability*
 14 *of aquatic nuisance species at the concentra-*
 15 *tions under consideration;*

16 (iv) *the impact of ballast water treat-*
 17 *ment technology on water quality; and*

18 (v) *the costs, cost-effectiveness, and im-*
 19 *pacts of—*

20 (I) *a revised ballast water per-*
 21 *formance standard, including the po-*
 22 *tential impacts on shipping, trade, and*
 23 *other uses of the aquatic environment;*
 24 *and*

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

8 (C) LOWER REVISED PERFORMANCE STAND-
 9 ARD.—

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

22 (ii) IMPLEMENTATION DEADLINE.—If
 23 the Secretary, in consultation with the Ad-
 24 ministrator, determines that the treatment
 25 technology under clause (i) cannot be imple-

1 *mented before the implementation deadline*
 2 *under paragraph (3) with respect to a class*
 3 *of vessels, the Secretary shall extend the im-*
 4 *plementation deadline for that class of ves-*
 5 *sels for not more than 36 months.*

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

11 *(D) HIGHER REVISED PERFORMANCE*
 12 *STANDARD.—*

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

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

1 *technology under clause (i) can be imple-*
 2 *mented before the implementation deadline*
 3 *under paragraph (3) with respect to a class*
 4 *of vessels, the Secretary shall accelerate the*
 5 *implementation deadline for that class of*
 6 *vessels. If the implementation deadline*
 7 *under paragraph (3) is accelerated, the Sec-*
 8 *retary shall provide not less than 24 months*
 9 *notice before the accelerated deadline takes*
 10 *effect.*

11 (3) *IMPLEMENTATION DEADLINE.—The revised*
 12 *ballast water performance standard under paragraph*
 13 *(1) shall apply to a vessel beginning on the date of*
 14 *the first drydocking of the vessel on or after January*
 15 *1, 2022, but not later than December 31, 2024.*

16 (4) *REVISED PERFORMANCE STANDARD COMPLI-*
 17 *ANCE DEADLINES.—*

18 (A) *IN GENERAL.—The Secretary may es-*
 19 *tablish a compliance deadline for compliance by*
 20 *a vessel (or a class, type, or size of vessel) with*
 21 *a revised ballast water performance standard*
 22 *under this subsection.*

23 (B) *PROCESS FOR GRANTING EXTEN-*
 24 *SIONS.—In issuing regulations under this sub-*
 25 *section, the Secretary shall establish a process for*

1 *an owner or operator to submit a petition to the*
 2 *Secretary for an extension of a compliance dead-*
 3 *line with respect to the vessel of the owner or op-*
 4 *erator.*

5 *(C) PERIOD OF EXTENSIONS.—An extension*
 6 *issued under subparagraph (B) may—*

7 *(i) apply for a period of not to exceed*
 8 *18 months from the date of the applicable*
 9 *deadline under subparagraph (A); and*

10 *(ii) be renewable for an additional pe-*
 11 *riod of not to exceed 18 months.*

12 *(D) FACTORS.—In issuing a compliance*
 13 *deadline or reviewing a petition under this*
 14 *paragraph, the Secretary shall consider, with re-*
 15 *spect to the ability of an owner or operator to*
 16 *meet a compliance deadline, the following fac-*
 17 *tors:*

18 *(i) Whether the treatment technology to*
 19 *be installed is available in sufficient quan-*
 20 *tities to meet the compliance deadline.*

21 *(ii) Whether there is sufficient ship-*
 22 *yard or other installation facility capacity.*

23 *(iii) Whether there is sufficient avail-*
 24 *ability of engineering and design resources.*

1 (iv) *Vessel characteristics, such as en-*
 2 *gine room size, layout, or a lack of installed*
 3 *pipng.*

4 (v) *Electric power generating capacity*
 5 *aboard the vessel.*

6 (vi) *Safety of the vessel and crew.*

7 (E) *CONSIDERATION OF PETITIONS.—*

8 (i) *DETERMINATIONS.—The Secretary*
 9 *shall approve or deny a petition for an ex-*
 10 *tension of a compliance deadline submitted*
 11 *by an owner or operator under this para-*
 12 *graph.*

13 (ii) *DEADLINE.—If the Secretary does*
 14 *not approve or deny a petition referred to*
 15 *in clause (i) on or before the last day of the*
 16 *90-day period beginning on the date of sub-*
 17 *mission of the petition, the petition shall be*
 18 *deemed approved.*

19 (c) *FUTURE REVISIONS OF VESSEL INCIDENTAL DIS-*
 20 *CHARGE STANDARDS; DECENNIAL REVIEWS.—*

21 (1) *REVISED BALLAST WATER PERFORMANCE*
 22 *STANDARDS.—The Secretary, in consultation with the*
 23 *Administrator, shall complete a review, 10 years after*
 24 *the issuance of a final rule under subsection (b) and*
 25 *every 10 years thereafter, to determine whether fur-*

1 *ther revision of the ballast water performance stand-*
 2 *ard would result in a scientifically demonstrable and*
 3 *substantial reduction in the risk of the introduction*
 4 *or establishment of aquatic nuisance species.*

5 (2) *REVISED STANDARDS FOR DISCHARGES*

6 *OTHER THAN BALLAST WATER.—The Secretary, in*

7 *consultation with the Administrator, may include in*

8 *a decennial review under this subsection best manage-*

9 *ment practices for discharges covered by subsection*

10 *(a)(2). The Secretary shall initiate a rulemaking to*

11 *revise 1 or more best management practices for such*

12 *discharges after a decennial review if the Secretary,*

13 *in consultation with the Administrator, determines*

14 *that revising 1 or more of such practices would sub-*

15 *stantially reduce the impacts on navigable waters of*

16 *discharges incidental to the normal operation of a*

17 *vessel other than ballast water.*

18 (3) *CONSIDERATIONS.—In conducting a review*

19 *under paragraph (1), the Secretary, the Adminis-*

20 *trator, and the heads of other appropriate Federal*

21 *agencies as determined by the Secretary, shall con-*

22 *sider the criteria under section 5(b)(2)(B).*

23 (4) *REVISION AFTER DECENNIAL REVIEW.—The*

24 *Secretary shall initiate a rulemaking to revise the*

25 *current ballast water performance standard after a*

1 *decennial review if the Secretary, in consultation*
 2 *with the Administrator, determines that revising the*
 3 *current ballast water performance standard would re-*
 4 *sult in a scientifically demonstrable and substantial*
 5 *reduction in the risk of the introduction or establish-*
 6 *ment of aquatic nuisance species.*

7 *(d) GREAT LAKES REQUIREMENTS.—In addition to*
 8 *the other standards and requirements imposed by this sec-*
 9 *tion, in the case of a vessel that enters the Great Lakes*
 10 *through the St. Lawrence River after operating outside the*
 11 *exclusive economic zone of the United States the Secretary,*
 12 *in consultation with the Administrator, shall establish a re-*
 13 *quirement that the vessel conduct saltwater flushing of all*
 14 *ballast water tanks onboard prior to entry.*

15 **SEC. 6. TREATMENT TECHNOLOGY CERTIFICATION.**

16 *(a) CERTIFICATION REQUIRED.—Beginning 1 year*
 17 *after the date that the requirements for testing protocols are*
 18 *issued under subsection (i), no manufacturer of a ballast*
 19 *water treatment technology shall sell, offer for sale, or intro-*
 20 *duce or deliver for introduction into interstate commerce,*
 21 *or import into the United States for sale or resale, a ballast*
 22 *water treatment technology for a vessel unless the treatment*
 23 *technology has been certified under this section.*

24 *(b) CERTIFICATION PROCESS.—*

1 (1) *EVALUATION.*—Upon application of a manu-
 2 facturer, the Secretary shall evaluate a ballast water
 3 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 vessel
 7 (or a class, type, or size of vessel);

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

10 (C) the effect of the treatment technology on
 11 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 treat-
 18 ment technology meets the criteria, the Secretary may
 19 certify the treatment technology for use on a vessel (or
 20 a class, type, or size of vessel).

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

25 (c) *CERTIFICATION CONDITIONS.*—

1 (1) *IMPOSITION OF CONDITIONS.*—*In certifying a*
 2 *ballast water treatment technology under this section,*
 3 *the Secretary, in consultation with the Administrator,*
 4 *may impose any condition on the subsequent installa-*
 5 *tion, use, or maintenance of the treatment technology*
 6 *onboard a vessel as is necessary for—*

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

9 *(B) the protection of the environment; or*

10 *(C) the effective operation of the treatment*
 11 *technology.*

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

16 (d) *PERIOD FOR USE OF INSTALLED TREATMENT*
 17 *EQUIPMENT.*—*Notwithstanding anything to the contrary in*
 18 *this Act or any other provision of law, the Secretary shall*
 19 *allow a vessel on which a system is installed and operated*
 20 *to meet a ballast water performance standard under this*
 21 *Act to continue to use that system, notwithstanding any*
 22 *revision of a ballast water performance standard occurring*
 23 *after the system is ordered or installed until the expiration*
 24 *of the service life of the system, as determined by the Sec-*
 25 *retary, so long as the system—*

1 (1) *is maintained in proper working condition;*
 2 *and*

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

7 (e) *CERTIFICATES OF TYPE APPROVAL FOR THE*
 8 *TREATMENT TECHNOLOGY.—*

9 (1) *ISSUANCE.—If the Secretary approves a bal-*
 10 *last water treatment technology for certification under*
 11 *subsection (b), the Secretary shall issue a certificate*
 12 *of type approval for the treatment technology to the*
 13 *manufacturer in such form and manner as the Sec-*
 14 *retary determines appropriate.*

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

19 (3) *OWNERS AND OPERATORS.—A manufacturer*
 20 *that receives a certificate of type approval for the*
 21 *treatment technology under this subsection shall pro-*
 22 *vide a copy of the certificate to each owner and oper-*
 23 *ator of a vessel on which the treatment technology is*
 24 *installed.*

1 (f) *INSPECTIONS.*—*An owner or operator who receives*
 2 *a copy of a certificate under subsection (e)(3) shall retain*
 3 *a copy of the certificate onboard the vessel and make the*
 4 *copy of the certificate available for inspection at all times*
 5 *while the owner or operator is utilizing the treatment tech-*
 6 *nology.*

7 (g) *BIOCIDES.*—*The Secretary may not approve a bal-*
 8 *last water treatment technology under subsection (b) if—*

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

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

20 (h) *PROHIBITION.*—

21 (1) *IN GENERAL.*—*Except as provided in para-*
 22 *graph (2), the use of a ballast water treatment tech-*
 23 *nology by an owner or operator of a vessel shall not*
 24 *satisfy the requirements of this Act unless it has been*
 25 *approved by the Secretary under subsection (b).*

1 (2) *EXCEPTIONS.*—

2 (A) *COAST GUARD SHIPBOARD TECHNOLOGY*
 3 *EVALUATION PROGRAM.*—*An owner or operator*
 4 *may use a ballast water treatment technology*
 5 *that has not been certified by the Secretary to*
 6 *comply with the requirements of this section if*
 7 *the technology is being evaluated under the Coast*
 8 *Guard Shipboard Technology Evaluation Pro-*
 9 *gram.*

10 (B) *BALLAST WATER TREATMENT TECH-*
 11 *NOLOGIES CERTIFIED BY FOREIGN ENTITIES.*—
 12 *An owner or operator may use a ballast water*
 13 *treatment technology that has not been certified*
 14 *by the Secretary to comply with the requirements*
 15 *of this section if the technology has been certified*
 16 *by a foreign entity and the certification dem-*
 17 *onstrates performance and safety of the treat-*
 18 *ment technology equivalent to the requirements of*
 19 *this section, as determined by the Secretary.*

20 (i) *TESTING PROTOCOLS.*—*Not later than 180 days*
 21 *after the date of enactment of this Act, the Administrator,*
 22 *in consultation with the Secretary, shall issue requirements*
 23 *for land-based and shipboard testing protocols or criteria*
 24 *for—*

- 1 (1) *certifying the performance of each ballast*
 2 *water treatment technology under this section; and*
 3 (2) *certifying laboratories to evaluate such treat-*
 4 *ment technologies.*

5 **SEC. 7. EXEMPTIONS.**

6 (a) *IN GENERAL.*—No permit shall be required or pro-
 7 hibition enforced under any other provision of law for, nor
 8 shall any standards regarding a discharge incidental to the
 9 normal operation of a vessel under this Act apply to—

10 (1) *a discharge incidental to the normal oper-*
 11 *ation of a vessel if the vessel is less than 79 feet in*
 12 *length and engaged in commercial service (as defined*
 13 *in section 2101(5) of title 46, United States Code);*

14 (2) *a discharge incidental to the normal oper-*
 15 *ation of a vessel if the vessel is a fishing vessel, in-*
 16 *cluding a fish processing vessel and a fish tender ves-*
 17 *sel, (as defined in section 2101 of title 46, United*
 18 *States Code);*

19 (3) *a discharge incidental to the normal oper-*
 20 *ation of a vessel if the vessel is a recreational vessel*
 21 *(as defined in section 2101(25) of title 46, United*
 22 *States Code);*

23 (4) *the placement, release, or discharge of equip-*
 24 *ment, devices, or other material from a vessel for the*
 25 *sole purpose of conducting research on the aquatic en-*

1 *vironment or its natural resources in accordance with*
 2 *generally recognized scientific methods, principles, or*
 3 *techniques;*

4 (5) *any discharge into navigable waters from a*
 5 *vessel authorized by an on-scene coordinator in ac-*
 6 *cordance with part 300 of title 40, Code of Federal*
 7 *Regulations, or part 153 of title 33, Code of Federal*
 8 *Regulations;*

9 (6) *any discharge into navigable waters from a*
 10 *vessel that is necessary to secure the safety of the ves-*
 11 *sel or human life, or to suppress a fire onboard the*
 12 *vessel or at a shoreside facility; or*

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

15 (b) *BALLAST WATER DISCHARGES.*—*No permit shall*
 16 *be required or prohibition enforced under any other provi-*
 17 *sion of law for, nor shall any ballast water performance*
 18 *standards under this Act apply to—*

19 (1) *a ballast water discharge incidental to the*
 20 *normal operation of a vessel determined by the Sec-*
 21 *retary to—*

22 (A) *operate exclusively within a geographi-*
 23 *cally limited area;*

24 (B) *take up and discharge ballast water ex-*
 25 *clusively within 1 Captain of the Port Zone es-*

1 *tablished by the Coast Guard unless the Sec-*
 2 *retary determines such discharge poses a sub-*
 3 *stantial risk of introduction or establishment of*
 4 *an aquatic nuisance species;*

5 *(C) operate pursuant to a geographic re-*
 6 *striction issued as a condition under section*
 7 *3309 of title 46, United States Code, or an*
 8 *equivalent restriction issued by the country of*
 9 *registration of the vessel; or*

10 *(D) continuously take on and discharge bal-*
 11 *last water in a flow-through system that does not*
 12 *introduce aquatic nuisance species into navi-*
 13 *gable waters;*

14 *(2) a ballast water discharge incidental to the*
 15 *normal operation of a vessel consisting entirely of*
 16 *water suitable for human consumption; or*

17 *(3) a ballast water discharge incidental to the*
 18 *normal operation of a vessel in an alternative compli-*
 19 *ance program established pursuant to section 8.*

20 *(c) VESSELS WITH PERMANENT BALLAST WATER.—*

21 *No permit shall be required or prohibition enforced under*
 22 *any other provision of law for, nor shall any ballast water*
 23 *performance standard under this Act apply to, a vessel that*
 24 *carries all of its permanent ballast water in sealed tanks*
 25 *that are not subject to discharge.*

1 (d) *VESSELS OF THE ARMED FORCES.*—*Nothing in*
 2 *this Act shall be construed to apply to a vessel as follows:*

3 (1) *A vessel owned or operated by the Depart-*
 4 *ment of Defense (other than a time-chartered or voy-*
 5 *age-chartered vessel).*

6 (2) *A vessel of the Coast Guard, as designated by*
 7 *the Secretary of the department in which the Coast*
 8 *Guard is operating.*

9 **SEC. 8. ALTERNATIVE COMPLIANCE PROGRAM.**

10 (a) *IN GENERAL.*—*The Secretary, in consultation with*
 11 *the Administrator, may promulgate regulations estab-*
 12 *lishing 1 or more compliance programs as an alternative*
 13 *to ballast water management regulations issued under sec-*
 14 *tion 5 for a vessel that—*

15 (1) *has a maximum ballast water capacity of*
 16 *less than 8 cubic meters;*

17 (2) *is less than 3 years from the end of the useful*
 18 *life of the vessel, as determined by the Secretary; or*

19 (3) *discharges ballast water into a facility for*
 20 *the reception of ballast water that meets standards*
 21 *promulgated by the Administrator, in consultation*
 22 *with the Secretary.*

23 (b) *PROMULGATION OF FACILITY STANDARDS.*—*Not*
 24 *later than 1 year after the date of enactment of this Act,*

1 *the Administrator, in consultation with the Secretary, shall*
 2 *promulgate standards for—*

3 *(1) the reception of ballast water from a vessel*
 4 *into a reception facility; and*

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

7 **SEC. 9. JUDICIAL REVIEW.**

8 *(a) IN GENERAL.—An interested person may file a pe-*
 9 *tition for review of a final regulation promulgated under*
 10 *this Act in the United States Court of Appeals for the Dis-*
 11 *trict of Columbia Circuit.*

12 *(b) DEADLINE.—A petition shall be filed not later than*
 13 *120 days after the date that notice of the promulgation ap-*
 14 *pears in the Federal Register.*

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

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

21 *(a) IN GENERAL.—No State or political subdivision*
 22 *thereof may adopt or enforce any statute or regulation of*
 23 *the State or political subdivision with respect to a discharge*
 24 *incidental to the normal operation of a vessel after the date*
 25 *of enactment of this Act.*

1 (b) *SAVINGS CLAUSE.*—*Notwithstanding subsection*
 2 *(a), a State or political subdivision thereof may adopt or*
 3 *enforce a statute or regulation of the State or political sub-*
 4 *division with respect to ballast water discharges incidental*
 5 *to the normal operation of a vessel that specifies a ballast*
 6 *water performance standard that is more stringent than the*
 7 *ballast water performance standard under section*
 8 *5(a)(1)(A) if the Secretary, after consultation with the Ad-*
 9 *ministrator and any other Federal department or agency*
 10 *the Secretary considers appropriate, makes a determination*
 11 *that—*

12 (1) *compliance with any performance standard*
 13 *specified in the statute or regulation can in fact be*
 14 *achieved and detected;*

15 (2) *the technology and systems necessary to com-*
 16 *ply with the statute or regulation are commercially*
 17 *available; and*

18 (3) *the statute or regulation is consistent with*
 19 *obligations under relevant international treaties or*
 20 *agreements to which the United States is a party.*

21 (c) *PETITION PROCESS.*—

22 (1) *SUBMISSION.*—*The Governor of a State seek-*
 23 *ing to adopt or enforce a statute or regulation under*
 24 *subsection (b) shall submit a petition to the Secretary*

1 *requesting the Secretary to review the statute or regu-*
 2 *lation.*

3 (2) *CONTENTS; TIMING.*—*A petition shall be ac-*
 4 *companied by the scientific and technical information*
 5 *on which the petition is based, and may be submitted*
 6 *within 1 year of the date of enactment of this Act and*
 7 *every 10 years thereafter.*

8 (3) *DETERMINATIONS.*—*The Secretary shall*
 9 *make a determination on a petition under this sub-*
 10 *section not later than 90 days after the date that the*
 11 *petition is received.*

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

13 *Notwithstanding any other provision of law, this Act*
 14 *shall be the exclusive statutory authority for regulation by*
 15 *the Federal Government of discharges incidental to the nor-*
 16 *mal operation of a vessel to which this Act applies. Except*
 17 *as provided under section 5(a)(1)(A), any regulation in ef-*
 18 *fect on the date immediately preceding the effective date of*
 19 *this Act relating to any permitting requirement for or pro-*
 20 *hibition on discharges incidental to the normal operation*
 21 *of a vessel to which this Act applies shall be deemed to be*
 22 *a regulation issued pursuant to the authority of this Act*
 23 *and shall remain in full force and effect unless or until su-*
 24 *perseded by new regulations issued hereunder.*

Calendar No. 171

114TH CONGRESS
1ST Session

S. 373

[Report No. 114-96]

A BILL

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

JULY 29, 2015

Reported with an amendment