

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.

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## 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

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## 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) BIOCIDE.—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-

1 ent, freshwater layup effluent, gas  
2 turbine wash water, motor gasoline  
3 and compensating effluent, refrigera-  
4 tion and air condensate effluent, sea-  
5 water pumping biofouling prevention  
6 substances, boat engine wet exhaust,  
7 sonar dome effluent, exhaust gas  
8 scrubber washwater, or stern tube  
9 packing gland effluent; or

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

17 (II) weather deck runoff, deck  
18 wash, aqueous film forming foam ef-  
19 fluent, chain locker effluent, non-oily  
20 machinery wastewater, underwater  
21 ship husbandry effluent, welldeck ef-  
22 fluent, or fish hold and fish hold  
23 cleaning effluent; or

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

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

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

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

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

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

19 (III) sewage as defined in section  
20 312(a)(6) of the Federal Water Pollu-  
21 tion Control Act (33 U.S.C.  
22 1322(a)(6)); or

23 (IV) graywater referred to in sec-  
24 tion 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 liters that is less than 50 micrometers in min-

1           imum dimension and more than 10 micrometers  
2           in minimum dimension;

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

5                   (i) 1 colony-forming unit of  
6                   toxicogenic *Vibrio cholera* (serotypes O1  
7                   and O139) per 100 milliliters or less than  
8                   1 colony-forming unit of that microbe per  
9                   gram of wet weight of zoological samples;

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

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

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

20           (2) FEASIBILITY REVIEW.—

21                   (A) IN GENERAL.—Not less than 2 years  
22                   before January 1, 2022, the Secretary, in con-  
23                   sultation with the Administrator, shall complete  
24                   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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