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112TH CONGRESS
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H. R. 2840

[Report No. 112-266]

To amend the Federal Water Pollution Control Act to regulate discharges from commercial vessels, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 2, 2011

Mr. LOBIONDO (for himself, Mr. MICA, and Mr. GIBBS) introduced the following bill

SEPTEMBER 6, 2011

Referred to the Committee on Transportation and Infrastructure

NOVEMBER 3, 2011

Additional sponsors: Mr. LANDRY, Mr. LATOURETTE, Mr. COOPER, Ms. HERRERA BEUTLER, and Mr. CRAVAACK

NOVEMBER 3, 2011

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

[For text of introduced bill, see copy of bill as introduced on September 2, 2011]

A BILL

To amend the Federal Water Pollution Control Act to regulate discharges from commercial vessels, and for other purposes.

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.**

4 *This Act may be cited as the “Commercial Vessel Dis-*
5 *charges Reform Act of 2011”.*

6 **SEC. 2. DISCHARGES FROM COMMERCIAL VESSELS.**

7 *Title III of the Federal Water Pollution Control Act*
8 *(33 U.S.C. 1311 et seq.) is amended by adding at the end*
9 *the following:*

10 **“SEC. 321. DISCHARGES FROM COMMERCIAL VESSELS.**

11 *“(a) DEFINITIONS.—In this section, the following defi-*
12 *initions apply:*

13 *“(1) 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 *“(2) 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 *commercial 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 system of the vessel.

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

12 “(3) *BALLAST WATER PERFORMANCE STAND-*
13 *ARD.*—The term ‘ballast water performance standard’
14 or ‘performance standard’ means a numerical ballast
15 water performance standard specified under sub-
16 section (c) or established under subsection (d).

17 “(4) *BALLAST WATER TREATMENT SYSTEM.*—The
18 term ‘ballast water treatment system’ means any
19 equipment on board a commercial vessel (including
20 all compartments, piping, spaces, tanks, and multi-
21 use compartments, piping, spaces, and tanks) that
22 is—

23 “(A) designed for loading, carrying, treat-
24 ing, or discharging ballast water; and

1 “(B) installed and operated to meet a bal-
2 last water performance standard.

3 “(5) *BALLAST WATER TREATMENT TECH-*
4 *NOLOGY.*—The term ‘ballast water treatment tech-
5 nology’ or ‘treatment technology’ means any mechan-
6 ical, physical, chemical, or biological process used, ei-
7 ther singularly or in combination, to remove, render
8 harmless, or avoid the uptake or discharge of aquatic
9 nuisance species within ballast water.

10 “(6) *BIOCIDE.*—The term ‘biocide’ means a sub-
11 stance or organism, including a virus or fungus, that
12 is introduced into, or produced by, a ballast water
13 treatment technology as part of the process used to
14 comply with a ballast water performance standard
15 under this section.

16 “(7) *COMMERCIAL VESSEL.*—The term ‘commer-
17 cial vessel’ means every description of watercraft, or
18 other artificial contrivance used or capable of being
19 used as a means of transportation on water, that is
20 engaged in commercial service (as defined under sec-
21 tion 2101 of title 46, United States Code).

22 “(8) *CONSTRUCTED.*—The term ‘constructed’
23 means a state of construction of a commercial vessel
24 at which—

25 “(A) the keel is laid;

1 “(B) construction identifiable with the spe-
2 cific vessel begins;

3 “(C) assembly of the vessel has begun com-
4 prising at least 50 tons or 1 percent of the esti-
5 mated mass of all structural material of the ves-
6 sel, whichever is less; or

7 “(D) the vessel commences a major conver-
8 sion.

9 “(9) *DISCHARGE INCIDENTAL TO THE NORMAL*
10 *OPERATION OF A COMMERCIAL VESSEL.—*

11 “(A) *IN GENERAL.—*The term ‘discharge in-
12 cidental to the normal operation of a commercial
13 vessel’ means—

14 “(i) a discharge into navigable waters
15 from a commercial vessel of—

16 “(I)(aa) graywater (except
17 graywater referred to in section
18 312(a)(6)), bilge water, cooling water,
19 oil water separator effluent, anti-foul-
20 ing hull coating leachate, boiler or
21 economizer blowdown, byproducts from
22 cathodic protection, controllable pitch
23 propeller and thruster hydraulic fluid,
24 distillation and reverse osmosis brine,
25 elevator pit effluent, firemain system

1 *effluent, 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 scrub-*
8 *ber washwater, or stern tube packing*
9 *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 commercial*
17 *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 prop-
2 erly functioning marine engine; or

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

9 “(B) EXCLUSION.—The term ‘discharge in-
10 cidental to the normal operation of a commercial
11 vessel’ does not include—

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

14 “(I) ballast water;

15 “(II) rubbish, trash, garbage, in-
16 cinerator ash, or other such material
17 discharged overboard;

18 “(III) oil or a hazardous sub-
19 stance within the meaning of section
20 311; or

21 “(IV) sewage within the meaning
22 of section 312; or

23 “(ii) an emission of an air pollutant
24 resulting from the operation onboard a com-

1 *mercial vessel of a vessel propulsion system,*
2 *motor driven equipment, or incinerator.*

3 “(10) *EXISTING COMMERCIAL VESSEL.*—*The*
4 *term ‘existing commercial vessel’ means a commercial*
5 *vessel constructed prior to January 1, 2012.*

6 “(11) *GEOGRAPHICALLY LIMITED AREA.*—*The*
7 *term ‘geographically limited area’ means an area—*

8 “(A) *with a physical limitation that pre-*
9 *vents a commercial vessel from operating outside*
10 *the area, as determined by the Secretary; or*

11 “(B) *that is ecologically homogeneous, as*
12 *determined by the Administrator, in consultation*
13 *with the Secretary.*

14 “(12) *MAJOR CONVERSION.*—*The term ‘major*
15 *conversion’ means a conversion of a commercial vessel*
16 *that—*

17 “(A) *changes its ballast water capacity by*
18 *15 percent or more; or*

19 “(B) *prolongs the life of the commercial ves-*
20 *sel by 10 years or more, as determined by the*
21 *Secretary.*

22 “(13) *MANUFACTURER.*—*The term ‘manufac-*
23 *turer’ means a person engaged in the manufacturing,*
24 *assembling, or importation of a ballast water treat-*
25 *ment technology.*

1 “(14) *NAVIGABLE WATERS.*—*The term ‘navigable*
2 *waters’ includes the exclusive economic zone, as de-*
3 *finied in section 107 of title 46, United States Code.*

4 “(15) *NONINDIGENOUS SPECIES.*—*The term*
5 *‘nonindigenous species’ means a species or other via-*
6 *ble biological material that enters an ecosystem be-*
7 *yond its historic range.*

8 “(16) *OWNER OR OPERATOR.*—*The term ‘owner*
9 *or operator’ means a person owning, operating, or*
10 *chartering by demise a commercial vessel.*

11 “(17) *SECRETARY.*—*The term ‘Secretary’ means*
12 *the Secretary of the department in which the Coast*
13 *Guard is operating.*

14 “(18) *VESSEL GENERAL PERMIT.*—*The term*
15 *‘Vessel General Permit’ means the Vessel General Per-*
16 *mit for Discharges Incidental to the Normal Oper-*
17 *ation of Vessels issued by the Administrator under*
18 *section 402 for ballast water and other discharges in-*
19 *cidental to the normal operation of vessels, as in effect*
20 *on December 19, 2008, for all jurisdictions except*
21 *Alaska and Hawaii, and February 6, 2009, for Alas-*
22 *ka and Hawaii.*

23 “(b) *GENERAL PROVISIONS.*—

24 “(1) *BALLAST WATER DISCHARGE REQUIRE-*
25 *MENTS FOR COMMERCIAL VESSELS.*—*An owner or op-*

1 *erator may discharge ballast water from a commer-*
2 *cial vessel into navigable waters only if—*

3 *“(A) the discharge—*

4 *“(i) meets the ballast water perform-*
5 *ance standard;*

6 *“(ii) is made pursuant to the safety ex-*
7 *emption established by subsection (c)(2);*

8 *“(iii) meets the requirements of an al-*
9 *ternative method of compliance established*
10 *for the commercial vessel under subsection*
11 *(f); or*

12 *“(iv) is made pursuant to a deter-*
13 *mination that the commercial vessel meets*
14 *the requirements relating to geographically*
15 *limited areas under subsection (g); and*

16 *“(B) the owner or operator discharges the*
17 *ballast water in accordance with a ballast water*
18 *management plan approved under subsection (i).*

19 *“(2) APPLICABILITY.—*

20 *“(A) COVERED VESSELS.—Paragraph (1)*
21 *shall apply to the owner or operator of a com-*
22 *mercial vessel that is designed, constructed, or*
23 *adapted to carry ballast water if the commercial*
24 *vessel is—*

1 “(i) documented under the laws of the
2 United States; or

3 “(ii) operating in navigable waters on
4 a voyage to or from a point in the United
5 States.

6 “(B) EXEMPTED VESSELS.—Paragraph (1)
7 shall not apply to the owner or operator of—

8 “(i) a commercial vessel that carries
9 all of its ballast water in sealed tanks that
10 are not subject to discharge;

11 “(ii) a commercial vessel that continu-
12 ously takes on and discharges ballast water
13 in a flow-through system;

14 “(iii) any vessel in the National De-
15 fense Reserve Fleet that is scheduled to be
16 disposed of through scrapping or sinking;

17 “(iv) a commercial vessel that dis-
18 charges ballast water consisting solely of
19 water—

20 “(I) taken aboard from a munic-
21 ipal or commercial source; and

22 “(II) that, at the time the water is
23 taken aboard, meets the applicable reg-
24 ulations or permit requirements for
25 such source under the Safe Drinking

1 *Water Act (42 U.S.C. 300f et seq.) and*
2 *section 402 of this Act; or*

3 “(v) *a commercial vessel that is 3*
4 *years or fewer from the end of its useful life,*
5 *as determined by the Secretary, on the date*
6 *on which the regulations issued under para-*
7 *graph (3) become effective for the vessel pur-*
8 *suant to the implementation schedule issued*
9 *under paragraph (3)(B).*

10 “(C) *LIMITATION.—An exemption under*
11 *subparagraph (B)(v) shall cease to be effective on*
12 *the date that is 3 years after the date on which*
13 *the regulations under paragraph (3) become ef-*
14 *fective for the commercial vessel pursuant to the*
15 *implementation schedule issued under paragraph*
16 *(3)(B).*

17 “(3) *ISSUANCE OF REGULATIONS.—*

18 “(A) *IN GENERAL.—Not later than 180*
19 *days after the date of enactment of this section,*
20 *the Secretary, in consultation with the Adminis-*
21 *trator, shall issue final regulations to implement*
22 *the requirements of this section.*

23 “(B) *PROPOSED RULE.—For the purposes of*
24 *chapter 5 of title 5, United States Code, the pro-*
25 *posed rulemaking published by the Coast Guard*

1 *on August 28, 2009 (74 Fed. Reg. 44632; relat-*
2 *ing to standards for living organisms in ships'*
3 *ballast water discharged in U.S. waters), shall*
4 *serve as a proposed rule for the purposes of*
5 *issuing regulations under this section.*

6 “(4) *COMPLIANCE SCHEDULES.—*

7 “(A) *INITIAL PERFORMANCE STANDARD*
8 *COMPLIANCE DEADLINES.—*

9 “(i) *IN GENERAL.—An owner or oper-*
10 *ator shall comply with the performance*
11 *standard established under subsection (c) on*
12 *or before the deadline that applies to the*
13 *commercial vessel of the owner or operator,*
14 *as specified in clause (ii).*

15 “(ii) *DEADLINES.—The deadlines for*
16 *compliance with the performance standard*
17 *established under subsection (c) are as fol-*
18 *lows:*

19 “(I) *For a commercial vessel con-*
20 *structed on or after January 1, 2012,*
21 *the date of delivery of the vessel.*

22 “(II) *For an existing commercial*
23 *vessel with a ballast water capacity of*
24 *less than 1,500 cubic meters, the date*

1 of the first drydocking of the vessel
2 after January 1, 2016.

3 “(III) For an existing commercial
4 vessel with a ballast water capacity of
5 at least 1,500 cubic meters but not
6 more than 5,000 cubic meters, the date
7 of the first drydocking of the vessel
8 after January 1, 2014.

9 “(IV) For an existing commercial
10 vessel with a ballast water capacity of
11 greater than 5,000 cubic meters, the
12 date of the first drydocking of the vessel
13 after January 1, 2016.

14 “(iii) REGULATIONS.—In issuing regu-
15 lations under paragraph (3), the Secretary
16 shall include a compliance schedule that sets
17 forth the deadlines specified in clause (ii).

18 “(B) REVISED PERFORMANCE STANDARD
19 COMPLIANCE DEADLINES.—

20 “(i) IN GENERAL.—Upon revision of a
21 performance standard under subsection (d),
22 the Secretary, in consultation with the Ad-
23 ministrators, shall issue a compliance sched-
24 ule that establishes deadlines for an owner

1 or operator to comply with the revised per-
2 formance standard.

3 “(ii) *FACTORS.*—In issuing a compli-
4 ance schedule under this subparagraph, the
5 Secretary—

6 “(I) shall consider the factors
7 identified in subparagraph (C)(iv);
8 and

9 “(II) may establish different com-
10 pliance deadlines based on vessel class,
11 type, or size.

12 “(iii) *VESSELS CONSTRUCTED AFTER*
13 *ISSUANCE OF REVISED PERFORMANCE*
14 *STANDARDS.*—A compliance schedule issued
15 under this subparagraph with respect to a
16 revised performance standard shall require,
17 at a minimum, the owner or operator of a
18 commercial vessel that commences a major
19 conversion or is constructed on or after the
20 date of issuance of the revised performance
21 standard to comply with the revised per-
22 formance standard.

23 “(C) *EXTENSION OF COMPLIANCE DEAD-*
24 *LINES.*—

1 “(i) *IN GENERAL.*—*The Secretary may*
2 *extend a compliance deadline established*
3 *under subparagraph (A) or (B) on the Sec-*
4 *retary’s own initiative or in response to a*
5 *petition submitted by an owner or operator.*

6 “(ii) *PROCESSES FOR GRANTING EX-*
7 *TENSIONS.*—*In issuing regulations under*
8 *paragraph (3), the Secretary shall estab-*
9 *lish—*

10 “(I) *a process for the Secretary,*
11 *in consultation with the Adminis-*
12 *trator, to issue an extension of a com-*
13 *pliance deadline established under sub-*
14 *paragraph (A) or (B) for a commercial*
15 *vessel (or class, type, or size of vessel);*
16 *and*

17 “(II) *a process for an owner or*
18 *operator to submit a petition to the*
19 *Secretary for an extension of a compli-*
20 *ance deadline established under sub-*
21 *paragraph (A) or (B) with respect to*
22 *the commercial vessel of the owner or*
23 *operator.*

1 “(iii) *PERIOD OF EXTENSIONS.*—An
2 *extension issued under this subparagraph*
3 *shall—*

4 “(I) *apply for a period of not to*
5 *exceed 18 months; and*

6 “(II) *be renewable for an addi-*
7 *tional period of not to exceed 18*
8 *months.*

9 “(iv) *FACTORS.*—*In issuing an exten-*
10 *sion or reviewing a petition under this sub-*
11 *paragraph, the Secretary shall consider,*
12 *with respect to the ability of an owner or*
13 *operator to meet a compliance deadline, the*
14 *following factors:*

15 “(I) *Whether the treatment tech-*
16 *nology to be installed is available in*
17 *sufficient quantities to meet the com-*
18 *pliance deadline.*

19 “(II) *Whether there is sufficient*
20 *shipyard or other installation facility*
21 *capacity.*

22 “(III) *Whether there is sufficient*
23 *availability of engineering and design*
24 *resources.*

1 “(IV) *Vessel characteristics, such*
2 *as engine room size, layout, or a lack*
3 *of installed piping.*

4 “(V) *Electric power generating ca-*
5 *capacity aboard the vessel.*

6 “(VI) *Safety of the vessel and*
7 *crew.*

8 “(v) *CONSIDERATION OF PETITIONS.—*

9 “(I) *DETERMINATIONS.—The Sec-*
10 *retary shall approve or deny a petition*
11 *for an extension of a compliance dead-*
12 *line submitted by an owner or operator*
13 *under this subparagraph.*

14 “(II) *DEADLINE.—If the Sec-*
15 *retary does not approve or deny a peti-*
16 *tion referred to in subclause (I) on or*
17 *before the last day of the 90-day period*
18 *beginning on the date of submission of*
19 *the petition, the petition shall be*
20 *deemed approved.*

21 “(c) *BALLAST WATER PERFORMANCE STANDARD FOR*
22 *COMMERCIAL VESSELS.—*

23 “(1) *IN GENERAL.—To meet the ballast water*
24 *performance standard, an owner or operator shall—*

1 “(A) conduct ballast water treatment before
2 discharging ballast water from a commercial ves-
3 sel into navigable waters using a ballast water
4 treatment technology certified for the vessel (or
5 class, type, or size of vessel) under subsection (e);
6 and

7 “(B) ensure that any ballast water so dis-
8 charged meets, at a minimum, the numerical
9 ballast water performance standard set forth in
10 the International Convention for the Control and
11 Management of Ships’ Ballast Water and Sedi-
12 ments, as adopted on February 13, 2004, or a re-
13 vised numerical ballast water performance
14 standard established under subsection (d).

15 “(2) SAFETY EXEMPTION.—Notwithstanding
16 paragraph (1), an owner or operator may discharge
17 ballast water without regard to a ballast water per-
18 formance standard if—

19 “(A) the discharge is done solely to ensure
20 the safety of life at sea;

21 “(B) the discharge is accidental and the re-
22 sult of damage to the commercial vessel or its
23 equipment and—

1 “(i) all reasonable precautions to pre-
2 vent or minimize the discharge have been
3 taken; and

4 “(ii) the owner or operator did not
5 willfully or recklessly cause such damage; or

6 “(C) the discharge is solely for the purpose
7 of avoiding or minimizing discharge from the
8 vessel of pollution that would otherwise violate
9 an applicable Federal or State law.

10 “(d) *REVIEW OF PERFORMANCE STANDARD.*—

11 “(1) *IN GENERAL.*—Not later than January 1,
12 2016, and every 10 years thereafter, the Adminis-
13 trator, in consultation with the Secretary, shall com-
14 plete a review to determine whether revising the bal-
15 last water performance standard would result in a
16 scientifically demonstrable and substantial reduction
17 in the risk of the introduction or establishment of
18 aquatic nuisance species.

19 “(2) *CONSIDERATIONS.*—In conducting the re-
20 view, the Administrator shall consider—

21 “(A) improvements in the scientific under-
22 standing of biological and ecological processes
23 that lead to the introduction or establishment of
24 aquatic nuisance species;

1 “(B) improvements in ballast water treat-
2 ment technology, including—

3 “(i) the capability of such technology
4 to achieve a revised ballast water perform-
5 ance standard;

6 “(ii) the effectiveness and reliability of
7 such technology in the shipboard environ-
8 ment;

9 “(iii) the compatibility of such tech-
10 nology with the design and operation of
11 commercial vessels by class, type, and size;

12 “(iv) the commercial availability of
13 such technology; and

14 “(v) the safety of such technology;

15 “(C) improvements in the capabilities to de-
16 tect, quantify, and assess the viability of aquatic
17 nuisance species at the concentrations under con-
18 sideration;

19 “(D) the impact of ballast water treatment
20 technology on water quality; and

21 “(E) the costs, cost-effectiveness, and im-
22 pacts of—

23 “(i) a revised ballast water perform-
24 ance standard, including the potential im-

1 *pects on shipping, trade, and other uses of*
2 *the aquatic environment; and*

3 “(ii) *maintaining the existing ballast*
4 *water performance standard, including the*
5 *potential impacts on water-related infra-*
6 *structure, recreation, the propagation of na-*
7 *tive fish, shellfish, and wildlife, and other*
8 *uses of navigable waters.*

9 “(3) *REVISION OF PERFORMANCE STANDARD.—*

10 “(A) *RULEMAKING.—If, pursuant to a re-*
11 *view conducted under paragraph (1), the Admin-*
12 *istrator, in consultation with the Secretary, de-*
13 *termines that revising the ballast water perform-*
14 *ance standard would result in a scientifically de-*
15 *monstrable and substantial reduction in the risk*
16 *of the introduction or establishment of aquatic*
17 *nuisance species, the Administrator shall under-*
18 *take a rulemaking to revise the performance*
19 *standard.*

20 “(B) *SPECIAL RULE.—The Administrator*
21 *may not issue a revised performance standard*
22 *pursuant to this paragraph that applies to a*
23 *commercial vessel constructed prior to the date*
24 *on which the revised performance standard is*
25 *issued unless the revised performance standard is*

1 *at least 2 orders of magnitude more stringent*
2 *than the performance standard in effect on the*
3 *date that the review is completed.*

4 “(4) *STATE PETITION FOR REVIEW OF PERFORM-*
5 *ANCE STANDARDS.—*

6 “(A) *IN GENERAL.—The Governor of a*
7 *State may submit a petition requesting that the*
8 *Administrator review a ballast water perform-*
9 *ance standard if there is significant new infor-*
10 *mation that could reasonably indicate the per-*
11 *formance standard could be revised to result in*
12 *a scientifically demonstrable and substantial re-*
13 *duction in the risk of the introduction or estab-*
14 *lishment of aquatic nuisance species.*

15 “(B) *TIMING.—A Governor may not submit*
16 *a petition under subparagraph (A) during the 1-*
17 *year period following the date of completion of a*
18 *review under paragraph (1).*

19 “(C) *REQUIRED INFORMATION.—A petition*
20 *submitted to the Administrator under subpara-*
21 *graph (A) shall include the scientific and tech-*
22 *nical information on which the petition is based.*

23 “(D) *REVIEW AND REPORTING.—Upon re-*
24 *ceipt of a petition from a Governor under sub-*
25 *paragraph (A), the Administrator shall make*

1 *publicly available a copy of the petition, includ-*
2 *ing the scientific and technical information pro-*
3 *vided by the Governor under subparagraph (C).*

4 “(E) *REVIEW AND REVISION OF PERFORM-*
5 *ANCE STANDARDS.—*

6 “(i) *IN GENERAL.—If, after receiving a*
7 *petition submitted by a Governor under*
8 *subparagraph (A) for review of a perform-*
9 *ance standard, the Administrator, in con-*
10 *sultation with the Secretary, determines*
11 *that the petition warrants additional ac-*
12 *tion, the Administrator may—*

13 “(I) *in consultation with the Sec-*
14 *retary, initiate a review of the per-*
15 *formance standard under paragraph*
16 *(1); and*

17 “(II) *in consultation with the Sec-*
18 *retary, revise the performance standard*
19 *through a rulemaking under para-*
20 *graph (3)(A), subject to the limitation*
21 *in paragraph (3)(B).*

22 “(ii) *TREATMENT OF MORE THAN ONE*
23 *PETITION AS A SINGLE PETITION.—The Ad-*
24 *ministrator may treat more than one peti-*
25 *tion as a single petition for review.*

1 “(e) *TREATMENT TECHNOLOGY CERTIFICATION.*—

2 “(1) *CERTIFICATION REQUIRED.*—

3 “(A) *CERTIFICATION PROCESS.*—

4 “(i) *EVALUATION.*—Upon application
5 of a manufacturer, the Secretary shall
6 evaluate a ballast water treatment tech-
7 nology with respect to—

8 “(I) whether the treatment tech-
9 nology meets the ballast water perform-
10 ance standard when installed on a
11 commercial vessel (or a class, type, or
12 size of commercial vessel);

13 “(II) the effect of the treatment
14 technology on commercial vessel safety;
15 and

16 “(III) any other criteria the Sec-
17 retary considers appropriate.

18 “(ii) *CERTIFICATION.*—If, after con-
19 ducting the evaluation required by clause
20 (i), the Secretary determines the treatment
21 technology meets the criteria established
22 under such clause, the Secretary may certify
23 the treatment technology for use on a com-
24 mercial vessel (or a class, type, or size of
25 commercial vessel).

1 “(iii) *SUSPENSION AND REVOCATION*
2 *OF CERTIFICATION.*—*The Secretary shall, by*
3 *regulation, establish a process to suspend or*
4 *revoke a certification issued under this sub-*
5 *paragraph.*

6 “(B) *CERTIFICATES OF TYPE APPROVAL.*—

7 “(i) *ISSUANCE OF CERTIFICATES TO*
8 *MANUFACTURER.*—*If the Secretary certifies*
9 *a ballast water treatment technology under*
10 *subparagraph (A), the Secretary shall issue*
11 *to the manufacturer of the treatment tech-*
12 *nology, in such form and manner as the*
13 *Secretary determines appropriate, a certifi-*
14 *cate of type approval for the treatment tech-*
15 *nology.*

16 “(ii) *CONDITIONS TO BE INCLUDED IN*
17 *CERTIFICATES.*—*A certificate of type ap-*
18 *proval issued under clause (i) shall include*
19 *any conditions that are imposed by the Sec-*
20 *retary under paragraph (2).*

21 “(iii) *ISSUANCE OF COPIES OF CER-*
22 *TIFICATES TO OWNERS AND OPERATORS.*—*A*
23 *manufacturer that receives a certificate of*
24 *type approval under clause (i) for a ballast*
25 *water treatment technology shall furnish a*

1 *copy of the certificate to any owner or oper-*
2 *ator of a commercial vessel on which the*
3 *treatment technology is installed.*

4 “(iv) *INSPECTIONS.*—*An owner or op-*
5 *erator who receives a copy of a certificate*
6 *under clause (iii) for a ballast water treat-*
7 *ment technology installed on a commercial*
8 *vessel shall retain a copy of the certificate*
9 *onboard the commercial vessel and make the*
10 *copy of the certificate available for inspec-*
11 *tion at all times that such owner or oper-*
12 *ator is utilizing the treatment technology.*

13 “(C) *TREATMENT TECHNOLOGIES THAT USE*
14 *OR GENERATE BIOCIDES.*—*The Secretary may*
15 *not certify a ballast water treatment technology*
16 *that—*

17 “(i) *uses a biocide or generates a*
18 *biocide that is a ‘pesticide’, as defined in*
19 *section 2 of the Federal Insecticide, Fun-*
20 *gicide, and Rodenticide Act (7 U.S.C. 136),*
21 *unless the biocide is registered under such*
22 *Act or the Administrator has approved the*
23 *use of such biocide in such treatment tech-*
24 *nology; or*

1 “(ii) uses or generates a biocide the
2 discharge of which causes or contributes to
3 a violation of a water quality standard
4 under section 303 of this Act.

5 “(D) PROHIBITION.—

6 “(i) IN GENERAL.—Except as provided
7 by clause (ii), an owner or operator may
8 not use a ballast water treatment technology
9 to comply with the requirements of this sec-
10 tion unless the Secretary has certified the
11 treatment technology under subparagraph
12 (A).

13 “(ii) EXCEPTIONS.—

14 “(I) COAST GUARD SHIPBOARD
15 TECHNOLOGY EVALUATION PROGRAM.—
16 An owner or operator may use a bal-
17 last water treatment technology that
18 has not been certified by the Secretary
19 to comply with the requirements of this
20 section if the technology is being evalu-
21 ated under the Coast Guard Shipboard
22 Technology Evaluation Program.

23 “(II) BALLAST WATER TREAT-
24 MENT TECHNOLOGIES CERTIFIED BY
25 FOREIGN ENTITIES.—An owner or op-

1 *erator may use a ballast water treat-*
2 *ment technology that has not been cer-*
3 *tified by the Secretary to comply with*
4 *the requirements of this section if the*
5 *technology has been certified by a for-*
6 *ign entity and the certification dem-*
7 *onstrates performance and safety of the*
8 *treatment technology equivalent to the*
9 *requirements of this subsection, as de-*
10 *termined by the Secretary.*

11 *“(2) CERTIFICATION CONDITIONS.—*

12 *“(A) IMPOSITION OF CONDITIONS.—In certi-*
13 *fying a ballast water treatment technology under*
14 *this subsection, the Secretary, in consultation*
15 *with the Administrator, may impose any condi-*
16 *tion on the subsequent installation, use, or main-*
17 *tenance of the treatment technology onboard a*
18 *commercial vessel as is necessary for—*

19 *“(i) the safety of the vessel, the crew of*
20 *the vessel, and any passengers aboard the*
21 *vessel;*

22 *“(ii) the protection of the environment;*
23 *and*

24 *“(iii) the effective operation of the*
25 *treatment technology.*

1 “(B) *FAILURE TO COMPLY.*—*The failure of*
2 *an owner or operator to comply with a condition*
3 *imposed under subparagraph (A) is a violation*
4 *of this section.*

5 “(3) *USE OF BALLAST WATER TREATMENT TECH-*
6 *NOLOGIES ONCE INSTALLED.*—

7 “(A) *IN GENERAL.*—*Subject to subpara-*
8 *graph (B), an owner or operator who installs a*
9 *ballast water treatment technology that the Sec-*
10 *retary has certified under paragraph (1) may*
11 *use the treatment technology, notwithstanding*
12 *any revisions to a ballast water performance*
13 *standard occurring after the installation so long*
14 *as the owner or operator—*

15 “(i) *maintains the treatment tech-*
16 *nology in proper working condition; and*

17 “(ii) *maintains and uses the treatment*
18 *technology in accordance with—*

19 “(I) *the manufacturer’s specifica-*
20 *tions; and*

21 “(II) *any conditions imposed by*
22 *the Secretary under paragraph (2).*

23 “(B) *LIMITATION.*—*Subparagraph (A) shall*
24 *cease to apply with respect to a commercial ves-*
25 *sel after the first to occur of the following:*

1 “(i) *The expiration of the service life of*
2 *the ballast water treatment technology of the*
3 *vessel, as determined by the Secretary.*

4 “(ii) *The expiration of service life of*
5 *the vessel, as determined by the Secretary.*

6 “(iii) *The completion of a major con-*
7 *version of the vessel.*

8 “(4) *TESTING PROTOCOLS.—Not later than 180*
9 *days after the date of enactment of this section, the*
10 *Administrator, in consultation with the Secretary,*
11 *shall issue guidelines specifying land-based and ship-*
12 *board testing protocols or criteria for—*

13 “(A) *certifying the performance of ballast*
14 *water treatment technologies under this sub-*
15 *section; and*

16 “(B) *certifying laboratories to evaluate such*
17 *treatment technologies.*

18 “(5) *PROHIBITION.—Following the date on*
19 *which the requirements of subsection (b)(1) apply*
20 *with respect to a commercial vessel pursuant to the*
21 *implementation schedule issued under subsection*
22 *(b)(3)(B), no manufacturer of a ballast water treat-*
23 *ment technology shall sell, offer for sale, or introduce*
24 *or deliver for introduction into interstate commerce,*
25 *or import into the United States for sale or resale, a*

1 *ballast water treatment technology for the commercial*
2 *vessel unless the technology has been certified under*
3 *this subsection.*

4 “(f) *ALTERNATIVE METHODS OF COMPLIANCE.*—

5 “(1) *ESTABLISHMENT.*—*Not later than 180 days*
6 *after the date of enactment of this section, the Sec-*
7 *retary, in consultation with the Administrator, shall*
8 *establish an alternative method of compliance with*
9 *this section for a commercial vessel having a max-*
10 *imum ballast water capacity of less than 8 cubic me-*
11 *ters.*

12 “(2) *FACTORS FOR CONSIDERATION.*—*In estab-*
13 *lishing an alternative method of compliance under*
14 *paragraph (1), the Secretary shall consider—*

15 “(A) *the effectiveness of the alternative*
16 *method in reducing the risk of the introduction*
17 *or establishment of aquatic nuisance species rel-*
18 *ative to the performance standard; and*

19 “(B) *any other factor the Secretary con-*
20 *siders appropriate.*

21 “(3) *BEST MANAGEMENT PRACTICES.*—*The Sec-*
22 *retary may establish as an alternative method of com-*
23 *pliance appropriate ballast water best management*
24 *practices to minimize the introduction or establish-*
25 *ment of aquatic nuisance species.*

1 “(g) *GEOGRAPHICALLY LIMITED AREAS.*—

2 “(1) *IN GENERAL.*—Subsections (c), (e), and (i)
3 shall not apply to a commercial vessel that—

4 “(A) operates exclusively within a geo-
5 graphically limited area, as determined by the
6 Secretary, in consultation with the Adminis-
7 trator; or

8 “(B) operates pursuant to a geographic re-
9 striction issued for the commercial vessel under
10 section 3309 of title 46, United States Code.

11 “(2) *PETITION FOR DETERMINATION BY THE*
12 *SECRETARY.*—

13 “(A) *SUBMISSION OF PETITIONS.*—Fol-
14 lowing the date of issuance of final regulations
15 under subsection (b), an owner or operator may
16 petition the Secretary for a determination under
17 paragraph (1).

18 “(B) *DETERMINATIONS.*—The Secretary
19 shall approve or deny a petition submitted by an
20 owner or operator under subparagraph (A).

21 “(C) *DEADLINE.*—If the Secretary does not
22 approve or deny a petition submitted by an
23 owner or operator under subparagraph (A) on or
24 before the last day of the 90-day period begin-

1 *ning on the date of submission of the petition,*
2 *the petition shall be deemed approved.*

3 *“(3) NOTIFICATION.—The Secretary shall notify*
4 *the Administrator and the Governor of each State the*
5 *waters of which could be affected by the discharge of*
6 *ballast water from a commercial vessel for which a*
7 *petition has been granted under paragraph (2) of the*
8 *granting of any such petition.*

9 *“(4) BEST MANAGEMENT PRACTICES.—For a*
10 *commercial vessel for which a petition is granted*
11 *under paragraph (2), the Secretary shall require the*
12 *owner or operator to implement appropriate ballast*
13 *water best management practices to minimize the in-*
14 *troduction or establishment of aquatic nuisance spe-*
15 *cies.*

16 *“(h) RECEPTION FACILITIES.—*

17 *“(1) IN GENERAL.—An owner or operator shall*
18 *discharge ballast water in compliance with subsection*
19 *(c) or (f) unless discharging ballast water into—*

20 *“(A) an onshore facility for the reception of*
21 *ballast water that meets standards issued by the*
22 *Administrator, in consultation with the Sec-*
23 *retary; or*

24 *“(B) an offshore facility for the reception of*
25 *ballast water that meets standards issued by the*

1 *Secretary, in consultation with the Adminis-*
2 *trator.*

3 “(2) *ISSUANCE OF STANDARDS.*—*Not later than*
4 *2 years after the date of enactment of this section—*

5 “(A) *the Administrator, in consultation*
6 *with the Secretary, shall issue the standards re-*
7 *ferred to in paragraph (1)(A); and*

8 “(B) *the Secretary, in consultation with the*
9 *Administrator, shall issue the standards referred*
10 *to in paragraph (1)(B).*

11 “(3) *SOLE METHOD OF DISCHARGE.*—*The Sec-*
12 *retary, in consultation with the Administrator, and*
13 *upon petition by an owner or operator, may issue to*
14 *an owner or operator a certificate stating that a com-*
15 *mercial vessel is in compliance with the requirements*
16 *of subsection (b)(1)(A) if discharging ballast water*
17 *into a facility meeting the standards issued under*
18 *this subsection is the sole method by which the owner*
19 *or operator discharges ballast water from the commer-*
20 *cial vessel.*

21 “(4) *BALLAST WATER MANAGEMENT PLANS.*—*An*
22 *owner or operator discharging ballast water under*
23 *this subsection shall discharge such water in accord-*
24 *ance with a ballast water management plan approved*
25 *under subsection (i).*

1 “(i) *COMMERCIAL VESSEL BALLAST WATER MANAGE-*
2 *MENT PLAN.*—

3 “(1) *IN GENERAL.*—*An owner or operator shall*
4 *discharge ballast water in accordance with a ballast*
5 *water management plan that—*

6 “(A) *meets requirements prescribed by the*
7 *Secretary; and*

8 “(B) *is approved by the Secretary.*

9 “(2) *FOREIGN COMMERCIAL VESSELS.*—*The Sec-*
10 *retary may approve a ballast water management*
11 *plan for a foreign commercial vessel on the basis of*
12 *a certificate of compliance issued by the country of*
13 *registration of the commercial vessel if the require-*
14 *ments of the government of that country for a ballast*
15 *water management plan are substantially equivalent*
16 *to regulations issued by the Secretary.*

17 “(3) *RECORDKEEPING.*—

18 “(A) *IN GENERAL.*—*Except as provided by*
19 *subparagraph (B), an owner or operator shall*
20 *maintain in English and have available for in-*
21 *spection by the Secretary a ballast water record*
22 *book in which each operation of the commercial*
23 *vessel involving a ballast water discharge is re-*
24 *corded in accordance with regulations issued by*
25 *the Secretary.*

1 “(B) *ALTERNATIVE MEANS OF RECORD-*
2 *KEEPING.—The Secretary may provide for alter-*
3 *native methods of recordkeeping, including elec-*
4 *tronic recordkeeping, to comply with the require-*
5 *ments of this paragraph.*

6 “(j) *REGULATION OF BALLAST WATER DIS-*
7 *CHARGES.—Effective on and after the date of enactment of*
8 *this section—*

9 “(1) *the Administrator (or a State in the case of*
10 *a permit program approved under section 402) shall*
11 *not require any new permit or permit condition*
12 *under section 402 for any discharge of ballast water*
13 *from a commercial vessel into navigable waters; and*

14 “(2) *except as provided by subsection (k), a State*
15 *or political subdivision thereof shall not adopt or en-*
16 *force any law or regulation of the State or political*
17 *subdivision with respect to such a discharge.*

18 “(k) *STATE AUTHORITY.—*

19 “(1) *STATE PROGRAMS.—The Governor of a*
20 *State desiring to administer its own inspection and*
21 *enforcement authority for ballast water discharges*
22 *within its jurisdiction may submit to the Secretary a*
23 *complete description of the program the Governor pro-*
24 *poses to establish and administer under State law. In*
25 *addition, the Governor shall submit a statement from*

1 *the State attorney general that the laws of the State*
2 *provide adequate authority to carry out the described*
3 *program.*

4 “(2) *APPROVAL.—The Secretary, with the con-*
5 *currence of the Administrator, may approve a pro-*
6 *gram of a State submitted under paragraph (1) pro-*
7 *viding for the State’s own inspection and enforcement*
8 *authority for ballast water discharges within its jurisdic-*
9 *tion, if the Secretary determines that the State*
10 *possesses adequate resources to—*

11 “(A) *inspect, monitor, and board a commer-*
12 *cial vessel at any time, including the taking and*
13 *testing of ballast water samples, to ensure the*
14 *commercial vessel’s compliance with this section;*

15 “(B) *ensure that any ballast water dis-*
16 *charged within the waters subject to the jurisdic-*
17 *tion of the State meets the requirements of this*
18 *section;*

19 “(C) *establish adequate procedures for re-*
20 *porting violations of this section;*

21 “(D) *investigate and abate violations of this*
22 *section, including the imposition of civil and*
23 *criminal penalties consistent with subsection (o);*
24 *and*

1 “(E) ensure that the Secretary and the Ad-
2 ministrators receive notice of each violation of
3 this section in an expeditious manner.

4 “(3) COMPLIANCE.—Any State program ap-
5 proved under paragraph (2) shall at all times be con-
6 ducted in accordance with this subsection.

7 “(4) WITHDRAWAL OF APPROVAL.—Whenever the
8 Secretary, in consultation with the Administrator, de-
9 termines, after providing notice and the opportunity
10 for a public hearing, that a State is not admin-
11 istering a program in accordance with the terms of
12 the program as approved under paragraph (2), the
13 Secretary shall notify the State, and, if appropriate
14 corrective action is not taken within a period of time
15 not to exceed 90 days, the Secretary, with the concur-
16 rence of the Administrator, shall withdraw approval
17 of the program. The Secretary shall not withdraw ap-
18 proval of a program unless the Secretary has first no-
19 tified the State and made public, in writing, the rea-
20 sons for the withdrawal.

21 “(5) LIMITATION ON STATUTORY CONSTRUC-
22 TION.—Nothing in this subsection shall limit the au-
23 thority of the Administrator or the Secretary to carry
24 out inspections of any commercial vessel under sub-
25 section (n).

1 “(6) *STATE LAWS.*—*Notwithstanding any other*
2 *provision of this section, a State may enact such laws*
3 *as are necessary to provide for the implementation of*
4 *the State ballast water inspection and enforcement*
5 *program provided under this subsection. The require-*
6 *ments for a ballast water inspection and enforcement*
7 *program contained in such State law shall be sub-*
8 *stantively and procedurally equivalent to those re-*
9 *quired in this section, and any requirements relating*
10 *to recordkeeping, reporting, and sampling or analysis*
11 *contained in such State law shall be substantively*
12 *and procedurally equivalent to the requirements of*
13 *this section and its implementing regulations and*
14 *guidance.*

15 “(l) *DISCHARGES INCIDENTAL TO THE NORMAL OPER-*
16 *ATIONS OF A COMMERCIAL VESSEL.*—

17 “(1) *EVALUATION OF INCIDENTAL DIS-*
18 *CHARGES.*—

19 “(A) *IN GENERAL.*—*Not later than 3 years*
20 *after the date of enactment of this section, the*
21 *Administrator, in consultation with the Sec-*
22 *retary, shall complete an evaluation of dis-*
23 *charges incidental to the normal operation of a*
24 *commercial vessel.*

1 “(B) *FACTORS.*—*In carrying out the eval-*
2 *uation, the Administrator shall analyze—*

3 “(i) *the characterization of the various*
4 *types and composition of discharges inci-*
5 *dental to the normal operation of a com-*
6 *mercial vessel by different classes, types,*
7 *and sizes of commercial vessels;*

8 “(ii) *the volume of such discharges for*
9 *representative individual commercial vessels*
10 *and by classes, types, and sizes of commer-*
11 *cial vessels in the aggregate;*

12 “(iii) *the availability and feasibility of*
13 *implementing technologies or best manage-*
14 *ment practices for the control of such dis-*
15 *charges;*

16 “(iv) *the characteristics of the receiving*
17 *waters of such discharges;*

18 “(v) *the nature and extent of potential*
19 *effects of such discharges on human health,*
20 *welfare, and the environment;*

21 “(vi) *the extent to which such dis-*
22 *charges are currently subject to and ad-*
23 *ressed by regulations under existing Fed-*
24 *eral laws or binding international obliga-*
25 *tions of the United States; and*

1 “(vii) any additional factor that the
2 Administrator considers appropriate.

3 “(2) REGULATION OF INCIDENTAL DIS-
4 CHARGES.—Effective on and after the date of enact-
5 ment of this section—

6 “(A) the Administrator (or a State in the
7 case of a permit program approved under section
8 402) shall not require any new permit or permit
9 conditions under section 402 for any discharge
10 incidental to the normal operation of a commer-
11 cial vessel; and

12 “(B) a State or political subdivision thereof
13 shall not adopt or enforce any law or regulation
14 of the State or political subdivision with respect
15 to such a discharge.

16 “(m) EFFECT ON VESSEL GENERAL PERMIT.—

17 “(1) EXPIRATION.—Notwithstanding the expira-
18 tion date set forth in the Vessel General Permit, the
19 Vessel General Permit shall expire as follows:

20 “(A) The terms and conditions of section 6
21 of such permit or any law of a State regulating
22 the discharge of ballast water or any discharge
23 incidental to the normal operation of a commer-
24 cial vessel, upon the date of enactment of this
25 section.

1 “(B) For each commercial vessel, the terms
2 and conditions of such permit (except the terms
3 and conditions referred to in subparagraph (A))
4 applicable to a discharge of ballast water—

5 “(i) on the date on which—

6 “(I) a ballast water treatment
7 technology certified under subsection
8 (e) is installed on the commercial ves-
9 sel;

10 “(II) an alternative method of
11 compliance established for the commer-
12 cial vessel under subsection (f) is im-
13 plemented for the commercial vessel;

14 “(III) a petition is granted for the
15 commercial vessel under subsection (g);
16 or

17 “(IV) a certificate is issued for the
18 commercial vessel under subsection (h);
19 or

20 “(ii) in any case not described in
21 clause (i), on December 18, 2013.

22 “(2) *DISCHARGES INCIDENTAL TO THE NORMAL*
23 *OPERATION OF COMMERCIAL VESSELS.*—*Notwith-*
24 *standing the expiration date set forth in the Vessel*
25 *General Permit, the terms and conditions of such per-*

1 *mit (except the terms and conditions referred to in*
2 *paragraph (1)(A)) applicable to discharges incidental*
3 *to the normal operation of a commercial vessel shall*
4 *remain in effect.*

5 “(n) *INSPECTIONS AND ENFORCEMENT.*—

6 “(1) *IN GENERAL.*—

7 “(A) *COAST GUARD ENFORCEMENT.*—*The*
8 *Secretary shall enforce the requirements of this*
9 *section and may utilize by agreement, with or*
10 *without reimbursement, law enforcement officers*
11 *or other personnel and facilities of the Adminis-*
12 *trator, other Federal agencies, and the States.*

13 “(B) *ENVIRONMENTAL PROTECTION AGENCY*
14 *ACTIONS.*—*Notwithstanding any enforcement de-*
15 *isions of the Secretary under subparagraph (A),*
16 *the Administrator may use the authorities pro-*
17 *vided in sections 308, 309, 312, and 504 when-*
18 *ever required to carry out this section.*

19 “(2) *COAST GUARD INSPECTIONS.*—*The Sec-*
20 *retary may carry out inspections of any commercial*
21 *vessel at any time, including the taking of ballast*
22 *water samples, to ensure compliance with this section.*
23 *The Secretary shall use all appropriate and practical*
24 *measures of detection and environmental monitoring*
25 *of such commercial vessels and shall establish ade-*

1 *quate procedures for reporting violations of this sec-*
2 *tion and accumulating evidence regarding such viola-*
3 *tions.*

4 “(o) *COMPLIANCE.—*

5 “(1) *DETENTION OF COMMERCIAL VESSEL.—The*
6 *Secretary, by notice to the owner or operator, may de-*
7 *tain the commercial vessel if the Secretary has reason-*
8 *able cause to believe that the commercial vessel does*
9 *not comply with a requirement of this section or is*
10 *being operated in violation of such a requirement.*

11 “(2) *SANCTIONS.—*

12 “(A) *CIVIL PENALTIES.—*

13 “(i) *IN GENERAL.—Any person who*
14 *violates this section shall be liable for a civil*
15 *penalty in an amount determined under*
16 *clause (ii). Each day of a continuing viola-*
17 *tion constitutes a separate violation. A com-*
18 *mercial vessel operated in violation of this*
19 *section is liable in rem for any civil penalty*
20 *assessed for that violation.*

21 “(ii) *PENALTY AMOUNTS.—The*
22 *amount of a civil penalty assessed under*
23 *clause (i) shall be determined as follows:*

24 “(I) *For vessels with a ballast*
25 *water capacity less than 1500 cubic*

1 *meters, not to exceed \$25,000 for each*
2 *violation.*

3 *“(II) For vessels with a ballast*
4 *water capacity of 1500 cubic meters*
5 *but not more than 5,000 cubic meters,*
6 *not to exceed \$28,750 for each viola-*
7 *tion.*

8 *“(III) For vessels with a ballast*
9 *water capacity greater than 5,000*
10 *cubic meters, not to exceed \$32,500 for*
11 *each violation.*

12 *“(B) CRIMINAL PENALTIES.—Any person*
13 *who knowingly violates this section shall be pun-*
14 *ished by a fine of not less than \$5,000 nor more*
15 *than \$50,000 per day of violation, or by impris-*
16 *onment for not more than 3 years, or both. If a*
17 *conviction of a person is for a violation com-*
18 *mitted after a first conviction of such person*
19 *under this paragraph, punishment shall be by a*
20 *fine of not more than \$100,000 per day of viola-*
21 *tion, or imprisonment of not more than 6 years,*
22 *or both.*

23 *“(C) REVOCATION OF CLEARANCE.—Upon*
24 *request of the Secretary, the Secretary of Home-*
25 *land Security shall withhold or revoke the clear-*

1 *ance of a commercial vessel required by section*
2 *60105 of title 46, United States Code, if the*
3 *owner or operator is in violation of this section.*

4 “(3) *ENFORCEMENT ACTIONS.*—

5 “(A) *ADMINISTRATIVE ACTIONS.*—*If the*
6 *Secretary finds that a person has violated this*
7 *section, the Secretary may assess a civil penalty*
8 *for the violation. In determining the amount of*
9 *the civil penalty, the Secretary shall take into*
10 *account the nature, circumstances, extent, and*
11 *gravity of the prohibited acts committed and,*
12 *with respect to the violator, the degree of culpa-*
13 *bility, any history of prior violations, and such*
14 *other matters as justice may require.*

15 “(B) *CIVIL ACTIONS.*—*At the request of the*
16 *Secretary, the Attorney General may bring a*
17 *civil action in an appropriate district court of*
18 *the United States to enforce this section. Any*
19 *court before which such an action is brought may*
20 *award appropriate relief, including temporary*
21 *or permanent injunctions and civil penalties.*

22 “(4) *EXCLUSION.*—*No person shall be found in*
23 *violation of this section whose commission of prohib-*
24 *ited acts is found by the Secretary to have been in the*
25 *interest of ensuring the safety of life at sea.*

1 “(p) *REGULATION UNDER OTHER SECTIONS OF THIS*
2 *ACT.—This section shall not affect the regulation of dis-*
3 *charges from a commercial vessel pursuant to section 311*
4 *or 312.*”.

5 **SEC. 3. DISCHARGES INCIDENTAL TO THE NORMAL OPER-**
6 **ATION OF A COVERED VESSEL.**

7 (a) *DISCHARGES INCIDENTAL TO THE NORMAL OPER-*
8 *ATION OF A COVERED VESSEL.—*

9 (1) *NO PERMIT REQUIRED.—Section 402 of the*
10 *Federal Water Pollution Control Act (33 U.S.C. 1342)*
11 *is amended by adding at the end the following:*

12 “(s) *DISCHARGES INCIDENTAL TO THE NORMAL OPER-*
13 *ATION OF A COVERED VESSEL.—No permit shall be re-*
14 *quired under this Act by the Administrator (or a State,*
15 *in the case of a permit program approved under subsection*
16 *(b)) for a discharge incidental to the normal operation of*
17 *a covered vessel (as defined in section 312(p)).*”.

18 (2) *BEST MANAGEMENT PRACTICES FOR COV-*
19 *ERED VESSELS.—Section 312 of the Federal Water*
20 *Pollution Control Act (33 U.S.C. 1342) is amended*
21 *by adding at the end the following:*

22 “(p) *BEST MANAGEMENT PRACTICES FOR COVERED*
23 *VESSELS.—*

24 “(1) *DEFINITIONS.—In this subsection, the fol-*
25 *lowing definitions apply:*

1 “(A) *COVERED VESSEL*.—The term ‘covered
2 vessel’ means every description of watercraft, or
3 other artificial contrivance used or capable of
4 being used as a means of transportation on
5 water, that is engaged in commercial service (as
6 defined under section 2101 of title 46, United
7 States Code), and—

8 “(i) is less than 79 feet in length; or

9 “(ii) is a fishing vessel (as defined in
10 section 2101 of title 46, United States
11 Code), regardless of length of the vessel.

12 “(B) *DISCHARGE INCIDENTAL TO THE NOR-*
13 *MAL OPERATION OF A COVERED VESSEL*.—The
14 term ‘discharge incidental to the normal oper-
15 ation of a covered vessel’ means a discharge inci-
16 dental to the normal operation of a commercial
17 vessel (as defined in section 321), insofar as the
18 commercial vessel is a covered vessel.

19 “(2) *DETERMINATION OF DISCHARGES SUBJECT*
20 *TO BEST MANAGEMENT PRACTICES*.—

21 “(A) *DETERMINATION*.—

22 “(i) *IN GENERAL*.—The Administrator,
23 in consultation with the Secretary of the de-
24 partment in which the Coast Guard is oper-
25 ating, shall determine the discharges inci-

1 *dental to the normal operation of a covered*
2 *vessel for which it is reasonable and prac-*
3 *ticable to develop best management practices*
4 *to mitigate the adverse impacts of such dis-*
5 *charges on the waters of the United States.*

6 “(ii) *PROMULGATION.*—*The Adminis-*
7 *trator shall promulgate the determinations*
8 *under clause (i) in accordance with section*
9 *553 of title 5, United States Code.*

10 “(B) *CONSIDERATIONS.*—*In making a de-*
11 *termination under subparagraph (A), the Ad-*
12 *ministrator shall consider—*

13 “(i) *the nature of the discharge;*

14 “(ii) *the environmental effects of the*
15 *discharge, including characteristics of the*
16 *receiving waters;*

17 “(iii) *the effectiveness of the best man-*
18 *agement practice in reducing adverse im-*
19 *acts of the discharge on water quality;*

20 “(iv) *the practicability of developing*
21 *and using a best management practice;*

22 “(v) *the effect that the use of a best*
23 *management practice would have on the op-*
24 *eration, operational capability, or safety of*
25 *the vessel;*

1 “(vi) applicable Federal and State law;

2 “(vii) applicable international stand-
3 ards; and

4 “(viii) the economic costs of the use of
5 the best management practice.

6 “(C) *TIMING.*—The Administrator shall—

7 “(i) make initial determinations under
8 subparagraph (A) not later than 1 year
9 after the date of enactment of this sub-
10 section; and

11 “(ii) every 5 years thereafter—

12 “(I) review the determinations;
13 and

14 “(II) if necessary, revise the deter-
15 minations based on any new informa-
16 tion available to the Administrator.

17 “(3) *REGULATIONS FOR THE USE OF BEST MAN-*
18 *AGEMENT PRACTICES.*—

19 “(A) *IN GENERAL.*—The Secretary of the de-
20 partment in which the Coast Guard is operating
21 shall promulgate regulations on the use of best
22 management practices for discharges incidental
23 to the normal operation of a covered vessel that
24 the Administrator determines are reasonable and
25 practicable to develop under paragraph (2).

1 “(B) REGULATIONS.—

2 “*(i) IN GENERAL.—The Secretary shall*
3 *promulgate the regulations under this para-*
4 *graph as soon as practicable after the Ad-*
5 *ministrator makes determinations pursuant*
6 *to paragraph (2).*

7 “*(ii) CONSIDERATIONS.—In promul-*
8 *gating regulations under this paragraph,*
9 *the Secretary may—*

10 “*(I) distinguish among classes,*
11 *types, and sizes of vessels;*

12 “*(II) distinguish between new and*
13 *existing vessels; and*

14 “*(III) provide for a waiver of the*
15 *applicability of the standards as nec-*
16 *essary or appropriate to a particular*
17 *class, type, age, or size of vessel.*

18 “*(4) EFFECT OF OTHER LAWS.—This subsection*
19 *shall not affect the application of section 311 to a cov-*
20 *ered vessel.*

21 “*(5) PROHIBITION RELATING TO COVERED VES-*
22 *SELS.—After the effective date of the regulations pro-*
23 *mulgated by the Secretary of the department in which*
24 *the Coast Guard is operating under paragraph (3),*
25 *the owner or operator of a covered vessel shall neither*

1 *operate in, nor discharge any discharge incidental to*
2 *the normal operation of the vessel into navigable*
3 *waters, if the owner or operator of the vessel is not*
4 *using any applicable best management practice meet-*
5 *ing standards established under this subsection.”.*

6 **SEC. 4. CONFORMING AND TECHNICAL AMENDMENTS.**

7 (a) *EFFLUENT LIMITATIONS.*—Section 301(a) of the
8 *Federal Water Pollution Control Act (33 U.S.C. 1311(a))*
9 *is amended by inserting “312, 321,” after “318,”.*

10 (b) *REVIEW OF ADMINISTRATOR’S ACTIONS.*—The first
11 *sentence of section 509(b)(1) of such Act (33 U.S.C.*
12 *1369(b)(1)) is amended—*

13 (1) *by striking “and (G)” and inserting “(G)”;*
14 *and*

15 (2) *by inserting after “section 304(l),” the fol-*
16 *lowing: “and (H) in issuing any regulation or other-*
17 *wise taking final agency action under section 312 or*
18 *321,”.*

19 **SEC. 5. REGULATION OF BALLAST WATER AND INCIDENTAL**
20 **DISCHARGES FROM A COMMERCIAL VESSEL.**

21 (a) *IN GENERAL.*—Effective on the date of enactment
22 *of this Act, the following discharges shall not be regulated*
23 *in any manner other than as specified in section 312 or*
24 *321 of the Federal Water Pollution Control Act (as added*
25 *by this Act):*

1 (1) *A discharge incidental to the normal oper-*
2 *ation of a commercial vessel.*

3 (2) *A discharge of ballast water from a commer-*
4 *cial vessel.*

5 (b) *DEFINITIONS.—In this section, the terms “ballast*
6 *water”, “commercial vessel”, and “discharge incidental to*
7 *the normal operation of a commercial vessel” have the*
8 *meanings given those terms in section 321(a) of the Federal*
9 *Water Pollution Control Act (as added by this Act).*

10 **SEC. 6. NONINDIGENOUS AQUATIC NUISANCE PREVENTION**
11 **AND CONTROL ACT OF 1990.**

12 (a) *AQUATIC NUISANCE SPECIES IN WATERS OF THE*
13 *UNITED STATES.—Effective on the date of issuance of final*
14 *regulations under section 321(b) of the Federal Water Pollu-*
15 *tion Control Act (as added by this Act), section 1101 of*
16 *the Nonindigenous Aquatic Nuisance Prevention and Con-*
17 *trol Act of 1990 (16 U.S.C. 4711) is repealed.*

18 (b) *RELATIONSHIP TO OTHER LAWS.—Effective on the*
19 *date of enactment of this Act, section 1205 of the Nonindige-*
20 *nous Aquatic Nuisance Prevention and Control Act of 1990*
21 *(16 U.S.C. 4725) is repealed.*

Union Calendar No. 178

112TH CONGRESS
1ST Session

H. R. 2840

[Report No. 112-266]

A BILL

To amend the Federal Water Pollution Control Act to regulate discharges from commercial vessels, and for other purposes.

NOVEMBER 3, 2011

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed