

112TH CONGRESS  
2D SESSION

# S. 3332

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

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## IN THE SENATE OF THE UNITED STATES

JUNE 21, 2012

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

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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 in the navigable waters of the United States.

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

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

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

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings; purpose.
- Sec. 3. Definitions.
- Sec. 4. Regulation and enforcement.
- Sec. 5. Uniform vessel incidental discharge standards.
- Sec. 6. Treatment technology certification.
- Sec. 7. Exemptions.
- Sec. 8. Alternative compliance program.
- Sec. 9. Judicial review.
- Sec. 10. Effect on State authority.
- Sec. 11. Application with other statutes.

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

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

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

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

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

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

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

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

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

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

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

1 (F) section 204 of the Maritime Transpor-  
2 tation Security Act of 2002 (33 U.S.C. 1902a),  
3 which established requirements for the regula-  
4 tion of incidental vessel discharges of agricul-  
5 tural cargo residue material in the form of hold  
6 washings; and

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

12 (b) PURPOSE.—The purpose of this Act is to provide  
13 for the establishment of nationally uniform and environ-  
14 mentally sound standards for discharges incidental to the  
15 normal operation of a vessel in the navigable waters of  
16 the United States.

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

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

22 (2) AQUATIC NUISANCE SPECIES.—The term  
23 “aquatic nuisance species” means a nonindigenous  
24 species (including a pathogen) that threatens the di-  
25 versity or abundance of native species or the ecologi-

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

4 (3) BALLAST WATER.—

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

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

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

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

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

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

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

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

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

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

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

1 (I)(aa) ballast water, graywater,  
2 bilge water, cooling water, oil water  
3 separator effluent, anti-fouling hull  
4 coating leachate, boiler or economizer  
5 blowdown, byproducts from cathodic  
6 protection, controllable pitch propeller  
7 and thruster hydraulic fluid, distilla-  
8 tion and reverse osmosis brine, eleva-  
9 tor pit effluent, firemain system efflu-  
10 ent, freshwater layup effluent, gas  
11 turbine wash water, motor gasoline  
12 and compensating effluent, refrigera-  
13 tion and air condensate effluent, sea-  
14 water pumping biofouling prevention  
15 substances, boat engine wet exhaust,  
16 sonar dome effluent, exhaust gas  
17 scrubber washwater, or stern tube  
18 packing gland effluent; or

19 (bb) any other pollutant associ-  
20 ated with the operation of a marine  
21 propulsion system, shipboard maneu-  
22 vering system, habitability system, or  
23 installed major equipment, or from a  
24 protective, preservative, or absorptive  
25 application to the hull of a vessel;

1 (II) weather deck runoff, deck  
2 wash, aqueous film forming foam ef-  
3 fluent, chain locker effluent, non-oily  
4 machinery wastewater, underwater  
5 ship husbandry effluent, welldeck ef-  
6 fluent, or fish hold and fish hold  
7 cleaning effluent; or

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

10 (ii) a discharge of a pollutant into  
11 navigable waters in connection with the  
12 testing, maintenance, or repair of a sys-  
13 tem, equipment, or engine described in  
14 subclause (I)(bb) or (III) of clause (i)  
15 whenever the vessel is waterborne.

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

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

21 (I) rubbish, trash, garbage, incin-  
22 erator ash, or other such material dis-  
23 charged overboard;

24 (II) oil or a hazardous substance  
25 as those terms are defined in section



1                   311 of the Federal Water Pollution  
2                   Control Act (33 U.S.C. 1321);

3                   (III) sewage as defined in section  
4                   312(a)(6) of the Federal Water Pollu-  
5                   tion Control Act (33 U.S.C.  
6                   1322(a)(6)); or

7                   (IV) graywater referred to in sec-  
8                   tion 312(a)(6) of the Federal Water  
9                   Pollution Control Act (33 U.S.C.  
10                  1322(a)(6));

11                  (ii) an emission of an air pollutant re-  
12                  sulting from the operation onboard a vessel  
13                  of a vessel propulsion system, motor driven  
14                  equipment, or incinerator; or

15                  (iii) a discharge into navigable waters  
16                  from a vessel when the vessel is operating  
17                  in a capacity other than as a means of  
18                  transportation on water.

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

21                  (A) with a physical limitation, including  
22                  limitation by physical size and limitation by au-  
23                  thorized route, that prevents a vessel from oper-  
24                  ating outside the area, as determined by the  
25                  Secretary; or

1 (B) that is ecologically homogeneous, as  
2 determined by the Secretary, in consultation  
3 with the heads of other Federal departments or  
4 agencies as the Secretary considers appropriate.

5 (9) MANUFACTURER.—The term “manufac-  
6 turer” means a person engaged in the manufacture,  
7 assemblage, or importation of ballast water treat-  
8 ment technology.

9 (10) SECRETARY.—The term “Secretary”  
10 means the Secretary of the Department in which the  
11 Coast Guard is operating.

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

16 **SEC. 4. REGULATION AND ENFORCEMENT.**

17 (a) IN GENERAL.—The Secretary, in consultation  
18 with the Administrator, shall establish and implement en-  
19 forceable uniform national standards for the regulation of  
20 discharges incidental to the normal operation of a vessel.  
21 The standards shall—

22 (1) be based upon the best available technology  
23 economically achievable; and

24 (2) supersede any permitting requirement or  
25 prohibition on discharges incidental to the normal

1 operation of a vessel under any other provision of  
2 law.

3 (b) ADMINISTRATION AND ENFORCEMENT.—The  
4 Secretary shall enforce the standards and requirements  
5 under this Act. Each State may enforce the standards and  
6 requirements under this Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (2) FEASIBILITY REVIEW.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (C) LOWER PERFORMANCE STANDARD.—

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

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



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

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

13 (D) HIGHER PERFORMANCE STANDARD.—

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

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

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

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

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

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

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

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

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

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

4 (4) REVISION AFTER DECENNIAL REVIEW.—

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

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

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

23 (b) CERTIFICATION PROCESS.—

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

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

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

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

12                  (D) the impact on the environment;

13                  (E) the cost effectiveness; and

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

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

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

25           (c) CERTIFICATION CONDITIONS.—

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

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

10                   (B) the protection of the environment; or

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

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

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

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

3 (1) is maintained in proper working condition;

4 and

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

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

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

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

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

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

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

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

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

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

24 (h) PROHIBITION.—



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

7           (2) EXCEPTIONS.—

8                   (A) COAST GUARD SHIPBOARD TECH-  
9                   NOLOGY EVALUATION PROGRAM.—An owner or  
10                  operator may use a ballast water treatment  
11                  technology that has not been certified by the  
12                  Secretary to comply with the requirements of  
13                  this section if the technology is being evaluated  
14                  under the Coast Guard Shipboard Technology  
15                  Evaluation Program.

16                   (B) BALLAST WATER TREATMENT TECH-  
17                   NOLOGIES CERTIFIED BY FOREIGN ENTITIES.—  
18                  An owner or operator may use a ballast water  
19                  treatment technology that has not been certified  
20                  by the Secretary to comply with the require-  
21                  ments of this section if the technology has been  
22                  certified by a foreign entity and the certification  
23                  demonstrates performance and safety of the  
24                  treatment technology equivalent to the require-

1           ments of this section, as determined by the Sec-  
2           retary.

3           (i) TESTING PROTOCOLS.—Not later than 180 days  
4 after the date of enactment of this Act, the Administrator,  
5 in consultation with the Secretary, shall issue require-  
6 ments for land-based and shipboard testing protocols or  
7 criteria for—

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

10           (2) certifying laboratories to evaluate such  
11           treatment technologies.

12 **SEC. 7. EXEMPTIONS.**

13           (a) IN GENERAL.—No permit shall be required or  
14 prohibition enforced under any other provision of law for,  
15 nor shall any vessel incidental discharge standards under  
16 this Act apply to—

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

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

1 vessel, (as defined in section 2101 of title 46, United  
2 States Code);

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

7 (4) the placement, release, or discharge of  
8 equipment, devices, or other material from a vessel  
9 for the sole purpose of conducting research on the  
10 aquatic environment or its natural resources in ac-  
11 cordance with generally recognized scientific meth-  
12 ods, principles, or techniques;

13 (5) any discharge into navigable waters from a  
14 vessel authorized by an on-scene coordinator in ac-  
15 cordance with part 300 of title 40, Code of Federal  
16 Regulations, or part 153 of title 33, Code of Federal  
17 Regulations;

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

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

24 (b) BALLAST WATER DISCHARGES.—No permit shall  
25 be required or prohibition enforced under any other provi-

1 sion of law for, nor shall any ballast water performance  
2 standards under this Act apply to—

3 (1) a ballast water discharge incidental to the  
4 normal operation of a vessel determined by the Sec-  
5 retary to—

6 (A) operate exclusively within a geographi-  
7 cally limited area;

8 (B) take up and discharge ballast water  
9 exclusively within 1 Captain of the Port Zone  
10 established by the Coast Guard unless the Sec-  
11 retary determines such discharge poses a sub-  
12 stantial risk of introduction or establishment of  
13 an aquatic nuisance species;

14 (C) operate pursuant to a geographic re-  
15 striction issued as a condition under section  
16 3309 of title 46, United States Code, or an  
17 equivalent restriction issued by the country of  
18 registration of the vessel; or

19 (D) continuously take on and discharge  
20 ballast water in a flow-through system that  
21 does not introduce aquatic nuisance species into  
22 navigable waters;

23 (2) a ballast water discharge incidental to the  
24 normal operation of a vessel consisting entirely of  
25 water suitable for human consumption; or

1           (3) a ballast water discharge incidental to the  
2           normal operation of a vessel in an alternative com-  
3           pliance program established pursuant to section (8).

4           (c) VESSELS WITH PERMANENT BALLAST WATER.—

5           No permit shall be required or prohibition enforced under  
6           any other provision of law for, nor shall any ballast water  
7           performance standard under this Act apply to a vessel that  
8           carries all of its permanent ballast water in sealed tanks  
9           that are not subject to discharge.

10          (d) VESSELS OF THE ARMED FORCES.—Nothing in  
11          this Act shall be interpreted to apply to a vessel of the  
12          Armed Forces, as defined in section 101(a) of title 10,  
13          United States Code.

14          **SEC. 8. ALTERNATIVE COMPLIANCE PROGRAM.**

15          (a) IN GENERAL.—The Secretary, in consultation  
16          with the Administrator, may promulgate regulations es-  
17          tablishing one or more compliance programs as an alter-  
18          native to ballast water discharge regulations issued under  
19          section 5 for a vessel that—

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

22                 (2) is less than 3 years from the end of the use-  
23                 ful life of the vessel, as determined by the Secretary;

24                 or

1           (3) discharges ballast water into a facility for  
2           the reception of ballast water that meets standards  
3           promulgated by the Administrator, in consultation  
4           with the Secretary.

5           (b) PROMULGATION OF FACILITY STANDARDS.—Not  
6           later than 1 year after the date of enactment of this Act,  
7           the Administrator, in consultation with the Secretary,  
8           shall promulgate standards for—

9                   (1) the reception of ballast water from a vessel  
10           into a reception facility; and

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

13 **SEC. 9. JUDICIAL REVIEW.**

14           (a) IN GENERAL.—An interested person may file a  
15           petition for review of a final regulation promulgated under  
16           this Act in the United States Court of Appeals for the  
17           District of Columbia Circuit.

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

21           (c) EXCEPTION.—Notwithstanding subsection (b), a  
22           petition that is based solely on grounds that arise after  
23           the deadline to file a petition under subsection (b) has  
24           passed may be filed not later than 120 days after the date  
25           that the grounds first arise.

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

2 (a) IN GENERAL.—No State or political subdivision  
3 thereof may adopt or enforce any statute or regulation of  
4 the State or political subdivision with respect to a dis-  
5 charge incidental to the normal operation of a vessel after  
6 the date of enactment of this Act.

7 (b) SAVINGS CLAUSE.—Notwithstanding subsection  
8 (a), a State or political subdivision thereof may enforce  
9 a statute or regulation of the State or political subdivision  
10 with respect to ballast water discharges incidental to the  
11 normal operation of a vessel that specifies a ballast water  
12 performance standard that is more stringent than the bal-  
13 last water performance standard specified in the notice of  
14 proposed rulemaking referred to in section 5(a)(1)(B) and  
15 is in effect on the date of enactment of this Act if the  
16 Secretary, after consultation with the Administrator and  
17 any other Federal department or agency the Secretary  
18 considers appropriate, makes a determination that—

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

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

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

4           (c) PETITION PROCESS.—

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

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

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

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

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

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

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



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

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