

115TH CONGRESS
1ST SESSION

H. R. 1154

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2017

Mr. HUNTER (for himself, Mr. CUMMINGS, Mr. GIBBS, Mr. KING of New York, Mr. BYRNE, Mr. FARENTHOLD, Mr. LOBIONDO, Mr. RICHMOND, Mr. BOST, Mr. HARPER, Mr. JENKINS of West Virginia, Mr. BABIN, Mr. GRAVES of Louisiana, and Mr. LEWIS of Minnesota) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

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

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

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

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

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Existing ballast water regulations.
- Sec. 4. Ballast water discharge requirements.
- Sec. 5. Review of ballast water discharge standard.
- Sec. 6. Alternative compliance program.
- Sec. 7. Reception facilities.
- Sec. 8. Requirements for discharges incidental to the normal operation of a commercial vessel.
- Sec. 9. Judicial review.
- Sec. 10. State enforcement.
- Sec. 11. Effect on State authority.
- Sec. 12. Effect on other laws.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

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

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

13 (3) BALLAST WATER.—The term “ballast
14 water” means any water and suspended matter
15 taken on board a commercial vessel to control or
16 maintain trim, draught, stability, or stresses of the
17 commercial vessel, regardless of how it is carried.

18 (4) BALLAST WATER DISCHARGE STANDARD.—
19 The term “ballast water discharge standard” means

1 the numerical ballast water discharge standard set
2 forth in section 151.2030 of title 33, Code of Fed-
3 eral Regulations, or section 151.1511 of title 33,
4 Code of Federal Regulations, or a revised numerical
5 ballast water discharge standard established under
6 section 5, as applicable.

7 (5) BALLAST WATER MANAGEMENT SYSTEM.—

8 The term “ballast water management system”
9 means any system (including all ballast water treat-
10 ment equipment and all associated control and moni-
11 toring equipment) that processes ballast water to
12 kill, render harmless, or remove organisms.

13 (6) COMMERCIAL VESSEL.—

14 (A) IN GENERAL.—The term “commercial
15 vessel” means a vessel (as defined in section 3
16 of title 1, United States Code) that is engaged
17 in commercial service (as defined in section
18 2101 of title 46, United States Code).

19 (B) EXCLUSION.—The term “commercial
20 vessel” does not include a recreational vessel.

21 (7) DISCHARGE INCIDENTAL TO THE NORMAL
22 OPERATION OF A COMMERCIAL VESSEL.—

23 (A) IN GENERAL.—The term “discharge
24 incidental to the normal operation of a commer-
25 cial vessel” means—

1 (i) a discharge into navigable waters
2 of the United States from a commercial
3 vessel of—

4 (I)(aa) graywater, bilge water,
5 cooling water, oil water separator ef-
6 fluent, anti-fouling hull coating leach-
7 ate, boiler or economizer blowdown,
8 byproducts from cathodic protection,
9 controllable pitch propeller and
10 thruster hydraulic fluid, distillation
11 and reverse osmosis brine, elevator pit
12 effluent, firemain system effluent,
13 freshwater layup effluent, gas turbine
14 wash water, motor gasoline and com-
15 pensating effluent, refrigeration and
16 air condensate effluent, seawater pip-
17 ing biofouling prevention substances,
18 boat engine wet exhaust, sonar dome
19 effluent, exhaust gas scrubber
20 washwater, or stern tube packing
21 gland effluent; or

22 (bb) any other pollutant associ-
23 ated with the operation of a marine
24 propulsion system, shipboard maneu-
25 vering system, habitability system, or

1 installed major equipment, or from a
2 protective, preservative, or absorptive
3 application to the hull of a commercial
4 vessel;

5 (II) deck runoff, deck washdown,
6 above the waterline hull cleaning ef-
7 fluent, aqueous film forming foam ef-
8 fluent, chain locker effluent, non-oily
9 machinery wastewater, underwater
10 ship husbandry effluent, welldeck ef-
11 fluent, or fish hold and fish hold
12 cleaning effluent; or

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

15 (ii) a discharge of a pollutant into
16 navigable waters of the United States in
17 connection with the testing, maintenance,
18 or repair of a system, equipment, or engine
19 described in subclause (I)(bb) or (III) of
20 clause (i) whenever the commercial vessel
21 is waterborne.

22 (B) EXCLUSIONS.—The term “discharge
23 incidental to the normal operation of a commer-
24 cial vessel” does not include—

1 (i) a discharge into navigable waters
2 of the United States from a commercial
3 vessel of—

4 (I) ballast water;

5 (II) rubbish, trash, garbage, in-
6 cinerator ash, or other such material
7 discharged overboard;

8 (III) oil or a hazardous sub-
9 stance, as those terms are defined in
10 section 311 of the Federal Water Pol-
11 lution Control Act (33 U.S.C. 1321);
12 or

13 (IV) sewage, as defined in section
14 312(a)(6) of the Federal Water Pollu-
15 tion Control Act (33 U.S.C.
16 1322(a)(6));

17 (ii) any emission of an air pollutant
18 resulting from the operation onboard a
19 commercial vessel of a commercial vessel
20 propulsion system, motor driven equip-
21 ment, or incinerator; or

22 (iii) any discharge into navigable
23 waters of the United States from a com-
24 mercial vessel when the commercial vessel

1 is operating in a capacity other than as a
2 means of transportation on water.

3 (8) GENERAL PERMIT.—The term “General
4 Permit” means the Final National Pollutant Dis-
5 charge Elimination System Vessel General Permit
6 for Discharges Incidental to the Normal Operation
7 of a Vessel noticed in the Federal Register on April
8 12, 2013 (78 Fed. Reg. 21938).

9 (9) GEOGRAPHICALLY LIMITED AREA.—The
10 term “geographically limited area” means an area—

11 (A) with a physical limitation that prevents
12 a commercial vessel from operating outside the
13 area, such as the Great Lakes and Saint Law-
14 rence River, as determined by the Secretary; or

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

19 (10) MAJOR CONVERSION.—The term “major
20 conversion” has the meaning given that term in sec-
21 tion 2101(14a) of title 46, United States Code.

22 (11) NAVIGABLE WATERS OF THE UNITED
23 STATES.—The term “navigable waters of the United
24 States” has the meaning given that term in section
25 2101(17a) of title 46, United States Code.

1 (12) OWNER OR OPERATOR.—The term “owner
2 or operator” means a person owning, operating, or
3 chartering by demise a commercial vessel.

4 (13) POLLUTANT.—The term “pollutant” has
5 the meaning given that term in section 502(6) of the
6 Federal Water Pollution Control Act (33 U.S.C.
7 1362(6)).

8 (14) RECREATIONAL VESSEL.—The term “rec-
9 reational vessel” has the meaning given that term in
10 section 2101(25) of title 46, United States Code.

11 (15) SECRETARY.—The term “Secretary”
12 means the Secretary of the department in which the
13 Coast Guard is operating.

14 **SEC. 3. EXISTING BALLAST WATER REGULATIONS.**

15 (a) EFFECT ON EXISTING REGULATIONS.—Any reg-
16 ulation issued pursuant to the Nonindigenous Aquatic
17 Nuisance Prevention and Control Act of 1990 that is in
18 effect on the date immediately preceding the effective date
19 of this Act, and that relates to a matter subject to regula-
20 tion under this Act, shall remain in full force and effect
21 unless or until superseded by a new regulation issued
22 under this Act relating to such matter.

23 (b) APPLICATION OF OTHER REGULATIONS.—The
24 regulations issued pursuant to the Nonindigenous Aquatic
25 Nuisance Prevention and Control Act of 1990 relating to

1 sanctions for violating a regulation under that Act shall
2 apply to violations of a regulation issued under this Act.

3 **SEC. 4. BALLAST WATER DISCHARGE REQUIREMENTS.**

4 (a) IN GENERAL.—

5 (1) REQUIREMENTS.—Except as provided in
6 paragraph (3), and subject to sections 151.2035 and
7 151.2036 of title 33, Code of Federal Regulations
8 (as in effect on the date of enactment of this Act),
9 an owner or operator may discharge ballast water
10 into navigable waters of the United States from a
11 commercial vessel covered under subsection (b) only
12 if—

13 (A) the discharge meets the ballast water
14 discharge standard; and

15 (B) the owner or operator discharges the
16 ballast water in accordance with other require-
17 ments established by the Secretary.

18 (2) COMMERCIAL VESSELS ENTERING THE
19 GREAT LAKES SYSTEM.—In the case of a commercial
20 vessel that enters the Great Lakes through the Saint
21 Lawrence River after operating outside the exclusive
22 economic zone of the United States or Canada, the
23 owner or operator shall—

24 (A) comply with the requirements of—

25 (i) paragraph (1);

1 (ii) subpart C of part 151 of title 33,
2 Code of Federal Regulations; and

3 (iii) section 401.30 of title 33, Code of
4 Federal Regulations; and

5 (B) conduct a complete ballast water ex-
6 change in an area that is 200 nautical miles or
7 more from any shore before the owner or oper-
8 ator may discharge ballast water while oper-
9 ating in the Saint Lawrence River or the Great
10 Lakes, subject to any requirements the Sec-
11 retary determines necessary with regard to such
12 exchange, or any ballast water management
13 system that is to be used in conjunction with
14 such exchange, to ensure that any discharge of
15 ballast water complies with the requirements of
16 paragraph (1).

17 (3) SAFETY EXEMPTION.—Notwithstanding
18 paragraphs (1) and (2), an owner or operator may
19 discharge any ballast water into navigable waters of
20 the United States from a commercial vessel if—

21 (A) the ballast water is discharged solely
22 to ensure the safety of life at sea;

23 (B) the ballast water is discharged acci-
24 dentally as the result of damage to the commer-
25 cial vessel or its 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 will-
5 fully or recklessly cause such damage; or

6 (C) the ballast water is discharged solely
7 for the purpose of avoiding or minimizing a dis-
8 charge from the commercial vessel of a pollut-
9 ant that would violate an applicable Federal or
10 State law.

11 (4) LIMITATION ON REQUIREMENTS.—In estab-
12 lishing requirements under this subsection, the Sec-
13 retary may not require the installation of a ballast
14 water management system on a commercial vessel
15 that—

16 (A) carries all of its ballast water in sealed
17 tanks that are not subject to discharge; or

18 (B) discharges ballast water solely into a
19 reception facility described in section 7.

20 (b) APPLICABILITY.—

21 (1) COVERED VESSELS.—Except as provided in
22 paragraph (2), subsection (a) shall apply to any
23 commercial vessel that is designed, constructed, or
24 adapted to carry ballast water while such commer-

1 cial vessel is operating in navigable waters of the
2 United States.

3 (2) EXEMPTED VESSELS.—Subsection (a) shall
4 not apply to a commercial vessel—

5 (A) that continuously takes on and dis-
6 charges ballast water in a flow-through system,
7 if such system does not introduce aquatic nui-
8 sance species into navigable waters of the
9 United States, as determined by the Secretary;

10 (B) that operates exclusively within a geo-
11 graphically limited area;

12 (C) that operates pursuant to a geographic
13 restriction issued as a condition under section
14 3309 of title 46, United States Code, or an
15 equivalent restriction issued by the country of
16 registration of the commercial vessel;

17 (D) in the National Defense Reserve Fleet
18 that is scheduled to be disposed of through
19 scrapping or sinking;

20 (E) that discharges ballast water con-
21 sisting solely of water taken aboard from a pub-
22 lic or commercial source that, at the time the
23 water is taken aboard, meets the applicable reg-
24 ulations or permit requirements for such source

1 under the Safe Drinking Water Act (42 U.S.C.
2 300f et seq.); or

3 (F) in an alternative compliance program
4 established pursuant to section 6.

5 (c) TYPE APPROVAL OF BALLAST WATER MANAGE-
6 MENT SYSTEMS THAT RENDER BALLAST WATER ORGA-
7 NISMS INCAPABLE OF REPRODUCTION.—

8 (1) IN GENERAL.—Notwithstanding chapter 5
9 of title 5, United States Code, part 151 of title 33,
10 Code of Federal Regulations, and part 162 of title
11 46, Code of Federal Regulations, a ballast water
12 management system that renders organisms in bal-
13 last water incapable of reproduction at the con-
14 centrations prescribed in the ballast water discharge
15 standard shall be type approved by the Secretary,
16 if—

17 (A) such system—

18 (i) undergoes type approval testing at
19 an independent laboratory designated by
20 the Secretary under such regulations; and

21 (ii) meets the requirements of subpart
22 162.060 of title 46, Code of Federal Regu-
23 lations, other than the requirements re-
24 lated to staining methods or measuring the
25 concentration of living organisms; and

1 (B) such laboratory uses a type approval
2 testing method described in a final policy letter
3 published under paragraph (2).

4 (2) TYPE APPROVAL TESTING METHODS.—

5 (A) DRAFT POLICY.—Not later than 60
6 days after the date of enactment of this Act,
7 the Secretary shall publish a draft policy letter
8 describing type approval testing methods capa-
9 ble of measuring the concentration of organisms
10 in ballast water that are capable of reproduc-
11 tion.

12 (B) PUBLIC COMMENT.—The Secretary
13 shall provide for a period of not more than 60
14 days for the public to comment on the draft
15 policy letter published under paragraph (1).

16 (C) FINAL POLICY.—Not later than 150
17 days after the date of enactment of this Act,
18 the Secretary shall publish a final policy letter
19 describing type approval testing methods capa-
20 ble of measuring the concentration of organisms
21 in ballast water that are capable of reproduc-
22 tion.

23 (D) REVISIONS.—The Secretary shall re-
24 vise such policy letter as additional testing
25 methods are determined by the Secretary to be

1 capable of measuring the concentration of orga-
2 nisms in ballast water that are capable of re-
3 production.

4 (E) CONSIDERATIONS.—In developing a
5 policy letter under this paragraph, the Sec-
6 retary—

7 (i) shall consider a type approval test-
8 ing method that uses organism grow out
9 and most probable number statistical anal-
10 ysis to determine the concentration of or-
11 ganisms in ballast water that are capable
12 of reproduction; and

13 (ii) shall not consider a type approval
14 testing method that relies on a staining
15 method that measures the concentration of
16 organisms greater than or equal to 10 mi-
17 crometers and organisms less than or
18 equal to 50 micrometers.

19 **SEC. 5. REVIEW OF BALLAST WATER DISCHARGE STAND-**
20 **ARD.**

21 (a) EFFECTIVENESS REVIEW.—

22 (1) IN GENERAL.—The Secretary shall conduct
23 reviews in accordance with this section to determine
24 whether revising the ballast water discharge stand-
25 ard would result in a reduction in the risk of the in-

1 introduction or establishment of aquatic nuisance spe-
2 cies.

3 (2) REQUIRED REVIEWS.—Not later than Janu-
4 ary 1, 2022, and every 10 years thereafter, the Sec-
5 retary, in consultation with the Administrator, shall
6 complete a review under paragraph (1).

7 (3) STATE PETITIONS FOR REVIEW.—

8 (A) IN GENERAL.—The Governor of a
9 State may submit a petition requesting that the
10 Secretary conduct a review under paragraph (1)
11 if there is significant new information that
12 could reasonably indicate the ballast water dis-
13 charge standard could be revised to result in a
14 reduction in the risk of the introduction or es-
15 tablishment of aquatic nuisance species.

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

20 (C) REQUIRED INFORMATION.—A petition
21 submitted to the Secretary under subparagraph
22 (A) shall include—

23 (i) a proposed ballast water discharge
24 standard that would result in a reduction

1 in the risk of the introduction or establish-
2 ment of aquatic nuisance species;

3 (ii) information regarding any ballast
4 water management systems that may
5 achieve the proposed ballast water dis-
6 charge standard;

7 (iii) the scientific and technical infor-
8 mation on which the petition is based, in-
9 cluding a description of the risk reduction
10 that would result from the proposed ballast
11 water discharge standard included under
12 clause (i); and

13 (iv) any additional information the
14 Secretary considers appropriate.

15 (D) PUBLIC AVAILABILITY.—Upon receipt
16 of a petition under subparagraph (A), the Sec-
17 retary shall make publicly available a copy of
18 the petition, including the information included
19 under subparagraph (C).

20 (E) TREATMENT OF MORE THAN ONE PE-
21 TITION AS A SINGLE PETITION.—The Secretary
22 may treat more than one petition submitted
23 under subparagraph (A) as a single such peti-
24 tion.

1 (F) AUTHORITY TO REVIEW.—After receiv-
2 ing a petition that meets the requirements of
3 this paragraph, the Secretary, in consultation
4 with the Administrator, may conduct a review
5 under paragraph (1).

6 (b) PRACTICABILITY REVIEW.—

7 (1) IN GENERAL.—If the Secretary determines
8 under subsection (a) that revision of the ballast
9 water discharge standard would result in a reduction
10 in the risk of the introduction or establishment of
11 aquatic nuisance species, the Secretary, in consulta-
12 tion with the Administrator, shall conduct a prac-
13 ticability review to determine whether—

14 (A) a ballast water management system
15 that is capable of achieving the ballast water
16 discharge standard as proposed to be revised is
17 economically achievable and operationally prac-
18 ticable; and

19 (B) testing protocols that can assure accu-
20 rate measurement of compliance with the bal-
21 last water discharge standard as proposed to be
22 revised can be practicably implemented.

23 (2) CRITERIA FOR PRACTICABILITY REVIEW.—

24 In conducting a practicability review under para-
25 graph (1), the Secretary shall consider—

1 (A) improvements in the scientific under-
2 standing of biological and ecological processes
3 that lead to the introduction or establishment of
4 aquatic nuisance species;

5 (B) improvements in ballast water manage-
6 ment systems, including—

7 (i) the capability of such systems to
8 achieve the ballast water discharge stand-
9 ard as proposed to be revised;

10 (ii) the effectiveness and reliability of
11 such systems in the shipboard environ-
12 ment;

13 (iii) the compatibility of such systems
14 with the design and operation of a com-
15 mercial vessel by class, type, and size;

16 (iv) the commercial availability of
17 such systems; and

18 (v) the safety of such systems;

19 (C) improvements in the capabilities to de-
20 tect, quantify, and assess whether aquatic nui-
21 sance species are capable of reproduction under
22 the ballast water discharge standard as pro-
23 posed to be revised;

24 (D) the impact of ballast water manage-
25 ment systems on water quality;

1 (E) the costs, cost-effectiveness, and ef-
2 fects of—

3 (i) a revised ballast water discharge
4 standard; and

5 (ii) maintaining the existing ballast
6 water discharge standard; and

7 (F) other criteria that the Secretary con-
8 siders appropriate.

9 (3) INFORMATION FROM STATES.—In con-
10 ducting a practicability review under paragraph (1),
11 the Secretary shall solicit information from the
12 States concerning matters the Secretary is required
13 to consider under paragraph (2).

14 (c) REVISED BALLAST WATER DISCHARGE STAND-
15 ARD.—The Secretary shall issue a rule to revise the ballast
16 water discharge standard if the Secretary, in consultation
17 with the Administrator, determines on the basis of the
18 practicability review under subsection (b) that—

19 (1) a ballast water management system that is
20 capable of achieving the ballast water discharge
21 standard as proposed to be revised is economically
22 achievable and operationally practicable; and

23 (2) testing protocols that can assure accurate
24 measurement of compliance with the ballast water

1 discharge standard as proposed to be revised can be
2 practicably implemented.

3 (d) REVISED BALLAST WATER DISCHARGE STAND-
4 ARD EFFECTIVE DATE AND COMPLIANCE DEADLINE.—

5 (1) IN GENERAL.—If the Secretary issues a
6 rule to revise the ballast water discharge standard
7 under subsection (c), the Secretary shall include in
8 such rule—

9 (A) an effective date for the revised ballast
10 discharge standard that is three years after the
11 date on which such rule is published in the Fed-
12 eral Register; and

13 (B) for the owner or operator of a com-
14 mercial vessel that is constructed or completes
15 a major conversion on or after the date that is
16 three years after the date on which the rule is
17 published in the Federal Register, a deadline to
18 comply with the revised ballast water discharge
19 standard that is the first day on which such
20 commercial vessel operates in navigable waters
21 of the United States.

22 (2) EXTENSIONS.—The Secretary shall estab-
23 lish a process for an owner or operator to submit a
24 petition to the Secretary for an extension of a com-
25 pliance deadline under paragraph (1)(B).

1 (3) FACTORS.—In reviewing a petition under
2 this subsection, the Secretary shall consider, with re-
3 spect to the ability of an owner or operator to meet
4 a compliance deadline, the following factors:

5 (A) Whether the ballast water management
6 system to be installed, if applicable, is available
7 in sufficient quantities to meet the compliance
8 deadline.

9 (B) Whether there is sufficient shipyard or
10 other installation facility capacity.

11 (C) Whether there is sufficient availability
12 of engineering and design resources.

13 (D) Commercial vessel characteristics, such
14 as engine room size, layout, or a lack of in-
15 stalled piping.

16 (E) Electric power generating capacity
17 aboard the commercial vessel.

18 (F) Safety of the commercial vessel and
19 crew.

20 (G) Any other factor that the Secretary de-
21 termines appropriate.

22 (4) CONSIDERATION OF PETITIONS.—

23 (A) DETERMINATIONS.—The Secretary
24 shall approve or deny a petition for an exten-

1 sion of a compliance deadline submitted by an
2 owner or operator under this subsection.

3 (B) DEADLINE.—If the Secretary does not
4 approve or deny a petition referred to in sub-
5 paragraph (A) on or before the last day of the
6 90-day period beginning on the date of submis-
7 sion of the petition, the petition shall be deemed
8 approved.

9 (5) PERIOD OF USE OF INSTALLED BALLAST
10 WATER MANAGEMENT SYSTEM.—

11 (A) IN GENERAL.—Subject to subpara-
12 graph (B), an owner or operator shall be con-
13 sidered to be in compliance with the ballast
14 water discharge standard if the ballast water
15 management system installed on the commercial
16 vessel complies with the ballast water discharge
17 standard in effect at the time of installation,
18 notwithstanding any revisions to the ballast
19 water discharge standard occurring after the in-
20 stallation, so long as—

21 (i) the owner or operator maintains
22 the ballast water management system in
23 proper working condition, as determined by
24 the Secretary; and

1 (ii) the ballast water management sys-
2 tem continues to meet the ballast water
3 discharge standard applicable to the com-
4 mercial vessel at the time of installation,
5 as determined by the Secretary.

6 (B) LIMITATION.—Subparagraph (A) shall
7 cease to apply with respect to a commercial ves-
8 sel after the first to occur of the following:

9 (i) The expiration of the service life of
10 the ballast water management system of
11 the commercial vessel, as determined by
12 the Secretary.

13 (ii) The expiration of the service life
14 of the commercial vessel, as determined by
15 the Secretary.

16 (iii) The completion of a major con-
17 version of the commercial vessel.

18 **SEC. 6. ALTERNATIVE COMPLIANCE PROGRAM.**

19 The Secretary, in consultation with the Adminis-
20 trator, may issue a rule establishing one or more compli-
21 ance programs as that may be used by an owner or oper-
22 ator as an alternative to compliance with the requirements
23 of section 4(a) for a commercial vessel that—

24 (1) has a maximum ballast water capacity of
25 less than 8 cubic meters; or

1 (2) is less than 3 years from the end of the
2 service life of the commercial vessel, as determined
3 by the Secretary.

4 **SEC. 7. RECEPTION FACILITIES.**

5 (a) IN GENERAL.—Notwithstanding the require-
6 ments of section 4(a), an owner or operator may discharge
7 ballast water into an onshore or offshore facility for the
8 reception of ballast water that meets the standards estab-
9 lished by the Administrator, in consultation with the Sec-
10 retary, under subsection (b).

11 (b) ISSUANCE OF STANDARDS.—Not later than 1
12 year after the date of enactment of this Act, the Adminis-
13 trator, in consultation with the Secretary, shall publish in
14 the Federal Register a rule establishing reasonable and
15 practicable standards for reception facilities to mitigate
16 adverse effects of aquatic nuisance species on navigable
17 waters of the United States.

18 **SEC. 8. REQUIREMENTS FOR DISCHARGES INCIDENTAL TO**
19 **THE NORMAL OPERATION OF A COMMERCIAL**
20 **VESSEL.**

21 (a) IN GENERAL.—Not later than 2 years after the
22 date of enactment of this Act, the Secretary, in consulta-
23 tion with the Administrator, shall publish in the Federal
24 Register a rule establishing best management practices for

1 discharges incidental to the normal operation of a com-
2 mercial vessel for commercial vessels that are—

3 (1) greater than or equal to 79 feet in length;

4 and

5 (2) not fishing vessels, including fish processing
6 vessels and fish tender vessels (as such terms are de-
7 fined in section 2101 of title 46, United States
8 Code).

9 (b) TRANSITION.—

10 (1) IN GENERAL.—Notwithstanding the expira-
11 tion date for the General Permit, any practice, limi-
12 tation, or concentration applicable to any discharge
13 incidental to the normal operation of a commercial
14 vessel that is required by the General Permit on the
15 date of enactment of this Act, and any reporting re-
16 quirement required by the General Permit on such
17 date of enactment, shall remain in effect until the
18 effective date of a rule issued by the Secretary under
19 subsection (a).

20 (2) PART 6 CONDITIONS.—Notwithstanding
21 paragraph (1) and any other provision of law, the
22 terms and conditions of Part 6 of the General Per-
23 mit (relating to specific requirements for individual
24 States or Indian country lands) shall expire on the
25 date of enactment of this Act.

1 (c) APPLICATION TO CERTAIN VESSELS.—

2 (1) APPLICATION OF FEDERAL WATER POLLU-
3 TION CONTROL ACT.—No permit shall be required
4 under section 402 of the Federal Water Pollution
5 Control Act (33 U.S.C. 1342) or prohibition en-
6 forced under any other provision of law for, nor shall
7 any best management practice regarding a discharge
8 incidental to the normal operation of a commercial
9 vessel under this Act apply to, a discharge incidental
10 to the normal operation of a commercial vessel if the
11 commercial vessel is—

12 (A) less than 79 feet in length; or

13 (B) a fishing vessel, including a fish proc-
14 essing vessel and a fish tender vessel (as such
15 terms are defined in section 2101 of title 46,
16 United States Code).

17 (2) APPLICATION OF GENERAL PERMIT.—The
18 terms and conditions of the General Permit shall
19 cease to apply to vessels described in subparagraphs
20 (A) and (B) of paragraph (1) on the date of enact-
21 ment of this Act.

22 (d) STATE PETITION FOR REVISION OF BEST MAN-
23 AGEMENT PRACTICES.—

24 (1) IN GENERAL.—The Governor of a State
25 may submit a petition requesting that the Secretary

1 revise a best management practice established under
2 subsection (a) if there is significant new information
3 that could reasonably indicate that—

4 (A) revising the best management practice
5 would substantially reduce the adverse effects
6 on navigable waters of the United States of dis-
7 charges incidental to the normal operation of a
8 commercial vessel; and

9 (B) the revised best management practice
10 would be economically achievable and operation-
11 ally practicable.

12 (2) REQUIRED INFORMATION.—A petition sub-
13 mitted to the Secretary under paragraph (1) shall
14 include—

15 (A) the scientific and technical information
16 on which the petition is based; and

17 (B) any additional information the Sec-
18 retary considers appropriate.

19 (3) PUBLIC AVAILABILITY.—Upon receipt of a
20 petition under paragraph (1), the Secretary shall
21 make publicly available a copy of the petition, in-
22 cluding the information included under paragraph
23 (2).

24 (4) TREATMENT OF MORE THAN ONE PETITION
25 AS A SINGLE PETITION.—The Secretary may treat

1 more than one petition submitted under paragraph
2 (1) as a single such petition.

3 (5) REVISION OF BEST MANAGEMENT PRAC-
4 TICES.—If, after reviewing a petition submitted by a
5 Governor under paragraph (1), the Secretary, in
6 consultation with the Administrator, determines that
7 revising a best management practice would substan-
8 tially reduce the adverse effects on navigable waters
9 of the United States of discharges incidental to the
10 normal operation of a commercial vessel, and the re-
11 vised best management practice would be economi-
12 cally achievable and operationally practicable, the
13 Secretary may, in consultation with the Adminis-
14 trator, issue a rule to revise the best management
15 practice established under subsection (a).

16 **SEC. 9. JUDICIAL REVIEW.**

17 (a) IN GENERAL.—A person may file a petition for
18 review of a final rule issued under this Act in the United
19 States Court of Appeals for the District of Columbia Cir-
20 cuit.

21 (b) DEADLINE.—

22 (1) IN GENERAL.—A petition under this section
23 shall be filed not later than 120 days after the date
24 on which the rule is published in the Federal Reg-
25 ister.

1 (2) EXCEPTION.—Notwithstanding paragraph
2 (1), a petition that is based solely on grounds that
3 arise after the deadline to file a petition under para-
4 graph (1) has passed may be filed not later than
5 120 days after the date on which such grounds first
6 arise.

7 **SEC. 10. STATE ENFORCEMENT.**

8 The Secretary may enter into an agreement with the
9 Governor of a State to allow the State to enforce the provi-
10 sions of this Act, as the Secretary considers appropriate.

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

12 (a) IN GENERAL.—Except as provided in subsection
13 (b) and as necessary to implement an agreement entered
14 into under section 10, no State or political subdivision
15 thereof may adopt or enforce any statute, regulation, or
16 other requirement of the State or political subdivision with
17 respect to—

18 (1) a discharge into navigable waters of the
19 United States from a commercial vessel of ballast
20 water; or

21 (2) a discharge incidental to the normal oper-
22 ation of a commercial vessel.

23 (b) PRESERVATION OF AUTHORITY.—Nothing in this
24 Act affects the authority of a State or political subdivision
25 thereof to adopt or enforce any statute, regulation, or

1 other requirement with respect to any water or other sub-
2 stance discharged or emitted from a vessel in preparation
3 for transport of the vessel by land from one body of water
4 to another.

5 **SEC. 12. EFFECT ON OTHER LAWS.**

6 (a) APPLICATION OF FEDERAL WATER POLLUTION
7 CONTROL ACT.—

8 (1) IN GENERAL.—Except as provided in sec-
9 tion 8(b), on or after the date of enactment of this
10 Act, the Federal Water Pollution Control Act (33
11 U.S.C. 1251 et seq.) shall not apply to a discharge
12 into navigable waters of the United States of ballast
13 water from a commercial vessel or a discharge inci-
14 dental to the normal operation of a commercial ves-
15 sel.

16 (2) OIL AND HAZARDOUS SUBSTANCE LIABIL-
17 ITY; MARINE SANITATION DEVICES.—Nothing in this
18 Act shall affect the application to a commercial ves-
19 sel of—

20 (A) section 311 of the Federal Water Pol-
21 lution Control Act (33 U.S.C. 1321); or

22 (B) section 312 of the Federal Water Pol-
23 lution Control Act (33 U.S.C. 1322).

1 (b) ESTABLISHED REGIMES.—Notwithstanding any
2 other provision of this Act, nothing in this Act shall affect
3 the authority of the Federal Government under—

4 (1) the Act to Prevent Pollution from Ships (33
5 U.S.C. 1901 et seq.) with respect to the regulation
6 by the Federal Government of any discharge or
7 emission that, on or after the date of enactment of
8 this Act, is covered under the International Conven-
9 tion for the Prevention of Pollution from Ships,
10 1973, as modified by the Protocol of 1978; and

11 (2) title X of the Coast Guard Authorization
12 Act of 2010 (33 U.S.C. 3801 et seq.) with respect
13 to the regulation by the Federal Government of any
14 anti-fouling system that, on or after the date of en-
15 actment of this Act, is covered under the Inter-
16 national Convention on the Control of Harmful Anti-
17 Fouling Systems on Ships, 2001.

18 (c) INTERNATIONAL LAW.—

19 (1) IN GENERAL.—Any action taken under this
20 Act shall be taken in accordance with international
21 law.

22 (2) STANDARDS.—This Act shall not be con-
23 strued to impose any design, equipment, or oper-
24 ation standard on a commercial vessel not docu-
25 mented under the laws of the United States and en-

1 gaged in innocent passage unless the standard im-
2 plements a generally accepted international rule, as
3 determined by the Secretary.

4 (d) OTHER AUTHORITIES.—Nothing in this Act shall
5 affect the authority of the Secretary of Commerce or the
6 Secretary of the Interior, as the case may be, to admin-
7 ister those lands or waters under such Secretary’s admin-
8 istrative control.

9 (e) CONFORMING AMENDMENT.—Section 1205 of the
10 Nonindigenous Aquatic Nuisance Prevention and Control
11 Act of 1990 (16 U.S.C. 4725) is amended by adding at
12 the end the following: “Ballast water and discharges inci-
13 dental to the normal operation of a commercial vessel, as
14 those terms are defined in the Commercial Vessel Inci-
15 dental Discharge Act, shall be regulated pursuant to such
16 Act.”.

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