

115TH CONGRESS
1ST SESSION

S. 168

To amend and enhance certain maritime programs of the Department of
Transportation.

IN THE SENATE OF THE UNITED STATES

JANUARY 17, 2017

Mr. WICKER (for himself, Mr. CASEY, Mr. RUBIO, Mr. NELSON, and Mr.
THUNE) introduced the following bill; which was read twice and referred
to the Committee on Commerce, Science, and Transportation

A BILL

To amend and enhance certain maritime programs of the
Department of Transportation.

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 for
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
20 the numerical ballast water discharge standard set
21 forth in section 151.2030 of title 33, Code of Fed-
22 eral Regulations, or section 151.1511 of such title,

1 or a revised numerical ballast water discharge stand-
 2 ard established under section 5, as applicable.

3 (5) BALLAST WATER MANAGEMENT SYSTEM.—

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

9 (6) COMMERCIAL VESSEL.—

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

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

17 (7) DISCHARGE INCIDENTAL TO THE NORMAL
 18 OPERATION OF A COMMERCIAL VESSEL.—

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

22 (i) a discharge into navigable waters
 23 of the United States from a commercial
 24 vessel of—

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

1 application to the hull of a commercial
2 vessel;

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

11 (III) any effluent from a properly
12 functioning marine engine; or

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

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

23 (i) a discharge into navigable waters
24 of the United States from a commercial
25 vessel of—

1 (I) ballast water;

2 (II) rubbish, trash, garbage, in-
3 cinerator ash, or other such material
4 discharged overboard;

5 (III) oil or a hazardous substance
6 (as such terms are defined in section
7 311 of the Federal Water Pollution
8 Control Act (33 U.S.C. 1321)); or

9 (IV) sewage (as defined in sec-
10 tion 312(a)(6) of the Federal Water
11 Pollution Control Act (33 U.S.C.
12 1322(a)(6))); or

13 (ii) any emission of an air pollutant
14 resulting from the operation onboard a
15 commercial vessel of a commercial vessel
16 propulsion system, motor driven equip-
17 ment, or incinerator; or

18 (iii) any discharge into navigable
19 waters of the United States from a com-
20 mercial vessel when the commercial vessel
21 is operating in a capacity other than as a
22 means of transportation on water.

23 (8) GENERAL PERMIT.—The term “General
24 Permit” means the Final National Pollutant Dis-
25 charge Elimination System Vessel General Permit

1 for Discharges Incidental to the Normal Operation
2 of a Vessel noticed in the Federal Register on April
3 12, 2013 (78 Fed. Reg. 21938).

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

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

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

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

17 (11) NAVIGABLE WATERS OF THE UNITED
18 STATES.—The term “navigable waters of the United
19 States” has the meaning given such term in section
20 2101(17a) of title 46, United States Code.

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

24 (13) POLLUTANT.—The term “pollutant” has
25 the meaning given such term in section 502(6) of

1 the Federal Water Pollution Control Act (33 U.S.C.
2 1362(6)).

3 (14) RECREATIONAL VESSEL.—The term “rec-
4 reational vessel” has the meaning given such term in
5 section 2101(25) of title 46, United States Code.

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

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

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

18 (b) APPLICATION OF OTHER REGULATIONS.—The
19 regulations issued pursuant to the Nonindigenous Aquatic
20 Nuisance Prevention and Control Act of 1990 (16 U.S.C.
21 4701 et seq.) relating to sanctions for violating a regula-
22 tion under that Act shall apply to violations of a regulation
23 issued under this Act.

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

25 (a) IN GENERAL.—

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

9 (A) by applying the best available tech-
10 nology that is economically achievable, the dis-
11 charge meets the ballast water discharge stand-
12 ard; and

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

16 (2) COMMERCIAL VESSELS ENTERING THE
17 GREAT LAKES SYSTEM.—If a commercial vessel en-
18 ters the Great Lakes through the Saint Lawrence
19 River after operating outside the exclusive economic
20 zone of the United States or Canada, the owner or
21 operator shall—

22 (A) comply with the requirements of—

23 (i) paragraph (1);

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

1 (iii) section 401.30 of such title; and

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

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

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

20 (B) the ballast water is discharged acci-
21 dentally as the result of damage to the commer-
22 cial vessel or its equipment and—

23 (i) all reasonable precautions to pre-
24 vent or minimize the discharge have been
25 taken; and

1 (ii) the owner or operator did not will-
2 fully or recklessly cause such damage; or

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

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

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

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

17 (b) APPLICABILITY.—

18 (1) COVERED VESSELS.—Except as provided in
19 paragraph (2), subsection (a) shall apply to any
20 commercial vessel that is designed, constructed, or
21 adapted to carry ballast water while such commer-
22 cial vessel is operating in navigable waters of the
23 United States.

24 (2) EXEMPTED VESSELS.—Subsection (a) shall
25 not apply to a commercial vessel—

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

6 (B) that operates exclusively within a geo-
7 graphically limited area;

8 (C) that operates pursuant to a geographic
9 restriction issued as a condition under section
10 3309 of title 46, United States Code, or an
11 equivalent restriction issued by the country of
12 registration of the commercial vessel;

13 (D) in the National Defense Reserve Fleet
14 that is scheduled to be disposed of through
15 scrapping or sinking;

16 (E) that discharges ballast water con-
17 sisting solely of water taken aboard from a pub-
18 lic or commercial source that, at the time the
19 water is taken aboard, meets the applicable reg-
20 ulations or permit requirements for such source
21 under the Safe Drinking Water Act (42 U.S.C.
22 300f et seq.); or

23 (F) in an alternative compliance program
24 established pursuant to section 6.

1 (c) TYPE APPROVAL OF BALLAST WATER MANAGE-
 2 MENT SYSTEMS THAT RENDER BALLAST WATER ORGA-
 3 NISMS INCAPABLE OF REPRODUCTION.—

4 (1) IN GENERAL.—Notwithstanding chapter 5
 5 of title 5, United States Code, part 151 of title 33,
 6 Code of Federal Regulations, and part 162 of title
 7 46, Code of Federal Regulations, a ballast water
 8 management system that renders organisms in bal-
 9 last water incapable of reproduction at the con-
 10 centrations prescribed in the ballast water discharge
 11 standard shall be type approved by the Secretary,
 12 if—

13 (A) such system—

14 (i) undergoes type approval testing at
 15 an independent laboratory designated by
 16 the Secretary under such regulations; and

17 (ii) meets the requirements of subpart
 18 162.060 of title 46, Code of Federal Regu-
 19 lations, other than the requirements re-
 20 lated to staining methods or measuring the
 21 concentration of living organisms; and

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

25 (2) TYPE APPROVAL TESTING METHODS.—

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

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

12 (C) FINAL POLICY.—Not later than 150
13 days after the date of the enactment of this
14 Act, the Secretary shall publish a final policy
15 letter describing type approval testing methods
16 capable of measuring the concentration of orga-
17 nisms in ballast water that are capable of re-
18 production.

19 (D) REVISIONS.—The Secretary shall re-
20 vise such policy letter as additional testing
21 methods are determined by the Secretary to be
22 capable of measuring the concentration of orga-
23 nisms in ballast water that are capable of re-
24 production.

(E) CONSIDERATIONS.—In developing a policy letter under this paragraph, the Secretary—

(i) shall consider a type approval testing method that uses organism grow out and most probable number statistical analysis to determine the concentration of organisms in ballast water that are capable of reproduction; and

(ii) shall not consider a type approval testing method that relies on a staining method that measures the concentration of organisms greater than or equal to 10 micrometers and organisms less than or equal to 50 micrometers.

SEC. 5. REVIEW OF BALLAST WATER DISCHARGE STANDARD.

(a) EFFECTIVENESS REVIEW.—

(1) IN GENERAL.—The Secretary shall conduct reviews in accordance with this section to determine whether revising the ballast water discharge standard based on the application of the best available technology that is economically achievable would result in a reduction in the risk of the introduction or establishment of aquatic nuisance species.

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

5 (3) STATE PETITIONS FOR REVIEW.—

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

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

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

21 (i) a proposed ballast water discharge
22 standard that would result in a reduction
23 in the risk of the introduction or establish-
24 ment of aquatic nuisance species;

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

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

11 (iv) any additional information the
12 Secretary considers appropriate.

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

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

23 (F) AUTHORITY TO REVIEW.—After receiv-
24 ing a petition that meets the requirements of
25 this paragraph, the Secretary, in consultation

1 with the Administrator, may conduct a review
2 under paragraph (1).

3 (b) PRACTICABILITY REVIEW.—

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

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

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

20 (2) CRITERIA FOR PRACTICABILITY REVIEW.—

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

23 (A) improvements in the scientific under-
24 standing of biological and ecological processes

1 that lead to the introduction or establishment of
2 aquatic nuisance species;

3 (B) improvements in ballast water manage-
4 ment systems, including—

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

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

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

14 (iv) the commercial availability of
15 such systems; and

16 (v) the safety of such systems;

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

22 (D) the impact of ballast water manage-
23 ment systems on water quality;

24 (E) the costs, cost-effectiveness, and ef-
25 fects of—

- 1 (i) a revised ballast water discharge
2 standard; and
3 (ii) maintaining the existing ballast
4 water discharge standard; and
5 (F) other criteria that the Secretary con-
6 sider appropriate.

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

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

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

21 (2) testing protocols that can assure accurate
22 measurement of compliance with the ballast water
23 discharge standard as proposed to be revised can be
24 practicably implemented.

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

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

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

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

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

24 (3) FACTORS.—In reviewing a petition under
25 this subsection, the Secretary shall consider, with re-

1 spect to the ability of an owner or operator to meet
2 a compliance deadline—

3 (A) whether the ballast water management
4 system to be installed, if applicable, is available
5 in sufficient quantities to meet the compliance
6 deadline;

7 (B) whether there is sufficient shipyard or
8 other installation facility capacity;

9 (C) whether there is sufficient availability
10 of engineering and design resources;

11 (D) commercial vessel characteristics, such
12 as engine room size, layout, or a lack of in-
13 stalled piping;

14 (E) electric power generating capacity
15 aboard the commercial vessel;

16 (F) the safety of the commercial vessel and
17 crew; and

18 (G) any other factor that the Secretary de-
19 termines appropriate.

20 (4) CONSIDERATION OF PETITIONS.—

21 (A) DETERMINATIONS.—The Secretary
22 shall approve or deny a petition for an exten-
23 sion of a compliance deadline submitted by an
24 owner or operator under this subsection.

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

7 (5) PERIOD OF USE OF INSTALLED BALLAST
 8 WATER MANAGEMENT SYSTEM.—

9 (A) IN GENERAL.—Subject to subpara-
 10 graph (B), an owner or operator shall be con-
 11 sidered to be in compliance with the ballast
 12 water discharge standard if—

13 (i) the ballast water management sys-
 14 tem installed on the commercial vessel
 15 complies with the ballast water discharge
 16 standard in effect at the time of installa-
 17 tion, notwithstanding any revisions to the
 18 ballast water discharge standard occurring
 19 after the installation;

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

24 (iii) the ballast water management
 25 system continues to meet the ballast water

1 discharge standard applicable to the com-
 2 mercial vessel at the time of installation,
 3 as determined by the Secretary.

4 (B) LIMITATION.—Subparagraph (A) shall
 5 cease to apply with respect to a commercial ves-
 6 sel after—

7 (i) the expiration of the service life of
 8 the ballast water management system of
 9 the commercial vessel, as determined by
 10 the Secretary;

11 (ii) the expiration of the service life of
 12 the commercial vessel, as determined by
 13 the Secretary; or

14 (iii) the completion of a major conver-
 15 sion of the commercial vessel.

16 **SEC. 6. ALTERNATIVE COMPLIANCE PROGRAM.**

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

22 (1) has a maximum ballast water capacity of
 23 less than eight cubic meters; or

1 (2) is less than three 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 under section 4(a), an owner or operator may dis-
7 charge ballast water into an onshore or offshore facility
8 for the reception of ballast water that meets the standards
9 established by the Administrator, in consultation with the
10 Secretary, under subsection (b).

11 (b) ISSUANCE OF STANDARDS.—Not later than one
12 year after the date of the enactment of this Act, the Ad-
13 ministrator, in consultation with the Secretary, shall pub-
14 lish a rule in the Federal Register that establishes reason-
15 able and practicable standards for reception facilities to
16 mitigate adverse effects of aquatic nuisance species on
17 navigable 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 two years after the
22 date of the enactment of this Act, the Secretary, in con-
23 sultation with the Administrator, shall publish a rule in
24 the Federal Register that establishes best management

1 practices for discharges incidental to the normal operation
2 of a commercial 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 the enactment of this Act, and any reporting
16 requirement 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 the 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 the en-
 21 actment 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 to the Secretary requesting

1 that the Secretary revise a best management prac-
2 tice established under subsection (a) if there is sig-
3 nificant new information that could reasonably indi-
4 cate that—

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

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

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

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

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

20 (3) PUBLIC AVAILABILITY.—Upon receiving a
21 petition under paragraph (1), the Secretary shall
22 make publicly available a copy of the petition, in-
23 cluding the information included under paragraph
24 (2).

1 (4) TREATMENT OF MORE THAN ONE PETITION
 2 AS A SINGLE PETITION.—The Secretary may treat
 3 more than one petition submitted under paragraph
 4 (1) as a single petition.

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

18 **SEC. 9. JUDICIAL REVIEW.**

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

23 (b) DEADLINE.—

24 (1) IN GENERAL.—A petition shall be filed
 25 under this section not later than 120 days after the

1 date on which the rule to be reviewed is published
2 in the Federal Register.

3 (2) EXCEPTION.—Notwithstanding paragraph
4 (1), a petition that is based solely on grounds that
5 arise after the deadline to file a petition under para-
6 graph (1) has passed may be filed not later than
7 120 days after the date on which such grounds first
8 arise.

9 **SEC. 10. STATE ENFORCEMENT.**

10 The Secretary may enter into an agreement with the
11 Governor of a State to authorize the State to enforce the
12 provisions of this Act, as the Secretary considers appro-
13 priate.

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

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

21 (1) a discharge into navigable waters of the
22 United States from a commercial vessel of ballast
23 water; or

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

1 (b) PRESERVATION OF AUTHORITY.—Nothing in this
 2 Act may be construed as affecting the authority of a State
 3 or political subdivision thereof to adopt or enforce any
 4 statute, regulation, or other requirement with respect to
 5 any water or other substance discharged or emitted from
 6 a vessel in preparation for transport of the vessel by land
 7 from one body of water to another body of water.

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

9 (a) APPLICATION OF FEDERAL WATER POLLUTION
 10 CONTROL ACT.—

11 (1) IN GENERAL.—Except as provided in sec-
 12 tion 8(b), on or after the date of the enactment of
 13 this Act, the Federal Water Pollution Control Act
 14 (33 U.S.C. 1251 et seq.) shall not apply to a dis-
 15 charge into navigable waters of the United States of
 16 ballast water from a commercial vessel or a dis-
 17 charge incidental to the normal operation of a com-
 18 mercial vessel.

19 (2) OIL AND HAZARDOUS SUBSTANCE LIABIL-
 20 ITY; MARINE SANITATION DEVICES.—Nothing in this
 21 Act may be construed as affecting the application to
 22 a commercial vessel of section 311 or 312 of the
 23 Federal Water Pollution Control Act (33 U.S.C.
 24 1321 and 1322).

1 (b) ESTABLISHED REGIMES.—Notwithstanding any
2 other provision of this Act, nothing in this Act may be
3 construed as affecting the authority of the Federal Gov-
4 ernment under—

5 (1) the Act to Prevent Pollution from Ships (33
6 U.S.C. 1901 et seq.) with respect to the regulation
7 by the Federal Government of any discharge or
8 emission that, on or after the date of enactment of
9 this Act, is covered under the International Conven-
10 tion for the Prevention of Pollution from Ships,
11 1973, as modified by the Protocol of 1978; and

12 (2) title X of the Coast Guard Authorization
13 Act of 2010 (33 U.S.C. 3801 et seq.) with respect
14 to the regulation by the Federal Government of any
15 anti-fouling system that, on or after the date of en-
16 actment of this Act, is covered under the Inter-
17 national Convention on the Control of Harmful Anti-
18 fouling Systems on Ships, done at London October
19 5, 2001.

20 (c) INTERNATIONAL LAW.—

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

24 (2) STANDARDS.—Nothing in this Act may be
25 construed to impose any design, equipment, or oper-

1 ation standard on a commercial vessel not docu-
2 mented under the laws of the United States and en-
3 gaged in innocent passage unless the standard im-
4 plements a generally accepted international rule, as
5 determined by the Secretary.

6 (d) OTHER AUTHORITIES.—Nothing in this Act may
7 construed as affecting the authority of the Secretary of
8 Commerce or the Secretary of the Interior, as the case
9 may be, to administer lands or waters under such Sec-
10 retary’s administrative control.

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

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