

M. R.

AMENDMENT NO. _____ Calendar No. _____

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

IN THE SENATE OF THE UNITED STATES—114th Cong.. 2d Sess.

	AMENDMENT N^o 3527	
To amend	By <i>Rubio</i>	tly
ex	To: <i>Amdt. No. 3464</i>	er
pu		
Refer	<i>41</i>	d
	Page(s)	
	<small>GPO: 2014 91-623 (mac)</small>	

AMENDMENT intended to be proposed by Mr. RUBIO (for himself, Mrs. CAPITO, Mr. CASSIDY, Mr. GRAHAM, Mr. MANCHIN, Mr. RISCH, Mrs. SHAHEEN, Mr. SULLIVAN, and Mr. VITTER) to the amendment (No. 3464) proposed by Mr. THUNE

Mr. Blunt

Viz:

- 1 At the appropriate place, insert the following:
- 2 **TITLE _____—VESSEL INCIDENTAL**
- 3 **DISCHARGE ACT**
- 4 **SEC. 01. SHORT TITLE.**

5 This title may be cited as the “Vessel Incidental Dis-
6 charge Act”.

1 **SEC. 02. FINDINGS; PURPOSE.**

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

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

11 (2) The Coast Guard estimates there are ap-
12 proximately 21,560,000 State-registered recreational
13 vessels, 75,000 commercial fishing vessels, and
14 33,000 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.

20 (4) During the 32 years during which this regu-
21 latory exemption was in effect, Congress enacted
22 several statutes to deal with the regulation of dis-
23 charges incidental to the normal operation of a ves-
24 sel, including—

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

1 (B) the Nonindigenous Aquatic Nuisance
2 Prevention and Control Act of 1990 (16 U.S.C.
3 4701 et seq.);

4 (C) the National Invasive Species Act of
5 1996 (110 Stat. 4073);

6 (D) section 415 of the Coast Guard Au-
7 thorization Act of 1998 (112 Stat. 3434) and
8 section 623 of the Coast Guard and Maritime
9 Transportation Act of 2004 (33 U.S.C. 1901
10 note), which established interim and permanent
11 requirements, respectively, for the regulation of
12 vessel discharges of certain bulk cargo residue;

13 (E) title XIV of division B of Appendix D
14 of the Consolidated Appropriations Act, 2001
15 (114 Stat. 2763), which prohibited or limited
16 certain vessel discharges in certain areas of
17 Alaska;

18 (F) section 204 of the Maritime Transpor-
19 tation Security Act of 2002 (33 U.S.C. 1902a),
20 which established requirements for the regula-
21 tion of vessel discharges of agricultural cargo
22 residue material in the form of hold washings;
23 and

24 (G) title X of the Coast Guard Authoriza-
25 tion Act of 2010 (33 U.S.C. 3801 et seq.),

1 which provided for the implementation of the
2 International Convention on the Control of
3 Harmful Anti-Fouling Systems on Ships, 2001.

4 (b) PURPOSE.—The purpose of this title is to provide
5 for the establishment of nationally uniform and environ-
6 mentally sound standards and requirements for the man-
7 agement of discharges incidental to the normal operation
8 of a vessel.

9 **SEC. _03. DEFINITIONS.**

10 In this title:

11 (1) ADMINISTRATOR.—The term “Adminis-
12 trator” means the Administrator of the Environ-
13 mental Protection Agency.

14 (2) AQUATIC NUISANCE SPECIES.—The term
15 “aquatic nuisance species” means a nonindigenous
16 species (including a pathogen) that threatens the di-
17 versity or abundance of native species or the ecologi-
18 cal stability of navigable waters or commercial, agri-
19 cultural, aquacultural, or recreational activities de-
20 pendent on such waters.

21 (3) BALLAST WATER.—

22 (A) IN GENERAL.—The term “ballast
23 water” means any water and water-suspended
24 matter taken aboard a vessel—

1 (i) to control or maintain trim, list,
2 draught, stability, or stresses of the vessel;
3 or

4 (ii) during the cleaning, maintenance,
5 or other operation of a ballast water treat-
6 ment technology of the vessel.

7 (B) EXCLUSIONS.—The term “ballast
8 water” does not include any substance that is
9 added to water described in subparagraph (A)
10 that is not directly related to the operation of
11 a properly functioning ballast water treatment
12 technology under this title.

13 (4) BALLAST WATER DISCHARGE STANDARD.—
14 The term “ballast water discharge standard” means
15 the numerical ballast water discharge standard set
16 forth in section 151.2030 of title 33, Code of Fed-
17 eral Regulations or section 151.1511 of title 33,
18 Code of Federal Regulations, as applicable, or a re-
19 vised numerical ballast water discharge standard es-
20 tablished under subsection (a)(1)(B), (b), or (c) of
21 section __05.

22 (5) BALLAST WATER MANAGEMENT SYSTEM;
23 MANAGEMENT SYSTEM.—The terms “ballast water
24 management system” and “management system”
25 mean any system, including all ballast water treat-

1 ment equipment and associated control and moni-
2 toring equipment, used to process ballast water to
3 kill, remove, render harmless, or avoid the uptake or
4 discharge of organisms.

5 (6) BIOCIDE.—The term “biocide” means a
6 substance or organism, including a virus or fungus,
7 that is introduced into or produced by a ballast
8 water management system to reduce or eliminate
9 aquatic nuisance species as part of the process used
10 to comply with a ballast water discharge standard
11 under this title.

12 (7) DISCHARGE INCIDENTAL TO THE NORMAL
13 OPERATION OF A VESSEL.—

14 (A) IN GENERAL.—The term “discharge
15 incidental to the normal operation of a vessel”
16 means—

17 (i) a discharge into navigable waters
18 from a vessel of—

19 (I)(aa) ballast water, graywater,
20 bilge water, cooling water, oil water
21 separator effluent, anti-fouling hull
22 coating leachate, boiler or economizer
23 blowdown, byproducts from cathodic
24 protection, controllable pitch propeller
25 and thruster hydraulic fluid, distilla-

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

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

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

1 (III) any effluent from a properly
2 functioning marine engine; or

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

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

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

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

17 (II) oil or a hazardous substance
18 as those terms are defined in section
19 311 of the Federal Water Pollution
20 Control Act (33 U.S.C. 1321);

21 (III) sewage as defined in section
22 312(a)(6) of the Federal Water Pollu-
23 tion Control Act (33 U.S.C.
24 1322(a)(6)); or

1 (IV) graywater referred to in sec-
2 tion 312(a)(6) of the Federal Water
3 Pollution Control Act (33 U.S.C.
4 1322(a)(6));

5 (ii) an emission of an air pollutant re-
6 sulting from the operation onboard a vessel
7 of a vessel propulsion system, motor driven
8 equipment, or incinerator; or

9 (iii) a discharge into navigable waters
10 from a vessel when the vessel is operating
11 in a capacity other than as a means of
12 transportation on water.

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

15 (A) with a physical limitation, including
16 limitation by physical size and limitation by au-
17 thorized route such as the Great Lakes and St.
18 Lawrence River, that prevents a vessel from op-
19 erating outside the area, as determined by the
20 Secretary; or

21 (B) that is ecologically homogeneous, as
22 determined by the Secretary, in consultation
23 with the heads of other Federal departments or
24 agencies as the Secretary considers appropriate.

1 (9) MANUFACTURER.—The term “manufac-
2 turer” means a person engaged in the manufacture,
3 assemblage, or importation of ballast water treat-
4 ment technology.

5 (10) NAVIGABLE WATERS.—The term “navi-
6 gable waters” has the meaning given the term in
7 section 2.36 of title 33, Code of Federal Regula-
8 tions, as in effect on the date of the enactment of
9 this Act.

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

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

17 **SEC. _04. REGULATION AND ENFORCEMENT.**

18 (a) IN GENERAL.—

19 (1) ESTABLISHMENT.—The Secretary, in con-
20 sultation with the Administrator, shall establish, im-
21 plement, and enforce uniform national standards
22 and requirements for the regulation of discharges in-
23 cidental to the normal operation of a vessel.

1 (2) BASIS.—Except as provided under para-
2 graph (3), the standards and requirements estab-
3 lished under paragraph (1)—

4 (A) with respect to ballast water, shall be
5 based upon the best available technology that is
6 economically achievable;

7 (B) with respect to discharges incidental to
8 the normal operation of a vessel other than bal-
9 last water, shall be based on best management
10 practices; and

11 (C) shall supersede any permitting require-
12 ment or prohibition on discharges incidental to
13 the normal operation of a vessel under any
14 other provision of law.

15 (3) RULE OF CONSTRUCTION.—The standards
16 and requirements established under paragraph (1)
17 shall not supersede regulations, in place on the date
18 of the enactment of this Act or established by a rule-
19 making proceeding after such date of enactment,
20 which cover a discharge in a national marine sanc-
21 tuary or in a marine national monument.

22 (b) ADMINISTRATION AND ENFORCEMENT.—The
23 Secretary shall administer and enforce the uniform na-
24 tional standards and requirements under this title. Each

1 State may enforce the uniform national standards and re-
2 quirements under this title.

3 (c) SANCTIONS.—

4 (1) CIVIL PENALTIES.—

5 (A) BALLAST WATER.—Any person who
6 violates a regulation issued pursuant to this
7 title regarding a discharge incidental to the nor-
8 mal operation of a vessel of ballast water shall
9 be liable for a civil penalty in an amount not to
10 exceed \$25,000. Each day of a continuing viola-
11 tion constitutes a separate violation.

12 (B) OTHER DISCHARGE.—Any person who
13 violates a regulation issued pursuant to this
14 title regarding a discharge incidental to the nor-
15 mal operation of a vessel other than ballast
16 water shall be liable for a civil penalty in an
17 amount not to exceed \$10,000. Each day of a
18 continuing violation constitutes a separate viola-
19 tion.

20 (C) IN REM LIABILITY.—A vessel operated
21 in violation of a regulation issued under this
22 title shall be liable in rem for any civil penalty
23 assessed under this subsection for that viola-
24 tion.

25 (2) CRIMINAL PENALTIES.—

1 (A) BALLAST WATER.—Any person who
2 knowingly violates a regulation issued pursuant
3 to this title regarding a discharge incidental to
4 the normal operation of a vessel of ballast water
5 shall be punished by a fine of not more than
6 \$100,000, imprisonment for not more than 2
7 years, or both.

8 (B) OTHER DISCHARGE.—Any person who
9 knowingly violates a regulation issued pursuant
10 to this title regarding a discharge incidental to
11 the normal operation of a vessel other than bal-
12 last water shall be punished by a fine of not
13 more than \$50,000, imprisonment for not more
14 than 1 year, or both.

15 (3) REVOCATION OF CLEARANCE.—The Sec-
16 retary shall withhold or revoke the clearance of a
17 vessel required under section 60105 of title 46,
18 United States Code, if the owner or operator of the
19 vessel is in violation of a regulation issued pursuant
20 to this Act.

21 (4) EXCEPTION TO SANCTIONS.—It shall be an
22 affirmative defense to any charge of a violation of
23 this title that compliance with this title would, be-
24 cause of adverse weather, equipment failure, or any

1 other relevant condition, have threatened the safety
2 or stability of a vessel, its crew, or its passengers.

3 **SEC. _05. UNIFORM NATIONAL STANDARDS AND REQUIRE-**
4 **MENTS FOR THE REGULATION OF DIS-**
5 **CHARGES INCIDENTAL TO THE NORMAL OP-**
6 **ERATION OF A VESSEL.**

7 (a) REQUIREMENTS.—

8 (1) BALLAST WATER MANAGEMENT REQUIRE-
9 MENTS.—

10 (A) IN GENERAL.—Notwithstanding any
11 other provision of law, the requirements set
12 forth in the final rule, Standards for Living Or-
13 ganisms in Ships' Ballast Water Discharged in
14 U.S. Waters (77 Fed. Reg. 17254 (March 23,
15 2012), as corrected at 77 Fed. Reg. 33969
16 (June 8, 2012)), shall be the management re-
17 quirements for a ballast water discharge inci-
18 dental to the normal operation of a vessel until
19 the Secretary revises the ballast water discharge
20 standard under subsection (b) or adopts a more
21 stringent State standard under subparagraph
22 (B).

23 (B) ADOPTION OF MORE STRINGENT
24 STATE STANDARD.—If the Secretary makes a
25 determination in favor of a State petition under

1 section 610, the Secretary shall adopt the more
2 stringent ballast water discharge standard spec-
3 ified in the statute or regulation that is the
4 subject of that State petition instead of the bal-
5 last water discharge standard in the final rule
6 described under subparagraph (A).

7 (2) INITIAL MANAGEMENT REQUIREMENTS FOR
8 DISCHARGES OTHER THAN BALLAST WATER.—Not
9 later than 2 years after the date of enactment of
10 this Act, the Secretary, in consultation with the Ad-
11 ministrator, shall issue a final rule establishing best
12 management practices for discharges incidental to
13 the normal operation of a vessel other than ballast
14 water.

15 (b) REVISED BALLAST WATER DISCHARGE STAND-
16 ARD; 8-YEAR REVIEW.—

17 (1) IN GENERAL.—Subject to the feasibility re-
18 view under paragraph (2), not later than January 1,
19 2024, the Secretary, in consultation with the Admin-
20 istrator, shall issue a final rule revising the ballast
21 water discharge standard under subsection (a)(1) so
22 that a ballast water discharge incidental to the nor-
23 mal operation of a vessel will contain—

24 (A) less than 1 organism that is living or
25 has not been rendered harmless per 10 cubic

1 meters that is 50 or more micrometers in min-
2 imum dimension;

3 (B) less than 1 organism that is living or
4 has not been rendered harmless per 10 milli-
5 liters that is less than 50 micrometers in min-
6 imum dimension and more than 10 micrometers
7 in minimum dimension;

8 (C) concentrations of indicator microbes
9 that are less than—

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

15 (ii) 126 colony-forming units of *Esch-*
16 *erichia coli* per 100 milliliters; and

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

19 (D) concentrations of such additional indi-
20 cator microbes and of viruses as may be speci-
21 fied in regulations issued by the Secretary in
22 consultation with the Administrator and such
23 other Federal agencies as the Secretary and the
24 Administrator consider appropriate.

25 (2) FEASIBILITY REVIEW.—

1 (A) IN GENERAL.—Not less than 2 years
2 before January 1, 2024, the Secretary, in con-
3 sultation with the Administrator, shall complete
4 a review to determine the feasibility of achiev-
5 ing the revised ballast water discharge standard
6 under paragraph (1).

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

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

19 (ii) improvements in ballast water
20 management systems, including—

21 (I) the capability of such man-
22 agement systems to achieve a revised
23 ballast water discharge standard;

1 (II) the effectiveness and reli-
2 ability of such management systems
3 in the shipboard environment;

4 (III) the compatibility of such
5 management systems with the design
6 and operation of a vessel by class,
7 type, and size;

8 (IV) the commercial availability
9 of such management systems; and

10 (V) the safety of such manage-
11 ment systems;

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

16 (iv) the impact of ballast water man-
17 agement systems on water quality; and

18 (v) the costs, cost-effectiveness, and
19 impacts of—

20 (I) a revised ballast water dis-
21 charge standard, including the poten-
22 tial impacts on shipping, trade, and
23 other uses of the aquatic environment;
24 and

1 (II) maintaining the existing bal-
2 last water discharge standard, includ-
3 ing the potential impacts on water-re-
4 lated infrastructure, recreation, propa-
5 gation of native fish, shellfish, and
6 wildlife, and other uses of navigable
7 waters.

8 (C) LOWER REVISED DISCHARGE STAND-
9 ARD.—

10 (i) IN GENERAL.—If the Secretary, in
11 consultation with the Administrator, deter-
12 mines on the basis of the feasibility review
13 and after an opportunity for a public hear-
14 ing that no ballast water management sys-
15 tem can be certified under section __06 to
16 comply with the revised ballast water dis-
17 charge standard under paragraph (1), the
18 Secretary shall require the use of the man-
19 agement system that achieves the perform-
20 ance levels of the best available technology
21 that is economically achievable.

22 (ii) IMPLEMENTATION DEADLINE.—If
23 the Secretary, in consultation with the Ad-
24 ministrator, determines that the manage-
25 ment system under clause (i) cannot be im-

1 plemented before the implementation dead-
2 line under paragraph (3) with respect to a
3 class of vessels, the Secretary shall extend
4 the implementation deadline for that class
5 of vessels for not more than 36 months.

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

12 (D) HIGHER REVISED DISCHARGE STAND-
13 ARD.—

14 (i) IN GENERAL.—If the Secretary, in
15 consultation with the Administrator, deter-
16 mines that a ballast water management
17 system exists that exceeds the revised bal-
18 last water discharge standard under para-
19 graph (1) with respect to a class of vessels
20 and is the best available technology that is
21 economically achievable, the Secretary shall
22 revise the ballast water discharge standard
23 for that class of vessels to incorporate the
24 higher discharge standard.

1 (ii) IMPLEMENTATION DEADLINE.—If
2 the Secretary, in consultation with the Ad-
3 ministrator, determines that the manage-
4 ment system under clause (i) can be imple-
5 mented before the implementation deadline
6 under paragraph (3) with respect to a
7 class of vessels, the Secretary shall accel-
8 erate the implementation deadline for that
9 class of vessels. If the implementation
10 deadline under paragraph (3) is acceler-
11 ated, the Secretary shall provide not less
12 than 24 months notice before the acceler-
13 ated deadline takes effect.

14 (3) IMPLEMENTATION DEADLINE.—The revised
15 ballast water discharge standard under paragraph
16 (1) shall apply to a vessel beginning on the date of
17 the first drydocking of the vessel on or after Janu-
18 ary 1, 2024, but not later than December 31, 2026.

19 (4) REVISED DISCHARGE STANDARD COMPLI-
20 ANCE DEADLINES.—

21 (A) IN GENERAL.—The Secretary may es-
22 tablish a compliance deadline for compliance by
23 a vessel (or a class, type, or size of vessel) with
24 a revised ballast water discharge standard
25 under this subsection.

1 (B) PROCESS FOR GRANTING EXTEN-
2 SIONS.—In issuing regulations under this sub-
3 section, the Secretary shall establish a process
4 for an owner or operator to submit a petition
5 to the Secretary for an extension of a compli-
6 ance deadline with respect to the vessel of the
7 owner or operator.

8 (C) PERIOD OF EXTENSIONS.—An exten-
9 sion issued under subparagraph (B) may—

10 (i) apply for a period of not to exceed
11 18 months from the date of the applicable
12 deadline under subparagraph (A); and

13 (ii) be renewable for an additional pe-
14 riod of not to exceed 18 months.

15 (D) FACTORS.—In issuing a compliance
16 deadline or reviewing a petition under this
17 paragraph, the Secretary shall consider, with
18 respect to the ability of an owner or operator to
19 meet a compliance deadline, the following fac-
20 tors:

21 (i) Whether the management system
22 to be installed is available in sufficient
23 quantities to meet the compliance deadline.

24 (ii) Whether there is sufficient ship-
25 yard or other installation facility capacity.

1 (iii) Whether there is sufficient avail-
2 ability of engineering and design resources.

3 (iv) Vessel characteristics, such as en-
4 gine room size, layout, or a lack of in-
5 stalled piping.

6 (v) Electric power generating capacity
7 aboard the vessel.

8 (vi) Safety of the vessel and crew.

9 (vii) Any other factors the Secretary
10 considers appropriate, including the avail-
11 ability of a ballast water reception facility
12 or other means of managing ballast water.

13 (E) CONSIDERATION OF PETITIONS.—

14 (i) DETERMINATIONS.—The Secretary
15 shall approve or deny a petition for an ex-
16 tension of a compliance deadline submitted
17 by an owner or operator under this para-
18 graph.

19 (ii) DEADLINE.—If the Secretary does
20 not approve or deny a petition referred to
21 in clause (i) on or before the last day of
22 the 90-day period beginning on the date of
23 submission of the petition, the petition
24 shall be deemed approved.

1 (c) FUTURE REVISIONS OF VESSEL INCIDENTAL
2 DISCHARGE STANDARDS; DECENNIAL REVIEWS.—

3 (1) REVISED BALLAST WATER DISCHARGE
4 STANDARDS.—The Secretary, in consultation with
5 the Administrator, shall complete a review, 10 years
6 after the issuance of a final rule under subsection
7 (b) and every 10 years thereafter, to determine
8 whether further revision of the ballast water dis-
9 charge standard would result in a scientifically de-
10 monstrable and substantial reduction in the risk of
11 the introduction or establishment of aquatic nui-
12 sance species.

13 (2) REVISED STANDARDS FOR DISCHARGES
14 OTHER THAN BALLAST WATER.—The Secretary, in
15 consultation with the Administrator, may include in
16 a decennial review under this subsection best man-
17 agement practices for discharges covered by sub-
18 section (a)(2). The Secretary shall initiate a rule-
19 making to revise 1 or more best management prac-
20 tices for such discharges after a decennial review if
21 the Secretary, in consultation with the Adminis-
22 trator, determines that revising 1 or more of such
23 practices would substantially reduce the impacts on
24 navigable waters of discharges incidental to the nor-
25 mal operation of a vessel other than ballast water.

1 (3) CONSIDERATIONS.—In conducting a review
2 under paragraph (1), the Secretary, the Adminis-
3 trator, and the heads of other Federal agencies as
4 the Secretary considers appropriate, shall consider
5 the criteria under section __05(b)(2)(B).

6 (4) REVISION AFTER DECENNIAL REVIEW.—
7 The Secretary shall initiate a rulemaking to revise
8 the current ballast water discharge standard after a
9 decennial review if the Secretary, in consultation
10 with the Administrator, determines that revising the
11 current ballast water discharge standard would re-
12 sult in a scientifically demonstrable and substantial
13 reduction in the risk of the introduction or establish-
14 ment of aquatic nuisance species.

15 (d) ALTERNATIVE BALLAST WATER MANAGEMENT
16 REQUIREMENTS.—Nothing in this title may be construed
17 to preclude the Secretary from authorizing the use of al-
18 ternate means or methods of managing ballast water (in-
19 cluding flow-through exchange, empty/refill exchange, and
20 transfer to treatment facilities in place of a vessel ballast
21 water management system required under this section) if
22 the Secretary, in consultation with the Administrator, de-
23 termines that such means or methods would not pose a
24 greater risk of introduction of aquatic nuisance species in
25 navigable waters than the use of a ballast water manage-

1 ment system that achieves the applicable ballast water dis-
2 charge standard.

3 (e) GREAT LAKES REQUIREMENTS.—In addition to
4 the other standards and requirements imposed by this sec-
5 tion, in the case of a vessel that enters the Great Lakes
6 through the St. Lawrence River after operating outside
7 the exclusive economic zone of the United States the Sec-
8 retary, in consultation with the Administrator, shall estab-
9 lish a requirement that the vessel conduct saltwater flush-
10 ing of all ballast water tanks onboard prior to entry.

11 **SEC. 06. TREATMENT TECHNOLOGY CERTIFICATION.**

12 (a) CERTIFICATION REQUIRED.—Beginning on the
13 date that is 1 year after the date on which the require-
14 ments for testing protocols are issued under subsection (i),
15 no manufacturer of a ballast water management system
16 shall sell, offer for sale, or introduce or deliver for intro-
17 duction into interstate commerce, or import into the
18 United States for sale or resale, a ballast water manage-
19 ment system for a vessel unless it has been certified under
20 this section.

21 (b) CERTIFICATION PROCESS.—

22 (1) EVALUATION.—Upon application of a man-
23 ufacturer, the Secretary shall evaluate a ballast
24 water management system with respect to—

1 (A) the effectiveness of the management
2 system in achieving the current ballast water
3 discharge standard when installed on a vessel
4 (or a class, type, or size of vessel);

5 (B) the compatibility with vessel design
6 and operations;

7 (C) the effect of the management system
8 on vessel safety;

9 (D) the impact on the environment;

10 (E) the cost effectiveness; and

11 (F) any other criteria the Secretary con-
12 siders appropriate.

13 (2) APPROVAL.—If after an evaluation under
14 paragraph (1) the Secretary determines that the
15 management system meets the criteria, the Sec-
16 retary may certify the management system for use
17 on a vessel (or a class, type, or size of vessel).

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

22 (c) CERTIFICATION CONDITIONS.—

23 (1) IMPOSITION OF CONDITIONS.—In certifying
24 a ballast water management system under this sec-
25 tion, the Secretary, in consultation with the Admin-

1 istrator, may impose any condition on the subse-
2 quent installation, use, or maintenance of the man-
3 agement system onboard a vessel as is necessary
4 for—

5 (A) the safety of the vessel, the crew of the
6 vessel, and any passengers aboard the vessel;

7 (B) the protection of the environment; or

8 (C) the effective operation of the manage-
9 ment system.

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

14 (d) PERIOD FOR USE OF INSTALLED TREATMENT
15 EQUIPMENT.—Notwithstanding anything to the contrary
16 in this title or any other provision of law, the Secretary
17 shall allow a vessel on which a management system is in-
18 stalled and operated to meet a ballast water discharge
19 standard under this title to continue to use that system,
20 notwithstanding any revision of a ballast water discharge
21 standard occurring after the management system is or-
22 dered or installed until the expiration of the service life
23 of the management system, as determined by the Sec-
24 retary, if the management system—

1 (1) is maintained in proper working condition;

2 and

3 (2) is maintained and used in accordance with
4 the manufacturer's specifications and any manage-
5 ment system certification conditions imposed by the
6 Secretary under this section.

7 (e) CERTIFICATES OF TYPE APPROVAL FOR THE
8 TREATMENT TECHNOLOGY.—

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

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

19 (3) OWNERS AND OPERATORS.—A manufac-
20 turer that receives a certificate of type approval for
21 the management system under this subsection shall
22 provide a copy of the certificate to each owner and
23 operator of a vessel on which the management sys-
24 tem is installed.

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

7 (g) BIOCIDES.—The Secretary may not approve a
8 ballast water management system under subsection (b)
9 if—

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

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

22 (h) PROHIBITION.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), the use of a ballast water management
25 system by an owner or operator of a vessel shall not

1 satisfy the requirements of this title unless it has
2 been approved by the Secretary under subsection
3 (b).

4 (2) EXCEPTIONS.—

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

13 (B) BALLAST WATER MANAGEMENT SYS-
14 TEMS CERTIFIED BY FOREIGN ENTITIES.—An
15 owner or operator may use a ballast water man-
16 agement system that has not been certified by
17 the Secretary to comply with the requirements
18 of this section if the management system has
19 been certified by a foreign entity and the cer-
20 tification demonstrates performance and safety
21 of the management system equivalent to the re-
22 quirements of this section, as determined by the
23 Secretary.

24 (i) TESTING PROTOCOLS.—Not later than 180 days
25 after the date of the enactment of this Act, the Adminis-

1 trator, in consultation with the Secretary, shall issue re-
2 quirements for land-based and shipboard testing protocols
3 or criteria for—

4 (1) certifying the performance of each ballast
5 water management system under this section; and

6 (2) certifying laboratories to evaluate such
7 treatment technologies.

8 **SEC. 07. EXEMPTIONS.**

9 (a) INCIDENTAL DISCHARGES.—Except in a national
10 marine sanctuary or a marine national monument, no per-
11 mit shall be required or prohibition enforced under any
12 other provision of law for, nor shall any standards regard-
13 ing a discharge incidental to the normal operation of a
14 vessel under this title apply to—

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

20 (2) a discharge incidental to the normal oper-
21 ation of a vessel if the vessel is a fishing vessel, in-
22 cluding a fish processing vessel and a fish tender
23 vessel, (as defined in section 2101 of title 46, United
24 States Code); or

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

5 (b) DISCHARGES INTO NAVIGABLE WATERS.—No
6 permit shall be required or prohibition enforced under any
7 other provision of law for, nor shall any standards regard-
8 ing a discharge incidental to the normal operation of a
9 vessel under this title apply to—

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

15 (2) any discharge into navigable waters from a
16 vessel that is necessary to secure the safety of the
17 vessel or human life, or to suppress a fire onboard
18 the vessel or at a shoreside facility; or

19 (3) a vessel of the armed forces of a foreign na-
20 tion when engaged in noncommercial service.

21 (c) BALLAST WATER DISCHARGES.—No permit shall
22 be required or prohibition enforced under any other provi-
23 sion of law for, nor shall any ballast water discharge
24 standard under this title apply to—

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

4 (A) operate exclusively within a geographi-
5 cally limited area;

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

12 (C) operate pursuant to a geographic re-
13 striction 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 vessel; or

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

21 (2) a ballast water discharge incidental to the
22 normal operation of a vessel consisting entirely of
23 water sourced from a United States public water
24 system that meets the requirements under the Safe
25 Drinking Water Act (42 U.S.C. 300f et seq.) or

1 from a foreign public water system determined by
2 the Administrator to be suitable for human con-
3 sumption; or

4 (3) a ballast water discharge incidental to the
5 normal operation of a vessel in an alternative com-
6 pliance program established pursuant to section
7 __08.

8 (d) VESSELS WITH PERMANENT BALLAST WATER.—

9 No permit shall be required or prohibition enforced re-
10 garding a ballast water discharge incidental to the normal
11 operation of a vessel under any other provision of law for,
12 nor shall any ballast water discharge standard under this
13 title apply to, a vessel that carries all of its permanent
14 ballast water in sealed tanks that are not subject to dis-
15 charge.

16 (e) VESSELS OF THE ARMED FORCES.—Nothing in
17 this title may be construed to apply to—

18 (1) a vessel owned or operated by the Depart-
19 ment of Defense (other than a time-chartered or
20 voyage-chartered vessel); or

21 (2) a vessel of the Coast Guard, as designated
22 by the Secretary of the department in which the
23 Coast Guard is operating.

1 **SEC. 08. ALTERNATIVE COMPLIANCE PROGRAM.**

2 (a) IN GENERAL.—The Secretary, in consultation
3 with the Administrator, may promulgate regulations es-
4 tablishing 1 or more compliance programs as an alter-
5 native to ballast water management regulations issued
6 under section 05 for a vessel that—

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

9 (2) is less than 3 years from the end of the use-
10 ful life of the vessel, as determined by the Secretary.

11 (b) RULEMAKING.—

12 (1) FACILITY STANDARDS.—Not later than 1
13 year after the date of the enactment of this Act, the
14 Administrator, in consultation with the Secretary,
15 shall promulgate standards for—

16 (A) the reception of ballast water from a
17 vessel into a reception facility; and

18 (B) the disposal or treatment of the ballast
19 water under paragraph (1).

20 (2) TRANSFER STANDARDS.—The Secretary, in
21 consultation with the Administrator, is authorized to
22 promulgate standards for the arrangements nec-
23 essary on a vessel to transfer ballast water to a facil-
24 ity.

1 **SEC. _09. JUDICIAL REVIEW.**

2 (a) IN GENERAL.—An interested person may file a
3 petition for review of a final regulation promulgated under
4 this title in the United States Court of Appeals for the
5 District of Columbia Circuit.

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

9 (c) EXCEPTION.—Notwithstanding subsection (b), a
10 petition that is based solely on grounds that arise after
11 the deadline to file a petition under subsection (b) has
12 passed may be filed not later than 120 days after the date
13 that the grounds first arise.

14 **SEC. _10. EFFECT ON STATE AUTHORITY.**

15 (a) IN GENERAL.—No State or political subdivision
16 thereof may adopt or enforce any statute or regulation of
17 the State or political subdivision with respect to a dis-
18 charge incidental to the normal operation of a vessel after
19 the date of enactment of this Act.

20 (b) SAVINGS CLAUSE.—Notwithstanding subsection
21 (a), a State or political subdivision thereof may adopt or
22 enforce a statute or regulation of the State or political
23 subdivision with respect to ballast water discharges inci-
24 dental to the normal operation of a vessel that specifies
25 a ballast water discharge standard that is more stringent
26 than the ballast water discharge standard under section

1 __05(a)(1)(A) if the Secretary, after consultation with the
2 Administrator and any other Federal department or agen-
3 cy the Secretary considers appropriate, makes a deter-
4 mination that—

5 (1) compliance with any discharge standard
6 specified in the statute or regulation can in fact be
7 achieved and detected;

8 (2) the technology and systems necessary to
9 comply with the statute or regulation are commer-
10 cially available and economically achievable; and

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

14 (c) PETITION PROCESS.—

15 (1) SUBMISSION.—The Governor of a State
16 seeking to adopt or enforce a statute or regulation
17 under subsection (b) shall submit a petition to the
18 Secretary requesting the Secretary to review the
19 statute or regulation.

20 (2) CONTENTS; TIMING.—A petition shall be ac-
21 companied by the scientific and technical informa-
22 tion on which the petition is based, and may be sub-
23 mitted within 1 year of the date of enactment of this
24 Act and every 10 years thereafter.

1 (3) DETERMINATIONS.—The Secretary shall
2 make a determination on a petition under this sub-
3 section not later than 90 days after the date on
4 which the Secretary determines that a complete peti-
5 tion has been received.

6 **SEC. __11. APPLICATION WITH OTHER STATUTES.**

7 (a) EXCLUSIVE STATUTORY AUTHORITY.—Except as
8 otherwise provided in this section and notwithstanding any
9 other provision of law, this title shall be the exclusive stat-
10 utory authority for regulation by the Federal Government
11 of discharges incidental to the normal operation of a vessel
12 to which this title applies.

13 (b) EFFECT OF EXISTING REGULATIONS.—Except as
14 provided under section __05(a)(1)(A), any regulation in
15 effect on the date immediately preceding the effective date
16 of this Act relating to any permitting requirement for or
17 prohibition on discharges incidental to the normal oper-
18 ation of a vessel to which this title applies—

19 (1) shall be deemed to be a regulation issued
20 pursuant to the authority of this title; and

21 (2) shall remain in full force and effect unless
22 or until superseded by new regulations issued under
23 this title.

24 (c) ACT TO PREVENT POLLUTION FROM SHIPS.—
25 The Act to Prevent Pollution from Ships (33 U.S.C. 1901

1 et seq.) shall be the exclusive statutory authority for the
2 regulation by the Federal Government of any discharge
3 or emission that is covered under the International Con-
4 vention for the Prevention of Pollution from Ships, 1973,
5 as modified by the Protocol of 1978, done at London Feb-
6 ruary 17, 1978. Nothing in this title may be construed
7 to alter or amend such Act or any regulation issued pursu-
8 ant to the authority of such Act.

9 (d) TITLE X OF THE COAST GUARD AND MARITIME
10 TRANSPORTATION ACT OF 2010.—Title X of the Coast
11 Guard and Maritime Transportation Act of 2010 (33
12 U.S.C. 3801 et seq.) shall be the exclusive statutory au-
13 thority for the regulation by the Federal Government of
14 any anti-fouling system that is covered under the Inter-
15 national Convention on the Control of Harmful Anti-Foul-
16 ing Systems on Ships, 2001. Nothing in this title may be
17 construed to alter or amend such title X or any regulation
18 issued pursuant to the authority under such title.

19 **SEC. 12. RELATIONSHIP TO OTHER LAWS.**

20 Section 1205 of the Nonindigenous Aquatic Nuisance
21 Prevention and Control Act of 1990 (16 U.S.C. 4725) is
22 amended—

23 (1) by striking “All actions” and inserting the
24 following:

1 “(a) IN GENERAL.—Except as provided in subsection
2 (b), all actions”; and

3 (2) by adding at the end the following:

4 “(b) VESSEL INCIDENTAL DISCHARGES.—Notwith-
5 standing subsection (a), the Vessel Incidental Discharge
6 Act shall be the exclusive statutory authority for the regu-
7 lation by the Federal Government of discharges incidental
8 to the normal operation of a vessel.”.

9 **SEC. _13. SAVINGS PROVISION.**

10 Any action taken by the Federal Government under
11 this Act shall be in full compliance with its obligations
12 under applicable provisions of international law.