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COMMERCIAL VESSEL DISCHARGES REFORM ACT OF 2011

NOVEMBER 3, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MICA, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2840]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 2840) to amend the Federal Water Pollution Control Act to regulate discharges from commercial vessels, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Commercial Vessel Discharges Reform Act of 2011".

SEC. 2. DISCHARGES FROM COMMERCIAL VESSELS.

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

"SEC. 321. DISCHARGES FROM COMMERCIAL VESSELS.

"(a) DEFINITIONS.—In this section, the following definitions apply:

"(1) AQUATIC NUISANCE SPECIES.—The term 'aquatic nuisance species' means a nonindigenous species (including a pathogen) that threatens the diversity or abundance of native species or the ecological stability of navigable waters or commercial, agricultural, aquacultural, or recreational activities dependent on such waters.

"(2) BALLAST WATER.—

"(A) IN GENERAL.—The term 'ballast water' means any water (including any sediment suspended in such water) taken aboard a commercial vessel—

"(i) to control trim, list, draught, stability, or stresses of the vessel; or

"(ii) during the cleaning, maintenance, or other operation of a ballast water treatment system of the vessel.

"(B) EXCLUSION.—The term 'ballast water' does not include any pollutant that is added to water described in subparagraph (A) that is not directly related to the operation of a properly functioning ballast water treatment technology certified under subsection (e).

"(3) BALLAST WATER PERFORMANCE STANDARD.—The term 'ballast water performance standard' or 'performance standard' means a numerical ballast water performance standard specified under subsection (c) or established under subsection (d).

"(4) BALLAST WATER TREATMENT SYSTEM.—The term 'ballast water treatment system' means any equipment on board a commercial vessel (including all compartments, piping, spaces, tanks, and multi-use compartments, piping, spaces, and tanks) that is—

"(A) designed for loading, carrying, treating, or discharging ballast water; and

"(B) installed and operated to meet a ballast water performance standard.

"(5) BALLAST WATER TREATMENT TECHNOLOGY.—The term 'ballast water treatment technology' or 'treatment technology' means any mechanical, physical, chemical, or biological process used, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of aquatic nuisance species within ballast water.

"(6) BIOCIDE.—The term 'biocide' means a substance or organism, including a virus or fungus, that is introduced into, or produced by, a ballast water treatment technology as part of the process used to comply with a ballast water performance standard under this section.

"(7) COMMERCIAL VESSEL.—The term 'commercial vessel' means every description of watercraft, or other artificial contrivance used or capable of being used as a means of transportation on water, that is engaged in commercial service (as defined under section 2101 of title 46, United States Code).

"(8) CONSTRUCTED.—The term 'constructed' means a state of construction of a commercial vessel at which—

"(A) the keel is laid;

"(B) construction identifiable with the specific vessel begins;

"(C) assembly of the vessel has begun comprising at least 50 tons or 1 percent of the estimated mass of all structural material of the vessel, whichever is less; or

"(D) the vessel commences a major conversion.

"(9) DISCHARGE INCIDENTAL TO THE NORMAL OPERATION OF A COMMERCIAL VESSEL.—

"(A) IN GENERAL.—The term 'discharge incidental to the normal operation of a commercial vessel' means—

"(i) a discharge into navigable waters from a commercial vessel of—

"(I)(aa) graywater (except graywater referred to in section 312(a)(6)), bilge water, cooling water, oil water separator effluent, anti-fouling hull coating leachate, boiler or economizer blowdown, byproducts from cathodic protection, controllable pitch propeller and thruster hydraulic fluid, distillation and reverse osmosis brine,

elevator pit effluent, firemain system effluent, freshwater layup effluent, gas turbine wash water, motor gasoline and compensating effluent, refrigeration and air condensate effluent, seawater pumping biofouling prevention substances, boat engine wet exhaust, sonar dome effluent, exhaust gas scrubber washwater, or stern tube packing gland effluent; or

"(bb) any other pollutant associated with the operation of a marine propulsion system, shipboard maneuvering system, habitability system, or installed major equipment, or from a protective, preservative, or absorptive application to the hull of a commercial vessel;

"(II) weather deck runoff, deck wash, aqueous film forming foam effluent, chain locker effluent, non-oily machinery wastewater, underwater ship husbandry effluent, welldeck effluent, or fish hold and fish hold cleaning effluent; or

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

"(ii) a discharge of a pollutant into navigable waters in connection with the testing, maintenance, and repair of a system, equipment, or engine described in subclause (I)(bb) or (III) of clause (i) whenever the commercial vessel is waterborne.

"(B) EXCLUSION.—The term 'discharge incidental to the normal operation of a commercial vessel' does not include—

"(i) a discharge into navigable waters from a commercial vessel of—

"(I) ballast water;

"(II) rubbish, trash, garbage, incinerator ash, or other such material discharged overboard;

"(III) oil or a hazardous substance within the meaning of section 311; or

"(IV) sewage within the meaning of section 312; or

"(ii) an emission of an air pollutant resulting from the operation onboard a commercial vessel of a vessel propulsion system, motor driven equipment, or incinerator.

"(10) EXISTING COMMERCIAL VESSEL.—The term 'existing commercial vessel' means a commercial vessel constructed prior to January 1, 2012.

"(11) GEOGRAPHICALLY LIMITED AREA.—The term 'geographically limited area' means an area—

"(A) with a physical limitation that prevents a commercial vessel from operating outside the area, as determined by the Secretary; or

"(B) that is ecologically homogeneous, as determined by the Administrator, in consultation with the Secretary.

"(12) MAJOR CONVERSION.—The term 'major conversion' means a conversion of a commercial vessel that—

"(A) changes its ballast water capacity by 15 percent or more; or

"(B) prolongs the life of the commercial vessel by 10 years or more, as determined by the Secretary.

"(13) MANUFACTURER.—The term 'manufacturer' means a person engaged in the manufacturing, assembling, or importation of a ballast water treatment technology.

"(14) NAVIGABLE WATERS.—The term 'navigable waters' includes the exclusive economic zone, as defined in section 107 of title 46, United States Code.

"(15) NONINDIGENOUS SPECIES.—The term 'nonindigenous species' means a species or other viable biological material that enters an ecosystem beyond its historic range.

"(16) OWNER OR OPERATOR.—The term 'owner or operator' means a person owning, operating, or chartering by demise a commercial vessel.

"(17) SECRETARY.—The term 'Secretary' means the Secretary of the department in which the Coast Guard is operating.

"(18) VESSEL GENERAL PERMIT.—The term 'Vessel General Permit' means the Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels issued by the Administrator under section 402 for ballast water and other discharges incidental to the normal operation of vessels, as in effect on December 19, 2008, for all jurisdictions except Alaska and Hawaii, and February 6, 2009, for Alaska and Hawaii.

"(b) GENERAL PROVISIONS.—

"(1) BALLAST WATER DISCHARGE REQUIREMENTS FOR COMMERCIAL VESSELS.—An owner or operator may discharge ballast water from a commercial vessel into navigable waters only if—

"(A) the discharge—

"(i) meets the ballast water performance standard;

"(ii) is made pursuant to the safety exemption established by subsection (c)(2);

"(iii) meets the requirements of an alternative method of compliance established for the commercial vessel under subsection (f); or

"(iv) is made pursuant to a determination that the commercial vessel meets the requirements relating to geographically limited areas under subsection (g); and

"(B) the owner or operator discharges the ballast water in accordance with a ballast water management plan approved under subsection (i).

"(2) APPLICABILITY.—

"(A) COVERED VESSELS.—Paragraph (1) shall apply to the owner or operator of a commercial vessel that is designed, constructed, or adapted to carry ballast water if the commercial vessel is—

"(i) documented under the laws of the United States; or

"(ii) operating in navigable waters on a voyage to or from a point in the United States.

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

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

"(ii) a commercial vessel that continuously takes on and discharges ballast water in a flow-through system;

"(iii) any vessel in the National Defense Reserve Fleet that is scheduled to be disposed of through scrapping or sinking;

"(iv) a commercial vessel that discharges ballast water consisting solely of water—

"(I) taken aboard from a municipal or commercial source; and

"(II) that, at the time the water is taken aboard, meets the applicable regulations or permit requirements for such source under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) and section 402 of this Act; or

"(v) a commercial vessel that is 3 years or fewer from the end of its useful life, as determined by the Secretary, on the date on which the regulations issued under paragraph (3) become effective for the vessel pursuant to the implementation schedule issued under paragraph (3)(B).

"(C) LIMITATION.—An exemption under subparagraph (B)(v) shall cease to be effective on the date that is 3 years after the date on which the regulations under paragraph (3) become effective for the commercial vessel pursuant to the implementation schedule issued under paragraph (3)(B).

"(3) ISSUANCE OF REGULATIONS.—

"(A) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Administrator, shall issue final regulations to implement the requirements of this section.

"(B) PROPOSED RULE.—For the purposes of chapter 5 of title 5, United States Code, the proposed rulemaking published by the Coast Guard on August 28, 2009 (74 Fed. Reg. 44632; relating to standards for living organisms in ships' ballast water discharged in U.S. waters), shall serve as a proposed rule for the purposes of issuing regulations under this section.

"(4) COMPLIANCE SCHEDULES.—

"(A) INITIAL PERFORMANCE STANDARD COMPLIANCE DEADLINES.—

"(i) IN GENERAL.—An owner or operator shall comply with the performance standard established under subsection (c) on or before the deadline that applies to the commercial vessel of the owner or operator, as specified in clause (ii).

"(ii) DEADLINES.—The deadlines for compliance with the performance standard established under subsection (c) are as follows:

"(I) For a commercial vessel constructed on or after January 1, 2012, the date of delivery of the vessel.

"(II) For an existing commercial vessel with a ballast water capacity of less than 1,500 cubic meters, the date of the first drydocking of the vessel after January 1, 2016.

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

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

"(iii) REGULATIONS.—In issuing regulations under paragraph (3), the Secretary shall include a compliance schedule that sets forth the deadlines specified in clause (ii).

"(B) REVISED PERFORMANCE STANDARD COMPLIANCE DEADLINES.—

"(i) IN GENERAL.—Upon revision of a performance standard under subsection (d), the Secretary, in consultation with the Administrator, shall issue a compliance schedule that establishes deadlines for an owner or operator to comply with the revised performance standard.

"(ii) FACTORS.—In issuing a compliance schedule under this subparagraph, the Secretary—

"(I) shall consider the factors identified in subparagraph (C)(iv); and

"(II) may establish different compliance deadlines based on vessel class, type, or size.

"(iii) VESSELS CONSTRUCTED AFTER ISSUANCE OF REVISED PERFORMANCE STANDARDS.—A compliance schedule issued under this subparagraph with respect to a revised performance standard shall require, at a minimum, the owner or operator of a commercial vessel that commences a major conversion or is constructed on or after the date of issuance of the revised performance standard to comply with the revised performance standard.

"(C) EXTENSION OF COMPLIANCE DEADLINES.—

"(i) IN GENERAL.—The Secretary may extend a compliance deadline established under subparagraph (A) or (B) on the Secretary's own initiative or in response to a petition submitted by an owner or operator.

"(ii) PROCESSES FOR GRANTING EXTENSIONS.—In issuing regulations under paragraph (3), the Secretary shall establish—

"(I) a process for the Secretary, in consultation with the Administrator, to issue an extension of a compliance deadline established under subparagraph (A) or (B) for a commercial vessel (or class, type, or size of vessel); and

"(II) a process for an owner or operator to submit a petition to the Secretary for an extension of a compliance deadline established under subparagraph (A) or (B) with respect to the commercial vessel of the owner or operator.

"(iii) PERIOD OF EXTENSIONS.—An extension issued under this subparagraph shall—

"(I) apply for a period of not to exceed 18 months; and

"(II) be renewable for an additional period of not to exceed 18 months.

"(iv) FACTORS.—In issuing an extension or reviewing a petition under this subparagraph, the Secretary shall consider, with respect to the ability of an owner or operator to meet a compliance deadline, the following factors:

"(I) Whether the treatment technology to be installed is available in sufficient quantities to meet the compliance deadline.

"(II) Whether there is sufficient shipyard or other installation facility capacity.

"(III) Whether there is sufficient availability of engineering and design resources.

"(IV) Vessel characteristics, such as engine room size, layout, or a lack of installed piping.

"(V) Electric power generating capacity aboard the vessel.

"(VI) Safety of the vessel and crew.

"(v) CONSIDERATION OF PETITIONS.—

"(I) DETERMINATIONS.—The Secretary shall approve or deny a petition for an extension of a compliance deadline submitted by an owner or operator under this subparagraph.

"(II) DEADLINE.—If the Secretary does not approve or deny a petition referred to in subclause (I) on or before the last day of the 90-day period beginning on the date of submission of the petition, the petition shall be deemed approved.

"(c) BALLAST WATER PERFORMANCE STANDARD FOR COMMERCIAL VESSELS.—

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

"(A) conduct ballast water treatment before discharging ballast water from a commercial vessel into navigable waters using a ballast water treatment technology certified for the vessel (or class, type, or size of vessel) under subsection (e); and

"(B) ensure that any ballast water so discharged meets, at a minimum, the numerical ballast water performance standard set forth in the International Convention for the Control and Management of Ships' Ballast Water and Sediments, as adopted on February 13, 2004, or a revised numerical ballast water performance standard established under subsection (d).

"(2) SAFETY EXEMPTION.—Notwithstanding paragraph (1), an owner or operator may discharge ballast water without regard to a ballast water performance standard if—

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

"(B) the discharge is accidental and the result of damage to the commercial vessel or its equipment and—

"(i) all reasonable precautions to prevent or minimize the discharge have been taken; and

"(ii) the owner or operator did not willfully or recklessly cause such damage; or

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

"(d) REVIEW OF PERFORMANCE STANDARD.—

"(1) IN GENERAL.—Not later than January 1, 2016, and every 10 years thereafter, the Administrator, in consultation with the Secretary, shall complete a review to determine whether revising the ballast water performance standard would result in a scientifically demonstrable and substantial reduction in the risk of the introduction or establishment of aquatic nuisance species.

"(2) CONSIDERATIONS.—In conducting the review, the Administrator shall consider—

"(A) improvements in the scientific understanding of biological and ecological processes that lead to the introduction or establishment of aquatic nuisance species;

"(B) improvements in ballast water treatment technology, including—

"(i) the capability of such technology to achieve a revised ballast water performance standard;

"(ii) the effectiveness and reliability of such technology in the shipboard environment;

"(iii) the compatibility of such technology with the design and operation of commercial vessels by class, type, and size;

"(iv) the commercial availability of such technology; and

"(v) the safety of such technology;

"(C) improvements in the capabilities to detect, quantify, and assess the viability of aquatic nuisance species at the concentrations under consideration;

"(D) the impact of ballast water treatment technology on water quality; and

"(E) the costs, cost-effectiveness, and impacts of—

"(i) a revised ballast water performance standard, including the potential impacts on shipping, trade, and other uses of the aquatic environment; and

"(ii) maintaining the existing ballast water performance standard, including the potential impacts on water-related infrastructure, recreation, the propagation of native fish, shellfish, and wildlife, and other uses of navigable waters.

"(3) REVISION OF PERFORMANCE STANDARD.—

"(A) RULEMAKING.—If, pursuant to a review conducted under paragraph (1), the Administrator, in consultation with the Secretary, determines that revising the ballast water performance standard would result in a scientifically demonstrable and substantial reduction in the risk of the introduction or establishment of aquatic nuisance species, the Administrator shall undertake a rulemaking to revise the performance standard.

"(B) SPECIAL RULE.—The Administrator may not issue a revised performance standard pursuant to this paragraph that applies to a commercial vessel constructed prior to the date on which the revised performance standard is issued unless the revised performance standard is at least 2 orders of magnitude more stringent than the performance standard in effect on the date that the review is completed.

"(4) STATE PETITION FOR REVIEW OF PERFORMANCE STANDARDS.—

"(A) IN GENERAL.—The Governor of a State may submit a petition requesting that the Administrator review a ballast water performance standard if there is significant new information that could reasonably indicate

the performance standard could be revised to result in a scientifically demonstrable and substantial reduction in the risk of the introduction or establishment of aquatic nuisance species.

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

"(C) REQUIRED INFORMATION.—A petition submitted to the Administrator under subparagraph (A) shall include the scientific and technical information on which the petition is based.

"(D) REVIEW AND REPORTING.—Upon receipt of a petition from a Governor under subparagraph (A), the Administrator shall make publicly available a copy of the petition, including the scientific and technical information provided by the Governor under subparagraph (C).

"(E) REVIEW AND REVISION OF PERFORMANCE STANDARDS.—

"(i) IN GENERAL.—If, after receiving a petition submitted by a Governor under subparagraph (A) for review of a performance standard, the Administrator, in consultation with the Secretary, determines that the petition warrants additional action, the Administrator may—

"(I) in consultation with the Secretary, initiate a review of the performance standard under paragraph (1); and

"(II) in consultation with the Secretary, revise the performance standard through a rulemaking under paragraph (3)(A), subject to the limitation in paragraph (3)(B).

"(ii) TREATMENT OF MORE THAN ONE PETITION AS A SINGLE PETITION.—The Administrator may treat more than one petition as a single petition for review.

"(e) TREATMENT TECHNOLOGY CERTIFICATION.—

"(1) CERTIFICATION REQUIRED.—

"(A) CERTIFICATION PROCESS.—

"(i) EVALUATION.—Upon application of a manufacturer, the Secretary shall evaluate a ballast water treatment technology with respect to—

"(I) whether the treatment technology meets the ballast water performance standard when installed on a commercial vessel (or a class, type, or size of commercial vessel);

"(II) the effect of the treatment technology on commercial vessel safety; and

"(III) any other criteria the Secretary considers appropriate.

"(ii) CERTIFICATION.—If, after conducting the evaluation required by clause (i), the Secretary determines the treatment technology meets the criteria established under such clause, the Secretary may certify the treatment technology for use on a commercial vessel (or a class, type, or size of commercial vessel).

"(iii) SUSPENSION AND REVOCATION OF CERTIFICATION.—The Secretary shall, by regulation, establish a process to suspend or revoke a certification issued under this subparagraph.

"(B) CERTIFICATES OF TYPE APPROVAL.—

"(i) ISSUANCE OF CERTIFICATES TO MANUFACTURER.—If the Secretary certifies a ballast water treatment technology under subparagraph (A), the Secretary shall issue to the manufacturer of the treatment technology, in such form and manner as the Secretary determines appropriate, a certificate of type approval for the treatment technology.

"(ii) CONDITIONS TO BE INCLUDED IN CERTIFICATES.—A certificate of type approval issued under clause (i) shall include any conditions that are imposed by the Secretary under paragraph (2).

"(iii) ISSUANCE OF COPIES OF CERTIFICATES TO OWNERS AND OPERATORS.—A manufacturer that receives a certificate of type approval under clause (i) for a ballast water treatment technology shall furnish a copy of the certificate to any owner or operator of a commercial vessel on which the treatment technology is installed.

"(iv) INSPECTIONS.—An owner or operator who receives a copy of a certificate under clause (iii) for a ballast water treatment technology installed on a commercial vessel shall retain a copy of the certificate onboard the commercial vessel and make the copy of the certificate available for inspection at all times that such owner or operator is utilizing the treatment technology.

"(C) TREATMENT TECHNOLOGIES THAT USE OR GENERATE BIOCIDES.—The Secretary may not certify a ballast water treatment technology that—

"(i) uses a biocide or generates a biocide that is a 'pesticide', as defined in section 2 of the Federal Insecticide, Fungicide, and Rodenticide

Act (7 U.S.C. 136), unless the biocide is registered under such Act or the Administrator has approved the use of such biocide in such treatment technology; or

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

"(D) PROHIBITION.—

"(i) IN GENERAL.—Except as provided by clause (ii), an owner or operator may not use a ballast water treatment technology to comply with the requirements of this section unless the Secretary has certified the treatment technology under subparagraph (A).

"(ii) EXCEPTIONS.—

"(I) COAST GUARD SHIPBOARD TECHNOLOGY EVALUATION PROGRAM.—An owner or operator may use a ballast water treatment technology that has not been certified by the Secretary to comply with the requirements of this section if the technology is being evaluated under the Coast Guard Shipboard Technology Evaluation Program.

"(II) BALLAST WATER TREATMENT TECHNOLOGIES CERTIFIED BY FOREIGN ENTITIES.—An owner or operator may use a ballast water treatment technology that has not been certified by the Secretary to comply with the requirements of this section if the technology has been certified by a foreign entity and the certification demonstrates performance and safety of the treatment technology equivalent to the requirements of this subsection, as determined by the Secretary.

"(2) CERTIFICATION CONDITIONS.—

"(A) IMPOSITION OF CONDITIONS.—In certifying a ballast water treatment technology under this subsection, the Secretary, in consultation with the Administrator, may impose any condition on the subsequent installation, use, or maintenance of the treatment technology onboard a commercial vessel as is necessary for—

"(i) the safety of the vessel, the crew of the vessel, and any passengers aboard the vessel;

"(ii) the protection of the environment; and

"(iii) the effective operation of the treatment technology.

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

"(3) USE OF BALLAST WATER TREATMENT TECHNOLOGIES ONCE INSTALLED.—

"(A) IN GENERAL.—Subject to subparagraph (B), an owner or operator who installs a ballast water treatment technology that the Secretary has certified under paragraph (1) may use the treatment technology, notwithstanding any revisions to a ballast water performance standard occurring after the installation so long as the owner or operator—

"(i) maintains the treatment technology in proper working condition; and

"(ii) maintains and uses the treatment technology in accordance with—

"(I) the manufacturer's specifications; and

"(II) any conditions imposed by the Secretary under paragraph (2).

"(B) LIMITATION.—Subparagraph (A) shall cease to apply with respect to a commercial vessel after the first to occur of the following:

"(i) The expiration of the service life of the ballast water treatment technology of the vessel, as determined by the Secretary.

"(ii) The expiration of service life of the vessel, as determined by the Secretary.

"(iii) The completion of a major conversion of the vessel.

"(4) TESTING PROTOCOLS.—Not later than 180 days after the date of enactment of this section, the Administrator, in consultation with the Secretary, shall issue guidelines specifying land-based and shipboard testing protocols or criteria for—

"(A) certifying the performance of ballast water treatment technologies under this subsection; and

"(B) certifying laboratories to evaluate such treatment technologies.

"(5) PROHIBITION.—Following the date on which the requirements of subsection (b)(1) apply with respect to a commercial vessel pursuant to the implementation schedule issued under subsection (b)(3)(B), no manufacturer of a bal-

last water treatment technology shall sell, offer for sale, or introduce or deliver for introduction into interstate commerce, or import into the United States for sale or resale, a ballast water treatment technology for the commercial vessel unless the technology has been certified under this subsection.

"(f) ALTERNATIVE METHODS OF COMPLIANCE.—

"(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Administrator, shall establish an alternative method of compliance with this section for a commercial vessel having a maximum ballast water capacity of less than 8 cubic meters.

"(2) FACTORS FOR CONSIDERATION.—In establishing an alternative method of compliance under paragraph (1), the Secretary shall consider—

"(A) the effectiveness of the alternative method in reducing the risk of the introduction or establishment of aquatic nuisance species relative to the performance standard; and

"(B) any other factor the Secretary considers appropriate.

"(3) BEST MANAGEMENT PRACTICES.—The Secretary may establish as an alternative method of compliance appropriate ballast water best management practices to minimize the introduction or establishment of aquatic nuisance species.

"(g) GEOGRAPHICALLY LIMITED AREAS.—

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

"(A) operates exclusively within a geographically limited area, as determined by the Secretary, in consultation with the Administrator; or

"(B) operates pursuant to a geographic restriction issued for the commercial vessel under section 3309 of title 46, United States Code.

"(2) PETITION FOR DETERMINATION BY THE SECRETARY.—

"(A) SUBMISSION OF PETITIONS.—Following the date of issuance of final regulations under subsection (b), an owner or operator may petition the Secretary for a determination under paragraph (1).

"(B) DETERMINATIONS.—The Secretary shall approve or deny a petition submitted by an owner or operator under subparagraph (A).

"(C) DEADLINE.—If the Secretary does not approve or deny a petition submitted by an owner or operator under subparagraph (A) on or before the last day of the 90-day period beginning on the date of submission of the petition, the petition shall be deemed approved.

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

"(4) BEST MANAGEMENT PRACTICES.—For a commercial vessel for which a petition is granted under paragraph (2), the Secretary shall require the owner or operator to implement appropriate ballast water best management practices to minimize the introduction or establishment of aquatic nuisance species.

"(h) RECEPTION FACILITIES.—

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

"(A) an onshore facility for the reception of ballast water that meets standards issued by the Administrator, in consultation with the Secretary; or

"(B) an offshore facility for the reception of ballast water that meets standards issued by the Secretary, in consultation with the Administrator.

"(2) ISSUANCE OF STANDARDS.—Not later than 2 years after the date of enactment of this section—

"(A) the Administrator, in consultation with the Secretary, shall issue the standards referred to in paragraph (1)(A); and

"(B) the Secretary, in consultation with the Administrator, shall issue the standards referred to in paragraph (1)(B).

"(3) SOLE METHOD OF DISCHARGE.—The Secretary, in consultation with the Administrator, and upon petition by an owner or operator, may issue to an owner or operator a certificate stating that a commercial vessel is in compliance with the requirements of subsection (b)(1)(A) if discharging ballast water into a facility meeting the standards issued under this subsection is the sole method by which the owner or operator discharges ballast water from the commercial vessel.

"(4) BALLAST WATER MANAGEMENT PLANS.—An owner or operator discharging ballast water under this subsection shall discharge such water in accordance with a ballast water management plan approved under subsection (i).

"(i) COMMERCIAL VESSEL BALLAST WATER MANAGEMENT PLAN.—

"(1) IN GENERAL.—An owner or operator shall discharge ballast water in accordance with a ballast water management plan that—

"(A) meets requirements prescribed by the Secretary; and

"(B) is approved by the Secretary.

"(2) FOREIGN COMMERCIAL VESSELS.—The Secretary may approve a ballast water management plan for a foreign commercial vessel on the basis of a certificate of compliance issued by the country of registration of the commercial vessel if the requirements of the government of that country for a ballast water management plan are substantially equivalent to regulations issued by the Secretary.

"(3) RECORDKEEPING.—

"(A) IN GENERAL.—Except as provided by subparagraph (B), an owner or operator shall maintain in English and have available for inspection by the Secretary a ballast water record book in which each operation of the commercial vessel involving a ballast water discharge is recorded in accordance with regulations issued by the Secretary.

"(B) ALTERNATIVE MEANS OF RECORDKEEPING.—The Secretary may provide for alternative methods of recordkeeping, including electronic recordkeeping, to comply with the requirements of this paragraph.

"(j) REGULATION OF BALLAST WATER DISCHARGES.—Effective on and after the date of enactment of this section—

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

"(2) except as provided by subsection (k), a State or political subdivision thereof shall not adopt or enforce any law or regulation of the State or political subdivision with respect to such a discharge.

"(k) STATE AUTHORITY.—

"(1) STATE PROGRAMS.—The Governor of a State desiring to administer its own inspection and enforcement authority for ballast water discharges within its jurisdiction may submit to the Secretary a complete description of the program the Governor proposes to establish and administer under State law. In addition, the Governor shall submit a statement from the State attorney general that the laws of the State provide adequate authority to carry out the described program.

"(2) APPROVAL.—The Secretary, with the concurrence of the Administrator, may approve a program of a State submitted under paragraph (1) providing for the State's own inspection and enforcement authority for ballast water discharges within its jurisdiction, if the Secretary determines that the State possesses adequate resources to—

"(A) inspect, monitor, and board a commercial vessel at any time, including the taking and testing of ballast water samples, to ensure the commercial vessel's compliance with this section;

"(B) ensure that any ballast water discharged within the waters subject to the jurisdiction of the State meets the requirements of this section;

"(C) establish adequate procedures for reporting violations of this section;

"(D) investigate and abate violations of this section, including the imposition of civil and criminal penalties consistent with subsection (o); and

"(E) ensure that the Secretary and the Administrator receive notice of each violation of this section in an expeditious manner.

"(3) COMPLIANCE.—Any State program approved under paragraph (2) shall at all times be conducted in accordance with this subsection.

"(4) WITHDRAWAL OF APPROVAL.—Whenever the Secretary, in consultation with the Administrator, determines, after providing notice and the opportunity for a public hearing, that a State is not administering a program in accordance with the terms of the program as approved under paragraph (2), the Secretary shall notify the State, and, if appropriate corrective action is not taken within a period of time not to exceed 90 days, the Secretary, with the concurrence of the Administrator, shall withdraw approval of the program. The Secretary shall not withdraw approval of a program unless the Secretary has first notified the State and made public, in writing, the reasons for the withdrawal.

"(5) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall limit the authority of the Administrator or the Secretary to carry out inspections of any commercial vessel under subsection (n).

"(6) STATE LAWS.—Notwithstanding any other provision of this section, a State may enact such laws as are necessary to provide for the implementation of the State ballast water inspection and enforcement program provided under this subsection. The requirements for a ballast water inspection and enforce-

ment program contained in such State law shall be substantively and procedurally equivalent to those required in this section, and any requirements relating to recordkeeping, reporting, and sampling or analysis contained in such State law shall be substantively and procedurally equivalent to the requirements of this section and its implementing regulations and guidance.

"(l) DISCHARGES INCIDENTAL TO THE NORMAL OPERATIONS OF A COMMERCIAL VESSEL.—

"(1) EVALUATION OF INCIDENTAL DISCHARGES.—

"(A) IN GENERAL.—Not later than 3 years after the date of enactment of this section, the Administrator, in consultation with the Secretary, shall complete an evaluation of discharges incidental to the normal operation of a commercial vessel.

"(B) FACTORS.—In carrying out the evaluation, the Administrator shall analyze—

"(i) the characterization of the various types and composition of discharges incidental to the normal operation of a commercial vessel by different classes, types, and sizes of commercial vessels;

"(ii) the volume of such discharges for representative individual commercial vessels and by classes, types, and sizes of commercial vessels in the aggregate;

"(iii) the availability and feasibility of implementing technologies or best management practices for the control of such discharges;

"(iv) the characteristics of the receiving waters of such discharges;

"(v) the nature and extent of potential effects of such discharges on human health, welfare, and the environment;

"(vi) the extent to which such discharges are currently subject to and addressed by regulations under existing Federal laws or binding international obligations of the United States; and

"(vii) any additional factor that the Administrator considers appropriate.

"(2) REGULATION OF INCIDENTAL DISCHARGES.—Effective on and after the date of enactment of this section—

"(A) the Administrator (or a State in the case of a permit program approved under section 402) shall not require any new permit or permit conditions under section 402 for any discharge incidental to the normal operation of a commercial vessel; and

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

"(m) EFFECT ON VESSEL GENERAL PERMIT.—

"(1) EXPIRATION.—Notwithstanding the expiration date set forth in the Vessel General Permit, the Vessel General Permit shall expire as follows:

"(A) The terms and conditions of section 6 of such permit or any law of a State regulating the discharge of ballast water or any discharge incidental to the normal operation of a commercial vessel, upon the date of enactment of this section.

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

"(i) on the date on which—

"(I) a ballast water treatment technology certified under subsection (e) is installed on the commercial vessel;

"(II) an alternative method of compliance established for the commercial vessel under subsection (f) is implemented for the commercial vessel;

"(III) a petition is granted for the commercial vessel under subsection (g); or

"(IV) a certificate is issued for the commercial vessel under subsection (h); or

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

"(2) DISCHARGES INCIDENTAL TO THE NORMAL OPERATION OF COMMERCIAL VESSELS.—Notwithstanding the expiration date set forth in the Vessel General Permit, the terms and conditions of such permit (except the terms and conditions referred to in paragraph (1)(A)) applicable to discharges incidental to the normal operation of a commercial vessel shall remain in effect.

"(n) INSPECTIONS AND ENFORCEMENT.—

"(1) IN GENERAL.—

"(A) COAST GUARD ENFORCEMENT.—The Secretary shall enforce the requirements of this section and may utilize by agreement, with or without

reimbursement, law enforcement officers or other personnel and facilities of the Administrator, other Federal agencies, and the States.

"(B) ENVIRONMENTAL PROTECTION AGENCY ACTIONS.—Notwithstanding any enforcement decisions of the Secretary under subparagraph (A), the Administrator may use the authorities provided in sections 308, 309, 312, and 504 whenever required to carry out this section.

"(2) COAST GUARD INSPECTIONS.—The Secretary may carry out inspections of any commercial vessel at any time, including the taking of ballast water samples, to ensure compliance with this section. The Secretary shall use all appropriate and practical measures of detection and environmental monitoring of such commercial vessels and shall establish adequate procedures for reporting violations of this section and accumulating evidence regarding such violations.

"(o) COMPLIANCE.—

"(1) DETENTION OF COMMERCIAL VESSEL.—The Secretary, by notice to the owner or operator, may detain the commercial vessel if the Secretary has reasonable cause to believe that the commercial vessel does not comply with a requirement of this section or is being operated in violation of such a requirement.

"(2) SANCTIONS.—

"(A) CIVIL PENALTIES.—

"(i) IN GENERAL.—Any person who violates this section shall be liable for a civil penalty in an amount determined under clause (ii). Each day of a continuing violation constitutes a separate violation. A commercial vessel operated in violation of this section is liable in rem for any civil penalty assessed for that violation.

"(ii) PENALTY AMOUNTS.—The amount of a civil penalty assessed under clause (i) shall be determined as follows:

"(I) For vessels with a ballast water capacity less than 1500 cubic meters, not to exceed $25,000 for each violation.

"(II) For vessels with a ballast water capacity of 1500 cubic meters but not more than 5,000 cubic meters, not to exceed $28,750 for each violation.

"(III) For vessels with a ballast water capacity greater than 5,000 cubic meters, not to exceed $32,500 for each violation.

"(B) CRIMINAL PENALTIES.—Any person who knowingly violates this section shall be punished by a fine of not less that $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both.

"(C) REVOCATION OF CLEARANCE.—Upon request of the Secretary, the Secretary of Homeland Security shall withhold or revoke the clearance of a commercial vessel required by section 60105 of title 46, United States Code, if the owner or operator is in violation of this section.

"(3) ENFORCEMENT ACTIONS.—

"(A) ADMINISTRATIVE ACTIONS.—If the Secretary finds that a person has violated this section, the Secretary may assess a civil penalty for the violation. In determining the amount of the civil penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior violations, and such other matters as justice may require.

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

"(4) EXCLUSION.—No person shall be found in violation of this section whose commission of prohibited acts is found by the Secretary to have been in the interest of ensuring the safety of life at sea.

"(p) REGULATION UNDER OTHER SECTIONS OF THIS ACT.—This section shall not affect the regulation of discharges from a commercial vessel pursuant to section 311 or 312.".

SEC. 3. DISCHARGES INCIDENTAL TO THE NORMAL OPERATION OF A COVERED VESSEL.

(a) DISCHARGES INCIDENTAL TO THE NORMAL OPERATION OF A COVERED VESSEL.—

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

"(s) DISCHARGES INCIDENTAL TO THE NORMAL OPERATION OF A COVERED VESSEL.—No permit shall be required under this Act by the Administrator (or a State, in the case of a permit program approved under subsection (b)) for a discharge incidental to the normal operation of a covered vessel (as defined in section 312(p)).".

(2) BEST MANAGEMENT PRACTICES FOR COVERED VESSELS.—Section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1342) is amended by adding at the end the following:

"(p) BEST MANAGEMENT PRACTICES FOR COVERED VESSELS.—

"(1) DEFINITIONS.—In this subsection, the following definitions apply:

"(A) COVERED VESSEL.—The term 'covered vessel' means every description of watercraft, or other artificial contrivance used or capable of being used as a means of transportation on water, that is engaged in commercial service (as defined under section 2101 of title 46, United States Code), and—

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

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

"(B) DISCHARGE INCIDENTAL TO THE NORMAL OPERATION OF A COVERED VESSEL.—The term 'discharge incidental to the normal operation of a covered vessel' means a discharge incidental to the normal operation of a commercial vessel (as defined in section 321), insofar as the commercial vessel is a covered vessel.

"(2) DETERMINATION OF DISCHARGES SUBJECT TO BEST MANAGEMENT PRACTICES.—

"(A) DETERMINATION.—

"(i) IN GENERAL.—The Administrator, in consultation with the Secretary of the department in which the Coast Guard is operating, shall determine the discharges incidental to the normal operation of a covered vessel for which it is reasonable and practicable to develop best management practices to mitigate the adverse impacts of such discharges on the waters of the United States.

"(ii) PROMULGATION.—The Administrator shall promulgate the determinations under clause (i) in accordance with section 553 of title 5, United States Code.

"(B) CONSIDERATIONS.—In making a determination under subparagraph (A), the Administrator shall consider—

"(i) the nature of the discharge;

"(ii) the environmental effects of the discharge, including characteristics of the receiving waters;

"(iii) the effectiveness of the best management practice in reducing adverse impacts of the discharge on water quality;

"(iv) the practicability of developing and using a best management practice;

"(v) the effect that the use of a best management practice would have on the operation, operational capability, or safety of the vessel;

"(vi) applicable Federal and State law;

"(vii) applicable international standards; and

"(viii) the economic costs of the use of the best management practice.

"(C) TIMING.—The Administrator shall—

"(i) make initial determinations under subparagraph (A) not later than 1 year after the date of enactment of this subsection; and

"(ii) every 5 years thereafter—

"(I) review the determinations; and

"(II) if necessary, revise the determinations based on any new information available to the Administrator.

"(3) REGULATIONS FOR THE USE OF BEST MANAGEMENT PRACTICES.—

"(A) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating shall promulgate regulations on the use of best management practices for discharges incidental to the normal operation of a covered vessel that the Administrator determines are reasonable and practicable to develop under paragraph (2).

"(B) REGULATIONS.—

"(i) IN GENERAL.—The Secretary shall promulgate the regulations under this paragraph as soon as practicable after the Administrator makes determinations pursuant to paragraph (2).

"(ii) CONSIDERATIONS.—In promulgating regulations under this paragraph, the Secretary may—

"(I) distinguish among classes, types, and sizes of vessels;

"(II) distinguish between new and existing vessels; and

"(III) provide for a waiver of the applicability of the standards as necessary or appropriate to a particular class, type, age, or size of vessel.

"(4) EFFECT OF OTHER LAWS.—This subsection shall not affect the application of section 311 to a covered vessel.

"(5) PROHIBITION RELATING TO COVERED VESSELS.—After the effective date of the regulations promulgated by the Secretary of the department in which the Coast Guard is operating under paragraph (3), the owner or operator of a covered vessel shall neither operate in, nor discharge any discharge incidental to the normal operation of the vessel into navigable waters, if the owner or operator of the vessel is not using any applicable best management practice meeting standards established under this subsection.".

SEC. 4. CONFORMING AND TECHNICAL AMENDMENTS.

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

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

(1) by striking "and (G)" and inserting "(G)"; and

(2) by inserting after "section 304(l)," the following: "and (H) in issuing any regulation or otherwise taking final agency action under section 312 or 321,".

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

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

(1) A discharge incidental to the normal operation of a commercial vessel.

(2) A discharge of ballast water from a commercial vessel.

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

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

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

(b) RELATIONSHIP TO OTHER LAWS.—Effective on the date of enactment of this Act, section 1205 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4725) is repealed.

PURPOSE OF THE LEGISLATION AND SUMMARY

H.R. 2840, the Commercial Vessel Discharges Reform Act of 2011 establishes a single, uniform national standard for the treatment of ballast water discharged from vessels into navigable waters. The bill also provides for uniform federal regulation of other discharges incidental to the normal operation of a vessel.

BACKGROUND AND NEED FOR LEGISLATION

In order to maintain stability during transit, most ocean going vessels fill internal tanks with ballast water during the loading of cargo and then release it during unloading. Ballast water has long been recognized as one of several pathways by which invasive species are transported globally and introduced into coastal waters where they did not live before. Many aquatic nuisance species have been introduced into U.S. waters via ballast water discharges. One of the most well known is the zebra mussel in the Great Lakes, which has caused millions of dollars in damage to infrastructure.

Current efforts to reduce the likelihood of invasive species being introduced are haphazard, contradictory, and ineffective. Ballast water is currently governed differently by the Coast Guard and the Environmental Protection Agency (EPA), as well as by numerous

state laws and regulations. As a result, vessels engaged in international and interstate commerce are required to meet several different standards for the treatment of ballast water, some of which are not technologically achievable or verifiable.

CURRENT CONTRADICTORY REGULATORY PROGRAMS

International

On February 13, 2004, the IMO agreed to the International Convention for the Control and Management of Ships' Ballast Water & Sediments (Convention). The Convention, if ratified by a sufficient number of nations and entered into force, will be the first time international law has attempted to minimize the spread of nonindigenous aquatic organisms by requiring vessels to manage their ballast water using ballast water treatment systems and procedures. The Convention also would establish performance standards applicable to ballast water treatment which would prohibit the release of ballast water containing more than 10 organisms that are greater than 10 micrometers in size per cubic meter of ballast water or certain concentrations of smaller size classes of organisms (the IMO D–2 standard).

The Convention will enter into force only after it has been ratified by at least 30 IMO member nations representing more than 35 percent of global merchant shipping tonnage. As of October 2011, 30 nations have ratified the Convention, representing 26.44% of world merchant shipping tonnage. The United States currently is not a party to the Convention.

Over 8,000 foreign flagged vessels enter U.S. waters on an annual basis. Once the IMO Convention enters into force, these vessels will begin installing treatment technology to meet the IMO D–2 standard.

Coast Guard

Under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 and the National Invasive Species Act of 1996, the Coast Guard has implemented regulations to minimize the introduction of these organisms into U.S. waters. Under current regulations promulgated by the Coast Guard in July 2004 (69 *Fed. Reg.* 44952–44961), all vessels that are engaged on an international voyage and bound for a U.S. port are required to conduct ballast water exchange before the vessel enters the U.S. Exclusive Economic Zone (EEZ) which extends roughly 200 miles from the U.S. coast. The intent of ballast water exchange is to discharge or kill any near coastal organisms that inhabit ballast water, and prevent the discharge of those alien organisms into U.S. waters. It is not clear how effective ballast water exchange is in preventing introductions of invasive species because it does not remove all organisms from ballast tanks or sediments that settle to the bottom of the ballast tanks. In addition, no significant monitoring program currently exists to establish a pre- or post-exchange baseline for the introduction of aquatic invasive species in U.S. waters.

The Coast Guard released a Notice of Proposed Rulemaking (NPRM) in 2009 to amend its regulations on ballast water management (74 FR 44632). The NPRM, which is currently at Department of Homeland Security for final review and approval, establishes a

standard for the allowable concentration of living organisms in vessel ballast water discharged in U.S. waters and creates a two-phase implementation plan. It would require all vessels operating in U.S. waters or bound for ports in the U.S. to install and operate a Coast Guard approved ballast water management system (BWMS) before discharging ballast water into U.S. waters.

The proposed rule includes a phase-in schedule for complying with both the phase 1 and phase 2 proposed ballast water discharge standard based on the vessel's ballast capacity and build date. All vessels would be required to manage their ballast water through a Coast Guard approved BWMS and meet either the proposed phase 1 or phase 2 discharge standard, as applicable, or retain their ballast water onboard. The phase 1 standard is the same as the standard adopted by the IMO. The proposed phase 2 standard is 1,000 times more stringent than the phase 1 standard. The Coast Guard notes that reliable technology to achieve the phase 2 standard and a testing protocol to ensure compliance with the standard does not yet exist. As a result, the Coast Guard proposes a practicability review to ensure a verifiable system is available to meet the phase 2 standard before mandating the installation of such system.

EPA

The Federal Water Pollution Control Act of 1972, popularly known as the Clean Water Act (CWA), regulates the discharge of pollutants into U.S. waters. Unless the discharge is otherwise exempt from permitting, individuals, companies, municipalities, and others who discharge pollutants from point sources must do so in compliance with a permit issued by the Environmental Protection Agency (EPA) under the National Pollutant Discharge Elimination System (NPDES) permit program (established under section 402 of the CWA, 33 USC 1342) or by one of the 45 states that issue permits in lieu of the EPA.

On May 22, 1973, EPA first promulgated a regulation excluding, certain discharges from vessels from the requirement to obtain an NPDES permit, including the discharge of sewage from vessels; effluent from properly functioning marine engines; laundry, shower, and galley sink wastes (collectively known as graywater); as well as "any other discharge incidental to the normal operation of a vessel," which includes ballast water (40 C.F.R. 122.3(a)).

In December 2003, the long-standing exclusion of discharges incidental to the normal operation of vessels from the NPDES program became the subject of a lawsuit in the U.S. District Court for the Northern District of California. The lawsuit arose from a January 13, 1999, rulemaking petition submitted to EPA by a number of parties concerned about the environmental effects of ballast water discharges. The petition asked EPA to repeal its regulation that excludes certain discharges incidental to the normal operation of vessels from the requirement to obtain an NPDES permit. The petition asserted that vessels are "point sources" requiring NPDES permits for discharges to U.S. waters; that EPA lacks authority to exclude point source discharges from vessels from the NPDES program; and that ballast water must be regulated under the NPDES program because it contains invasive plant and animal species, as well as other materials of concern. In March 2005, the Court ruled

the regulatory exemption for discharges incidental to the normal operation of vessels exceeded the EPA's authority under the CWA (*Northwest Envtl. Advocates et al.* v. *United States EPA*, 2005 U.S. Dist. (N.D. Cal., 2005). EPA appealed the ruling, but the Ninth Circuit Court of Appeals upheld the District Court decision in July 2008.

Pursuant to the Court order, in December 2008, EPA promulgated final regulations establishing a Vessel General Permit (VGP) under the NPDES program to govern ballast water and other discharges incidental to the normal operation of vessels. The VGP requires vessel operators to be in compliance with best management practices covering 26 types of discharges incidental to normal vessel operations, including deck runoff, air conditioner condensate, bilge water, graywater, and cooling system discharge. With respect to ballast water, the VGP incorporates the Coast Guard's mandatory ballast water management and exchange standards. Vessel operators must maintain records with EPA indicating they are in compliance with training, inspection, monitoring, and reporting protocols, as well as implement any corrective actions upon identification of violations. Vessel operators are required to file a notice of intent (NOI) indicating they intend to be covered by the VGP. Approximately 45,000 vessels currently operate under an NOI with the EPA.

Vessel operators that do not file an NOI, or are not in compliance with the VGP or an individual permit governing these discharges can be found to be in violation of the CWA. In addition to criminal penalties, violations of the CWA can carry civil penalties totaling up to $32,500 per day per violation. Under a memorandum of understanding with EPA, the Coast Guard began a VGP enforcement and compliance monitoring program in March 2011.

The EPA's current VGP expires in December 2013. EPA is planning to propose a new draft VGP by November 30, 2011, and take final action on the new VGP by November 30, 2012. The new VGP would become effective when the current VGP expires. Pursuant to a March 2011 Court settlement with several environmental groups and the State of Michigan (*Natural Resources Defense Council* v. *EPA*, Case No. 09–1089), EPA agreed to replace the current requirement for ballast water exchange with new numeric concentration-based limits on the discharge of organisms in ballast water in the draft VGP. The draft VGP will also include monitoring standards for ballast water treatment systems. There is no requirement for the EPA to align its ballast water standard in the new VGP with the new Coast Guard regulations.

State, Territory, and Tribal Regulations

Under section 401 of the CWA (33 U.S.C. 1341), those seeking federal license or permit to conduct activities that may result in a discharge into U.S. waters must first receive a water quality certification from the state, territory, or Indian tribe in which the activity may occur that the permitted discharge will comply with state water quality requirements. These 401 certifications may require those seeking a federal permit to comply with additional water quality regulatory requirements when conducting activities. With respect to the VGP, 26 states, 2 Indian tribes, and 1 territory have filed 401 certifications requiring vessel operators to be in compli-

ance with local water quality regulatory requirements. As a result, to transit U.S. waters, vessel operators must ensure they are in compliance with Coast Guard and EPA regulations, as well as over two dozen state, territory, or tribal regulations governing 26 discharges.

Ensuring a vessel is in compliance with federal regulations as augmented by state 401 certifications under the VGP can be difficult, if not impossible, as some of the state certifications are contradictory in nature. For instance, New York will be requiring vessels to install ballast water treatment systems to eliminate organisms at a rate 1000 times greater than the international standard proposed by the IMO. Meanwhile, Great Lakes states such as Ohio are only requiring vessels to install treatment systems that meet IMO standards. In addition, some states permit ballast water treatment systems which use chlorine as a biocide, while other prohibit them. Finally, standards governing the discharge of bilge water, graywater, and other incidental discharges also can vary from state to state.

Under current law, any recreational vessel that is not subject to Coast Guard inspection and carrying paying passengers or engaged in commercial use are permanently exempt from the VGP and related permits regulating discharges incidental to the normal operation of a vessel (33 U.S.C. 1342(r)). Congress has also enacted a temporary moratorium of the VGP for commercial fishing vessels regardless of size, as well as commercial vessels less than 79 feet in length (Public Law 111–215). The moratorium expires on December 18, 2013. The EPA estimates there are approximately 140,000 vessels currently subject to the moratorium which will have to come into compliance with the VGP and state 401 certifications.

CURRENT SCIENCE

EPA and the Coast Guard jointly tasked the National Research Council (NRC) of the National Academies of Sciences and the EPA Office of Water tasked the EPA Science Advisory Board's Ecological Processes and Effects Committee (SAB) to report back on several aspects of regulating the discharge of ballast water.

National Research Council

- The NRC completed its report (*Assessing the Relationship Between Propagule Pressure and Invasion Risk in Ballast Water*) in June 2011 and found the following: An assumption in the development of a numeric standard for live organisms per unit volume ballast water discharged is that there is a direct and quantifiable relationship between the density of individuals released in a ballast discharge and the probability of their eventual establishment. While a relationship between density and establishment probability may exist, many other factors also affect establishment success in aquatic systems. Additionally, ballast water is just one of several pathways for the introduction of nonindigenous species or pathogens.
- Available methods for determining a numeric standard for ballast water discharge are limited by a profound lack of data to develop and validate models determining risk of invasion.
- However, a discharge standard, for example the Coast Guard phase 1 or IMO D–2 standard, should be established. This will re-

duce the likelihood of invasion in coastal ecosystems beyond what we presently experience and will serve as a benchmark to use in future studies.

• Steps should be taken to develop sampling protocols, standardize methods and analytical processes, and create the framework necessary to produce high-quality data specifically needed to populate risk-release models. Once data can be collected, experiments and studies can commence to determine the efficacy of numeric limits on reducing the risk of invasion from nonindigenous species or pathogens.

Science Advisory Board Report

The EPA Office of Water requested the SAB to review and provide advice regarding whether existing shipboard treatment technologies can reach specified concentrations of organisms in vessel ballast water, how these technologies might be improved in the future, and how to overcome limitations in existing data. On June 2011, the SAB released its report (*Efficacy of Ballast Water Treatment Systems*) which found the following:

• Five categories of existing BWMS are currently able to comply with the least stringent standard proposed by the USCG (i.e., the Coast Guard phase 1 standard, which is equivalent to the IMO D–2 standard). However, no current BWMS can meet a 100x or 1000x standard (i.e., the Coast Guard phase 2 standard) or the complete removal of all living organisms.

• The IMO D–2/Coast Guard phase 1 performance standards for discharge quality are currently measurable. However, currently available methods prevent testing of BWMS to any standard more stringent than the IMO D–2/Coast Guard phase 1 standard and make it impracticable for verifying a standard 1000x more stringent. Verification of standards that set very low organism concentrations (those more stringent than the Coast Guard phase 1/IMO D–2 standard) may require water samples that are too large to be logistically feasible. Furthermore, a zero detectable discharge standard is not statistically verifiable.

• The primary impediments to the ability of shipboard systems to meet stringent discharge standards beyond exiting technologies is that treatment processing plants will likely need to be large, heavy, and energy intensive. Many existing vessels may be unable to overcome these barriers through retrofitting. More stringent standards may require a fundamental shift in how ballast water is managed.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

"Commercial Vessel Discharges Reform Act of 2011".

Section 2. Discharges from commercial vessels

Section 2 of the bill amends Title III of the Federal Water Pollution Control Act of 1972, popularly known as the Clean Water Act (CWA) by adding at the end a new section: Sec. 321. Discharges from Commercial Vessels.

Section 321(a) defines certain terms only applicable to section 321.

Section 321(b) specifies the circumstances in which a discharge of ballast water from a commercial vessel (vessel) into navigable waters is permitted and identifies applicable vessels. It further requires the Secretary of the department in which the Coast Guard is operating to issue final regulations within 180 days of the date of enactment of the bill to implementing requirements of the bill, including compliance deadlines for an initial ballast water performance standard (performance standard) established under subsection (c) and revised under (d) and a process to issue extensions of such deadlines.

Section 321(c) establishes an initial performance standard that is consistent with the International Maritime Organization standard and requires vessel operators to conduct ballast water treatment using technologies certified to meet the performance standard. It further provides for an exemption for the discharge of ballast water that does not meet the performance standard if such discharge was done to ensure the safety of life at sea, as the result of accidental damage, or to avoid or minimize the discharge of another pollutant.

Section 321(d) requires the Administrator of the EPA to review of the performance standard no later than January 1, 2016, and every ten years thereafter to determine whether revising the performance standard would result in a demonstrable and substantial reduction in the risk of introduction or establishment of aquatic nuisance species. If after considering such factors as improvements to ballast water treatment technology (treatment technology), testing methods, and impacts on water quality, the Administrator may revise the performance standard for any new or converted vessel. If the after the review, the Administrator determines the existing performance standard can be made more stringent by at least two orders of magnitude, the Administrator may revise the performance standard by such amount for vessels constructed prior to the date of the revision. This subsection also provides a mechanism for the governor of a state to petition the Administrator to revise the performance standard if new information reasonably indicates that such revision could result in a scientifically demonstrable and substantial reduction in the risk of the introduction or establishment of aquatic nuisance species.

Section 321(e) establishes a process for manufacturers of treatment technology to apply for and for the Secretary to review and grant certifications for treatment technology. The subsection requires Secretary to issue guidelines to govern the certification testing process. It also requires the treatment technology to meet certain criteria before the Secretary may certify it, and allows the Secretary to accept the certification of treatment systems done by foreign flag states under certain conditions. It further prohibits vessel owners from using a treatment technology that has not been certified and prohibits manufacturers from selling a treatment technology that has not been certified. Finally, it allows a vessel operator to continue to use a properly maintained treatment technology until the vessel reaches the end of it service life, the treatment technology reaches the end of its service life, or the vessel completes a major conversion.

Section 321(f) requires the Secretary to establish an alternative method of compliance with this section for vessels having a maximum ballast water capacity of less than eight cubic meters.

Section 321(g) establishes a mechanism for the owners of vessels that operate exclusively within a geographically limited area to petition the Secretary for a waiver from the requirement to install a certified treatment technology. Owners of vessels whose petitions are granted are required to comply with best management practices to minimize the introduction or establishment of aquatic nuisance species.

Section 321(h) allows vessels owners to discharge ballast water that does not meet a performance standard if such discharge is into an onshore or offshore ballast water reception facility that meets standard issued by the Administrator or Secretary, respectively.

Section 321(i) requires the owner of a vessel to discharge ballast water in accordance with a ballast water management plan that meets requirements prescribed by the Secretary and that is approved by the Secretary. It authorizes the Secretary to approve a ballast water management plan for a foreign vessel under certain conditions and requires all vessels to maintain for inspection aboard the vessel a ballast water record book.

Section 321(j) prohibits the Administrator or a state from requiring a vessel operator to obtain any new permit or permit condition under section 402 of the Clean Water Act for any discharge of ballast water into navigable waters. It also prohibits any state or political subdivision thereof from adopting or enforcing any law or regulation governing the discharge of ballast water into navigable waters.

Section 321(k) authorizes a state to establish its own program to inspect vessels to ensure compliance with the ballast water requirements of this section and to enforce such requirements. A state desiring to establish such program must satisfy certain criteria and seek the approval of its program from the Secretary. A state inspection and enforcement program must be substantially and procedurally equivalent to the requirements of this section and any implementing regulations or guidance promulgated pursuant to this section.

Section 321(l) requires the Administrator to complete an evaluation of discharges incidental to the normal operation of a vessel within three years of the date of enactment. It prohibits the Administrator or a state from requiring a vessel operator to obtain any new permit or permit condition under section 402 of the CWA for any discharge incidental to the normal operation of a vessel into navigable waters. It also prohibits any state or political subdivision thereof from adopting or enforcing any law or regulation governing discharge incidental to the normal operation of a vessel into navigable waters.

Section 321(m) provides conditions for the expiration of EPA's current VGP. Upon the date of enactment of this section, the terms and conditions of state section 401 water quality certifications included in section six of the VGP or state law regulating the discharge of ballast water or any discharge incidental to the normal operation of a vessel expire. Upon the date on which a vessel owner installs a certified treatment technology or otherwise comes into compliance with this section, the terms and conditions of the VGP applicable to the discharge of ballast water from such vessel expire. Finally, the terms and conditions of the VGP with respect to discharges incidental to the normal operation of a vessel do not expire.

Section 321(n) requires the Secretary to enforce the requirements of this section through the inspection of vessels and other means. It also authorizes the Administrator to use existing CWA authorities to enforce the requirements of this section.

Section 321(o) establishes civil, criminal and administrative penalties for any violation of the requirements of this section. It also includes a provision clarifying that actions taken by an individual determined by the Secretary to have been in the interest of ensuring the safety of life at sea do not constitute a violation of the requirements of this section.

Section 321(p) clarifies that nothing in this section affects the regulation of discharges from vessels of oil and other hazardous substances under section 311 of the CWA, or sewage under section 312 of the CWA.

Section 3. Discharges incidental to the normal operation of a covered vessel

Section 3 adds a new subsection (s) to section 402 of the CWA and a new subsection (p) to section 312 of the CWA.

Subsection 402(s) exempts covered vessels (commercial vessels less than 79 feet in length and commercial fishing vessels regardless of length) from the requirement to obtain a permit under section 402 of the CWA for discharges incidental to the normal operation of a vessel.

Subsection 312(p) requires the Administrator to determine the discharges incidental to the normal operation of a covered vessel for which it is reasonable and practicable to develop a best management practice (BMP) to mitigate adverse impacts of such discharges on waters of the United States. In determining which discharges to develop best management practices for, the Administrator must consider such factors as the impact on the environment of the discharge, the effectiveness BMP would have in reducing any adverse impact, the effect the BMP would have on the operation and safety of the vessel, and the economic impact of the BMP. The Administrator must review the determinations every five years. The subsection further requires the Secretary to promulgate regulations governing the use of BMPs for the discharges the Administrator determines it is reasonable and practicable to develop. In promulgating such regulations, the Secretary may consider vessel size, type, class and age. The Secretary may also provide waivers to certain vessels as necessary. Once the regulations go into effect, operators of covered vessels are prohibited from discharging any discharge incidental to the normal operation of a covered vessel unless using a BMP.

Section 4. Conforming and technical amendments

Section 3 makes conforming and technical amendments to the CWA.

Section 5. Regulation of ballast water and incidental discharges from a commercial vessel

Section 5 clarifies that upon enactment of this act, discharges of ballast water and discharges incidental to the normal operation of a vessel shall not be regulated in any manner other than as specified in section 321 and 312 of the CWA.

Section 6. Nonindigenous aquatic nuisance prevention and control act of 1990

Section 6 repeals certain sections of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 that authorize the Secretary to issue regulations to prevent the introduction and spread of aquatic nuisance species.

LEGISLATIVE HISTORY

On September 2, 2011, Subcommittee on Coast Guard and Maritime Transportation Chairman Frank A. LoBiondo introduced for himself, Transportation and Infrastructure Committee Chairman John L. Mica, and Subcommittee on Water Resources and Environment Chairman Bob Gibbs, H.R. 2840, The Commercial Vessel Discharge Reform Act. On October 13, 2011, the Committee on Transportation and Infrastructure met in open session to consider H.R. 2838, and ordered the bill, as amended, reported favorably to the House of Representatives by voice vote with a quorum present. Amendments were offered in Committee by Representatives LoBiondo, Bishop, and Ribble. Mr. LoBiondo offered an amendment in the nature of a substitute which was adopted by voice vote. The amendment made technical and clarifying changes to the bill, set a revised schedule for implementation of the performance standard on new and existing vessels; reduced the limitation on revising the performance standard; set a tiered civil penalty for violations; revised the period for the use of treatment technologies; revised the applicability of the alternative compliance program; and clarified that best management practices apply to vessels not required to install treatment technologies. Mr. Bishop offered and withdrew an amendment regarding state operational requirements. Mr. Ribble offered and withdrew an amendment regarding the applicability of the bill to certain federally owned vessels.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. During consideration of H.R. 2840, no recorded votes were taken. The bill, as amended, was reported favorably to the House of Representatives by voice vote.

HEARINGS

On July 26, 2011, the Subcommittee on Coast Guard and Maritime Transportation and the Subcommittee on Water Resources and Environment held a joint hearing on "Reducing Regulatory Burdens, Ensuring the Flow of Commerce, and Protecting Jobs: A Common Sense Approach to Ballast Water Regulation."

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Transportation and Infrastructure's oversight findings and recommendations are reflected in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974, included below.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2840 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 3, 2011.

Hon. JOHN L. MICA,
Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2840, the Commercial Vessel Discharges Reform Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CHO staff contact is Sarah Puro.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 2840—Commercial Vessel Discharges Reform Act of 2011

H.R. 2840 would set standards for ballast water discharged from ships into United States waters. Under current law, the United States Coast Guard (USCG) and the Environmental Protection Agency (EPA) already set such standards, and those agencies have proposed the same standards that would be set by the legislation. The bill also would require the USCG to complete additional inspections on certain ships; however, the agency would conduct that work during inspections for violations of other laws. Based on information from those agencies, CBO estimates that any additional requirements under the bill would not have a significant impact on the federal budget.

The Statutory-Pay-As-You-Go-Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Enacting H.R. 2840 could result in the collection of additional civil penalties, which are recorded as revenues and deposited in the U.S. Treasury. However, CBO estimates that such collections would be minimal and the effect on revenues would be insignificant. Because those prosecuted and convicted under the bill could be subject to criminal fines, the federal government might collect additional fines if the legislation is enacted. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent. CBO expects that any additional revenues

and direct spending would not be significant because of the small number of cases likely affected.

H.R. 2840 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on owners and operators of vessels. The bill would impose additional private-sector mandates on manufacturers of vessels and manufacturers of ballast water treatment systems and would preempt state and local laws relating to vessel discharges. Because of uncertainty about the timing and scope of regulations forthcoming from USCG and EPA, CBO cannot determine whether the aggregate cost of the mandates in the bill would exceed the annual threshold established in UMRA for private-sector mandates ($142 million in 2011, adjusted annually for inflation).

However, because of the relatively small number of public entities affected, CBO estimates that the aggregate cost of intergovernmental mandates in the bill would fall below the annual threshold in UMRA ($71 million in 2011, adjusted annually for inflation).

The CBO staff contacts for this estimate are Sarah Puro (for USCG) and Susanne Mehlman (for EPA). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to provide for the uniform regulation of discharges of ballast water and other discharges incidental to the normal operation of a vessel in a manner which protects U.S. waters from aquatic nuisance species without disrupting the flow of international and interstate commerce.

ADVISORY OF EARMARKS

In compliance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2840 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 2840 preempts state and local law by prohibiting states from adopting or enforcing any law or regulation of the state or political subdivision thereof with respect to a discharge incidental to the normal operation of a vessel into the navigable waters of the U.S.

ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL WATER POLLUTION CONTROL ACT

* * * * * * *

TITLE III—STANDARDS AND ENFORCEMENT

EFFLUENT LIMITATIONS

SEC. 301. (a) Except as in compliance with this section and sections 302, 306, 307, 318, *312, 321,* 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.

* * * * * * *

MARINE SANITATION DEVICES

SEC. 312. (a) * * *

* * * * * * *

(p) BEST MANAGEMENT PRACTICES FOR COVERED VESSELS.—

(1) DEFINITIONS.—In this subsection, the following definitions apply:

(A) COVERED VESSEL.—The term "covered vessel" means every description of watercraft, or other artificial contrivance used or capable of being used as a means of transportation on water, that is engaged in commercial service (as defined under section 2101 of title 46, United States Code), and—

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

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

(B) DISCHARGE INCIDENTAL TO THE NORMAL OPERATION OF A COVERED VESSEL.—The term "discharge incidental to the normal operation of a covered vessel" means a discharge incidental to the normal operation of a commercial vessel (as defined in section 321), insofar as the commercial vessel is a covered vessel.

(2) DETERMINATION OF DISCHARGES SUBJECT TO BEST MANAGEMENT PRACTICES.—

(A) DETERMINATION.—

(i) IN GENERAL.—The Administrator, in consultation with the Secretary of the department in which the Coast Guard is operating, shall determine the discharges incidental to the normal operation of a covered vessel for which it is reasonable and practicable to develop best management practices to mitigate the adverse impacts of such discharges on the waters of the United States.

(ii) PROMULGATION.—The Administrator shall promulgate the determinations under clause (i) in accordance with section 553 of title 5, United States Code.

(B) CONSIDERATIONS.—In making a determination under subparagraph (A), the Administrator shall consider—

(i) the nature of the discharge;

(ii) the environmental effects of the discharge, including characteristics of the receiving waters;

(iii) the effectiveness of the best management practice in reducing adverse impacts of the discharge on water quality;

(iv) the practicability of developing and using a best management practice;

(v) the effect that the use of a best management practice would have on the operation, operational capability, or safety of the vessel;

(vi) applicable Federal and State law;

(vii) applicable international standards; and

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

(C) TIMING.—The Administrator shall—

(i) make initial determinations under subparagraph (A) not later than 1 year after the date of enactment of this subsection; and

(ii) every 5 years thereafter—

(I) review the determinations; and

(II) if necessary, revise the determinations based on any new information available to the Administrator.

(3) REGULATIONS FOR THE USE OF BEST MANAGEMENT PRACTICES.—

(A) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating shall promulgate regulations on the use of best management practices for discharges incidental to the normal operation of a covered vessel that the Administrator determines are reasonable and practicable to develop under paragraph (2).

(B) REGULATIONS.—

(i) IN GENERAL.—The Secretary shall promulgate the regulations under this paragraph as soon as practicable after the Administrator makes determinations pursuant to paragraph (2).

(ii) CONSIDERATIONS.—In promulgating regulations under this paragraph, the Secretary may—

(I) distinguish among classes, types, and sizes of vessels;

(II) distinguish between new and existing vessels; and

(III) provide for a waiver of the applicability of the standards as necessary or appropriate to a particular class, type, age, or size of vessel.

(4) EFFECT OF OTHER LAWS.—This subsection shall not affect the application of section 311 to a covered vessel.

(5) PROHIBITION RELATING TO COVERED VESSELS.—After the effective date of the regulations promulgated by the Secretary of the department in which the Coast Guard is operating under paragraph (3), the owner or operator of a covered vessel shall neither operate in, nor discharge any discharge incidental to the normal operation of the vessel into navigable waters, if the owner or operator of the vessel is not using any applicable best management practice meeting standards established under this subsection.

* * * * * * *

SEC. 321. DISCHARGES FROM COMMERCIAL VESSELS.

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) AQUATIC NUISANCE SPECIES.—The term "aquatic nuisance species" means a nonindigenous species (including a pathogen) that threatens the diversity or abundance of native species or the ecological stability of navigable waters or commercial, agricultural, aquacultural, or recreational activities dependent on such waters.

(2) BALLAST WATER.—

(A) IN GENERAL.—The term "ballast water" means any water (including any sediment suspended in such water) taken aboard a commercial vessel—

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

(ii) during the cleaning, maintenance, or other operation of a ballast water treatment system of the vessel.

(B) EXCLUSION.—The term "ballast water" does not include any pollutant that is added to water described in subparagraph (A) that is not directly related to the operation of a properly functioning ballast water treatment technology certified under subsection (e).

(3) BALLAST WATER PERFORMANCE STANDARD.—The term "ballast water performance standard" or "performance standard" means a numerical ballast water performance standard specified under subsection (c) or established under subsection (d).

(4) BALLAST WATER TREATMENT SYSTEM.—The term "ballast water treatment system" means any equipment on board a commercial vessel (including all compartments, piping, spaces, tanks, and multi-use compartments, piping, spaces, and tanks) that is—

(A) designed for loading, carrying, treating, or discharging ballast water; and

(B) installed and operated to meet a ballast water performance standard.

(5) BALLAST WATER TREATMENT TECHNOLOGY.—The term "ballast water treatment technology" or "treatment technology"

means any mechanical, physical, chemical, or biological process used, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of aquatic nuisance species within ballast water.

(6) BIOCIDE.—The term "biocide" means a substance or organism, including a virus or fungus, that is introduced into, or produced by, a ballast water treatment technology as part of the process used to comply with a ballast water performance standard under this section.

(7) COMMERCIAL VESSEL.—The term "commercial vessel" means every description of watercraft, or other artificial contrivance used or capable of being used as a means of transportation on water, that is engaged in commercial service (as defined under section 2101 of title 46, United States Code).

(8) CONSTRUCTED.—The term "constructed" means a state of construction of a commercial vessel at which—

(A) the keel is laid;

(B) construction identifiable with the specific vessel begins;

(C) assembly of the vessel has begun comprising at least 50 tons or 1 percent of the estimated mass of all structural material of the vessel, whichever is less; or

(D) the vessel commences a major conversion.

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

(A) IN GENERAL.—The term "discharge incidental to the normal operation of a commercial vessel" means—

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

(I)(aa) graywater (except graywater referred to in section 312(a)(6)), bilge water, cooling water, oil water separator effluent, anti-fouling hull coating leachate, boiler or economizer blowdown, byproducts from cathodic protection, controllable pitch propeller and thruster hydraulic fluid, distillation and reverse osmosis brine, elevator pit effluent, firemain system effluent, freshwater layup effluent, gas turbine wash water, motor gasoline and compensating effluent, refrigeration and air condensate effluent, seawater pumping biofouling prevention substances, boat engine wet exhaust, sonar dome effluent, exhaust gas scrubber washwater, or stern tube packing gland effluent; or

(bb) any other pollutant associated with the operation of a marine propulsion system, shipboard maneuvering system, habitability system, or installed major equipment, or from a protective, preservative, or absorptive application to the hull of a commercial vessel;

(II) weather deck runoff, deck wash, aqueous film forming foam effluent, chain locker effluent, non-oily machinery wastewater, underwater ship husbandry effluent, welldeck effluent, or fish hold and fish hold cleaning effluent; or

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

(ii) a discharge of a pollutant into navigable waters in connection with the testing, maintenance, and repair of a system, equipment, or engine described in subclause (I)(bb) or (III) of clause (i) whenever the commercial vessel is waterborne.

(B) EXCLUSION.—The term "discharge incidental to the normal operation of a commercial vessel" does not include—

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

(I) ballast water;

(II) rubbish, trash, garbage, incinerator ash, or other such material discharged overboard;

(III) oil or a hazardous substance within the meaning of section 311; or

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

(ii) an emission of an air pollutant resulting from the operation onboard a commercial vessel of a vessel propulsion system, motor driven equipment, or incinerator.

(10) EXISTING COMMERCIAL VESSEL.—The term "existing commercial vessel" means a commercial vessel constructed prior to January 1, 2012.

(11) GEOGRAPHICALLY LIMITED AREA.—The term "geographically limited area" means an area—

(A) with a physical limitation that prevents a commercial vessel from operating outside the area, as determined by the Secretary; or

(B) that is ecologically homogeneous, as determined by the Administrator, in consultation with the Secretary.

(12) MAJOR CONVERSION.—The term "major conversion" means a conversion of a commercial vessel that—

(A) changes its ballast water capacity by 15 percent or more; or

(B) prolongs the life of the commercial vessel by 10 years or more, as determined by the Secretary.

(13) MANUFACTURER.—The term "manufacturer" means a person engaged in the manufacturing, assembling, or importation of a ballast water treatment technology.

(14) NAVIGABLE WATERS.—The term "navigable waters" includes the exclusive economic zone, as defined in section 107 of title 46, United States Code.

(15) NONINDIGENOUS SPECIES.—The term "nonindigenous species" means a species or other viable biological material that enters an ecosystem beyond its historic range.

(16) OWNER OR OPERATOR.—The term "owner or operator" means a person owning, operating, or chartering by demise a commercial vessel.

(17) SECRETARY.—The term "Secretary" means the Secretary of the department in which the Coast Guard is operating.

(18) VESSEL GENERAL PERMIT.—The term "Vessel General Permit" means the Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels issued by the Administrator

under section 402 for ballast water and other discharges incidental to the normal operation of vessels, as in effect on December 19, 2008, for all jurisdictions except Alaska and Hawaii, and February 6, 2009, for Alaska and Hawaii.

(b) GENERAL PROVISIONS.—

(1) BALLAST WATER DISCHARGE REQUIREMENTS FOR COMMERCIAL VESSELS.—An owner or operator may discharge ballast water from a commercial vessel into navigable waters only if—

(A) the discharge—

(i) meets the ballast water performance standard;

(ii) is made pursuant to the safety exemption established by subsection (c)(2);

(iii) meets the requirements of an alternative method of compliance established for the commercial vessel under subsection (f); or

(iv) is made pursuant to a determination that the commercial vessel meets the requirements relating to geographically limited areas under subsection (g); and

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

(2) APPLICABILITY.—

(A) COVERED VESSELS.—Paragraph (1) shall apply to the owner or operator of a commercial vessel that is designed, constructed, or adapted to carry ballast water if the commercial vessel is—

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

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

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

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

(ii) a commercial vessel that continuously takes on and discharges ballast water in a flow-through system;

(iii) any vessel in the National Defense Reserve Fleet that is scheduled to be disposed of through scrapping or sinking;

(iv) a commercial vessel that discharges ballast water consisting solely of water—

(I) taken aboard from a municipal or commercial source; and

(II) that, at the time the water is taken aboard, meets the applicable regulations or permit requirements for such source under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) and section 402 of this Act; or

(v) a commercial vessel that is 3 years or fewer from the end of its useful life, as determined by the Secretary, on the date on which the regulations issued under paragraph (3) become effective for the vessel pursuant to the implementation schedule issued under paragraph (3)(B).

(C) LIMITATION.—An exemption under subparagraph (B)(v) shall cease to be effective on the date that is 3 years after the date on which the regulations under paragraph (3) become effective for the commercial vessel pursuant to the implementation schedule issued under paragraph (3)(B).

(3) ISSUANCE OF REGULATIONS.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Administrator, shall issue final regulations to implement the requirements of this section.

(B) PROPOSED RULE.—For the purposes of chapter 5 of title 5, United States Code, the proposed rulemaking published by the Coast Guard on August 28, 2009 (74 Fed. Reg. 44632; relating to standards for living organisms in ships' ballast water discharged in U.S. waters), shall serve as a proposed rule for the purposes of issuing regulations under this section.

(4) COMPLIANCE SCHEDULES.—

(A) INITIAL PERFORMANCE STANDARD COMPLIANCE DEADLINES.—

(i) IN GENERAL.—An owner or operator shall comply with the performance standard established under subsection (c) on or before the deadline that applies to the commercial vessel of the owner or operator, as specified in clause (ii).

(ii) DEADLINES.—The deadlines for compliance with the performance standard established under subsection (c) are as follows:

(I) For a commercial vessel constructed on or after January 1, 2012, the date of delivery of the vessel.

(II) For an existing commercial vessel with a ballast water capacity of less than 1,500 cubic meters, the date of the first drydocking of the vessel after January 1, 2016.

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

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

(iii) REGULATIONS.—In issuing regulations under paragraph (3), the Secretary shall include a compliance schedule that sets forth the deadlines specified in clause (ii).

(B) REVISED PERFORMANCE STANDARD COMPLIANCE DEADLINES.—

(i) IN GENERAL.—Upon revision of a performance standard under subsection (d), the Secretary, in consultation with the Administrator, shall issue a compliance schedule that establishes deadlines for an owner

or operator to comply with the revised performance standard.

(ii) FACTORS.—In issuing a compliance schedule under this subparagraph, the Secretary—

(I) shall consider the factors identified in subparagraph (C)(iv); and

(II) may establish different compliance deadlines based on vessel class, type, or size.

(iii) VESSELS CONSTRUCTED AFTER ISSUANCE OF REVISED PERFORMANCE STANDARDS.—A compliance schedule issued under this subparagraph with respect to a revised performance standard shall require, at a minimum, the owner or operator of a commercial vessel that commences a major conversion or is constructed on or after the date of issuance of the revised performance standard to comply with the revised performance standard.

(C) EXTENSION OF COMPLIANCE DEADLINES.—

(i) IN GENERAL.—The Secretary may extend a compliance deadline established under subparagraph (A) or (B) on the Secretary's own initiative or in response to a petition submitted by an owner or operator.

(ii) PROCESSES FOR GRANTING EXTENSIONS.—In issuing regulations under paragraph (3), the Secretary shall establish—

(I) a process for the Secretary, in consultation with the Administrator, to issue an extension of a compliance deadline established under subparagraph (A) or (B) for a commercial vessel (or class, type, or size of vessel); and

(II) a process for an owner or operator to submit a petition to the Secretary for an extension of a compliance deadline established under subparagraph (A) or (B) with respect to the commercial vessel of the owner or operator.

(iii) PERIOD OF EXTENSIONS.—An extension issued under this subparagraph shall—

(I) apply for a period of not to exceed 18 months; and

(II) be renewable for an additional period of not to exceed 18 months.

(iv) FACTORS.—In issuing an extension or reviewing a petition under this subparagraph, the Secretary shall consider, with respect to the ability of an owner or operator to meet a compliance deadline, the following factors:

(I) Whether the treatment technology to be installed is available in sufficient quantities to meet the compliance deadline.

(II) Whether there is sufficient shipyard or other installation facility capacity.

(III) Whether there is sufficient availability of engineering and design resources.

(IV) Vessel characteristics, such as engine room size, layout, or a lack of installed piping.

(V) Electric power generating capacity aboard the vessel.

(VI) Safety of the vessel and crew.

(v) CONSIDERATION OF PETITIONS.—

(I) DETERMINATIONS.—The Secretary shall approve or deny a petition for an extension of a compliance deadline submitted by an owner or operator under this subparagraph.

(II) DEADLINE.—If the Secretary does not approve or deny a petition referred to in subclause (I) on or before the last day of the 90-day period beginning on the date of submission of the petition, the petition shall be deemed approved.

(c) BALLAST WATER PERFORMANCE STANDARD FOR COMMERCIAL VESSELS.—

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

(A) conduct ballast water treatment before discharging ballast water from a commercial vessel into navigable waters using a ballast water treatment technology certified for the vessel (or class, type, or size of vessel) under subsection (e); and

(B) ensure that any ballast water so discharged meets, at a minimum, the numerical ballast water performance standard set forth in the International Convention for the Control and Management of Ships' Ballast Water and Sediments, as adopted on February 13, 2004, or a revised numerical ballast water performance standard established under subsection (d).

(2) SAFETY EXEMPTION.—Notwithstanding paragraph (1), an owner or operator may discharge ballast water without regard to a ballast water performance standard if—

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

(B) the discharge is accidental and the result of damage to the commercial vessel or its equipment and—

(i) all reasonable precautions to prevent or minimize the discharge have been taken; and

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

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

(d) REVIEW OF PERFORMANCE STANDARD.—

(1) IN GENERAL.—Not later than January 1, 2016, and every 10 years thereafter, the Administrator, in consultation with the Secretary, shall complete a review to determine whether revising the ballast water performance standard would result in a scientifically demonstrable and substantial reduction in the risk of the introduction or establishment of aquatic nuisance species.

(2) CONSIDERATIONS.—In conducting the review, the Administrator shall consider—

(A) improvements in the scientific understanding of biological and ecological processes that lead to the introduction or establishment of aquatic nuisance species;

(B) improvements in ballast water treatment technology, including—

(i) the capability of such technology to achieve a revised ballast water performance standard;

(ii) the effectiveness and reliability of such technology in the shipboard environment;

(iii) the compatibility of such technology with the design and operation of commercial vessels by class, type, and size;

(iv) the commercial availability of such technology; and

(v) the safety of such technology;

(C) improvements in the capabilities to detect, quantify, and assess the viability of aquatic nuisance species at the concentrations under consideration;

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

(E) the costs, cost-effectiveness, and impacts of—

(i) a revised ballast water performance standard, including the potential impacts on shipping, trade, and other uses of the aquatic environment; and

(ii) maintaining the existing ballast water performance standard, including the potential impacts on water-related infrastructure, recreation, the propagation of native fish, shellfish, and wildlife, and other uses of navigable waters.

(3) REVISION OF PERFORMANCE STANDARD.—

(A) RULEMAKING.—If, pursuant to a review conducted under paragraph (1), the Administrator, in consultation with the Secretary, determines that revising the ballast water performance standard would result in a scientifically demonstrable and substantial reduction in the risk of the introduction or establishment of aquatic nuisance species, the Administrator shall undertake a rulemaking to revise the performance standard.

(B) SPECIAL RULE.—The Administrator may not issue a revised performance standard pursuant to this paragraph that applies to a commercial vessel constructed prior to the date on which the revised performance standard is issued unless the revised performance standard is at least 2 orders of magnitude more stringent than the performance standard in effect on the date that the review is completed.

(4) STATE PETITION FOR REVIEW OF PERFORMANCE STANDARDS.—

(A) IN GENERAL.—The Governor of a State may submit a petition requesting that the Administrator review a ballast water performance standard if there is significant new information that could reasonably indicate the performance standard could be revised to result in a scientifically demonstrable and substantial reduction in the risk of the introduction or establishment of aquatic nuisance species.

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

(C) REQUIRED INFORMATION.—A petition submitted to the Administrator under subparagraph (A) shall include the scientific and technical information on which the petition is based.

(D) REVIEW AND REPORTING.—Upon receipt of a petition from a Governor under subparagraph (A), the Administrator shall make publicly available a copy of the petition, including the scientific and technical information provided by the Governor under subparagraph (C).

(E) REVIEW AND REVISION OF PERFORMANCE STANDARDS.—

(i) IN GENERAL.—If, after receiving a petition submitted by a Governor under subparagraph (A) for review of a performance standard, the Administrator, in consultation with the Secretary, determines that the petition warrants additional action, the Administrator may—

(I) in consultation with the Secretary, initiate a review of the performance standard under paragraph (1); and

(II) in consultation with the Secretary, revise the performance standard through a rulemaking under paragraph (3)(A), subject to the limitation in paragraph (3)(B).

(ii) TREATMENT OF MORE THAN ONE PETITION AS A SINGLE PETITION.—The Administrator may treat more than one petition as a single petition for review.

(e) TREATMENT TECHNOLOGY CERTIFICATION.—

(1) CERTIFICATION REQUIRED.—

(A) CERTIFICATION PROCESS.—

(i) EVALUATION.—Upon application of a manufacturer, the Secretary shall evaluate a ballast water treatment technology with respect to—

(I) whether the treatment technology meets the ballast water performance standard when installed on a commercial vessel (or a class, type, or size of commercial vessel);

(II) the effect of the treatment technology on commercial vessel safety; and

(III) any other criteria the Secretary considers appropriate.

(ii) CERTIFICATION.—If, after conducting the evaluation required by clause (i), the Secretary determines the treatment technology meets the criteria established under such clause, the Secretary may certify the treatment technology for use on a commercial vessel (or a class, type, or size of commercial vessel).

(iii) SUSPENSION AND REVOCATION OF CERTIFICATION.—The Secretary shall, by regulation, establish a process to suspend or revoke a certification issued under this subparagraph.

(B) CERTIFICATES OF TYPE APPROVAL.—

(i) ISSUANCE OF CERTIFICATES TO MANUFACTURER.—If the Secretary certifies a ballast water treatment technology under subparagraph (A), the Secretary shall

issue to the manufacturer of the treatment technology, in such form and manner as the Secretary determines appropriate, a certificate of type approval for the treatment technology.

(ii) CONDITIONS TO BE INCLUDED IN CERTIFICATES.—A certificate of type approval issued under clause (i) shall include any conditions that are imposed by the Secretary under paragraph (2).

(iii) ISSUANCE OF COPIES OF CERTIFICATES TO OWNERS AND OPERATORS.—A manufacturer that receives a certificate of type approval under clause (i) for a ballast water treatment technology shall furnish a copy of the certificate to any owner or operator of a commercial vessel on which the treatment technology is installed.

(iv) INSPECTIONS.—An owner or operator who receives a copy of a certificate under clause (iii) for a ballast water treatment technology installed on a commercial vessel shall retain a copy of the certificate onboard the commercial vessel and make the copy of the certificate available for inspection at all times that such owner or operator is utilizing the treatment technology.

(C) TREATMENT TECHNOLOGIES THAT USE OR GENERATE BIOCIDES.—The Secretary may not certify a ballast water treatment technology that—

(i) uses a biocide or generates a biocide that is a "pesticide", as defined in section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136), unless the biocide is registered under such Act or the Administrator has approved the use of such biocide in such treatment technology; or

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

(D) PROHIBITION.—

(i) IN GENERAL.—Except as provided by clause (ii), an owner or operator may not use a ballast water treatment technology to comply with the requirements of this section unless the Secretary has certified the treatment technology under subparagraph (A).

(ii) EXCEPTIONS.—

(I) COAST GUARD SHIPBOARD TECHNOLOGY EVALUATION PROGRAM.—An owner or operator may use a ballast water treatment technology that has not been certified by the Secretary to comply with the requirements of this section if the technology is being evaluated under the Coast Guard Shipboard Technology Evaluation Program.

(II) BALLAST WATER TREATMENT TECHNOLOGIES CERTIFIED BY FOREIGN ENTITIES.—An owner or operator may use a ballast water treatment technology that has not been certified by the Secretary to comply with the requirements of this section if the technology has been certified by a foreign entity and the certification demonstrates performance and safety of the treatment technology equivalent

to the requirements of this subsection, as determined by the Secretary.

(2) CERTIFICATION CONDITIONS.—

(A) IMPOSITION OF CONDITIONS.—In certifying a ballast water treatment technology under this subsection, the Secretary, in consultation with the Administrator, may impose any condition on the subsequent installation, use, or maintenance of the treatment technology onboard a commercial vessel as is necessary for—

(i) the safety of the vessel, the crew of the vessel, and any passengers aboard the vessel;

(ii) the protection of the environment; and

(iii) the effective operation of the treatment technology.

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

(3) USE OF BALLAST WATER TREATMENT TECHNOLOGIES ONCE INSTALLED.—

(A) IN GENERAL.—Subject to subparagraph (B), an owner or operator who installs a ballast water treatment technology that the Secretary has certified under paragraph (1) may use the treatment technology, notwithstanding any revisions to a ballast water performance standard occurring after the installation so long as the owner or operator—

(i) maintains the treatment technology in proper working condition; and

(ii) maintains and uses the treatment technology in accordance with—

(I) the manufacturer's specifications; and

(II) any conditions imposed by the Secretary under paragraph (2).

(B) LIMITATION.—Subparagraph (A) shall cease to apply with respect to a commercial vessel after the first to occur of the following:

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

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

(iii) The completion of a major conversion of the vessel.

(4) TESTING PROTOCOLS.—Not later than 180 days after the date of enactment of this section, the Administrator, in consultation with the Secretary, shall issue guidelines specifying land-based and shipboard testing protocols or criteria for—

(A) certifying the performance of ballast water treatment technologies under this subsection; and

(B) certifying laboratories to evaluate such treatment technologies.

(5) PROHIBITION.—Following the date on which the requirements of subsection (b)(1) apply with respect to a commercial vessel pursuant to the implementation schedule issued under subsection (b)(3)(B), no manufacturer of a ballast water treatment technology shall sell, offer for sale, or introduce or deliver

for introduction into interstate commerce, or import into the United States for sale or resale, a ballast water treatment technology for the commercial vessel unless the technology has been certified under this subsection.

(f) ALTERNATIVE METHODS OF COMPLIANCE.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Administrator, shall establish an alternative method of compliance with this section for a commercial vessel having a maximum ballast water capacity of less than 8 cubic meters.

(2) FACTORS FOR CONSIDERATION.—In establishing an alternative method of compliance under paragraph (1), the Secretary shall consider—

(A) the effectiveness of the alternative method in reducing the risk of the introduction or establishment of aquatic nuisance species relative to the performance standard; and

(B) any other factor the Secretary considers appropriate.

(3) BEST MANAGEMENT PRACTICES.—The Secretary may establish as an alternative method of compliance appropriate ballast water best management practices to minimize the introduction or establishment of aquatic nuisance species.

(g) GEOGRAPHICALLY LIMITED AREAS.—

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

(A) operates exclusively within a geographically limited area, as determined by the Secretary, in consultation with the Administrator; or

(B) operates pursuant to a geographic restriction issued for the commercial vessel under section 3309 of title 46, United States Code.

(2) PETITION FOR DETERMINATION BY THE SECRETARY.—

(A) SUBMISSION OF PETITIONS.—Following the date of issuance of final regulations under subsection (b), an owner or operator may petition the Secretary for a determination under paragraph (1).

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

(C) DEADLINE.—If the Secretary does not approve or deny a petition submitted by an owner or operator under subparagraph (A) on or before the last day of the 90-day period beginning on the date of submission of the petition, the petition shall be deemed approved.

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

(4) BEST MANAGEMENT PRACTICES.—For a commercial vessel for which a petition is granted under paragraph (2), the Secretary shall require the owner or operator to implement appropriate ballast water best management practices to minimize the introduction or establishment of aquatic nuisance species.

(h) RECEPTION FACILITIES.—

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

(A) an onshore facility for the reception of ballast water that meets standards issued by the Administrator, in consultation with the Secretary; or

(B) an offshore facility for the reception of ballast water that meets standards issued by the Secretary, in consultation with the Administrator.

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

(A) the Administrator, in consultation with the Secretary, shall issue the standards referred to in paragraph (1)(A); and

(B) the Secretary, in consultation with the Administrator, shall issue the standards referred to in paragraph (1)(B).

(3) SOLE METHOD OF DISCHARGE.—The Secretary, in consultation with the Administrator, and upon petition by an owner or operator, may issue to an owner or operator a certificate stating that a commercial vessel is in compliance with the requirements of subsection (b)(1)(A) if discharging ballast water into a facility meeting the standards issued under this subsection is the sole method by which the owner or operator discharges ballast water from the commercial vessel.

(4) BALLAST WATER MANAGEMENT PLANS.—An owner or operator discharging ballast water under this subsection shall discharge such water in accordance with a ballast water management plan approved under subsection (i).

(i) COMMERCIAL VESSEL BALLAST WATER MANAGEMENT PLAN.—

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

(A) meets requirements prescribed by the Secretary; and

(B) is approved by the Secretary.

(2) FOREIGN COMMERCIAL VESSELS.—The Secretary may approve a ballast water management plan for a foreign commercial vessel on the basis of a certificate of compliance issued by the country of registration of the commercial vessel if the requirements of the government of that country for a ballast water management plan are substantially equivalent to regulations issued by the Secretary.

(3) RECORDKEEPING.—

(A) IN GENERAL.—Except as provided by subparagraph (B), an owner or operator shall maintain in English and have available for inspection by the Secretary a ballast water record book in which each operation of the commercial vessel involving a ballast water discharge is recorded in accordance with regulations issued by the Secretary.

(B) ALTERNATIVE MEANS OF RECORDKEEPING.—The Secretary may provide for alternative methods of recordkeeping, including electronic recordkeeping, to comply with the requirements of this paragraph.

(j) REGULATION OF BALLAST WATER DISCHARGES.—Effective on and after the date of enactment of this section—

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

(2) except as provided by subsection (k), a State or political subdivision thereof shall not adopt or enforce any law or regulation of the State or political subdivision with respect to such a discharge.

(k) STATE AUTHORITY.—

(1) STATE PROGRAMS.—The Governor of a State desiring to administer its own inspection and enforcement authority for ballast water discharges within its jurisdiction may submit to the Secretary a complete description of the program the Governor proposes to establish and administer under State law. In addition, the Governor shall submit a statement from the State attorney general that the laws of the State provide adequate authority to carry out the described program.

(2) APPROVAL.—The Secretary, with the concurrence of the Administrator, may approve a program of a State submitted under paragraph (1) providing for the State's own inspection and enforcement authority for ballast water discharges within its jurisdiction, if the Secretary determines that the State possesses adequate resources to—

(A) inspect, monitor, and board a commercial vessel at any time, including the taking and testing of ballast water samples, to ensure the commercial vessel's compliance with this section;

(B) ensure that any ballast water discharged within the waters subject to the jurisdiction of the State meets the requirements of this section;

(C) establish adequate procedures for reporting violations of this section;

(D) investigate and abate violations of this section, including the imposition of civil and criminal penalties consistent with subsection (o); and

(E) ensure that the Secretary and the Administrator receive notice of each violation of this section in an expeditious manner.

(3) COMPLIANCE.—Any State program approved under paragraph (2) shall at all times be conducted in accordance with this subsection.

(4) WITHDRAWAL OF APPROVAL.—Whenever the Secretary, in consultation with the Administrator, determines, after providing notice and the opportunity for a public hearing, that a State is not administering a program in accordance with the terms of the program as approved under paragraph (2), the Secretary shall notify the State, and, if appropriate corrective action is not taken within a period of time not to exceed 90 days, the Secretary, with the concurrence of the Administrator, shall withdraw approval of the program. The Secretary shall not withdraw approval of a program unless the Secretary has first notified the State and made public, in writing, the reasons for the withdrawal.

(5) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall limit the authority of the Administrator or the Secretary to carry out inspections of any commercial vessel under subsection (n).

(6) STATE LAWS.—Notwithstanding any other provision of this section, a State may enact such laws as are necessary to provide for the implementation of the State ballast water inspection and enforcement program provided under this subsection. The requirements for a ballast water inspection and enforcement program contained in such State law shall be substantively and procedurally equivalent to those required in this section, and any requirements relating to recordkeeping, reporting, and sampling or analysis contained in such State law shall be substantively and procedurally equivalent to the requirements of this section and its implementing regulations and guidance.

(l) DISCHARGES INCIDENTAL TO THE NORMAL OPERATIONS OF A COMMERCIAL VESSEL.—

(1) EVALUATION OF INCIDENTAL DISCHARGES.—

(A) IN GENERAL.—Not later than 3 years after the date of enactment of this section, the Administrator, in consultation with the Secretary, shall complete an evaluation of discharges incidental to the normal operation of a commercial vessel.

(B) FACTORS.—In carrying out the evaluation, the Administrator shall analyze—

(i) the characterization of the various types and composition of discharges incidental to the normal operation of a commercial vessel by different classes, types, and sizes of commercial vessels;

(ii) the volume of such discharges for representative individual commercial vessels and by classes, types, and sizes of commercial vessels in the aggregate;

(iii) the availability and feasibility of implementing technologies or best management practices for the control of such discharges;

(iv) the characteristics of the receiving waters of such discharges;

(v) the nature and extent of potential effects of such discharges on human health, welfare, and the environment;

(vi) the extent to which such discharges are currently subject to and addressed by regulations under existing Federal laws or binding international obligations of the United States; and

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

(2) REGULATION OF INCIDENTAL DISCHARGES.—Effective on and after the date of enactment of this section—

(A) the Administrator (or a State in the case of a permit program approved under section 402) shall not require any new permit or permit conditions under section 402 for any discharge incidental to the normal operation of a commercial vessel; and

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

(m) EFFECT ON VESSEL GENERAL PERMIT.—

(1) EXPIRATION.—Notwithstanding the expiration date set forth in the Vessel General Permit, the Vessel General Permit shall expire as follows:

(A) The terms and conditions of section 6 of such permit or any law of a State regulating the discharge of ballast water or any discharge incidental to the normal operation of a commercial vessel, upon the date of enactment of this section.

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

(i) on the date on which—

(I) a ballast water treatment technology certified under subsection (e) is installed on the commercial vessel;

(II) an alternative method of compliance established for the commercial vessel under subsection (f) is implemented for the commercial vessel;

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

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

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

(2) DISCHARGES INCIDENTAL TO THE NORMAL OPERATION OF COMMERCIAL VESSELS.—Notwithstanding the expiration date set forth in the Vessel General Permit, the terms and conditions of such permit (except the terms and conditions referred to in paragraph (1)(A)) applicable to discharges incidental to the normal operation of a commercial vessel shall remain in effect.

(n) INSPECTIONS AND ENFORCEMENT.—

(1) IN GENERAL.—

(A) COAST GUARD ENFORCEMENT.—The Secretary shall enforce the requirements of this section and may utilize by agreement, with or without reimbursement, law enforcement officers or other personnel and facilities of the Administrator, other Federal agencies, and the States.

(B) ENVIRONMENTAL PROTECTION AGENCY ACTIONS.—Notwithstanding any enforcement decisions of the Secretary under subparagraph (A), the Administrator may use the authorities provided in sections 308, 309, 312, and 504 whenever required to carry out this section.

(2) COAST GUARD INSPECTIONS.—The Secretary may carry out inspections of any commercial vessel at any time, including the taking of ballast water samples, to ensure compliance with this section. The Secretary shall use all appropriate and practical measures of detection and environmental monitoring of such commercial vessels and shall establish adequate procedures for reporting violations of this section and accumulating evidence regarding such violations.

(o) COMPLIANCE.—

(1) DETENTION OF COMMERCIAL VESSEL.—The Secretary, by notice to the owner or operator, may detain the commercial vessel if the Secretary has reasonable cause to believe that the commercial vessel does not comply with a requirement of this section or is being operated in violation of such a requirement.

(2) SANCTIONS.—

(A) CIVIL PENALTIES.—

(i) IN GENERAL.—Any person who violates this section shall be liable for a civil penalty in an amount determined under clause (ii). Each day of a continuing violation constitutes a separate violation. A commercial vessel operated in violation of this section is liable in rem for any civil penalty assessed for that violation.

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

(I) For vessels with a ballast water capacity less than 1500 cubic meters, not to exceed $25,000 for each violation.

(II) For vessels with a ballast water capacity of 1500 cubic meters but not more than 5,000 cubic meters, not to exceed $28,750 for each violation.

(III) For vessels with a ballast water capacity greater than 5,000 cubic meters, not to exceed $32,500 for each violation.

(B) CRIMINAL PENALTIES.—Any person who knowingly violates this section shall be punished by a fine of not less that $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both.

(C) REVOCATION OF CLEARANCE.—Upon request of the Secretary, the Secretary of Homeland Security shall withhold or revoke the clearance of a commercial vessel required by section 60105 of title 46, United States Code, if the owner or operator is in violation of this section.

(3) ENFORCEMENT ACTIONS.—

(A) ADMINISTRATIVE ACTIONS.—If the Secretary finds that a person has violated this section, the Secretary may assess a civil penalty for the violation. In determining the amount of the civil penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior violations, and such other matters as justice may require.

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

(4) EXCLUSION.—No person shall be found in violation of this section whose commission of prohibited acts is found by the Secretary to have been in the interest of ensuring the safety of life at sea.

(p) REGULATION UNDER OTHER SECTIONS OF THIS ACT.—This section shall not affect the regulation of discharges from a commercial vessel pursuant to section 311 or 312.

TITLE IV—PERMITS AND LICENSES

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NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

SEC. 402. (a) * * *

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(s) DISCHARGES INCIDENTAL TO THE NORMAL OPERATION OF A COVERED VESSEL.—No permit shall be required under this Act by the Administrator (or a State, in the case of a permit program approved under subsection (b)) for a discharge incidental to the normal operation of a covered vessel (as defined in section 312(p)).

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TITLE V—GENERAL PROVISIONS

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ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 509. (a) * * *

(b)(1) Review of the Administrator's action (A) in promulgating any standard of performance under section 306, (B) in making any determination pursuant to section 306(b)(1)(C), (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 307, (D) in making any determination as to a State permit program submitted under section 402(b), (E) in approving or promulgating any effluent limitation or other limitation under sections 301, 302, 306, or 405, (F) in issuing or denying any permit under section 402, ⟦and (G)⟧ *(G)* in promulgating any individual control strategy under section 304(l), *and (H) in issuing any regulation or otherwise taking final agency action under section 312 or 321,* may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts business which is directly affected by such action upon application by such person. Any such application shall be made within 120 days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such 120th day.

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NONINDIGENOUS AQUATIC NUISANCE PREVENTION AND CONTROL ACT OF 1990

TITLE I—AQUATIC NUISANCE PREVENTION AND CONTROL

* * * * * * *

Subtitle B—Prevention of Unintentional Introductions of Nonindigenous Aquatic Species

[SEC. 1101. AQUATIC NUISANCE SPECIES IN WATERS OF THE UNITED STATES.

[(a) GREAT LAKES GUIDELINES.—

[(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary shall issue voluntary guidelines to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the exchange of ballast water of vessels prior to entering those waters.

[(2) CONTENT OF GUIDELINES.—The guidelines issued under this subsection shall—

[(A) ensure to the maximum extent practicable that ballast water containing aquatic nuisance species is not discharged into the Great Lakes;

[(B) protect the safety of—

[(i) each vessel; and

[(ii) the crew and passengers of each vessel;

[(C) take into consideration different vessel operating conditions; and

[(D) be based on the best scientific information available.

[(b) REGULATIONS.—

[(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary, in consultation with the Task Force, shall issue regulations to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the ballast water of vessels.

[(2) CONTENT OF REGULATIONS.—The regulations issued under this subsection shall—

[(A) apply to all vessels equipped with ballast water tanks that enter a United States port on the Great Lakes after operating on the waters beyond the exclusive economic zone;

[(B) require a vessel to—

[(i) carry out exchange of ballast water on the waters beyond the exclusive economic zone prior to entry into any port within the Great Lakes;

[(ii) carry out an exchange of ballast water in other waters where the exchange does not pose a threat of infestation or spread of aquatic nuisance species in the Great Lakes and other waters of the United States, as

recommended by the Task Force under section 1102(a)(1); or

[(iii) use environmentally sound alternative ballast water management methods if the Secretary determines that such alternative methods are as effective as ballast water exchange in preventing and controlling infestations of aquatic nuisance species;

[(C) not affect or supersede any requirements or prohibitions pertaining to the discharge of ballast water into waters of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

[(D) provide for sampling procedures to monitor compliance with the requirements of the regulations;

[(E) prohibit the operation of a vessel in the Great Lakes if the master of the vessel has not certified to the Secretary or the Secretary's designee by not later than the departure of that vessel from the first lock in the St. Lawrence Seaway that the vessel has complied with the requirements of the regulations;

[(F) protect the safety of—

[(i) each vessel; and

[(ii) the crew and passengers of each vessel;

[(G) take into consideration different operating conditions; and

[(H) be based on the best scientific information available.

[(3) ADDITIONAL REGULATIONS.—In addition to promulgating regulations under paragraph (1), the Secretary, in consultation with the Task Force, shall, not later than November 4, 1994, issue regulations to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through ballast water carried on vessels that enter a United States port on the Hudson River north of the George Washington Bridge.

[(4) EDUCATION AND TECHNICAL ASSISTANCE PROGRAMS.—The Secretary may carry out education and technical assistance programs and other measures to promote compliance with the regulations issued under this subsection.

[(c) VOLUNTARY NATIONAL GUIDELINES.—

[(1) IN GENERAL.—Not later than 1 year after the date of enactment of the National Invasive Species Act of 1996, and after providing notice and an opportunity for public comment, the Secretary shall issue voluntary guidelines to prevent the introduction and spread of nonindigenous species in waters of the United States by ballast water operations and other operations of vessels equipped with ballast water tanks.

[(2) CONTENT OF GUIDELINES.—The voluntary guidelines issued under this subsection shall—

[(A) ensure to the maximum extent practicable that aquatic nuisance species are not discharged into waters of the United States from vessels;

[(B) apply to all vessels equipped with ballast water tanks that operate in waters of the United States;

[(C) protect the safety of—

[(i) each vessel; and

[(ii) the crew and passengers of each vessel;

[(D) direct a vessel that is carrying ballast water into waters of the United States after operating beyond the exclusive economic zone to—

[(i) carry out the exchange of ballast water of the vessel in waters beyond the exclusive economic zone;

[(ii) exchange the ballast water of the vessel in other waters where the exchange does not pose a threat of infestation or spread of nonindigenous species in waters of the United States, as recommended by the Task Force under section 1102(a)(1); or

[(iii) use environmentally sound alternative ballast water management methods, including modification of the vessel ballast water tanks and intake systems, if the Secretary determines that such alternative methods are at least as effective as ballast water exchange in preventing and controlling infestations of aquatic nuisance species;

[(E) direct vessels to carry out management practices that the Secretary determines to be necessary to reduce the probability of unintentional nonindigenous species transfer resulting from—

[(i) ship operations other than ballast water discharge; and

[(ii) ballasting practices of vessels that enter waters of the United States with no ballast water on board;

[(F) provide for the keeping of records that shall be submitted to the Secretary, as prescribed by the guidelines, and that shall be maintained on board each vessel and made available for inspection, upon request of the Secretary and in a manner consistent with subsection (i), in order to enable the Secretary to determine compliance with the guidelines, including—

[(i) with respect to each ballast water exchange referred to in clause (ii), reporting on the precise location and thoroughness of the exchange; and

[(ii) any other information that the Secretary considers necessary to assess the rate of effective compliance with the guidelines;

[(G) provide for sampling procedures to monitor compliance with the guidelines;

[(H) take into consideration—

[(i) vessel types;

[(ii) variations in the characteristics of point of origin and receiving water bodies;

[(iii) variations in the ecological conditions of waters and coastal areas of the United States; and

[(iv) different operating conditions;

[(I) be based on the best scientific information available;

[(J) not affect or supersede any requirements or prohibitions pertaining to the discharge of ballast water into waters of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and

[(K) provide an exemption from ballast water exchange requirements to passenger vessels with operating ballast water systems that are equipped with treatment systems

designed to kill aquatic organisms in ballast water, unless the Secretary determines that such treatment systems are less effective than ballast water exchange at reducing the risk of transfers of invasive species in the ballast water of passenger vessels; and

[(L) not apply to crude oil tankers engaged in the coastwise trade.

[(3) EDUCATION AND TECHNICAL ASSISTANCE PROGRAMS.—Not later than 1 year after the date of enactment of the National Invasive Species Act of 1996, the Secretary shall carry out education and technical assistance programs and other measures to encourage compliance with the guidelines issued under this subsection.

[(d) REPORT TO CONGRESS.—Not sooner than 24 months after the date of issuance of guidelines pursuant to subsection (c) and not later than 30 months after such date, and after consultation with interested and affected persons, the Secretary shall prepare and submit to Congress a report containing the information required pursuant to paragraphs (1) and (2) of subsection (e).

[(e) PERIODIC REVIEW AND REVISION.—

[(1) IN GENERAL.—Not later than 3 years after the date of issuance of guidelines pursuant to subsection (c), and not less frequently than every 3 years thereafter, the Secretary shall, in accordance with criteria developed by the Task Force under paragraph (3)—

[(A) assess the compliance by vessels with the voluntary guidelines issued under subsection (c) and the regulations promulgated under this Act;

[(B) establish the rate of compliance that is based on the assessment under subparagraph (A);

[(C) assess the effectiveness of the voluntary guidelines and regulations referred to in subparagraph (A) in reducing the introduction and spread of aquatic nuisance species by vessels; and

[(D) as necessary, on the basis of the best scientific information available—

[(i) revise the guidelines and regulations referred to in subparagraph (A);

[(ii) promulgate additional regulations pursuant to subsection (f)(1); or

[(iii) carry out each of clauses (i) and (ii).

[(2) SPECIAL REVIEW AND REVISION.—Not later than 90 days after the Task Force makes a request to the Secretary for a special review and revision for coastal and inland waterways designated by the Task Force, the Secretary shall—

[(A) conduct a special review of guidelines and regulations applicable to those waterways in accordance with the review procedures under paragraph (1); and

[(B) as necessary, in the same manner as provided under paragraph (1)(D)—

[(i) revise those guidelines;

[(ii) promulgate additional regulations pursuant to subsection (f)(1); or

[(iii) carry out each of clauses (i) and (ii).

[(3) CRITERIA FOR EFFECTIVENESS.—Not later than 18 months after the date of enactment of the National Invasive Species Act of 1996, the Task Force shall submit to the Secretary criteria for determining the adequacy and effectiveness of the voluntary guidelines issued under subsection (c).

[(f) AUTHORITY OF SECRETARY.—

[(1) GENERAL REGULATIONS.—If, on the basis of a periodic review conducted under subsection (e)(1) or a special review conducted under subsection (e)(2), the Secretary determines that—

[(A) the rate of effective compliance (as determined by the Secretary) with the guidelines issued pursuant to subsection (c) is inadequate; or

[(B) the reporting by vessels pursuant to those guidelines is not adequate for the Secretary to assess the compliance with those guidelines and provide a rate of compliance of vessels, including the assessment of the rate of compliance of vessels under subsection (e)(2),

the Secretary shall promptly promulgate regulations that meet the requirements of paragraph (2).

[(2) REQUIREMENTS FOR REGULATIONS.—The regulations promulgated by the Secretary under paragraph (1)—

[(A) shall—

[(i) not be promulgated sooner than 180 days following the issuance of the report to Congress submitted pursuant to subsection (d);

[(ii) make mandatory the requirements included in the voluntary guidelines issued under subsection (c); and

[(iii) provide for the enforcement of the regula-tions; and

[(B) may be regional in scope.

[(3) INTERNATIONAL REGULATIONS.—The Secretary shall revise regulations promulgated under this subsection to the extent required to make such regulations consistent with the treatment of a particular matter in any international agreement, agreed to by the United States, governing management of the transfer of nonindigenous aquatic species by vessel.

[(g) SANCTIONS.—

[(1) CIVIL PENALTIES.—Any person who violates a regulation promulgated under subsection (b) or (f) shall be liable for a civil penalty in an amount not to exceed $25,000. Each day of a continuing violation constitutes a separate violation. A vessel operated in violation of the regulations is liable in rem for any civil penalty assessed under this subsection for that violation.

[(2) CRIMINAL PENALTIES.—Any person who knowingly violates the regulations promulgated under subsection (b) or (f) is guilty of a class C felony.

[(3) REVOCATION OF CLEARANCE.—Upon request of the Secretary, the Secretary of the Treasury shall withhold or revoke the clearance of a vessel required by section 4197 of the Revised Statutes (46 U.S.C. App. 91), if the owner or operator of that vessel is in violation of the regulations issued under subsection (b) or (f).

[(4) EXCEPTION TO SANCTIONS.—This subsection does not apply to a failure to exchange ballast water if—

[(A) the master of a vessel, acting in good faith, decides that the exchange of ballast water will threaten the safety or stability of the vessel, its crew, or its passengers; and

[(B) the recordkeeping and reporting requirements of the Act are complied with.

[(h) COORDINATION WITH OTHER AGENCIES.—In carrying out the programs under this section, the Secretary is encouraged to use, to the maximum extent practicable, the expertise, facilities, members, or personnel of established agencies and organizations that have routine contact with vessels, including the Animal and Plant Health Inspection Service of the Department of Agriculture, the National Cargo Bureau, port administrations, and ship pilots' associations.

[(i) CONSULTATION WITH CANADA, MEXICO, AND OTHER FOREIGN GOVERNMENTS.—In developing the guidelines issued and regulations promulgated under this section, the Secretary is encouraged to consult with the Government of Canada, the Government of Mexico, and any other government of a foreign country that the Secretary, in consultation with the Task Force, determines to be necessary to develop and implement an effective international program for preventing the unintentional introduction and spread of nonindigenous species.

[(j) INTERNATIONAL COOPERATION.—The Secretary, in cooperation with the International Maritime Organization of the United Nations and the Commission on Environmental Cooperation established pursuant to the North American Free Trade Agreement, is encouraged to enter into negotiations with the governments of foreign countries to develop and implement an effective international program for preventing the unintentional introduction and spread of nonindigenous species.

[(k) SAFETY EXEMPTION.—

[(1) MASTER DISCRETION.—The master of a vessel is not required to conduct a ballast water exchange if the master decides that the exchange would threaten the safety or stability of the vessel, its crew, or its passengers because of adverse weather, vessel architectural design, equipment failure, or any other extraordinary conditions.

[(2) OTHER REQUIREMENTS.—(A) IN GENERAL.—Except as provided in subparagraph (B), a vessel that does not exchange ballast water on the high seas under paragraph (1) shall not be restricted from discharging ballast water in any harbor.

[(B) GREAT LAKES.—Subparagraph (A) shall not apply in a case in which a vessel is subject to the regulations issued by the Secretary under subsection (b).

[(3) CRUDE OIL TANKER BALLAST FACILITY STUDY.—(A) Within 60 days of the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating, in consultation with the Under Secretary of Commerce for Oceans and Atmosphere, affected shoreside ballast water facility operators, affected crude oil tanker operators, and interested parties, shall initiate a study of the effectiveness of existing shoreside ballast water facilities used by crude oil tankers in the coastwise trade off Alaska in preventing the introduction of nonindigenous aquatic species into the waters off Alaska, as

well as the cost and feasibility of modifying such facilities to improve such effectiveness.

[(B) The study required under subparagraph (A) shall be submitted to the Congress by no later than October 1, 1997.

[(l) NON-DISCRIMINATION.—The Secretary shall ensure that vessels registered outside of the United States do not receive more favorable treatment than vessels registered in the United States when the Secretary performs studies, reviews compliance, determines effectiveness, establishes requirements, or performs any other responsibilities under this Act.]

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Subtitle C—Prevention and Control of Aquatic Nuisance Species Dispersal

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[SEC. 1205. RELATIONSHIP TO OTHER LAWS.

[All actions taken by Federal agencies in implementing the provisions of section 1202 shall be consistent with all applicable Federal, State, and local environmental laws. Nothing in this title shall affect the authority of any State or political subdivision thereof to adopt or enforce control measures for aquatic nuisance species, or diminish or affect the jurisdiction of any State over species of fish and wildlife. Compliance with the control and eradication measures of any State or political subdivision thereof regarding aquatic nuisance species shall not relieve any person of the obligation to comply with the provisions of this subtitle.]

* * * * * * *

MINORITY VIEWS

Ballast water has been documented as a significant source for introducing and spreading non-native (invasive) species into aquatic ecosystems where they would not otherwise be present. According to a recent report of the Natural Research Council of the National Academies (NRC), many of these invasive species have caused extensive and adverse environmental, economic, and human health impacts in receiving ecosystems.

For example, in the Great Lakes region, approximately 180 individual aquatic invasive species have been detected and documented and 55 to 70 percent of those introductions are attributed to ballast water releases. One of the most infamous of these invasive species, the zebra mussel, clogs the water intake pipes of communities around the Lakes, impedes recreational activities by accumulating on boats, docks and buoys, and has a wide range of impacts on other native Great Lakes species. The States and Federal Government have spent two decades trying to control zebra mussels at an estimated cost of $500 million per year. The adverse impacts of zebra mussels are not limited to the Great Lakes. While first observed in Lake St. Clair, zebra mussels have now been redistributed to at least 26 States where they create similar adverse economic and environmental impacts.

Similarly, for coastal marine ecosystems in the State of California, scientists have documented more than 250 distinct aquatic invasive species that have become established in tidal waters. The San Francisco Bay, where ocean-going ships from around the globe come into port, has the dubious distinction of being the most invaded aquatic ecosystem on earth. The economic and environmental costs associated with invasive species are substantial and far ranging. Green Crabs originally from the Black Sea feast on native shellfish, and the Chinese Mitten crab weakens California's critical levee system when it burrows into their banks, placing millions of persons at risk. Thousands of other species also cost California hundreds of millions of dollars a year in lost revenues and mitigation expenses.

In short, aquatic invasive species pose a significant ecological and economic impact on States and local communities. Yet, the reality is that controlling invasive species after they have been introduced though ballast water discharges is extremely difficult, if not impossible, and much more costly to public and private interests than preventing the introduction of new invasive species.

This is why we strongly support the implementation of stringent ballast water discharge standards through the installation of treatment technologies on vessels that will reduce the introduction and spread of new aquatic invasive species through ballast water.

While we recognize that there are costs associated with ballast water treatment technologies, the costs of relying on the existing,

ineffective management practice of ballast water exchange, are much greater. It makes sense that Congress should require discharge standards that are technologically feasible, but we should not become complacent with the belief that existing technologies have the ability to eliminate the future risk of introduction and spread of new aquatic invasive species. With today's technologies, even treated ballast water is likely to contain some nonindigenous species. The International Maritime Organization (IMO)-based standard in the bill acknowledges that. Any legislative action by Congress on ballast water treatment should encourage and support the development of new technologies that will reduce operational costs to shippers while providing ever greater benefits to the environment and the economy by reducing the risk of invasion. That is the current structure of the Clean Water Act, and is good for business, good for innovation and job creation, and is good for the environment.

There has been a strong push for Congress to legislate a uniform, national standard for ballast water discharges to harmonize the requirements for ship owners to install ballast water treatment technologies, as well as facilitate the interstate and international nature of waterborne commerce. H.R. 2840, the "Commercial Vessel Discharges Reform Act of 2011", provides a framework to accomplish this purpose by proposing adoption of the IMO-based standard as the national baseline technological requirement for commercial vessels, and allowing for further strengthening of ballast water treatment standards as improvements in technology are realized over time.

However, we also believe that there is an important role for individual states in the protection of local water resources. Over the past few years, several States have made it clear that they oppose Federal efforts to preempt more protective state or local regulation of discharges of ballast water containing aquatic invasive species. States have commented that Federal preemption is "contrary to the bedrock principle of environmental law that states may set standards that are more protective of the environmental health and safety of their citizens than those set by the federal government." In fact, the Clean Water Act, which H.R. 2840 proposes to amend, is premised on a Federal-State partnership, both in the establishment of a Federal floor for regulation of point source discharges, whereby states can require more stringent levels of protection for their state waters, as well as in the establishment of uniform standards for discharges for marine sanitation devices under section 312 of the Act.

However, even in section 312 of the Act, which is the closest analogy to the issue of ballast water discharges from commercial vessels, the Clean Water Act specifically reserves a role for States to petition the Environmental Protection Agency (EPA) to establish "no-discharge zones" for important State waters, provided that these zones will not adversely impact vessels from operating within the State's waters.

To date, EPA has approved petitions from 26 individual States under section 312 and created special "no-discharge zones" within the State's waters—protecting resources as diverse as the Boundary Waters Canoe Area in Minnesota, Barnegat Bay in New Jersey,

and Mission Bay in southern California. In the State of New York, EPA has agreed to the State's request to protect the unique aquatic resources of the Hudson River and waters of East Hampton from discharges of marine sewage.

However, under H.R. 2840, as approved by the Committee, States would have a greater role in protecting their waters from marine sewage than from the potential impacts caused by discharges of ballast water. A State can petition EPA to prevent a person from flushing a toilet into sensitive waters, but could not prevent someone from flushing zebra mussels into those same waters. This is unwise.

We recognize that Congress must try to strike an appropriate balance between protecting the health of the public and the environment and the promotion of healthy economies, including the promotion of international and interstate trade. This balance can be achieved by both the adoption of stringent, national standards for ballast water treatment technologies that continue to improve over time, as well as the adoption of a legitimate role for individual states to seek additional protection for important local aquatic resources.

During the markup of H.R. 2840, Mr. Bishop (NY) offered an amendment that would recognize the importance of both Federal and State efforts to protect the waters of individual states by preserving an opportunity for States to seek operational limitations to protect important state resource waters. *See attached Bishop amendment.*

This amendment would authorize States to seek approval from EPA and the Coast Guard for additional operational requirements for the discharge of ballast water to protect their unique local waters. These additional operational requirements must be properly evaluated and approved by the Federal agencies before they could become effective. To be clear, under the Bishop amendment, States could not require vessel owners to install or implement additional technological controls—those standards would be uniform and national. However, under this amendment, States would be given the flexibility, after review and approval by the EPA and the U.S. Coast Guard, to require additional operational requirements—such as the establishment of no-discharge zones—to protect local waters.

Similar to section 312 of the Clean Water Act, the Bishop amendment would require that States demonstrate a need for the requirement and the ability for vessels to safely operate within designated waters *before* these additional protections are put in place. Federal review of a new no-discharge zone would require careful consideration of the impacts on the safety of vessels, on shipping and trade, and on the costs and benefits of the additional protections.

As the Clean Water Act states so clearly and directly in its first section, "It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution." Without the Bishop amendment, these primary responsibilities and rights of States would be completely extinguished. The Clean Water Act respects the rights of the States to have no-discharge zones for sewage and for discharges from vessels of the Armed Forces. Surely we can afford the same

rights to the States when it comes to invasive species and pathogens.

At the conclusion of the debate on the amendment, Mr. Bishop agreed to withdraw the amendment based on a commitment of the Chairman of the Coast Guard and Maritime Transportation Subcommittee to continue to work on this issue before Floor consideration of H.R. 2840. However, we will continue to press for inclusion of a legitimate role for individual States to protect local waters.

NICK J. RAHALL II.
RICK LARSEN.
TIMOTHY H. BISHOP.

Amendment to the Amendment in the Nature of a Substitute to H.R. 2840

Offered by Mr. Bishop of New York

Page 40, after line 14, insert the following:

"(7) STATE OPERATIONAL REQUIREMENTS.—

"(A) IN GENERAL.—If any State determines that the protection and enhancement of the quality of some or all of the waters within the State require greater environmental protection, the State may impose standards that are more protective than the standards established under this section, except that a State standard imposed under this paragraph may not—

"(i) require the installation of a ballast water treatment technology that exceeds that required by the standard established under subsection (c) or as revised under subsection (d); or

"(ii) apply until the Administrator and the Secretary determine that the waters of the State require greater environmental protection and such greater environmental protection can be achieved.

"(B) FACTORS FOR DETERMINATION.—

"(i) DETERMINATIONS BY ADMINISTRATOR.—In making the determination under subparagraph (A)(ii), the Administrator shall consider—

"(I) whether the receiving waters have been afforded special protection under Federal or State law;

"(II) the benefits to human health, welfare, or the environment of the additional protection for the receiving waters;

"(III) the reduction in risk to human health, welfare, or the environment resulting from the additional protection;

"(IV) the propagule pressure to be addressed by the additional protection;

"(V) applicable Federal and State law;

"(VI) applicable international standards; and

"(VII) the costs and benefits of providing the additional protection.

"(ii) DETERMINATIONS BY SECRETARY.—In making the determination under (A)(ii), the Secretary shall consider—

"(I) the effect that the use of additional protection would have on the operation, operational capability, or safety of the vessel;

"(II) the potential impacts on shipping, trade, and other uses of the aquatic environment;

"(III) applicable international standards; and

"(IV) the costs and benefits of providing the additional protection.

"(C) DEADLINE.—Upon application of the State, the Administrator and the Secretary shall make the determination within 180 days of the date of the application.

"(D) APPROVAL OF STATE STANDARDS.—If the Administrator and the Secretary determine upon application by a State that the protection and enhancement of the quality of specified waters within that State requires more protective standards and that such greater environmental protection can be achieved, the Administrator and the Secretary shall approve the State standards.".

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