

112TH CONGRESS  
1ST SESSION

# H. R. 2840

To amend the Federal Water Pollution Control Act to regulate discharges from commercial vessels, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 2, 2011

Mr. LOBIONDO (for himself, Mr. MICA, and Mr. GIBBS) introduced the following bill

SEPTEMBER 6, 2011

Referred to the Committee on Transportation and Infrastructure

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## A BILL

To amend the Federal Water Pollution Control Act to regulate discharges from commercial vessels, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Commercial Vessel  
5 Discharges Reform Act of 2011”.

1 **SEC. 2. DISCHARGES FROM COMMERCIAL VESSELS.**

2 Title III of the Federal Water Pollution Control Act  
3 (33 U.S.C. 1311 et seq.) is amended by adding at the end  
4 the following:

5 **“SEC. 321. DISCHARGES FROM COMMERCIAL VESSELS.**

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

8 “(1) AQUATIC NUISANCE SPECIES.—The term  
9 ‘aquatic nuisance species’ means a nonindigenous  
10 species (including a pathogen) that threatens the di-  
11 versity or abundance of native species or the ecologi-  
12 cal stability of navigable waters or commercial, agri-  
13 cultural, aquacultural, or recreational activities de-  
14 pendent on such waters.

15 “(2) BALLAST WATER.—

16 “(A) IN GENERAL.—The term ‘ballast  
17 water’ means any water (including any sedi-  
18 ment suspended in such water) taken aboard a  
19 commercial vessel—

20 “(i) to control trim, list, draught, sta-  
21 bility, or stresses of the vessel; or

22 “(ii) during the cleaning, mainte-  
23 nance, or other operation of a ballast water  
24 treatment system of the vessel.

25 “(B) EXCLUSION.—The term ‘ballast  
26 water’ does not include any pollutant that is

1           added to water described in subparagraph (A)  
2           that is not directly related to the operation of  
3           a properly functioning ballast water treatment  
4           technology certified under subsection (e).

5           “(3) BALLAST WATER CAPACITY.—The term  
6           ‘ballast water capacity’ means the total volumetric  
7           capacity of the ballast water treatment system of a  
8           commercial vessel.

9           “(4) BALLAST WATER PERFORMANCE STAND-  
10          ARD.—The term ‘ballast water performance stand-  
11          ard’ or ‘performance standard’ means a numerical  
12          ballast water performance standard specified under  
13          subsection (c) or established under subsection (d).

14          “(5) BALLAST WATER TREATMENT SYSTEM.—  
15          The term ‘ballast water treatment system’ means  
16          any equipment on board a commercial vessel (includ-  
17          ing all compartments, piping, spaces, tanks, and  
18          multi-use compartments, piping, spaces, and tanks)  
19          designed for loading, carrying, treating, or dis-  
20          charging ballast water.

21          “(6) BALLAST WATER TREATMENT TECH-  
22          NOLOGY.—The term ‘ballast water treatment tech-  
23          nology’ or ‘treatment technology’ means any me-  
24          chanical, physical, chemical, or biological process  
25          used, either singularly or in combination, to remove,

1 render harmless, or avoid the uptake or discharge of  
2 aquatic nuisance species within ballast water.

3 “(7) BIOCIDES.—The term ‘biocides’ means a  
4 substance or organism, including a virus or fungus,  
5 that is introduced into, or produced by, a ballast  
6 water treatment technology as part of the treatment  
7 process used to comply with a ballast water perform-  
8 ance standard under this section.

9 “(8) COMMERCIAL VESSEL.—The term ‘com-  
10 mercial vessel’ means every description of  
11 watercraft, or other artificial contrivance used or ca-  
12 pable of being used as a means of transportation on  
13 water, that is engaged in commercial service (as de-  
14 fined under section 2101 of title 46, United States  
15 Code).

16 “(9) CONSTRUCTED.—The term ‘constructed’  
17 means a state of construction of a commercial vessel  
18 at which—

19 “(A) the keel is laid;

20 “(B) construction identifiable with the spe-  
21 cific vessel begins;

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

1                   “(D) the vessel undergoes a major conver-  
2                   sion.

3                   “(10) DISCHARGE INCIDENTAL TO THE NOR-  
4                   MAL OPERATION OF A COMMERCIAL VESSEL.—

5                   “(A) IN GENERAL.—The term ‘discharge  
6                   incidental to the normal operation of a commer-  
7                   cial vessel’ means—

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

10                   “(I)(aa)     graywater     (except  
11                   graywater referred to in section  
12                   312(a)(6)), bilge water, cooling water,  
13                   oil water separator effluent, anti-foul-  
14                   ing hull coating leachate, boiler or  
15                   economizer blowdown, byproducts  
16                   from cathodic protection, controllable  
17                   pitch propeller and thruster hydraulic  
18                   fluid, distillation and reverse osmosis  
19                   brine, elevator pit effluent, firemain  
20                   system effluent, freshwater layup ef-  
21                   fluent, gas turbine wash water, motor  
22                   gasoline and compensating effluent,  
23                   refrigeration and air condensate efflu-  
24                   ent, seawater pumping biofouling pre-  
25                   vention substances, boat engine wet

1 exhaust, sonar dome effluent, exhaust  
2 gas scrubber washwater, or stern tube  
3 packing gland effluent; or

4 “(bb) any other pollutant associ-  
5 ated with the operation of a marine  
6 propulsion system, shipboard maneu-  
7 vering system, habitability system, or  
8 installed major equipment, or from a  
9 protective, preservative, or absorptive  
10 application to the hull of a commercial  
11 vessel;

12 “(II) weather deck runoff, deck  
13 wash, aqueous film forming foam ef-  
14 fluent, chain locker effluent, non-oily  
15 machinery wastewater, underwater  
16 ship husbandry effluent, welldeck ef-  
17 fluent, or fish hold and fish hold  
18 cleaning effluent; or

19 “(III) any effluent from a prop-  
20 erly functioning marine engine; or

21 “(ii) a discharge of a pollutant into  
22 navigable waters in connection with the  
23 testing, maintenance, and repair of a sys-  
24 tem, equipment, or engine described in  
25 subclause (I)(bb) or (III) of clause (i)

1                   whenever the commercial vessel is water-  
2                   borne.

3                   “(B) EXCLUSION.—The term ‘discharge  
4                   incidental to the normal operation of a commer-  
5                   cial vessel’ does not include—

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

8   “(I) ballast water;

9   “(II) rubbish, trash, garbage, in-  
10   cinerator ash, or other such material  
11   discharged overboard;

12   “(III) oil or a hazardous sub-  
13   stance within the meaning of section  
14   311; or

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

17   “(ii) an emission of an air pollutant  
18   resulting from the operation onboard a  
19   commercial vessel of a vessel propulsion  
20   system, motor driven equipment, or incin-  
21   erator.

22                                 “(11) GEOGRAPHICALLY LIMITED AREA.—The  
23                                 term ‘geographically limited area’ means an area—

1           “(A) with a physical limitation, such as a  
2           navigation lock, that prevents a commercial ves-  
3           sel from operating outside the area; or

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

7           “(12) MAJOR CONVERSION.—The term ‘major  
8           conversion’ means a conversion of a commercial ves-  
9           sel that—

10           “(A) changes its ballast water capacity by  
11           at least 15 percent; or

12           “(B) is projected to prolong the life of the  
13           commercial vessel by at least 10 years, as deter-  
14           mined by the Secretary.

15           “(13) MANUFACTURER.—The term ‘manufac-  
16           turer’ means a person engaged in the manufac-  
17           turing, assembling, or importation of a ballast water  
18           treatment technology.

19           “(14) NONINDIGENOUS SPECIES.—The term  
20           ‘nonindigenous species’ means a species or other via-  
21           ble biological material that enters an ecosystem be-  
22           yond its historic range.

23           “(15) OWNER OR OPERATOR.—The term ‘owner  
24           or operator’ means a person owning, operating, or  
25           chartering by demise a commercial vessel.



1           “(16) SECRETARY.—The term ‘Secretary’  
2 means the Secretary of the department in which the  
3 Coast Guard is operating.

4           “(b) GENERAL PROVISIONS.—

5           “(1) BALLAST WATER DISCHARGE REQUIRE-  
6 MENTS FOR COMMERCIAL VESSELS.—An owner or  
7 operator may discharge ballast water from a com-  
8 mercial vessel into navigable waters only if—

9           “(A) the discharge—

10                   “(i) meets the ballast water perform-  
11 ance standard;

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

14                   “(iii) meets the requirements of an al-  
15 ternative method of compliance established  
16 for the commercial vessel under subsection  
17 (f);

18                   “(iv) is made pursuant to a deter-  
19 mination that the commercial vessel meets  
20 the requirements relating to geographically  
21 limited areas under subsection (g); or

22                   “(v) is made into an onshore or off-  
23 shore facility that meets applicable stand-  
24 ards, as described in subsection (h); and

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

5           “(2) APPLICABILITY.—

6           “(A) COVERED VESSELS.—Paragraph (1)  
7 shall apply to the owner or operator of a com-  
8 mercial vessel that is designed, constructed, or  
9 adapted to carry ballast water if the commercial  
10 vessel is—

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

13                   “(ii) operating in navigable waters.

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

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

20                   “(ii) a commercial vessel that continu-  
21 ously takes on and discharges ballast water  
22 in a flow-through system;

23                   “(iii) any vessel in the National De-  
24 fense Reserve Fleet that is scheduled to be  
25 disposed of through scrapping or sinking;

1           “(iv) a commercial vessel that dis-  
2 charges ballast water consisting solely of  
3 water—

4                   “(I) taken aboard from a munic-  
5 ipal or commercial source; and

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

12           “(v) a commercial vessel that is 3  
13 years or fewer from the end of its useful  
14 life, as determined by the Secretary, on the  
15 date on which the regulations issued under  
16 paragraph (3) become effective for the ves-  
17 sel pursuant to the implementation sched-  
18 ule issued under paragraph (3)(B).

19           “(C) LIMITATION.—An exemption under  
20 subparagraph (B)(v) shall cease to be effective  
21 on the date that is 3 years after the date on  
22 which the regulations under paragraph (3) be-  
23 come effective for the commercial vessel pursu-  
24 ant to the implementation schedule issued  
25 under paragraph (3)(B).

1 “(3) ISSUANCE OF REGULATIONS.—

2 “(A) IN GENERAL.—Not later than 180  
3 days after the date of enactment of this section,  
4 the Secretary, in consultation with the Adminis-  
5 trator, shall issue final regulations to imple-  
6 ment the requirements of this section.

7 “(B) IMPLEMENTATION SCHEDULE.—Reg-  
8 ulations issued under this paragraph shall in-  
9 clude an implementation schedule by commer-  
10 cial vessel class, type, or size.

11 “(C) PROPOSED RULE.—For the purposes  
12 of chapter 5 of title 5, United States Code, the  
13 proposed rulemaking published by the Coast  
14 Guard on August 28, 2009 (74 Fed. Reg.  
15 44632; relating to standards for living orga-  
16 nisms in ships’ ballast water discharged in U.S.  
17 waters), shall serve as a proposed rule for the  
18 purposes of issuing regulations under this sec-  
19 tion.

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

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

24 “(A) conduct ballast water treatment be-  
25 fore discharging ballast water from the com-

1 commercial vessel into navigable waters using a bal-  
2 last water treatment technology certified for the  
3 vessel (or class, type, or size of vessel) under  
4 subsection (e); and

5 “(B) ensure that any ballast water so dis-  
6 charged meets, at a minimum, the numerical  
7 ballast water performance standard set forth in  
8 the International Convention for the Control  
9 and Management of Ships’ Ballast Water and  
10 Sediments, as adopted on February 13, 2004,  
11 or a revised numerical ballast water perform-  
12 ance standard established under subsection (d).

13 “(2) SAFETY EXEMPTION.—Notwithstanding  
14 paragraph (1), an owner or operator may discharge  
15 ballast water without regard to a ballast water per-  
16 formance standard if—

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

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

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

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

3                   or

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

8                   “(d) REVIEW OF PERFORMANCE STANDARD.—

9                   “(1) IN GENERAL.—Not later than January 1,  
10                  2016, and every 10 years thereafter, the Adminis-  
11                  trator, in consultation with the Secretary, shall com-  
12                  plete a review to determine whether revising the bal-  
13                  last water performance standard would result in a  
14                  scientifically demonstrable and substantial reduction  
15                  in the risk of the introduction and establishment of  
16                  aquatic nuisance species.

17                  “(2) CONSIDERATIONS.—In conducting the re-  
18                  view, the Administrator shall consider—

19                         “(A) improvements in the scientific under-  
20                         standing of biological and ecological processes  
21                         that lead to the introduction and establishment  
22                         of aquatic nuisance species;

23                         “(B) improvements in ballast water treat-  
24                         ment technology, including—

1           “(i) the capability of such technology  
2           to achieve a revised ballast water perform-  
3           ance standard;

4           “(ii) the effectiveness and reliability of  
5           such technology in the shipboard environ-  
6           ment;

7           “(iii) the compatibility of such tech-  
8           nology with the design and operation of  
9           commercial vessels by class, type, and size;

10          “(iv) the commercial availability of  
11          such technology; and

12          “(v) the safety of such technology;

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

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

19          “(E) the costs, cost-effectiveness, and im-  
20          pacts of—

21                 “(i) a revised ballast water perform-  
22                 ance standard, including the potential im-  
23                 pacts on shipping, trade, and other uses of  
24                 the aquatic environment; and

1           “(ii) maintaining the existing ballast  
2           water performance standard, including the  
3           potential impacts on water-related infra-  
4           structure, recreation, the propagation of  
5           native fish, shellfish, and wildlife, and  
6           other uses of navigable waters.

7           “(3) REVISION OF PERFORMANCE STANDARD.—

8           “(A) RULEMAKING.—If, pursuant to a re-  
9           view conducted under paragraph (1), the Ad-  
10          ministrator, in consultation with the Secretary,  
11          determines that revising the ballast water per-  
12          formance standard would result in a scientif-  
13          ically demonstrable and substantial reduction in  
14          the risk of the introduction and establishment  
15          of aquatic nuisance species, the Administrator  
16          shall undertake a rulemaking to revise the per-  
17          formance standard.

18          “(B) LIMITATION.—The Administrator  
19          may not issue a revised performance standard  
20          pursuant to this paragraph unless it is at least  
21          3 orders of magnitude more stringent than the  
22          performance standard in effect on the date that  
23          the review is completed.

24          “(4) STATE PETITION FOR REVIEW OF PER-  
25          FORMANCE STANDARDS.—



1           “(A) IN GENERAL.—The Governor of a  
2 State may submit a petition requesting that the  
3 Administrator review a ballast water perform-  
4 ance standard if there is significant new infor-  
5 mation that could reasonably indicate the per-  
6 formance standard could be revised to result in  
7 a scientifically demonstrable and substantial re-  
8 duction in the risk of the introduction and es-  
9 tablishment of aquatic nuisance species.

10           “(B) TIMING.—A Governor may not sub-  
11 mit a petition under subparagraph (A) during  
12 the 1-year period following the date of comple-  
13 tion of a review under paragraph (1).

14           “(C) REQUIRED INFORMATION.—A peti-  
15 tion submitted to the Administrator under sub-  
16 paragraph (A) shall include the scientific and  
17 technical information on which the petition is  
18 based.

19           “(D) REVIEW AND REPORTING.—Not later  
20 than 30 days after the date of receipt of a peti-  
21 tion from a Governor under subparagraph (A),  
22 the Administrator shall make publicly available  
23 a copy of the petition, including the scientific  
24 and technical information provided by the Gov-  
25 ernor under subparagraph (C).

1                   “(E) REVIEW AND REVISION OF PERFORM-  
2 ANCE STANDARDS.—

3                   “(i) IN GENERAL.—If, after receiving  
4 a petition submitted by a Governor under  
5 subparagraph (A) for review of a perform-  
6 ance standard, the Administrator, in con-  
7 sultation with the Secretary, determines  
8 that the petition warrants additional ac-  
9 tion, the Administrator may—

10                   “(I) in consultation with the Sec-  
11 retary, initiate a review of the per-  
12 formance standard under paragraph  
13 (1); and

14                   “(II) with the concurrence of the  
15 Secretary, revise the performance  
16 standard through a rulemaking under  
17 paragraph (3)(A), subject to the limi-  
18 tation in paragraph (3)(B).

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

23                   “(e) TREATMENT TECHNOLOGY CERTIFICATION.—

24                   “(1) CERTIFICATION REQUIRED.—

25                   “(A) CERTIFICATION PROCESS.—

1           “(i) EVALUATION.—Upon application  
2 of the manufacturer, the Secretary shall  
3 evaluate a ballast water treatment tech-  
4 nology with respect to—

5           “(I) whether the treatment tech-  
6 nology reliably meets the ballast water  
7 performance standard when installed  
8 on a commercial vessel (or class, type,  
9 or size of commercial vessel);

10           “(II) the effect of the treatment  
11 technology on commercial vessel safe-  
12 ty; and

13           “(III) any other criteria the Sec-  
14 retary considers appropriate.

15           “(ii) CERTIFICATION.—If, after con-  
16 ducting the evaluation required by clause  
17 (i), the Secretary determines the treatment  
18 technology meets the criteria established  
19 under such clause, the Secretary may cer-  
20 tify the treatment technology for use on a  
21 commercial vessel (or a class, type, or size  
22 of commercial vessel).

23           “(iii) SUSPENSION AND REVOCATION  
24 OF CERTIFICATION.—The Secretary shall,  
25 by regulation, establish a process to sus-

1           pend or revoke a certification issued under  
2           this subparagraph.

3           “(B) CERTIFICATES OF TYPE APPROVAL.—

4                 “(i) ISSUANCE OF CERTIFICATES TO  
5           MANUFACTURER.—If the Secretary cer-  
6           tifies a ballast water treatment technology  
7           under subparagraph (A), the Secretary  
8           shall issue to the manufacturer of the  
9           treatment technology, in such form and  
10          manner as the Secretary determines appro-  
11          priate, a certificate of type approval for the  
12          treatment technology.

13                 “(ii) CONDITIONS TO BE INCLUDED IN  
14          CERTIFICATES.—A certificate of type ap-  
15          proval issued under clause (i) shall include  
16          any conditions that are imposed by the  
17          Secretary under paragraph (2).

18                 “(iii) ISSUANCE OF COPIES OF CER-  
19          TIFICATES TO OWNERS AND OPERATORS.—  
20          A manufacturer that receives a certificate  
21          of type approval under clause (i) for a bal-  
22          last water treatment technology shall fur-  
23          nish a copy of the certificate to any owner  
24          or operator of a commercial vessel on

1           which the treatment technology is in-  
2           stalled.

3           “(iv) INSPECTIONS.—An owner or op-  
4           erator who receives a copy of a certificate  
5           under clause (iii) for a ballast water treat-  
6           ment technology installed on a commercial  
7           vessel shall retain a copy of the certificate  
8           onboard the commercial vessel and make  
9           the copy of the certificate available for in-  
10          spection at all times that such owner or  
11          operator is utilizing the treatment tech-  
12          nology.

13          “(C) TREATMENT TECHNOLOGIES THAT  
14          USE OR GENERATE BIOCIDES.—The Secretary  
15          shall not certify a ballast water treatment tech-  
16          nology that—

17                 “(i) uses a biocide or generates a  
18                 biocide that is a ‘pesticide’, as defined in  
19                 section 2 of the Federal Insecticide, Fun-  
20                 gicide, and Rodenticide Act (7 U.S.C.  
21                 136), unless the biocide is registered under  
22                 such Act or the Administrator has ap-  
23                 proved the use of such biocide in such  
24                 treatment technology; or

1           “(ii) uses or generates a biocide the  
2 discharge of which causes a violation of a  
3 water quality standard under section 303  
4 of this Act.

5           “(D) PROHIBITION.—

6           “(i) IN GENERAL.—Except as pro-  
7 vided by clause (ii), an owner or operator  
8 may not use a ballast water treatment  
9 technology to comply with the require-  
10 ments of this section unless the Secretary  
11 has certified the treatment technology  
12 under subparagraph (A).

13           “(ii) EXCEPTIONS.—

14           “(I) COAST GUARD SHIPBOARD  
15 TECHNOLOGY EVALUATION PRO-  
16 GRAM.—An owner or operator may  
17 use a ballast water treatment tech-  
18 nology that has not been certified by  
19 the Secretary to comply with the re-  
20 quirements of this section if the tech-  
21 nology is being evaluated under the  
22 Coast Guard Shipboard Technology  
23 Evaluation Program.

24           “(II) BALLAST WATER TREAT-  
25 MENT TECHNOLOGIES CERTIFIED BY

1 FOREIGN ENTITIES.—An owner or op-  
2 erator may use a ballast water treat-  
3 ment technology that has not been  
4 certified by the Secretary to comply  
5 with the requirements of this section  
6 if the technology has been certified by  
7 a foreign entity and the certification  
8 demonstrates performance and safety  
9 of the treatment technology equivalent  
10 to the requirements of this subsection,  
11 as determined by the Secretary.

12 “(2) CERTIFICATION CONDITIONS.—

13 “(A) IMPOSITION OF CONDITIONS.—In cer-  
14 tifying a ballast water treatment technology  
15 under this subsection, the Secretary, in con-  
16 sultation with the Administrator, may impose  
17 any condition on the subsequent installation,  
18 use, or maintenance of the treatment tech-  
19 nology onboard a commercial vessel as is nec-  
20 essary for—

21 “(i) the safety of the vessel, the crew  
22 of the vessel, and any passengers aboard  
23 the vessel;

24 “(ii) the protection of the environ-  
25 ment; and

1                   “(iii) the effective operation of the  
2                   treatment technology.

3                   “(B) FAILURE TO COMPLY.—The failure of  
4                   an owner or operator to comply with a condi-  
5                   tion imposed under subparagraph (A) is a viola-  
6                   tion of this section.

7                   “(3) USE OF BALLAST WATER TREATMENT  
8                   TECHNOLOGIES ONCE INSTALLED.—An owner or op-  
9                   erator who installs a ballast water treatment tech-  
10                  nology that the Secretary has certified under para-  
11                  graph (1) may use the treatment technology, not-  
12                  withstanding any revisions to a ballast water per-  
13                  formance standard occurring after the installation—

14                  “(A) so long as the owner or operator—

15                          “(i) maintains the treatment tech-  
16                          nology in proper working condition; and

17                          “(ii) maintains and uses the treat-  
18                          ment technology in accordance with—

19                                  “(I) the manufacturer’s specifica-  
20                                  tions; and

21                                  “(II) any conditions imposed by  
22                                  the Secretary under paragraph (2);  
23                                  and

24                                  “(B) for a period of time not to exceed the  
25                                  service life of the ballast water treatment tech-



1           nology or the commercial vessel, as determined  
2           by the Secretary, whichever is less.

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

8                   “(A) certifying the performance of ballast  
9                   water treatment technologies under this sub-  
10                  section; and

11                   “(B) certifying laboratories to evaluate  
12                  such treatment technologies.

13           “(5) PROHIBITION.—Following the date on  
14           which the requirements of subsection (b)(1) apply  
15           with respect to a commercial vessel pursuant to the  
16           implementation schedule issued under subsection  
17           (b)(3)(B), no manufacturer of a ballast water treat-  
18           ment technology shall sell, offer for sale, or intro-  
19           duce or deliver for introduction into interstate com-  
20           merce, or import into the United States for sale or  
21           resale, a ballast water treatment technology for the  
22           commercial vessel unless the technology has been  
23           certified under this subsection.

24           “(f) ALTERNATIVE METHODS OF COMPLIANCE.—

1           “(1) ESTABLISHMENT.—Not later than 180  
2 days after the date of enactment of this section, the  
3 Secretary, in consultation with the Administrator,  
4 shall establish an alternative method of compliance  
5 with this section for—

6           “(A) a commercial vessel having a max-  
7 imum ballast water capacity of less than 8  
8 cubic meters; and

9           “(B) a commercial vessel for which the  
10 Secretary determines that the ballast water  
11 treatment technology that is certified under this  
12 section—

13           “(i) is not commercially available in  
14 sufficient quantities to meet the compli-  
15 ance deadline issued by the Secretary;

16           “(ii) is not able to be installed to meet  
17 the compliance deadline promulgated by  
18 the Secretary due to—

19           “(I) insufficient shipyard or  
20 other installation facility capacity;

21           “(II) insufficient availability of  
22 engineering and design resources;

23           “(III) vessel characteristics, such  
24 as engine room size, layout, or a lack  
25 of installed piping that makes the in-

1                   stallation of the ballast water treat-  
2                   ment technology impracticable; or

3                   “ (IV) insufficient generation ca-  
4                   pacity aboard the vessel to power the  
5                   ballast water treatment technology; or

6                   “ (iii) would adversely affect the safe  
7                   operation of the vessel.

8                   “(2) FACTORS FOR CONSIDERATION.—In estab-  
9                   lishing an alternative method of compliance under  
10                  paragraph (1), the Secretary shall consider—

11                  “(A) the effectiveness of the alternative  
12                  method in reducing the risk of the introduction  
13                  and establishment of aquatic nuisance species  
14                  relative to the performance standard; and

15                  “(B) any other factor the Secretary con-  
16                  siders appropriate.

17                  “(3) BEST MANAGEMENT PRACTICES.—The  
18                  Secretary may establish as an alternative method of  
19                  compliance appropriate ballast water best manage-  
20                  ment practices to minimize the introduction and es-  
21                  tablishment of aquatic nuisance species.

22                  “(4) USE OF ALTERNATIVE METHOD.—

23                  “(A) PETITION.—In order to use an alter-  
24                  native method of compliance established under  
25                  paragraph (1)(B), an owner or operator shall

1 submit a petition to the Secretary requesting  
2 approval to use such alternative method.

3 “(B) APPROVAL.—If the Secretary deter-  
4 mines that a commercial vessel for which a peti-  
5 tion has been submitted under subparagraph  
6 (A) meets the criteria described in paragraph  
7 (1)(B), the Secretary may approve the petition  
8 and impose any conditions on such approval  
9 that the Secretary determines appropriate.

10 “(C) DEADLINE.—The Secretary shall  
11 make a determination under subparagraph (B)  
12 not later than 90 days after the date on which  
13 an owner or operator submits a petition under  
14 subparagraph (A). If the Secretary fails to  
15 make a determination by the end of the 90-day  
16 period, the petition shall be considered to be ap-  
17 proved.

18 “(g) GEOGRAPHICALLY LIMITED AREAS.—

19 “(1) IN GENERAL.—Subsections (c), (e), and (i)  
20 shall not apply to a commercial vessel that, as deter-  
21 mined by the Secretary—

22 “(A) operates exclusively within a geo-  
23 graphically limited area; or

1           “(B) operates pursuant to a geographic re-  
2           striction issued for the commercial vessel under  
3           section 3309 of title 46, United States Code.

4           “(2) PETITION FOR DETERMINATION BY THE  
5           SECRETARY.—Following the date of issuance of final  
6           regulations under subsection (b), an owner or oper-  
7           ator may petition the Secretary for a determination  
8           under paragraph (1). Not later than 90 days after  
9           receipt of such a petition, the Secretary shall re-  
10          spond to the petitioner with a determination regard-  
11          ing whether the commercial vessel that is the subject  
12          of the petition meets the requirements of paragraph  
13          (1). If the Secretary fails to respond to a petition by  
14          the end of the 90-day period, the petition shall be  
15          considered to be granted.

16          “(3) NOTIFICATION.—The Secretary shall no-  
17          tify the Administrator and the Governor of each  
18          State the waters of which could be affected by the  
19          discharge of ballast water from a commercial vessel  
20          for which a petition has been granted under para-  
21          graph (2) of the granting of any such petition.

22          “(h) RECEPTION FACILITIES.—

23          “(1) IN GENERAL.—An owner or operator shall  
24          discharge ballast water in compliance with sub-

1 section (e) or (f) unless discharging ballast water  
2 into—

3 “(A) an onshore facility for the reception  
4 of ballast water that meets standards issued by  
5 the Administrator, in consultation with the Sec-  
6 retary; or

7 “(B) an offshore facility for the reception  
8 of ballast water that meets standards issued by  
9 the Secretary, in consultation with the Adminis-  
10 trator.

11 “(2) ISSUANCE OF STANDARDS.—Not later  
12 than 2 years after the date of enactment of this sec-  
13 tion—

14 “(A) the Administrator, in consultation  
15 with the Secretary, shall issue the standards re-  
16 ferred to in paragraph (1)(A); and

17 “(B) the Secretary, in consultation with  
18 the Administrator, shall issue the standards re-  
19 ferred to in paragraph (1)(B).

20 “(3) SOLE METHOD OF DISCHARGE.—The Sec-  
21 retary, in consultation with the Administrator, and  
22 upon petition by an owner or operator, may issue to  
23 an owner or operator a certificate stating that a  
24 commercial vessel is in compliance with the require-  
25 ments of subsection (b)(1)(A) if discharging ballast

1 water into a facility meeting the standards issued  
2 under this subsection is the sole method by which  
3 the owner or operator discharges ballast water from  
4 the commercial vessel.

5 “(i) COMMERCIAL VESSEL BALLAST WATER MAN-  
6 AGEMENT PLAN.—

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

10 “(A) meets requirements prescribed by the  
11 Secretary; and

12 “(B) is approved by the Secretary.

13 “(2) FOREIGN COMMERCIAL VESSELS.—The  
14 Secretary may approve a ballast water management  
15 plan for a foreign commercial vessel on the basis of  
16 a certificate of compliance issued by the country of  
17 registration of the commercial vessel if the require-  
18 ments of the government of that country for a bal-  
19 last water management plan are substantially equiv-  
20 alent to regulations issued by the Secretary.

21 “(3) RECORDKEEPING.—

22 “(A) IN GENERAL.—Except as provided by  
23 subparagraph (B), an owner or operator shall  
24 maintain in English and have available for in-  
25 spection by the Secretary a ballast water record

1 book in which each operation of the commercial  
2 vessel involving a ballast water discharge is re-  
3 corded in accordance with regulations issued by  
4 the Secretary.

5 “(B) ALTERNATIVE MEANS OF RECORD-  
6 KEEPING.—The Secretary may provide for al-  
7 ternative methods of recordkeeping, including  
8 electronic recordkeeping, to comply with the re-  
9 quirements of this paragraph.

10 “(j) REGULATION OF BALLAST WATER DIS-  
11 CHARGES.—Effective on and after the date of enactment  
12 of this section—

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

18 “(2) except as provided by subsection (k), a  
19 State or political subdivision thereof shall not adopt  
20 or enforce any law or regulation of the State or po-  
21 litical subdivision with respect to such a discharge.

22 “(k) STATE AUTHORITY.—

23 “(1) STATE PROGRAMS.—The Governor of a  
24 State desiring to administer its own inspection and  
25 enforcement authority for ballast water discharges



1 within its jurisdiction may submit to the Secretary  
2 a complete description of the program the Governor  
3 proposes to establish and administer under State  
4 law. In addition, the Governor shall submit a state-  
5 ment from the State attorney general that the laws  
6 of the State provide adequate authority to carry out  
7 the described program.

8 “(2) APPROVAL.—The Secretary, with the con-  
9 currence of the Administrator, may approve a pro-  
10 gram of a State submitted under paragraph (1) pro-  
11 viding for the State’s own inspection and enforce-  
12 ment authority for ballast water discharges within  
13 its jurisdiction, if the Secretary determines that the  
14 State possesses adequate resources to—

15 “(A) inspect, monitor, and board a com-  
16 mercial vessel at any time, including the taking  
17 and testing of ballast water samples, to ensure  
18 the commercial vessel’s compliance with this  
19 section;

20 “(B) ensure that any ballast water dis-  
21 charged within the waters subject to the juris-  
22 diction of the State meets the requirements of  
23 this section;

24 “(C) establish adequate procedures for re-  
25 porting violations of this section;

1           “(D) investigate and abate violations of  
2           this section, including the imposition of civil  
3           and criminal penalties consistent with this sec-  
4           tion; and

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

8           “(3) COMPLIANCE.—Any State program ap-  
9           proved under paragraph (2) shall at all times be  
10          conducted in accordance with this subsection.

11          “(4) WITHDRAWAL OF APPROVAL.—Whenever  
12          the Secretary, in consultation with the Adminis-  
13          trator, determines, after providing notice and the op-  
14          portunity for a public hearing, that a State is not  
15          administering a program in accordance with the  
16          terms of the program as approved under paragraph  
17          (2), the Secretary shall notify the State, and, if ap-  
18          propriate corrective action is not taken within a pe-  
19          riod of time not to exceed 90 days, the Secretary,  
20          with the concurrence of the Administrator, shall  
21          withdraw approval of the program. The Secretary  
22          shall not withdraw approval of a program unless the  
23          Secretary has first notified the State and made pub-  
24          lic, in writing, the reasons for the withdrawal.

1           “(5) LIMITATION ON STATUTORY CONSTRUC-  
2           TION.—Nothing in this subsection shall limit the au-  
3           thority of the Administrator or the Secretary to  
4           carry out inspections of any commercial vessel under  
5           subsection (m).

6           “(6) STATE LAWS.—Notwithstanding any other  
7           provision of this section, a State may enact such  
8           laws as are necessary to provide for the implementa-  
9           tion of the State ballast water inspection and en-  
10          forcement program provided under this subsection.  
11          The requirements for a ballast water inspection and  
12          enforcement program contained in such State law  
13          shall be substantively and procedurally equivalent to  
14          those required in this section, and any requirements  
15          relating to recordkeeping, reporting, and sampling or  
16          analysis contained in such State law shall be sub-  
17          stantively and procedurally equivalent to the require-  
18          ments of this section and its implementing regula-  
19          tions and guidance.

20          “(1) DISCHARGES INCIDENTAL TO THE NORMAL OP-  
21          ERATIONS OF A COMMERCIAL VESSEL.—

22                 “(1) EVALUATION OF INCIDENTAL DIS-  
23                 CHARGES.—

24                         “(A) IN GENERAL.—Not later than 3 years  
25                         after the date of enactment of this section, the

1 Administrator, in consultation with the Sec-  
2 retary, shall complete an evaluation of dis-  
3 charges incidental to the normal operation of a  
4 commercial vessel.

5 “(B) FACTORS.—In carrying out the eval-  
6 uation, the Administrator shall analyze—

7 “(i) the characterization of the var-  
8 ious types and composition of discharges  
9 incidental to the normal operation of a  
10 commercial vessel by different classes,  
11 types, and sizes of commercial vessels;

12 “(ii) the volume of such discharges for  
13 representative individual commercial ves-  
14 sels and by classes, types, and sizes of  
15 commercial vessels in the aggregate;

16 “(iii) the availability and feasibility of  
17 implementing technologies or best manage-  
18 ment practices for the control of such dis-  
19 charges;

20 “(iv) the characteristics of the receiv-  
21 ing waters of such discharges;

22 “(v) the nature and extent of poten-  
23 tial effects of such discharges on human  
24 health, welfare, and the environment;

1           “(vi) the extent to which such dis-  
2           charges are currently subject to and ad-  
3           dressed by regulations under existing Fed-  
4           eral laws or binding international obliga-  
5           tions of the United States; and

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

8           “(2) REGULATION OF INCIDENTAL DIS-  
9           CHARGES.—Effective on and after the date of enact-  
10          ment of this section—

11           “(A) the Administrator (or a State in the  
12           case of a permit program approved under sec-  
13           tion 402) shall not require any new permit or  
14           permit conditions under section 402 for any dis-  
15           charge incidental to the normal operation of a  
16           commercial vessel; and

17           “(B) a State or political subdivision there-  
18           of shall not adopt or enforce any law or regula-  
19           tion of the State or political subdivision with re-  
20           spect to such a discharge.

21          “(m) INSPECTIONS AND ENFORCEMENT.—

22           “(1) IN GENERAL.—

23           “(A) COAST GUARD ENFORCEMENT.—The  
24           Secretary shall enforce the requirements of this  
25           section and may utilize by agreement, with or

1 without reimbursement, law enforcement offi-  
2 cers or other personnel and facilities of the Ad-  
3 ministrator, other Federal agencies, and the  
4 States.

5 “(B) ENVIRONMENTAL PROTECTION AGEN-  
6 CY ACTIONS.—Notwithstanding any enforce-  
7 ment decisions of the Secretary under subpara-  
8 graph (A), the Administrator may use the au-  
9 thorities provided in sections 308, 309, 312,  
10 and 504 whenever required to carry out this  
11 section.

12 “(2) COAST GUARD INSPECTIONS.—The Sec-  
13 retary may carry out inspections of any commercial  
14 vessel at any time, including the taking of ballast  
15 water samples, to ensure compliance with this sec-  
16 tion. The Secretary shall use all appropriate and  
17 practical measures of detection and environmental  
18 monitoring of such commercial vessels and shall es-  
19 tablish adequate procedures for reporting violations  
20 of this section and accumulating evidence regarding  
21 such violations.

22 “(n) COMPLIANCE.—

23 “(1) DETENTION OF COMMERCIAL VESSEL.—  
24 The Secretary, by notice to the owner or operator,  
25 may detain the commercial vessel if the Secretary

1 has reasonable cause to believe that the commercial  
2 vessel does not comply with a requirement of this  
3 section or is being operated in violation of such a re-  
4 quirement.

5 “(2) SANCTIONS.—

6 “(A) CIVIL PENALTIES.—Any person who  
7 violates this section shall be liable for a civil  
8 penalty in an amount not to exceed \$5,000 for  
9 each violation. Each day of a continuing viola-  
10 tion constitutes a separate violation. A commer-  
11 cial vessel operated in violation of this section  
12 is liable in rem for any civil penalty assessed for  
13 that violation.

14 “(B) CRIMINAL PENALTIES.—Whoever  
15 knowingly violates this section shall be fined not  
16 less than \$5,000 nor more than \$50,000 for  
17 each day of a violation, or imprisoned not more  
18 than 3 years, or both.

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

1           “(3) ENFORCEMENT ACTIONS.—

2                   “(A) ADMINISTRATIVE ACTIONS.—If the  
3 Secretary finds that a person has violated this  
4 section, the Secretary may assess a civil penalty  
5 for the violation. In determining the amount of  
6 the civil penalty, the Secretary shall take into  
7 account the nature, circumstances, extent, and  
8 gravity of the prohibited acts committed and,  
9 with respect to the violator, the degree of culpa-  
10 bility, any history of prior violations, and such  
11 other matters as justice may require.

12                   “(B) CIVIL ACTIONS.—At the request of  
13 the Secretary, the Attorney General may bring  
14 a civil action in an appropriate district court of  
15 the United States to enforce this section. Any  
16 court before which such an action is brought  
17 may award appropriate relief, including tem-  
18 porary or permanent injunctions and civil pen-  
19 alties.

20                   “(4) EXCLUSION.—No person shall be found in  
21 violation of this section whose commission of prohib-  
22 ited acts is found by the Secretary to have been in  
23 the interest of the safe operation of the commercial  
24 vessel.



1       “(o) REGULATION UNDER OTHER SECTIONS OF  
2 THIS ACT.—This section shall not affect the regulation  
3 of discharges from a commercial vessel pursuant to section  
4 311 or 312.”.

5 **SEC. 3. CONFORMING AND TECHNICAL AMENDMENTS.**

6       (a) FEDERAL WATER POLLUTION CONTROL ACT.—

7           (1) EFFLUENT LIMITATIONS.—Section 301(a)  
8 of the Federal Water Pollution Control Act (33  
9 U.S.C. 1311(a)) is amended by inserting “321,”  
10 after “318,”.

11           (2) REVIEW OF ADMINISTRATOR’S ACTIONS.—

12 The first sentence of section 509(b)(1) of such Act  
13 (33 U.S.C. 1369(b)(1)) is amended—

14           (A) by striking “and (G)” and inserting  
15 “(G)”; and

16           (B) by inserting after “section 304(l),” the  
17 following: “and (H) in issuing any regulation or  
18 otherwise taking final agency action under sec-  
19 tion 321,”.

20       (b) VESSEL GENERAL PERMIT.—

21           (1) EXPIRATION.—Notwithstanding the expira-  
22 tion date set forth in the Vessel General Permit, the  
23 Vessel General Permit shall expire as follows:

24           (A) The terms and conditions of section 6  
25 of such permit or any law of a State (as defined

1 in section 502 of the Federal Water Pollution  
2 Control Act (33 U.S.C. 1362)) or political sub-  
3 division thereof regulating the discharge of bal-  
4 last water or any discharge incidental to the  
5 normal operation of a commercial vessel within  
6 the meaning of section 321 of the Federal  
7 Water Pollution Control Act (as added by this  
8 Act), upon the date of enactment of this Act.

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

13 (i) on the date on which—

14 (I) a ballast water treatment  
15 technology certified under section  
16 321(e) of the Federal Water Pollution  
17 Control Act (as added by this Act) is  
18 installed on the commercial vessel;

19 (II) an alternative method of  
20 compliance is established for the com-  
21 mercial vessel under section  
22 321(f)(1)(A) of such Act or is ap-  
23 proved for use on the commercial ves-  
24 sel under section 321(f)(4)(B) of such  
25 Act;

1 (III) a petition is granted for the  
2 commercial vessel under section  
3 321(g) of such Act; or

4 (IV) a certificate is issued for the  
5 commercial vessel under section  
6 321(h) of such Act; or

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

9 (C) The terms and conditions of such per-  
10 mit (except the terms and conditions referred to  
11 in subparagraph (A)) applicable to discharges  
12 incidental to the normal operation of a covered  
13 vessel, on December 18, 2013.

14 (2) DISCHARGES INCIDENTAL TO THE NORMAL  
15 OPERATION OF COMMERCIAL VESSELS.—Notwith-  
16 standing the expiration date set forth in the Vessel  
17 General Permit, the terms and conditions of such  
18 permit (except the terms and conditions referred to  
19 in paragraphs (1)(A) and (1)(C)) applicable to dis-  
20 charges incidental to the normal operation of a com-  
21 mercial vessel shall remain in effect.

22 (3) DEFINITIONS.—In this subsection, the fol-  
23 lowing definitions apply:

24 (A) COMMERCIAL VESSEL.—The term  
25 “commercial vessel” has the meaning given that

1 term in section 321(a) of the Federal Water  
2 Pollution Control Act (as added by this Act).

3 (B) COVERED VESSEL.—The term “cov-  
4 ered vessel” has the meaning given that term in  
5 Public Law 110–299 (33 U.S.C. 1342 note).

6 (C) VESSEL GENERAL PERMIT.—The term  
7 “Vessel General Permit” means the Vessel Gen-  
8 eral Permit for Discharges Incidental to the  
9 Normal Operation of Vessels issued under sec-  
10 tion 402 of the Federal Water Pollution Control  
11 Act (33 U.S.C. 1342) by the Administrator of  
12 the Environmental Protection Agency for bal-  
13 last water and other discharges incidental to  
14 the normal operation of vessels, as in effect on  
15 December 19, 2008, for all jurisdictions except  
16 Alaska and Hawaii, and February 6, 2009, for  
17 Alaska and Hawaii.

18 (c) REGULATION OF BALLAST WATER AND INCI-  
19 DENTAL DISCHARGES FROM A COMMERCIAL VESSEL.—

20 (1) IN GENERAL.—Effective on the date of en-  
21 actment of this Act, the following discharges shall  
22 not be regulated in any manner other than as speci-  
23 fied in section 321 of the Federal Water Pollution  
24 Control Act (as added by this Act) and subsection  
25 (b) of this section:

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

3 (B) A discharge of ballast water from a  
4 commercial vessel.

5 (2) DEFINITIONS.—In this subsection, the  
6 terms “ballast water”, “commercial vessel”, and  
7 “discharge incidental to the normal operation of a  
8 commercial vessel” have the meanings given those  
9 terms in section 321(a) of the Federal Water Pollu-  
10 tion Control Act (as added by this Act).

11 (d) NONINDIGENOUS AQUATIC NUISANCE PREVEN-  
12 TION AND CONTROL ACT OF 1990.—

13 (1) AQUATIC NUISANCE SPECIES IN WATERS OF  
14 THE UNITED STATES.—Effective on the date of  
15 issuance of final regulations under section 321(b) of  
16 the Federal Water Pollution Control Act (as added  
17 by this Act), section 1101 of the Nonindigenous  
18 Aquatic Nuisance Prevention and Control Act of  
19 1990 (16 U.S.C. 4711) is repealed.

20 (2) RELATIONSHIP TO OTHER LAWS.—Effective  
21 on the date of enactment of this Act, section 1205  
22 of the Nonindigenous Aquatic Nuisance Prevention  
23 and Control Act of 1990 (16 U.S.C. 4725) is re-  
24 pealed.

○