

AMENDMENT TO H.R. 4909
OFFERED BY MR. HUNTER OF CALIFORNIA

At the appropriate place in the bill insert the following:

1 **TITLE _____ —BALLAST WATER**

2 **SEC. ___ 01. SHORT TITLE.**

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

5 **SEC. ___ 02. DEFINITIONS.**

6 In this title:

7 (1) ADMINISTRATOR.—The term “Adminis-
8 trator” means the Administrator of the Environ-
9 mental Protection Agency.

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

17 (3) BALLAST WATER.—

18 (A) IN GENERAL.—The term “ballast
19 water” means any water, including any sedi-

1 ment suspended in such water, taken aboard a
2 vessel—

3 (i) to control trim, list, draught, sta-
4 bility, or stresses of the vessel; or

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

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

14 (4) BALLAST WATER PERFORMANCE STAND-
15 ARD.—The term “ballast water performance stand-
16 ard” means the numerical ballast water discharge
17 standard set forth in section 151.2030 of title 33,
18 Code of Federal Regulations or section 151.1511 of
19 title 33, Code of Federal Regulations, as applicable,
20 or a revised numerical ballast water performance
21 standard established under subsection (a)(1)(B), (b),
22 or (c) of section ____ 04 of this title.

23 (5) BALLAST WATER TREATMENT TECHNOLOGY
24 OR TREATMENT TECHNOLOGY.—The term “ballast
25 water treatment technology” or “treatment tech-

1 nology” means any mechanical, physical, chemical,
2 or biological process used, alone or in combination,
3 to remove, render harmless, or avoid the uptake or
4 discharge of aquatic nuisance species within ballast
5 water.

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

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

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

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

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

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

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

20 (II) weather deck runoff, deck
21 wash, aqueous film forming foam ef-
22 fluent, chain locker effluent, non-oily
23 machinery wastewater, underwater
24 ship husbandry effluent, welldeck ef-

1 fluent, or fish hold and fish hold
2 cleaning effluent; or

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

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

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

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

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

19 (II) oil or a hazardous substance
20 as those terms are defined in section
21 311 of the Federal Water Pollution
22 Control Act (33 U.S.C. 1321);

23 (III) sewage as defined in section
24 312(a)(6) of the Federal Water Pollu-

1 tion Control Act (33 U.S.C.
2 1322(a)(6)); or

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

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

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

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

17 (A) with a physical limitation, including
18 limitation by physical size and limitation by au-
19 thorized route, that prevents a vessel from oper-
20 ating outside the area, as determined by the
21 Secretary; or

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

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

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

8 (11) VESSEL.—The term “vessel” means every
9 description of watercraft or other artificial contriv-
10 ance used, or practically or otherwise capable of
11 being used, as a means of transportation on water.

12 **SEC. ___ 03. REGULATION AND ENFORCEMENT.**

13 (a) IN GENERAL.—The Secretary, in consultation
14 with the Administrator, shall establish and implement en-
15 forceable uniform national standards and requirements for
16 the regulation of discharges incidental to the normal oper-
17 ation of a vessel. The standards and requirements shall—

18 (1) be based upon the best available technology
19 economically achievable; and

20 (2) supersede any permitting requirement or
21 prohibition on discharges incidental to the normal
22 operation of a vessel under any other provision of
23 law.

24 (b) ADMINISTRATION AND ENFORCEMENT.—The
25 Secretary shall administer and enforce the uniform na-

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

4 **SEC. ___ 04. UNIFORM NATIONAL STANDARDS AND RE-**
5 **QUIREMENTS FOR THE REGULATION OF DIS-**
6 **CHARGES INCIDENTAL TO THE NORMAL OP-**
7 **ERATION OF A VESSEL.**

8 (a) REQUIREMENTS.—

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

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

24 (B) ADOPTION OF MORE STRINGENT
25 STATE STANDARD.—If the Secretary makes a

1 determination in favor of a State petition under
2 section ____09, the Secretary shall adopt the
3 more stringent ballast water performance
4 standard specified in the statute or regulation
5 that is the subject of that State petition in lieu
6 of the ballast water performance standard in
7 the final rule described under subparagraph
8 (A).

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

17 (b) REVISED BALLAST WATER PERFORMANCE
18 STANDARD; 7-YEAR REVIEW.—

19 (1) IN GENERAL.—Subject to the feasibility re-
20 view under paragraph (2), not later than January 1,
21 2022, the Secretary, in consultation with the Admin-
22 istrator, shall issue a final rule revising the ballast
23 water performance standard under subsection (a)(1)
24 so that a ballast water discharge incidental to the
25 normal operation of a vessel will contain—

1 (A) less than 1 living organism per 10
2 cubic meters that is 50 or more micrometers in
3 minimum dimension;

4 (B) less than 1 living organism per 10 mil-
5 liters that is less than 50 micrometers in min-
6 imum dimension and more than 10 micrometers
7 in minimum dimension;

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

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

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

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

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

25 (2) FEASIBILITY REVIEW.—

1 (A) IN GENERAL.—Not later than January
2 1, 2020, the Secretary, in consultation with the
3 Administrator, shall complete a review to deter-
4 mine the feasibility of achieving the revised bal-
5 last water performance standard under para-
6 graph (1).

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

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

20 (ii) improvements in ballast water
21 treatment technology, including—

22 (I) the capability of such treat-
23 ment technology to achieve a revised
24 ballast water performance standard;

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

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

8 (IV) the commercial availability
9 of such treatment technology; and

10 (V) the safety of such treatment
11 technology;

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

16 (iv) the impact of ballast water treat-
17 ment technology on water quality; and

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

20 (I) a revised ballast water per-
21 formance standard, including the po-
22 tential impacts on shipping, trade,
23 and other uses of the aquatic environ-
24 ment; and

1 (II) maintaining the existing bal-
2 last water performance standard, in-
3 cluding the potential impacts on
4 water-related infrastructure, recre-
5 ation, propagation of native fish,
6 shellfish, and wildlife, and other uses
7 of navigable waters.

8 (C) LOWER REVISED PERFORMANCE
9 STANDARD.—

10 (i) IN GENERAL.—If the Secretary, in
11 consultation with the Administrator, deter-
12 mines on the basis of the feasibility review
13 and after an opportunity for a public hear-
14 ing that no ballast water treatment tech-
15 nology can be certified under section
16 ____ 05 to comply with the revised ballast
17 water performance standard under para-
18 graph (1), the Secretary shall require the
19 use of the treatment technology that
20 achieves the performance levels of the best
21 treatment technology available.

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

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

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

12 (D) HIGHER REVISED PERFORMANCE
13 STANDARD.—

14 (i) IN GENERAL.—If the Secretary, in
15 consultation with the Administrator, deter-
16 mines that ballast water treatment tech-
17 nology exists that exceeds the revised bal-
18 last water performance standard under
19 paragraph (1) with respect to a class of
20 vessels, the Secretary shall revise the bal-
21 last water performance standard for that
22 class of vessels to incorporate the higher
23 performance standard.

24 (ii) IMPLEMENTATION DEADLINE.—If
25 the Secretary, in consultation with the Ad-

1 administrator, determines that the treatment
2 technology under clause (i) can be imple-
3 mented before the implementation deadline
4 under paragraph (3) with respect to a
5 class of vessels, the Secretary shall accel-
6 erate the implementation deadline for that
7 class of vessels. If the implementation
8 deadline under paragraph (3) is acceler-
9 ated, the Secretary shall provide not less
10 than 24 months notice before the acceler-
11 ated deadline takes effect.

12 (3) IMPLEMENTATION DEADLINE.—The revised
13 ballast water performance standard under paragraph
14 (1) shall apply to a vessel beginning on the date of
15 the first drydocking of the vessel on or after Janu-
16 ary 1, 2022, but not later than December 31, 2024.

17 (4) REVISED PERFORMANCE STANDARD COM-
18 PLIANCE DEADLINES.—

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

24 (B) PROCESS FOR GRANTING EXTEN-
25 SIONS.—In issuing regulations under this sub-

1 section, the Secretary shall establish a process
2 for an owner or operator to submit a petition
3 to the Secretary for an extension of a compli-
4 ance deadline with respect to the vessel of the
5 owner or operator.

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

8 (i) apply for a period of not to exceed
9 18 months from the date of the applicable
10 deadline under subparagraph (A); and

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

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

19 (i) Whether the treatment technology
20 to be installed is available in sufficient
21 quantities to meet the compliance deadline.

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

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

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

4 (v) Electric power generating capacity
5 aboard the vessel.

6 (vi) Safety of the vessel and crew.

7 (E) CONSIDERATION OF PETITIONS.—

8 (i) DETERMINATIONS.—The Secretary
9 shall approve or deny a petition for an ex-
10 tension of a compliance deadline submitted
11 by an owner or operator under this para-
12 graph.

13 (ii) DEADLINE.—If the Secretary does
14 not approve or deny a petition referred to
15 in clause (i) on or before the last day of
16 the 90-day period beginning on the date of
17 submission of the petition, the petition
18 shall be deemed approved.

19 (c) FUTURE REVISIONS OF VESSEL INCIDENTAL
20 DISCHARGE STANDARDS; DECENNIAL REVIEWS.—

21 (1) REVISED BALLAST WATER PERFORMANCE
22 STANDARDS.—The Secretary, in consultation with
23 the Administrator, shall complete a review, 10 years
24 after the issuance of a final rule under subsection

25 (b) and every 10 years thereafter, to determine

1 whether further revision of the ballast water per-
2 formance standard would result in a scientifically de-
3 monstrable and substantial reduction in the risk of
4 the introduction or establishment of aquatic nui-
5 sance species.

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

19 (3) CONSIDERATIONS.—In conducting a review
20 under paragraph (1), the Secretary, the Adminis-
21 trator, and the heads of other appropriate Federal
22 agencies as determined by the Secretary, shall con-
23 sider the criteria under section ____04(b)(2)(B).

24 (4) REVISION AFTER DECENNIAL REVIEW.—
25 The Secretary shall initiate a rulemaking to revise

1 the current ballast water performance standard after
2 a decennial review if the Secretary, in consultation
3 with the Administrator, determines that revising the
4 current ballast water performance standard would
5 result in a scientifically demonstrable and substan-
6 tial reduction in the risk of the introduction or es-
7 tablishment of aquatic nuisance species.

8 **SEC. 05. TREATMENT TECHNOLOGY CERTIFICATION.**

9 (a) **CERTIFICATION REQUIRED.**—Beginning 60 days
10 after the date that the requirements for testing protocols
11 are issued under subsection (i), no manufacturer of a bal-
12 last water treatment technology shall sell, offer for sale,
13 or introduce or deliver for introduction into interstate
14 commerce, or import into the United States for sale or
15 resale, a ballast water treatment technology for a vessel
16 unless the treatment technology has been certified under
17 this section.

18 (b) **CERTIFICATION PROCESS.**—

19 (1) **EVALUATION.**—Upon application of a man-
20 ufacturer, the Secretary shall evaluate a ballast
21 water treatment technology with respect to—

22 (A) the effectiveness of the treatment tech-
23 nology in achieving the current ballast water
24 performance standard when installed on a ves-
25 sel (or a class, type, or size of vessel);

1 (B) the compatibility with vessel design
2 and operations;

3 (C) the effect of the treatment technology
4 on vessel safety;

5 (D) the impact on the environment;

6 (E) the cost effectiveness; and

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

9 (2) APPROVAL.—If after an evaluation under
10 paragraph (1) the Secretary determines that the
11 treatment technology meets the criteria, the Sec-
12 retary may certify the treatment technology for use
13 on a vessel (or a class, type, or size of vessel).

14 (3) SUSPENSION AND REVOCATION.—The Sec-
15 retary shall establish, by regulation, a process to
16 suspend or revoke a certification issued under this
17 section.

18 (c) CERTIFICATION CONDITIONS.—

19 (1) IMPOSITION OF CONDITIONS.—In certifying
20 a ballast water treatment technology under this sec-
21 tion, the Secretary, in consultation with the Admin-
22 istrator, may impose any condition on the subse-
23 quent installation, use, or maintenance of the treat-
24 ment technology onboard a vessel as is necessary
25 for—

1 (A) the safety of the vessel, the crew of the
2 vessel, and any passengers aboard the vessel;

3 (B) the protection of the environment; or

4 (C) the effective operation of the treatment
5 technology.

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

10 (d) PERIOD FOR USE OF INSTALLED TREATMENT
11 EQUIPMENT.—Notwithstanding anything to the contrary
12 in this title or any other provision of law, the Secretary
13 shall allow a vessel on which a system is installed and op-
14 erated to meet a ballast water performance standard
15 under this title to continue to use that system, notwith-
16 standing any revision of a ballast water performance
17 standard occurring after the system is ordered or installed
18 until the expiration of the service life of the system, as
19 determined by the Secretary, so long as the system—

20 (1) is maintained in proper working condition;

21 and

22 (2) is maintained and used in accordance with
23 the manufacturer's specifications and any treatment
24 technology certification conditions imposed by the
25 Secretary under this section.

1 (e) CERTIFICATES OF TYPE APPROVAL FOR THE
2 TREATMENT TECHNOLOGY.—

3 (1) ISSUANCE.—If the Secretary approves a
4 ballast water treatment technology for certification
5 under subsection (b), the Secretary shall issue a cer-
6 tificate of type approval for the treatment technology
7 to the manufacturer in such form and manner as the
8 Secretary determines appropriate.

9 (2) CERTIFICATION CONDITIONS.—A certificate
10 of type approval issued under paragraph (1) shall
11 specify each condition imposed by the Secretary
12 under subsection (c).

13 (3) OWNERS AND OPERATORS.—A manufac-
14 turer that receives a certificate of type approval for
15 the treatment technology under this subsection shall
16 provide a copy of the certificate to each owner and
17 operator of a vessel on which the treatment tech-
18 nology is installed.

19 (f) INSPECTIONS.—An owner or operator who re-
20 ceives a copy of a certificate under subsection (e)(3) shall
21 retain a copy of the certificate onboard the vessel and
22 make the copy of the certificate available for inspection
23 at all times while the owner or operator is utilizing the
24 treatment technology.

1 (g) BIOCIDES.—The Secretary may not approve a
2 ballast water treatment technology under subsection (b)
3 if—

4 (1) it uses a biocide or generates a biocide that
5 is a pesticide, as defined in section 2 of the Federal
6 Insecticide, Fungicide, and Rodenticide Act (7
7 U.S.C. 136), unless the biocide is registered under
8 that Act or the Secretary, in consultation with Ad-
9 ministrator, has approved the use of the biocide in
10 such treatment technology; or

11 (2) it uses or generates a biocide the discharge
12 of which causes or contributes to a violation of a
13 water quality standard under section 303 of the
14 Federal Water Pollution Control Act (33 U.S.C.
15 1313).

16 (h) PROHIBITION.—

17 (1) IN GENERAL.—Except as provided in para-
18 graph (2), the use of a ballast water treatment tech-
19 nology by an owner or operator of a vessel shall not
20 satisfy the requirements of this title unless it has
21 been approved by the Secretary under subsection
22 (b).

23 (2) EXCEPTIONS.—

24 (A) COAST GUARD SHIPBOARD TECH-
25 NOLOGY EVALUATION PROGRAM.—An owner or

1 operator may use a ballast water treatment
2 technology that has not been certified by the
3 Secretary to comply with the requirements of
4 this section if the technology is being evaluated
5 under the Coast Guard Shipboard Technology
6 Evaluation Program.

7 (B) BALLAST WATER TREATMENT TECH-
8 NOLOGIES CERTIFIED BY FOREIGN ENTITIES.—
9 An owner or operator may use a ballast water
10 treatment technology that has not been certified
11 by the Secretary to comply with the require-
12 ments of this section if the technology has been
13 certified by a foreign entity and the certification
14 demonstrates performance and safety of the
15 treatment technology equivalent to the require-
16 ments of this section, as determined by the Sec-
17 retary.

18 (i) TESTING PROTOCOLS.—Not later than 180 days
19 after the date of enactment of this Act, the Administrator,
20 in consultation with the Secretary, shall issue require-
21 ments for land-based and shipboard testing protocols or
22 criteria for—

23 (1) certifying the performance of each ballast
24 water treatment technology under this section; and

1 (2) certifying laboratories to evaluate such
2 treatment technologies.

3 **SEC. ___ 06. EXEMPTIONS.**

4 (a) IN GENERAL.—No permit shall be required or
5 prohibition enforced under any other provision of law for,
6 nor shall any standards regarding a discharge incidental
7 to the normal operation of a vessel under this title apply
8 to—

9 (1) a discharge incidental to the normal oper-
10 ation of a vessel if the vessel is less than 79 feet in
11 length and engaged in commercial service (as de-
12 fined in section 2101(5) of title 46, United States
13 Code);

14 (2) a discharge incidental to the normal oper-
15 ation of a vessel if the vessel is a fishing vessel, in-
16 cluding a fish processing vessel and a fish tender
17 vessel, (as defined in section 2101 of title 46, United
18 States Code);

19 (3) a discharge incidental to the normal oper-
20 ation of a vessel if the vessel is a recreational vessel
21 (as defined in section 2101(25) of title 46, United
22 States Code);

23 (4) the placement, release, or discharge of
24 equipment, devices, or other material from a vessel
25 for the sole purpose of conducting research on the

1 aquatic environment or its natural resources in ac-
2 cordance with generally recognized scientific meth-
3 ods, principles, or techniques;

4 (5) any discharge into navigable waters from a
5 vessel authorized by an on-scene coordinator in ac-
6 cordance with part 300 of title 40, Code of Federal
7 Regulations, or part 153 of title 33, Code of Federal
8 Regulations;

9 (6) any discharge into navigable waters from a
10 vessel that is necessary to secure the safety of the
11 vessel or human life, or to suppress a fire onboard
12 the vessel or at a shoreside facility; or

13 (7) a vessel of the armed forces of a foreign na-
14 tion when engaged in noncommercial service.

15 (b) BALLAST WATER DISCHARGES.—No permit shall
16 be required or prohibition enforced under any other provi-
17 sion of law for, nor shall any ballast water performance
18 standards under this title apply to—

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

22 (A) operate exclusively within a geographi-
23 cally limited area;

24 (B) take up and discharge ballast water
25 exclusively within 1 Captain of the Port Zone

1 established by the Coast Guard unless the Sec-
2 retary determines such discharge poses a sub-
3 stantial risk of introduction or establishment of
4 an aquatic nuisance species;

5 (C) operate pursuant to a geographic re-
6 striction issued as a condition under section
7 3309 of title 46, United States Code, or an
8 equivalent restriction issued by the country of
9 registration of the vessel; or

10 (D) continuously take on and discharge
11 ballast water in a flow-through system that
12 does not introduce aquatic nuisance species into
13 navigable waters;

14 (2) a ballast water discharge incidental to the
15 normal operation of a vessel consisting entirely of
16 water suitable for human consumption; or

17 (3) a ballast water discharge incidental to the
18 normal operation of a vessel in an alternative com-
19 pliance program established pursuant to section
20 ____ 07.

21 (c) VESSELS WITH PERMANENT BALLAST WATER.—
22 No permit shall be required or prohibition enforced under
23 any other provision of law for, nor shall any ballast water
24 performance standard under this title apply to, a vessel

1 that carries all of its permanent ballast water in sealed
2 tanks that are not subject to discharge.

3 (d) VESSELS OF THE ARMED FORCES.—Nothing in
4 this title shall be construed to apply to the following ves-
5 sels:

6 (1) A vessel owned or operated by the Depart-
7 ment of Defense (other than a time-chartered or
8 voyage-chartered vessel).

9 (2) A vessel of the Coast Guard, as designated
10 by the Secretary of the department in which the
11 Coast Guard is operating.

12 **SEC. ___ 07. ALTERNATIVE COMPLIANCE PROGRAM.**

13 (a) IN GENERAL.—The Secretary, in consultation
14 with the Administrator, may promulgate regulations es-
15 tablishing 1 or more compliance programs as an alter-
16 native to ballast water management regulations issued
17 under section ___ 04 for a vessel that—

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

20 (2) is less than 3 years from the end of the use-
21 ful life of the vessel, as determined by the Secretary;
22 or

23 (3) discharges ballast water into a facility for
24 the reception of ballast water that meets standards

1 promulgated by the Administrator, in consultation
2 with the Secretary.

3 (b) PROMULGATION OF FACILITY STANDARDS.—Not
4 later than 1 year after the date of enactment of this Act,
5 the Administrator, in consultation with the Secretary,
6 shall promulgate standards for—

7 (1) the reception of ballast water from a vessel
8 into a reception facility; and

9 (2) the disposal or treatment of the ballast
10 water under paragraph (1).

11 **SEC. ___ 08. JUDICIAL REVIEW.**

12 (a) IN GENERAL.—An interested person may file a
13 petition for review of a final regulation promulgated under
14 this title in the United States Court of Appeals for the
15 District of Columbia Circuit.

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

19 (c) EXCEPTION.—Notwithstanding subsection (b), a
20 petition that is based solely on grounds that arise after
21 the deadline to file a petition under subsection (b) has
22 passed may be filed not later than 120 days after the date
23 that the grounds first arise.

1 **SEC. ___ 09. EFFECT ON STATE AUTHORITY.**

2 (a) IN GENERAL.—No State or political subdivision
3 thereof may adopt or enforce any statute or regulation of
4 the State or political subdivision with respect to a dis-
5 charge incidental to the normal operation of a vessel after
6 the date of enactment of this Act.

7 (b) SAVINGS CLAUSE.—Notwithstanding subsection
8 (a), a State or political subdivision thereof may enforce
9 a statute or regulation of the State or political subdivision
10 with respect to ballast water discharges incidental to the
11 normal operation of a vessel that specifies a ballast water
12 performance standard that is more stringent than the bal-
13 last water performance standard under section
14 ___ 04(a)(1)(A) and is in effect on the date of enactment
15 of this Act if the Secretary, after consultation with the
16 Administrator and any other Federal department or agen-
17 cy the Secretary considers appropriate, makes a deter-
18 mination that—

19 (1) compliance with any performance standard
20 specified in the statute or regulation can in fact be
21 achieved and detected;

22 (2) the technology and systems necessary to
23 comply with the statute or regulation are commer-
24 cially available; and

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

4 (c) PETITION PROCESS.—

5 (1) SUBMISSION.—The Governor of a State
6 seeking to enforce a statute or regulation under sub-
7 section (b) shall submit a petition requesting the
8 Secretary to review the statute or regulation.

9 (2) CONTENTS; DEADLINE.—A petition shall—

10 (A) be accompanied by the scientific and
11 technical information on which the petition is
12 based; and

13 (B) be submitted to the Secretary not later
14 than 90 days after the date of enactment of
15 this Act.

16 (3) DETERMINATIONS.—The Secretary shall
17 make a determination on a petition under this sub-
18 section not later than 90 days after the date that
19 the petition is received.

20 **SEC. ____ 10. APPLICATION WITH OTHER STATUTES.**

21 Notwithstanding any other provision of law, this title
22 shall be the exclusive statutory authority for regulation by
23 the Federal Government of discharges incidental to the
24 normal operation of a vessel to which this title applies.
25 Except as provided under section ____ 04(a)(1)(A), any

1 regulation in effect on the date immediately preceding the
2 effective date of this Act relating to any permitting re-
3 quirement for or prohibition on discharges incidental to
4 the normal operation of a vessel to which this title applies
5 shall be deemed to be a regulation issued pursuant to the
6 authority of this title and shall remain in full force and
7 effect unless or until superseded by new regulations issued
8 hereunder.

