AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

112TH CONGRESS
2D SESSION

S. 3570

To provide for the establishment of nationally uniform and environmentally sound standards governing discharges incidental to the normal operation of a vessel in the navigable waters of the United States.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2012

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To provide for the establishment of nationally uniform and environmentally sound standards governing discharges incidental to the normal operation of a vessel in the navigable waters of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Vessel Incidental Discharge Act".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings; purpose.
Sec. 3. Definitions.

Sec. 4. Regulation and enforcement.
Sec. 5. Uniform vessel incidental discharge standards.
Sec. 6. Treatment technology certification.
Sec. 7. Exemptions.
Sec. 8. Alternative compliance program.
Sec. 9. Judicial review.
Sec. 10. Effect on State authority.
Sec. 11. Application with other statutes.

SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) Beginning with enactment of the Act to Prevent Pollution from Ships in 1980 (22 U.S.C. 1901 et seq.), the United States Coast Guard has been the principal Federal authority charged with administering, enforcing, and prescribing regulations relating to the discharge of pollutants from vessels engaged in maritime commerce and transportation.

(2) The Coast Guard estimates there are approximately 12,700,000 State-registered recreational vessels, 78,000 commercial fishing vessels, and 57,000 freight and tank barges operating in United States waters.

(3) From 1973 to 2005, certain discharges incidental to the normal operation of a vessel were exempted by regulation from otherwise applicable permitting requirements.

(4) Over the 32 years during which this regulatory exemption was in effect, Congress enacted

statutes on a number of occasions dealing with the regulation of discharges incidental to the normal operation of a vessel, including—

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

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

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

(D) section 415 of the Coast Guard Authorization Act of 1998 (112 Stat. 3434) and section 623 of the Coast Guard and Maritime Transportation Act of 2004 (33 U.S.C. 1901 note), which established interim and permanent requirements, respectively, for the regulation of incidental vessel discharges of certain bulk cargo residue;

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

(F) section 204 of the Maritime Transportation Security Act of 2002 (33 U.S.C. 1902a),

which established requirements for the regulation of incidental vessel discharges of agricultural cargo residue material in the form of hold washings; and

(G) title X of the Coast Guard Authorization Act of 2010 (33 U.S.C. 3801 et seq.), which provided for the implementation of the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001.

(b) PURPOSE.—The purpose of this Act is to provide for the establishment of nationally uniform and environmentally sound standards for discharges incidental to the normal operation of a vessel in the navigable waters of the United States.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) 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, agri-

cultural, aquacultural, or recreational activities dependent on such waters.

(3) BALLAST WATER.—

(A) IN GENERAL.—The term ''ballast water'' means any water, including any sediment suspended in such water, taken aboard a 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 technology of the vessel.

(B) EXCLUSIONS.—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 under this Act.

(4) BALLAST WATER PERFORMANCE STANDARD.—The term ''ballast water performance standard'' means the numerical ballast water performance standard set forth in Regulation D–2 of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, adopted on February 13, 2004, or a revised numerical

ballast water performance standard established under section 5.

(5) BALLAST WATER TREATMENT TECHNOLOGY OR TREATMENT TECHNOLOGY.—The term ''ballast water treatment technology'' or ''treatment technology'' means any mechanical, physical, chemical, or biological process used, alone 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 to reduce or eliminate aquatic nuisance species as part of the process used to comply with a ballast water performance standard under this Act.

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

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

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

(I)(aa) ballast water, graywater, 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 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, or repair of a system, equipment, or engine described in subclause (I)(bb) or (III) of clause (i) whenever the vessel is waterborne.

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

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

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

(II) oil or a hazardous substance as those terms are defined in section

311 of the Federal Water Pollution Control Act (33 U.S.C. 1321);

(III) sewage as defined in section 312(a) of the Federal Water Pollution Control Act (33 U.S.C. 1322(a)); or

(IV) graywater referred to in section 312(a) of the Federal Water Pollution Control Act (33 U.S.C. 1322(a));

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

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

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

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

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

with the heads of other Federal departments or agencies as the Secretary considers appropriate.

(9) MANUFACTURER.—The term ''manufacturer'' means a person engaged in the manufacture, assemblage, or importation of ballast water treatment technology.

(10) SECRETARY.—The term ''Secretary'' means the Secretary of the Department in which the Coast Guard is operating.

(11) VESSEL.—The term ''vessel'' means every description of watercraft or other artificial contrivance used, or practically or otherwise capable of being used, as a means of transportation on water.

SEC. 4. REGULATION AND ENFORCEMENT.

(a) IN GENERAL.—The Secretary, in consultation with the Administrator, shall establish and implement enforceable uniform national standards for the regulation of discharges incidental to the normal operation of a vessel. The standards shall—

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

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

(b) ADMINISTRATION AND ENFORCEMENT.—The Secretary shall enforce the standards and requirements under this Act. Each State may enforce the standards and requirements under this Act.

SEC. 5. UNIFORM VESSEL INCIDENTAL DISCHARGE STANDARDS.

(a) INITIAL VESSEL INCIDENTAL DISCHARGE STANDARDS.—

(1) INITIAL BALLAST WATER PERFORMANCE STANDARD.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary, in consultation with the Administrator, shall issue a final rule for the regulation of ballast water discharges incidental to the normal operation of a vessel.

(B) PROPOSED RULE.—For the purposes of chapter 5 of title 5, United States Code, the notice of proposed rulemaking published by the Coast Guard pursuant to the requirements of chapter 5 of title 5, United States Code, 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 purpose of issuing the final rule under subparagraph (A).

(C) INITIAL PERFORMANCE STANDARD COMPLIANCE DEADLINES.—

(i) IN GENERAL.—An owner or operator shall comply with the performance standard established under this subparagraph (A) 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 subparagraph (A) are as follows:

(I) 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.

(II) 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.

(III) 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) PROCESSES FOR GRANTING EXTENSIONS.—In issuing regulations under this paragraph, the Secretary shall establish a process for an owner or operator to submit a petition to the Secretary for an extension of a compliance deadline with respect to the commercial vessel of the owner or operator.

(iv) PERIOD OF EXTENSIONS.—An extension issued under clause (iii) 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.

(v) FACTORS.—In issuing a compliance deadline or reviewing a petition under this subparagraph, the Secretary shall con-

sider, 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.

(vi) CONSIDERATION OF PETITIONS.—

(I) DETERMINATIONS.—The Secretary shall approve or deny a petition for an extension of a compliance dead-

line 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.

(vii) REGULATIONS.—In issuing regulations under subparagraph (A), the Secretary shall include—

(I) a compliance schedule that sets forth the deadlines specified in clause (ii); and

(II) the process for requesting an extension of such deadlines.

(2) INITIAL STANDARD FOR DISCHARGES OTHER THAN BALLAST WATER.—Not later than 2 years after the date of enactment of this Act, the Secretary, in consultation with the Administrator, shall issue a final rule establishing best management practices for discharges incidental to the normal operation of a vessel other than ballast water.

(b) REVISED BALLAST WATER PERFORMANCE STANDARD; 8-YEAR REVIEW.—

(1) IN GENERAL.—Subject to the feasibility review under paragraph (2), not later than January 1, 2020, the Secretary, in consultation with the Administrator, shall issue a final rule revising the ballast water performance standard under subsection (a)(1) so that a ballast water discharge incidental to the normal operation of a vessel will contain—

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

(B) less than 1 living organism per 10 milliliters that is less than 50 micrometers in minimum dimension and more than 10 micrometers in minimum dimension;

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

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

(ii) 126 colony-forming units of escherichia coli per 100 milliliters; and

(iii) 33 colony-forming units of intestinal enterococci per 100 milliliters; and

(D) concentrations of such additional indicator microbes and of viruses as may be specified in regulations issued by the Secretary in consultation with the Administrator and such other Federal agencies as the Secretary and the Administrator deem appropriate.

(2) FEASIBILITY REVIEW.—

(A) IN GENERAL.—Not less than 2 years before January 1, 2020, the Secretary, in consultation with the Administrator, shall complete a review to determine the feasibility of achieving the revised ballast water performance standard under paragraph (1).

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

(i) improvements in the scientific understanding of biological and ecological

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

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

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

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

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

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

(V) the safety of such treatment technology;

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

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

(v) 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, propagation of native fish, shellfish, and wildlife, and other uses of navigable waters.

(C) LOWER PERFORMANCE STANDARD.—

(i) IN GENERAL.—If the Secretary, in consultation with the Administrator, determines on the basis of the feasibility review and after an opportunity for a public hearing that no ballast water treatment technology can be certified under section 6 to comply with the revised ballast water performance standard under paragraph (1), the Secretary shall require the use of the treatment technology that achieves the per-

formance levels of the best treatment technology available.

(ii) IMPLEMENTATION DEADLINE.—If the Secretary, in consultation with the Administrator, determines that the treatment technology under clause (i) cannot be implemented before the implementation deadline under paragraph (3) with respect to a class of vessels, the Secretary shall extend the implementation deadline for that class of vessels for not more than 24 months.

(iii) COMPLIANCE.—If the implementation deadline under paragraph (3) is extended, the Secretary shall recommend action to ensure compliance with the extended implementation deadline under clause (ii).

(D) COMPLIANCE DEADLINES.—

(i) IN GENERAL.—The Secretary may establish a compliance deadline for compliance with a revised standard under this subsection 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 this subsection, the Secretary shall establish—

(I) a process for the Secretary, in consultation with the Administrator, to issue a compliance deadline 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 with respect to the commercial vessel of the owner or operator.

(iii) PERIOD OF EXTENSIONS.—An extension issued under clause (ii)(II) 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 a compliance deadline or reviewing a petition under this subparagraph, the Secretary shall con-

sider, 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 dead-

line 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.

(3) IMPLEMENTATION.—The revised ballast water performance standard under paragraph (1) shall apply to a vessel beginning on the date of the first drydocking of the vessel on or after January 1, 2020, but not later than December 31, 2022.

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

(1) REVISED BALLAST WATER PERFORMANCE STANDARDS.—Not earlier than 10 years after the issuance of a final rule under subsection (b) and every 10 years thereafter, the Secretary, in consultation with the Administrator shall complete a review to determine whether further revision of 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) REVISED STANDARDS FOR DISCHARGES OTHER THAN BALLAST WATER.—The Secretary, in consultation with the Administrator, may include in the decennial review under this subsection national standards for discharges covered by subsection (a)(2). The Secretary shall initiate a rulemaking to revise one or more national standards for such discharges after a decennial review if the Secretary, in consultation with the Administrator, determines that revising one or more of such standards would substantially reduce the impacts on navigable waters of discharges incidental to the normal operation of a vessel other than ballast water.

(3) CONSIDERATIONS.—In conducting a review under paragraph (1), the Secretary, the Administrator, and the heads of other appropriate Federal agencies as determined by the Secretary, shall consider the criteria under section 5(b)(2)(B).

(4) SPECIAL RULE.—The Administrator may not issue a revised performance standard pursuant to this subsection 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.

SEC. 6. TREATMENT TECHNOLOGY CERTIFICATION.

(a) CERTIFICATION REQUIRED.—Beginning 60 days after the date that the requirements for testing protocols are issued under subsection (i), 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 a vessel unless the treatment technology has been certified under this section.

(b) CERTIFICATION PROCESS.—

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

(A) the effectiveness of the treatment technology in achieving the current ballast water performance standard when installed on a vessel (or a class, type, or size of vessel);

(B) the compatibility with vessel design and operations;

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

(D) the impact on the environment;

(E) the cost effectiveness; and

(F) any other criteria the Secretary considers appropriate.

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

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

(c) CERTIFICATION CONDITIONS.—

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

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

(B) the protection of the environment; or

(C) the effective operation of the treatment technology.

(2) FAILURE TO COMPLY.—The failure of an owner or operator to comply with a condition imposed under paragraph (1) shall be considered a violation of this section.

(d) PERIOD FOR USE OF INSTALLED TREATMENT EQUIPMENT.—Notwithstanding anything to the contrary in this Act or any other provision of law, the Secretary shall allow a vessel on which a system is installed and operated to meet a ballast water performance standard under this Act to continue to use that system, notwithstanding any revision of a ballast water performance standard occurring after the system is ordered or installed until the expiration of the service life of the system, as determined by the Secretary, so long as the system—

(1) is maintained in proper working condition; and

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

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

(1) ISSUANCE.—If the Secretary approves a ballast water treatment technology for certification under subsection (b), the Secretary shall issue a cer-

tificate of type approval for the treatment technology to the manufacturer in such form and manner as the Secretary determines appropriate.

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

(3) OWNERS AND OPERATORS.—A manufacturer that receives a certificate of type approval for the treatment technology under this subsection shall provide a copy of the certificate to each owner and operator of a vessel on which the treatment technology is installed.

(f) INSPECTIONS.—An owner or operator who receives a copy of a certificate under subsection (e)(3) shall retain a copy of the certificate onboard the vessel and make the copy of the certificate available for inspection at all times while the owner or operator is utilizing the treatment technology.

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

(1) it 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 that Act or the Secretary, in consultation with Administrator, has approved the use of the biocide in such treatment technology; or

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

(h) PROHIBITION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the use of a ballast water treatment technology by an owner or operator of a vessel shall not satisfy the requirements of this Act unless it has been approved by the Secretary under subsection (b).

(2) EXCEPTIONS.—

(A) 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.

(B) 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 section, as determined by the Secretary.

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

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

(2) certifying laboratories to evaluate such treatment technologies.

SEC. 7. EXEMPTIONS.

(a) IN GENERAL.—No permit shall be required or prohibition enforced under any other provision of law for, nor shall any vessel incidental discharge standards under this Act apply to—

(1) a discharge incidental to the normal operation of a vessel if the vessel is less than 79 feet in length and engaged in commercial service (as defined in section 2101(5) of title 46, United States Code);

(2) a discharge incidental to the normal operation of a vessel if the vessel is a fishing vessel (as defined in section 2101 (11a) of title 46, United States Code);

(3) a discharge incidental to the normal operation of a vessel if the vessel is a recreational vessel (as defined in section 2101(25) of title 46, United States Code);

(4) the placement, release, or discharge of equipment, devices, or other material from a vessel for the sole purpose of conducting research on the aquatic environment or its natural resources in accordance with generally recognized scientific methods, principles, or techniques;

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

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

(7) a vessel of the armed forces of a foreign nation when engaged in noncommercial service.

(b) BALLAST WATER DISCHARGES.—No permit shall be required or prohibition enforced under any other provision of law for, nor shall any ballast water performance standards under this Act apply to—

(1) a ballast water discharge incidental to the normal operation of a vessel determined by the Secretary to—

(A) operate exclusively within a geographically limited area;

(B) take up and discharge ballast water exclusively within 1 Captain of the Port Zone established by the Coast Guard unless the Secretary determines such discharge poses a substantial risk of introduction or establishment of an aquatic nuisance species;

(C) operate pursuant to a geographic restriction issued as a condition under section 3309 of title 46, United States Code, or an

equivalent restriction issued by the country of registration of the vessel; or

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

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

(3) a ballast water discharge incidental to the normal operation of a vessel in an alternative compliance program established pursuant to section (8).

(c) VESSELS WITH PERMANENT BALLAST WATER.—No permit shall be required or prohibition enforced under any other provision of law for, nor shall any ballast water performance standard under this Act apply to a vessel that carries all of its permanent ballast water in sealed tanks that are not subject to discharge.

(d) VESSELS OF THE ARMED FORCES.—Nothing in this Act shall be interpreted to apply to a vessel of the Armed Forces, as defined in section 101(a) of title 10, United States Code.

SEC. 8. ALTERNATIVE COMPLIANCE PROGRAM.

(a) IN GENERAL.—The Secretary, in consultation with the Administrator, may promulgate regulations es-

tablishing one or more compliance programs as an alternative to ballast water discharge regulations issued under section 5 for a vessel that—

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

(2) is less than 3 years from the end of the useful life of the vessel, as determined by the Secretary; or

(3) discharges ballast water into a facility for the reception of ballast water that meets standards promulgated by the Administrator, in consultation with the Secretary.

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

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

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

SEC. 9. JUDICIAL REVIEW.

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

(b) DEADLINE.—A petition shall be filed not later than 120 days after the date that notice of the promulgation appears in the Federal Register.

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

SEC. 10. EFFECT ON STATE AUTHORITY.

No State or political subdivision thereof may adopt or enforce any statute or regulation of the State or political subdivision with respect to a discharge incidental to the normal operation of a vessel after the date of enactment of this Act.

SEC. 11. APPLICATION WITH OTHER STATUTES.

Notwithstanding any other provision of law, this Act shall be the exclusive statutory authority for regulation by the Federal Government of discharges incidental to the normal operation of a vessel to which this Act applies. Any regulation in effect on the date immediately preceding the effective date of this Act which is repealed or superseded by this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full

1 force and effect unless or until superseded by new regula-
2 tions issued thereunder.

○