



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 110<sup>th</sup> CONGRESS, SECOND SESSION

Vol. 154

WASHINGTON, TUESDAY, JULY 22, 2008

No. 120

## Senate

The Senate met at 10 a.m. and was called to order by the Honorable JON TESTER, a Senator from the State of Montana.

### PRAYER

The Chaplain, Dr. Barry C. Black, of offered the following prayer:

Let us pray.

Almighty God, before whose face the generations rise and fall, we pause to thank You for Your loving kindness in the morning and Your faithfulness every night. Cleanse the purposes and desires of our lawmakers as they face the tasks committed to their hands. May they walk with You throughout this day in trust and peace. Lord, may they not be afraid to face facts, however unpleasant. When the way is uncertain and the problems baffling, inspire them to ask You for light for but one step at a time. Keep their lips clean and their thoughts pure, and may they never doubt the ultimate triumph of truth. Let Your kingdom come in us and through us.

We pray in Your great Name. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable JON TESTER led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, July 22, 2008.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable JON TESTER, a Senator from the State of Montana, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mr. TESTER thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

Mr. REID. Mr. President, following leader remarks, the Senate will resume consideration of the motion to proceed to the energy speculation legislation. Sometime after 11 today, the Senate will proceed to a rollcall vote on the motion to proceed to the bill. The Senate will recess from 12:30 until 2:15 in order to allow for the weekly caucus luncheons. Tomorrow, there will be a classified briefing for Senators in S-407 from 4 until 5:30 p.m. with National Security Adviser Stephen Hadley.

### ORDER OF PROCEDURE

Mr. REID. I ask unanimous consent that the final 20 minutes prior to the cloture vote today be divided between Senator MCCONNELL and me or our designees, with my controlling the final 10 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

### MEASURE READ THE FIRST TIME—S. 3297

Mr. REID. Mr. President, S. 3297 is at the desk. I ask for its first reading.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 3297) to advance America's priorities.

Mr. REID. Mr. President, I now ask for its second reading and object to my own request.

The ACTING PRESIDENT pro tempore. Objection is heard.

The bill will receive its second reading on the next legislative day.

### CLEAN BOATING ACT OF 2008

### CLARIFYING PERMITS FOR DISCHARGES FROM CERTAIN VESSELS

Mrs. MURRAY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the following bills en bloc: Calendar No. 832, S. 2766, and S. 3298, introduced earlier today by Senator MURKOWSKI.

The ACTING PRESIDENT pro tempore. The clerk will report the bills by title.

The bill clerk read as follows:

A bill (S. 2766) to amend the Federal Water Pollution Control Act to address certain discharges incidental to the normal operation of a recreational vessel.

A bill (S. 3298) to clarify the circumstances during which the Administrator of the Environmental Protection Agency and applicable States may require permits for discharges from certain vessels, and to require the Administrator to conduct a study of discharges incidental to the normal operation of vessels.

There being no objection, the Senate proceeded to consider the bills en bloc.

Ms. MURKOWSKI. Mr. President, I rise today to support legislation that will provide a 2-year moratorium on National Pollution Discharge Elimination System permits for all commercial fishing vessels of any size and for all other commercial vessels less than 79 feet. The legislation requires the EPA, working with the Coast Guard, to conduct a 15-month study during the

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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moratorium period to evaluate the impacts of various discharges from vessels and report their findings to Congress for the purposes of making final decisions on vessel discharge permit requirements.

Discharges incidental to the normal operation of vessels have been exempt from NPDES permits under the Clean Water Act since 1973. The National Pollution Discharge Elimination System was developed for industrial sources of pollution and was not designed for mobile sources. In 2006, the U.S. District Court for Northern California ruled that the EPA exceeded its authority under the Clean Water Act in exempting these discharges and issued an order revoking the exemption and requiring the agency to permit these discharges by September 30, 2008. The EPA has appealed the decision, but in the meantime, the agency has proposed to permit both recreational and commercial vessels under two general permits. While the EPA has proposed a general permit system that does not require individual permits, all commercial and recreational vessels would still be subject to the regulations, fines, and enforcement and citizen lawsuits of the Clean Water Act. Considering incidental discharges for these vessels have been exempt for the past 35 years, it is hard to support permitting when we have such a dearth of information about what the discharges are, especially for small commercial and recreational boats.

The commercial moratorium bill directs the EPA to study the incidental discharges of commercial vessels to determine the volume, type and frequency of various categories and sizes of vessels. It is my sincere hope that after the results of the study are reported to the Senate Environment and Public Works and Commerce Committees, and the House Transportation and Infrastructure Committee, Congress will take action to exempt commercial vessels, as we are now doing for the recreational sector under the Clean Boating Act. The commercial vessels that will be included are commercial fishing vessels of any size and other commercial vessels less than 79 feet. I need to clarify that it is my understanding that a commercial fishing vessel is one that previously or is presently engaged in the harvesting, taking or catching of commercial fish. Many commercial fishing boats in the United States also work as fish tenders and it is my intention that the fishing vessels working in this capacity are also included in the covered vessels under the commercial moratorium bill.

I also support S. 2766, the Clean Boating Act of 2008. This legislation exempts recreational vessels from the NPDES permitting while the EPA develops best management practices for this sector. Neither category of vessels has documented discharge levels that have been shown to be harmful to the environment. The court case that required the EPA to develop this permit

system was focused on invasive species and ballast water. Neither recreational nor small commercial vessels have ballast tanks and very few are ocean-going vessels.

Enactment of this legislation, together with the Clean Boating Act will provide the recreation sector an exemption and commercial boats a two year waiver with the possibility for exemptions based on the outcome of the discharge study.

It was a collaborative, negotiated process that developed the Clean Boating Act and the commercial moratorium legislation. I ask my colleagues to support both of these bills and I ask that they both pass by unanimous consent today.

Mrs. MURRAY. Mr. President, I ask unanimous consent that the bills be read a third time and passed, en bloc, the motions to reconsider be laid upon the table, with no intervening action or debate, en bloc, and that any statements relating to the bills be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The bills were ordered to be engrossed for a third reading, were read the third time, and passed, as follows:

S. 2766

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Clean Boating Act of 2008".

**SEC. 2. DISCHARGES INCIDENTAL TO THE NORMAL OPERATION OF RECREATIONAL VESSELS.**

Section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) is amended by adding at the end the following:

"(r) DISCHARGES INCIDENTAL TO THE NORMAL OPERATION OF RECREATIONAL VESSELS.—No permit shall be required under this Act by the Administrator (or a State, in the case of a permit program approved under subsection (b)) for the discharge of any graywater, bilge water, cooling water, weather deck runoff, oil water separator effluent, or effluent from properly functioning marine engines, or any other discharge that is incidental to the normal operation of a vessel, if the discharge is from a recreational vessel."

**SEC. 3. DEFINITION.**

Section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362) is amended by adding at the end the following:

"(25) RECREATIONAL VESSEL.—

"(A) IN GENERAL.—The term 'recreational vessel' means any vessel that is—

"(i) manufactured or used primarily for pleasure; or

"(ii) leased, rented, or chartered to a person for the pleasure of that person.

"(B) EXCLUSION.—The term 'recreational vessel' does not include a vessel that is subject to Coast Guard inspection and that—

"(i) is engaged in commercial use; or

"(ii) carries paying passengers."

**SEC. 4. MANAGEMENT PRACTICES FOR RECREATIONAL VESSELS.**

Section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1322) is amended by adding at the end the following:

"(o) MANAGEMENT PRACTICES FOR RECREATIONAL VESSELS.—

"(1) APPLICABILITY.—This subsection applies to any discharge, other than a discharge of sewage, from a recreational vessel that is—

"(A) incidental to the normal operation of the vessel; and

"(B) exempt from permitting requirements under section 402(r).

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

"(A) DETERMINATION.—

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

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

"(iii) MANAGEMENT PRACTICES.—The Administrator shall develop management practices for recreational vessels in any case in which the Administrator determines that the use of those practices is reasonable and practicable.

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

"(i) the nature of the discharge;

"(ii) the environmental effects of the discharge;

"(iii) the practicability of using a management practice;

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

"(v) applicable Federal and State law;

"(vi) applicable international standards; and

"(vii) the economic costs of the use of the management practice.

"(C) TIMING.—The Administrator shall—

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

"(ii) every 5 years thereafter—

"(I) review the determinations; and

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

"(3) PERFORMANCE STANDARDS FOR MANAGEMENT PRACTICES.—

"(A) IN GENERAL.—For each discharge for which a management practice is developed under paragraph (2), the Administrator, in consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, other interested Federal agencies, and interested States, shall promulgate, in accordance with section 553 of title 5, United States Code, Federal standards of performance for each management practice required with respect to the discharge.

"(B) CONSIDERATIONS.—In promulgating standards under this paragraph, the Administrator shall take into account the considerations described in paragraph (2)(B).

"(C) CLASSES, TYPES, AND SIZES OF VESSELS.—The standards promulgated under this paragraph may—

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

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

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

"(D) TIMING.—The Administrator shall—

“(i) promulgate standards of performance for a management practice under subparagraph (A) not later than 1 year after the date of a determination under paragraph (2) that the management practice is reasonable and practicable; and

“(ii) every 5 years thereafter—

“(I) review the standards; and

“(II) if necessary, revise the standards, in accordance with subparagraph (B) and based on any new information available to the Administrator.

“(4) REGULATIONS FOR THE USE OF MANAGEMENT PRACTICES.—

“(A) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating shall promulgate such regulations governing the design, construction, installation, and use of management practices for recreational vessels as are necessary to meet the standards of performance promulgated under paragraph (3).

“(B) REGULATIONS.—

“(i) IN GENERAL.—The Secretary shall promulgate the regulations under this paragraph as soon as practicable after the Administrator promulgates standards with respect to the practice under paragraph (3), but not later than 1 year after the date on which the Administrator promulgates the standards.

“(ii) EFFECTIVE DATE.—The regulations promulgated by the Secretary under this paragraph shall be effective upon promulgation unless another effective date is specified in the regulations.

“(iii) CONSIDERATION OF TIME.—In determining the effective date of a regulation promulgated under this paragraph, the Secretary shall consider the period of time necessary to communicate the existence of the regulation to persons affected by the regulation.

“(5) EFFECT OF OTHER LAWS.—This subsection shall not affect the application of section 311 to discharges incidental to the normal operation of a recreational vessel.

“(6) PROHIBITION RELATING TO RECREATIONAL VESSELS.—After the effective date of the regulations promulgated by the Secretary of the department in which the Coast Guard is operating under paragraph (4), the owner or operator of a recreational vessel shall neither operate in nor discharge any discharge incidental to the normal operation of the vessel into, the waters of the United States or the waters of the contiguous zone, if the owner or operator of the vessel is not using any applicable management practice meeting standards established under this subsection.”.

S. 3298

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

#### SECTION 1. DEFINITIONS.

In this Act:

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

(2) COVERED VESSEL.—The term “covered vessel” means a vessel that is—

(A) less than 79 feet in length; or

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

(3) OTHER TERMS.—The terms “contiguous zone”, “discharge”, “ocean”, and “State” have the meanings given the terms in section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362).

#### SEC. 2. DISCHARGES INCIDENTAL TO NORMAL OPERATION OF VESSELS.

(a) NO PERMIT REQUIREMENT.—Except as provided in subsection (b), during the 2-year period beginning on the date of enactment of this Act, the Administrator, or a State in

the case of a permit program approved under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342), shall not require a permit under that section for a covered vessel for—

(1) any discharge of effluent from properly functioning marine engines;

(2) any discharge of laundry, shower, and galley sink wastes; or

(3) any other discharge incidental to the normal operation of a covered vessel.

(b) EXCEPTIONS.—Subsection (a) shall not apply with respect to—

(1) rubbish, trash, garbage, or other such materials discharged overboard;

(2) other discharges when the vessel is operating in a capacity other than as a means of transportation, such as when—

(A) used as an energy or mining facility;

(B) used as a storage facility or a seafood processing facility;

(C) secured to a storage facility or a seafood processing facility; or

(D) secured to the bed of the ocean, the contiguous zone, or waters of the United States for the purpose of mineral or oil exploration or development;

(3) any discharge of ballast water; or

(4) any discharge in a case in which the Administrator or State, as appropriate, determines that the discharge—

(A) contributes to a violation of a water quality standard; or

(B) poses an unacceptable risk to human health or the environment.

#### SEC. 3. STUDY OF DISCHARGES INCIDENTAL TO NORMAL OPERATION OF VESSELS.

(a) IN GENERAL.—The Administrator, in consultation with the Secretary of the department in which the Coast Guard is operating and the heads of other interested Federal agencies, shall conduct a study to evaluate the impacts of—

(1) any discharge of effluent from properly functioning marine engines;

(2) any discharge of laundry, shower, and galley sink wastes; and

(3) any other discharge incidental to the normal operation of a vessel.

(b) SCOPE OF STUDY.—The study under subsection (a) shall include—

(1) characterizations of the nature, type, and composition of discharges for—

(A) representative single vessels; and

(B) each class of vessels;

(2) determinations of the volumes of those discharges, including average volumes, for—

(A) representative single vessels; and

(B) each class of vessels;

(3) a description of the locations, including the more common locations, of the discharges;

(4) analyses and findings as to the nature and extent of the potential effects of the discharges, including determinations of whether the discharges pose a risk to human health, welfare, or the environment, and the nature of those risks;

(5) determinations of the benefits to human health, welfare, and the environment from reducing, eliminating, controlling, or mitigating the discharges; and

(6) analyses of the extent to which the discharges are currently subject to regulation under Federal law or a binding international obligation of the United States.

(c) EXCLUSION.—In carrying out the study under subsection (a), the Administrator shall exclude—

(1) discharges from a vessel of the Armed Forces (as defined in section 312(a) of the Federal Water Pollution Control Act (33 U.S.C. 1322(a)));

(2) discharges of sewage (as defined in section 312(a) of the Federal Water Pollution Control Act (33 U.S.C. 1322(a))) from a vessel, other than the discharge of graywater from a vessel operating on the Great Lakes; and

(3) discharges of ballast water.

(d) PUBLIC COMMENT; REPORT.—The Administrator shall—

(1) publish in the Federal Register for public comment a draft of the study required under subsection (a);

(2) after taking into account any comments received during the public comment period, develop a final report with respect to the study; and

(3) not later than 15 months after the date of enactment of this Act, submit the final report to—

(A) the Committee on Transportation and Infrastructure of the House of Representatives; and

(B) the Committees on Environment and Public Works and Commerce, Science, and Transportation of the Senate.

#### RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

#### UNANIMOUS-CONSENT AGREEMENT—S. 3268

Mr. McCONNELL. Mr. President, in connection with debate on the motion to proceed, I ask unanimous consent that the time allocated to my side before the vote be equally divided between Senator DOMENICI and Senator CORNYN.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### A SERIOUS SOLUTION

Mr. McCONNELL. Mr. President, today the Senate will continue debate on the No. 1 domestic issue facing the Nation, but it now seems clear that the majority is not interested in a full and open debate, is not interested in good ideas from all sides, and is designing floor debate that is designed to fail. That is simply unacceptable. I was disturbed to read this morning that our friends on the other side are considering only a brief and limited consideration of this bill. It is troubling that at a time of \$4.06-a-gallon gas, the Senate would treat the issue as if it is some technical corrections bill. Let me assure my friends it is not.

Let's be absolutely clear, Republicans will not accept a perfunctory approach to the problem. We are not content with a check-the-box exercise. More important, the American people will not accept a timid approach to such a major problem. This is the biggest issue in the country by far. The only thing I can recall in recent years that rivals it was terrorism right after 9/11. The Republican conference is interested in a solution. We are not interested in holding a pair of votes so that we can go home with political cover to blame the other side for our collective lack of accomplishment.

Let's be clear, speculation-only legislation is a very little piece to a massive problem. Americans are facing