

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2840
OFFERED BY MR. LOBIONDO OF NEW JERSEY**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

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

4 SEC. 2. DISCHARGES FROM COMMERCIAL VESSELS.

5 Title III of the Federal Water Pollution Control Act
6 (33 U.S.C. 1311 et seq.) is amended by adding at the end
7 the following:

8 “SEC. 321. DISCHARGES FROM COMMERCIAL VESSELS.

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

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

18 “(2) BALLAST WATER.—

1 “(A) IN GENERAL.—The term ‘ballast
2 water’ means any water (including any sedi-
3 ment suspended in such water) taken aboard a
4 commercial vessel—

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

7 “(ii) during the cleaning, mainte-
8 nance, or other operation of a ballast water
9 treatment system of the vessel.

10 “(B) EXCLUSION.—The term ‘ballast
11 water’ does not include any pollutant that is
12 added to water described in subparagraph (A)
13 that is not directly related to the operation of
14 a properly functioning ballast water treatment
15 technology certified under subsection (e).

16 “(3) BALLAST WATER PERFORMANCE STAND-
17 ARD.—The term ‘ballast water performance stand-
18 ard’ or ‘performance standard’ means a numerical
19 ballast water performance standard specified under
20 subsection (c) or established under subsection (d).

21 “(4) BALLAST WATER TREATMENT SYSTEM.—
22 The term ‘ballast water treatment system’ means
23 any equipment on board a commercial vessel (includ-
24 ing all compartments, piping, spaces, tanks, and

1 multi-use compartments, piping, spaces, and tanks)
2 that is—

3 “(A) designed for loading, carrying, treat-
4 ing, or discharging ballast water; and

5 “(B) installed and operated to meet a bal-
6 last water performance standard.

7 “(5) BALLAST WATER TREATMENT TECH-
8 NOLOGY.—The term ‘ballast water treatment tech-
9 nology’ or ‘treatment technology’ means any me-
10 chanical, physical, chemical, or biological process
11 used, either singularly or in combination, to remove,
12 render harmless, or avoid the uptake or discharge of
13 aquatic nuisance species within ballast water.

14 “(6) BIOCIDES.—The term ‘biocides’ means a
15 substance or organism, including a virus or fungus,
16 that is introduced into, or produced by, a ballast
17 water treatment technology as part of the process
18 used to comply with a ballast water performance
19 standard under this section.

20 “(7) COMMERCIAL VESSEL.—The term ‘com-
21 mercial vessel’ means every description of
22 watercraft, or other artificial contrivance used or ca-
23 pable of being used as a means of transportation on
24 water, that is engaged in commercial service (as de-

1 fined under section 2101 of title 46, United States
2 Code).

3 “(8) CONSTRUCTED.—The term ‘constructed’
4 means a state of construction of a commercial vessel
5 at which—

6 “(A) the keel is laid;

7 “(B) construction identifiable with the spe-
8 cific vessel begins;

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

13 “(D) the vessel commences a major conver-
14 sion.

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

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

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

22 “(I)(aa) graywater (except
23 graywater referred to in section
24 312(a)(6)), bilge water, cooling water,
25 oil water separator effluent, anti-foul-

1 ing hull coating leachate, boiler or
2 economizer blowdown, byproducts
3 from cathodic protection, controllable
4 pitch propeller and thruster hydraulic
5 fluid, distillation and reverse osmosis
6 brine, elevator pit effluent, firemain
7 system effluent, freshwater layup ef-
8 fluent, gas turbine wash water, motor
9 gasoline and compensating effluent,
10 refrigeration and air condensate efflu-
11 ent, seawater pumping biofouling pre-
12 vention substances, boat engine wet
13 exhaust, sonar dome effluent, exhaust
14 gas scrubber washwater, or stern tube
15 packing gland effluent; or

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

24 “(II) weather deck runoff, deck
25 wash, aqueous film forming foam ef-

1 fluent, chain locker effluent, non-oily
2 machinery wastewater, underwater
3 ship husbandry effluent, welldeck ef-
4 fluent, or fish hold and fish hold
5 cleaning effluent; or

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

8 “(ii) a discharge of a pollutant into
9 navigable waters in connection with the
10 testing, maintenance, and repair of a sys-
11 tem, equipment, or engine described in
12 subclause (I)(bb) or (III) of clause (i)
13 whenever the commercial vessel is water-
14 borne.

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

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

20 “(I) ballast water;

21 “(II) rubbish, trash, garbage, in-
22 cinerator ash, or other such material
23 discharged overboard;

1 “(III) oil or a hazardous sub-
2 stance within the meaning of section
3 311; or

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

6 “(ii) an emission of an air pollutant
7 resulting from the operation onboard a
8 commercial vessel of a vessel propulsion
9 system, motor driven equipment, or incin-
10 erator.

11 “(10) EXISTING COMMERCIAL VESSEL.—The
12 term ‘existing commercial vessel’ means a commer-
13 cial vessel constructed prior to January 1, 2012.

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

16 “(A) with a physical limitation that pre-
17 vents a commercial vessel from operating out-
18 side the area, as determined by the Secretary;
19 or

20 “(B) that is ecologically homogeneous, as
21 determined by the Administrator, in consulta-
22 tion with the Secretary.

23 “(12) MAJOR CONVERSION.—The term ‘major
24 conversion’ means a conversion of a commercial ves-
25 sel that—

1 “(A) changes its ballast water capacity by
2 15 percent or more; or

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

6 “(13) MANUFACTURER.—The term ‘manufac-
7 turer’ means a person engaged in the manufac-
8 turing, assembling, or importation of a ballast water
9 treatment technology.

10 “(14) NAVIGABLE WATERS.—The term ‘navi-
11 gable waters’ includes the exclusive economic zone,
12 as defined in section 107 of title 46, United States
13 Code.

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

18 “(16) OWNER OR OPERATOR.—The term ‘owner
19 or operator’ means a person owning, operating, or
20 chartering by demise a commercial vessel.

21 “(17) SECRETARY.—The term ‘Secretary’
22 means the Secretary of the department in which the
23 Coast Guard is operating.

24 “(18) VESSEL GENERAL PERMIT.—The term
25 ‘Vessel General Permit’ means the Vessel General

1 Permit for Discharges Incidental to the Normal Op-
2 eration of Vessels issued by the Administrator under
3 section 402 for ballast water and other discharges
4 incidental to the normal operation of vessels, as in
5 effect on December 19, 2008, for all jurisdictions ex-
6 cept Alaska and Hawaii, and February 6, 2009, for
7 Alaska and Hawaii.

8 “(b) GENERAL PROVISIONS.—

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

13 “(A) the discharge—

14 “(i) meets the ballast water perform-
15 ance standard;

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

18 “(iii) meets the requirements of an al-
19 ternative method of compliance established
20 for the commercial vessel under subsection
21 (f); or

22 “(iv) is made pursuant to a deter-
23 mination that the commercial vessel meets
24 the requirements relating to geographically
25 limited areas under subsection (g); 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 on
14 a voyage to or from a point in the United
15 States.

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

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

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

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

4 “(iv) a commercial vessel that dis-
5 charges ballast water consisting solely of
6 water—

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

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

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

22 “(C) LIMITATION.—An exemption under
23 subparagraph (B)(v) shall cease to be effective
24 on the date that is 3 years after the date on
25 which the regulations under paragraph (3) be-

1 come effective for the commercial vessel pursu-
2 ant to the implementation schedule issued
3 under paragraph (3)(B).

4 “(3) ISSUANCE OF REGULATIONS.—

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

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

19 “(4) COMPLIANCE SCHEDULES.—

20 “(A) INITIAL PERFORMANCE STANDARD
21 COMPLIANCE DEADLINES.—

22 “(i) IN GENERAL.—An owner or oper-
23 ator shall comply with the performance
24 standard established under subsection (c)
25 on or before the deadline that applies to

1 the commercial vessel of the owner or oper-
2 ator, as specified in clause (ii).

3 “(ii) DEADLINES.—The deadlines for
4 compliance with the performance standard
5 established under subsection (e) are as fol-
6 lows:

7 “(I) For a commercial vessel con-
8 structed on or after January 1, 2012,
9 the date of delivery of the vessel.

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

15 “(III) For an existing commer-
16 cial vessel with a ballast water capaci-
17 ty of at least 1,500 cubic meters but
18 not more than 5,000 cubic meters, the
19 date of the first drydocking of the ves-
20 sel after January 1, 2014.

21 “(IV) For an existing commercial
22 vessel with a ballast water capacity of
23 greater than 5,000 cubic meters, the
24 date of the first drydocking of the ves-
25 sel after January 1, 2016.

1 “(iii) REGULATIONS.—In issuing reg-
2 ulations under paragraph (3), the Sec-
3 retary shall include a compliance schedule
4 that sets forth the deadlines specified in
5 clause (ii).

6 “(B) REVISED PERFORMANCE STANDARD
7 COMPLIANCE DEADLINES.—

8 “(i) IN GENERAL.—Upon revision of a
9 performance standard under subsection
10 (d), the Secretary, in consultation with the
11 Administrator, shall issue a compliance
12 schedule that establishes deadlines for an
13 owner or operator to comply with the re-
14 vised performance standard.

15 “(ii) FACTORS.—In issuing a compli-
16 ance schedule under this subparagraph,
17 the Secretary—

18 “(I) shall consider the factors
19 identified in subparagraph (C)(iv);
20 and

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

24 “(iii) VESSELS CONSTRUCTED AFTER
25 ISSUANCE OF REVISED PERFORMANCE

1 STANDARDS.—A compliance schedule
2 issued under this subparagraph with re-
3 spect to a revised performance standard
4 shall require, at a minimum, the owner or
5 operator of a commercial vessel that com-
6 mences a major conversion or is con-
7 structed on or after the date of issuance of
8 the revised performance standard to com-
9 ply with the revised performance standard.

10 “(C) EXTENSION OF COMPLIANCE DEAD-
11 LINES.—

12 “(i) IN GENERAL.—The Secretary
13 may extend a compliance deadline estab-
14 lished under subparagraph (A) or (B) on
15 the Secretary’s own initiative or in re-
16 sponse to a petition submitted by an owner
17 or operator.

18 “(ii) PROCESSES FOR GRANTING EX-
19 TENSIONS.—In issuing regulations under
20 paragraph (3), the Secretary shall estab-
21 lish—

22 “(I) a process for the Secretary,
23 in consultation with the Adminis-
24 trator, to issue an extension of a com-
25 pliance deadline established under

1 subparagraph (A) or (B) for a com-
2 mercial vessel (or class, type, or size
3 of vessel); and

4 “(II) a process for an owner or
5 operator to submit a petition to the
6 Secretary for an extension of a com-
7 pliance deadline established under
8 subparagraph (A) or (B) with respect
9 to the commercial vessel of the owner
10 or operator.

11 “(iii) PERIOD OF EXTENSIONS.—An
12 extension issued under this subparagraph
13 shall—

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

16 “(II) be renewable for an addi-
17 tional period of not to exceed 18
18 months.

19 “(iv) FACTORS.—In issuing an exten-
20 sion or reviewing a petition under this sub-
21 paragraph, the Secretary shall consider,
22 with respect to the ability of an owner or
23 operator to meet a compliance deadline,
24 the following factors:

1 “(I) Whether the treatment tech-
2 nology to be installed is available in
3 sufficient quantities to meet the com-
4 pliance deadline.

5 “(II) Whether there is sufficient
6 shipyard or other installation facility
7 capacity.

8 “(III) Whether there is sufficient
9 availability of engineering and design
10 resources.

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

14 “(V) Electric power generating
15 capacity aboard the vessel.

16 “(VI) Safety of the vessel and
17 crew.

18 “(v) CONSIDERATION OF PETI-
19 TIONS.—

20 “(I) DETERMINATIONS.—The
21 Secretary shall approve or deny a pe-
22 tition for an extension of a compliance
23 deadline submitted by an owner or op-
24 erator under this subparagraph.

1 “(II) DEADLINE.—If the Sec-
2 retary does not approve or deny a pe-
3 tition referred to in subclause (I) on
4 or before the last day of the 90-day
5 period beginning on the date of sub-
6 mission of the petition, the petition
7 shall be deemed approved.

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

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

12 “(A) conduct ballast water treatment be-
13 fore discharging ballast water from a commer-
14 cial vessel into navigable waters using a ballast
15 water treatment technology certified for the ves-
16 sel (or class, type, or size of vessel) under sub-
17 section (e); and

18 “(B) ensure that any ballast water so dis-
19 charged meets, at a minimum, the numerical
20 ballast water performance standard set forth in
21 the International Convention for the Control
22 and Management of Ships’ Ballast Water and
23 Sediments, as adopted on February 13, 2004,
24 or a revised numerical ballast water perform-
25 ance standard established under subsection (d).

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

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

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

10 “(i) all reasonable precautions to pre-
11 vent or minimize the discharge have been
12 taken; and

13 “(ii) the owner or operator did not
14 willfully or recklessly cause such damage;
15 or

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

20 “(d) REVIEW OF PERFORMANCE STANDARD.—

21 “(1) IN GENERAL.—Not later than January 1,
22 2016, and every 10 years thereafter, the Adminis-
23 trator, in consultation with the Secretary, shall com-
24 plete a review to determine whether revising the bal-
25 last water performance standard would result in a

1 scientifically demonstrable and substantial reduction
2 in the risk of the introduction or establishment of
3 aquatic nuisance species.

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

6 “(A) improvements in the scientific under-
7 standing of biological and ecological processes
8 that lead to the introduction or establishment of
9 aquatic nuisance species;

10 “(B) improvements in ballast water treat-
11 ment technology, including—

12 “(i) the capability of such technology
13 to achieve a revised ballast water perform-
14 ance standard;

15 “(ii) the effectiveness and reliability of
16 such technology in the shipboard environ-
17 ment;

18 “(iii) the compatibility of such tech-
19 nology with the design and operation of
20 commercial vessels by class, type, and size;

21 “(iv) the commercial availability of
22 such technology; and

23 “(v) the safety of such technology;

24 “(C) improvements in the capabilities to
25 detect, quantify, and assess the viability of

1 aquatic nuisance species at the concentrations
2 under consideration;

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

5 “(E) the costs, cost-effectiveness, and im-
6 pacts of—

7 “(i) a revised ballast water perform-
8 ance standard, including the potential im-
9 pacts on shipping, trade, and other uses of
10 the aquatic environment; and

11 “(ii) maintaining the existing ballast
12 water performance standard, including the
13 potential impacts on water-related infra-
14 structure, recreation, the propagation of
15 native fish, shellfish, and wildlife, and
16 other uses of navigable waters.

17 “(3) REVISION OF PERFORMANCE STANDARD.—

18 “(A) RULEMAKING.—If, pursuant to a re-
19 view conducted under paragraph (1), the Ad-
20 ministrator, in consultation with the Secretary,
21 determines that revising the ballast water per-
22 formance standard would result in a scientif-
23 ically demonstrable and substantial reduction in
24 the risk of the introduction or establishment of
25 aquatic nuisance species, the Administrator

1 shall undertake a rulemaking to revise the per-
2 formance standard.

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

12 “(4) STATE PETITION FOR REVIEW OF PER-
13 FORMANCE STANDARDS.—

14 “(A) IN GENERAL.—The Governor of a
15 State may submit a petition requesting that the
16 Administrator review a ballast water perform-
17 ance standard if there is significant new infor-
18 mation that could reasonably indicate the per-
19 formance standard could be revised to result in
20 a scientifically demonstrable and substantial re-
21 duction in the risk of the introduction or estab-
22 lishment of aquatic nuisance species.

23 “(B) TIMING.—A Governor may not sub-
24 mit a petition under subparagraph (A) during

1 the 1-year period following the date of comple-
2 tion of a review under paragraph (1).

3 “(C) REQUIRED INFORMATION.—A peti-
4 tion submitted to the Administrator under sub-
5 paragraph (A) shall include the scientific and
6 technical information on which the petition is
7 based.

8 “(D) REVIEW AND REPORTING.—Upon re-
9 ceipt of a petition from a Governor under sub-
10 paragraph (A), the Administrator shall make
11 publicly available a copy of the petition, includ-
12 ing the scientific and technical information pro-
13 vided by the Governor under subparagraph (C).

14 “(E) REVIEW AND REVISION OF PERFORM-
15 ANCE STANDARDS.—

16 “(i) IN GENERAL.—If, after receiving
17 a petition submitted by a Governor under
18 subparagraph (A) for review of a perform-
19 ance standard, the Administrator, in con-
20 sultation with the Secretary, determines
21 that the petition warrants additional ac-
22 tion, the Administrator may—

23 “(I) in consultation with the Sec-
24 retary, initiate a review of the per-

1 performance standard under paragraph
2 (1); and

3 “(II) in consultation with the
4 Secretary, revise the performance
5 standard through a rulemaking under
6 paragraph (3)(A), subject to the limi-
7 tation in paragraph (3)(B).

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

12 “(e) TREATMENT TECHNOLOGY CERTIFICATION.—

13 “(1) CERTIFICATION REQUIRED.—

14 “(A) CERTIFICATION PROCESS.—

15 “(i) EVALUATION.—Upon application
16 of a manufacturer, the Secretary shall
17 evaluate a ballast water treatment tech-
18 nology with respect to—

19 “(I) whether the treatment tech-
20 nology meets the ballast water per-
21 formance standard when installed on
22 a commercial vessel (or a class, type,
23 or size of commercial vessel);

1 “(II) the effect of the treatment
2 technology on commercial vessel safe-
3 ty; and

4 “(III) any other criteria the Sec-
5 retary considers appropriate.

6 “(ii) CERTIFICATION.—If, after con-
7 ducting the evaluation required by clause
8 (i), the Secretary determines the treatment
9 technology meets the criteria established
10 under such clause, the Secretary may cer-
11 tify the treatment technology for use on a
12 commercial vessel (or a class, type, or size
13 of commercial vessel).

14 “(iii) SUSPENSION AND REVOCATION
15 OF CERTIFICATION.—The Secretary shall,
16 by regulation, establish a process to sus-
17 pend or revoke a certification issued under
18 this subparagraph.

19 “(B) CERTIFICATES OF TYPE APPROVAL.—

20 “(i) ISSUANCE OF CERTIFICATES TO
21 MANUFACTURER.—If the Secretary cer-
22 tifies a ballast water treatment technology
23 under subparagraph (A), the Secretary
24 shall issue to the manufacturer of the
25 treatment technology, in such form and

1 manner as the Secretary determines appro-
2 priate, a certificate of type approval for the
3 treatment technology.

4 “(ii) CONDITIONS TO BE INCLUDED IN
5 CERTIFICATES.—A certificate of type ap-
6 proval issued under clause (i) shall include
7 any conditions that are imposed by the
8 Secretary under paragraph (2).

9 “(iii) ISSUANCE OF COPIES OF CER-
10 TIFICATES TO OWNERS AND OPERATORS.—
11 A manufacturer that receives a certificate
12 of type approval under clause (i) for a bal-
13 last water treatment technology shall fur-
14 nish a copy of the certificate to any owner
15 or operator of a commercial vessel on
16 which the treatment technology is in-
17 stalled.

18 “(iv) INSPECTIONS.—An owner or op-
19 erator who receives a copy of a certificate
20 under clause (iii) for a ballast water treat-
21 ment technology installed on a commercial
22 vessel shall retain a copy of the certificate
23 onboard the commercial vessel and make
24 the copy of the certificate available for in-
25 spection at all times that such owner or

1 operator is utilizing the treatment tech-
2 nology.

3 “(C) TREATMENT TECHNOLOGIES THAT
4 USE OR GENERATE BIOCIDES.—The Secretary
5 may not certify a ballast water treatment tech-
6 nology that—

7 “(i) uses a biocide or generates a
8 biocide that is a ‘pesticide’, as defined in
9 section 2 of the Federal Insecticide, Fun-
10 gicide, and Rodenticide Act (7 U.S.C.
11 136), unless the biocide is registered under
12 such Act or the Administrator has ap-
13 proved the use of such biocide in such
14 treatment technology; or

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

19 “(D) PROHIBITION.—

20 “(i) IN GENERAL.—Except as pro-
21 vided by clause (ii), an owner or operator
22 may not use a ballast water treatment
23 technology to comply with the require-
24 ments of this section unless the Secretary

1 has certified the treatment technology
2 under subparagraph (A).

3 “(ii) EXCEPTIONS.—

4 “(I) COAST GUARD SHIPBOARD
5 TECHNOLOGY EVALUATION PRO-
6 GRAM.—An owner or operator may
7 use a ballast water treatment tech-
8 nology that has not been certified by
9 the Secretary to comply with the re-
10 quirements of this section if the tech-
11 nology is being evaluated under the
12 Coast Guard Shipboard Technology
13 Evaluation Program.

14 “(II) BALLAST WATER TREAT-
15 MENT TECHNOLOGIES CERTIFIED BY
16 FOREIGN ENTITIES.—An owner or op-
17 erator may use a ballast water treat-
18 ment technology that has not been
19 certified by the Secretary to comply
20 with the requirements of this section
21 if the technology has been certified by
22 a foreign entity and the certification
23 demonstrates performance and safety
24 of the treatment technology equivalent

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

3 “(2) CERTIFICATION CONDITIONS.—

4 “(A) IMPOSITION OF CONDITIONS.—In cer-
5 tifying a ballast water treatment technology
6 under this subsection, the Secretary, in con-
7 sultation with the Administrator, may impose
8 any condition on the subsequent installation,
9 use, or maintenance of the treatment tech-
10 nology onboard a commercial vessel as is nec-
11 essary for—

12 “(i) the safety of the vessel, the crew
13 of the vessel, and any passengers aboard
14 the vessel;

15 “(ii) the protection of the environ-
16 ment; and

17 “(iii) the effective operation of the
18 treatment technology.

19 “(B) FAILURE TO COMPLY.—The failure of
20 an owner or operator to comply with a condi-
21 tion imposed under subparagraph (A) is a viola-
22 tion of this section.

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

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), an owner or operator who installs a
3 ballast water treatment technology that the
4 Secretary has certified under paragraph (1)
5 may use the treatment technology, notwith-
6 standing any revisions to a ballast water per-
7 formance standard occurring after the installa-
8 tion so long as the owner or operator—

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

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

13 “(I) the manufacturer’s specifica-
14 tions; and

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

17 “(B) LIMITATION.—Subparagraph (A)
18 shall cease to apply with respect to a commer-
19 cial vessel after the first to occur of the fol-
20 lowing:

21 “(i) The expiration of the service life
22 of the ballast water treatment technology
23 of the vessel, as determined by the Sec-
24 retary.

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

3 “(iii) The completion of a major con-
4 version of the vessel.

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

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

13 “(B) certifying laboratories to evaluate
14 such treatment technologies.

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

1 “(f) ALTERNATIVE METHODS OF COMPLIANCE.—

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

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

12 “(A) the effectiveness of the alternative
13 method in reducing the risk of the introduction
14 or establishment of aquatic nuisance species rel-
15 ative to the performance standard; and

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

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

23 “(g) GEOGRAPHICALLY LIMITED AREAS.—

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

1 “(A) operates exclusively within a geo-
2 graphically limited area, as determined by the
3 Secretary, in consultation with the Adminis-
4 trator; or

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

8 “(2) PETITION FOR DETERMINATION BY THE
9 SECRETARY.—

10 “(A) SUBMISSION OF PETITIONS.—Fol-
11 lowing the date of issuance of final regulations
12 under subsection (b), an owner or operator may
13 petition the Secretary for a determination
14 under paragraph (1).

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

18 “(C) DEADLINE.—If the Secretary does
19 not approve or deny a petition submitted by an
20 owner or operator under subparagraph (A) on
21 or before the last day of the 90-day period be-
22 ginning on the date of submission of the peti-
23 tion, the petition shall be deemed approved.

24 “(3) NOTIFICATION.—The Secretary shall no-
25 tify the Administrator and the Governor of each

1 State the waters of which could be affected by the
2 discharge of ballast water from a commercial vessel
3 for which a petition has been granted under para-
4 graph (2) of the granting of any such petition.

5 “(4) BEST MANAGEMENT PRACTICES.—For a
6 commercial vessel for which a petition is granted
7 under paragraph (2), the Secretary shall require the
8 owner or operator to implement appropriate ballast
9 water best management practices to minimize the in-
10 troduction or establishment of aquatic nuisance spe-
11 cies.

12 “(h) RECEPTION FACILITIES.—

13 “(1) IN GENERAL.—An owner or operator shall
14 discharge ballast water in compliance with sub-
15 section (e) or (f) unless discharging ballast water
16 into—

17 “(A) an onshore facility for the reception
18 of ballast water that meets standards issued by
19 the Administrator, in consultation with the Sec-
20 retary; or

21 “(B) an offshore facility for the reception
22 of ballast water that meets standards issued by
23 the Secretary, in consultation with the Adminis-
24 trator.

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

4 “(A) the Administrator, in consultation
5 with the Secretary, shall issue the standards re-
6 ferred to in paragraph (1)(A); and

7 “(B) the Secretary, in consultation with
8 the Administrator, shall issue the standards re-
9 ferred to in paragraph (1)(B).

10 “(3) SOLE METHOD OF DISCHARGE.—The Sec-
11 retary, in consultation with the Administrator, and
12 upon petition by an owner or operator, may issue to
13 an owner or operator a certificate stating that a
14 commercial vessel is in compliance with the require-
15 ments of subsection (b)(1)(A) if discharging ballast
16 water into a facility meeting the standards issued
17 under this subsection is the sole method by which
18 the owner or operator discharges ballast water from
19 the commercial vessel.

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

1 “(i) COMMERCIAL VESSEL BALLAST WATER MAN-
2 AGEMENT PLAN.—

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

6 “(A) meets requirements prescribed by the
7 Secretary; and

8 “(B) is approved by the Secretary.

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

17 “(3) RECORDKEEPING.—

18 “(A) IN GENERAL.—Except as provided by
19 subparagraph (B), an owner or operator shall
20 maintain in English and have available for in-
21 spection by the Secretary a ballast water record
22 book in which each operation of the commercial
23 vessel involving a ballast water discharge is re-
24 corded in accordance with regulations issued by
25 the Secretary.

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

6 “(j) REGULATION OF BALLAST WATER DIS-
7 CHARGES.—Effective on and after the date of enactment
8 of this section—

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

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

18 “(k) STATE AUTHORITY.—

19 “(1) STATE PROGRAMS.—The Governor of a
20 State desiring to administer its own inspection and
21 enforcement authority for ballast water discharges
22 within its jurisdiction may submit to the Secretary
23 a complete description of the program the Governor
24 proposes to establish and administer under State
25 law. In addition, the Governor shall submit a state-

1 ment from the State attorney general that the laws
2 of the State provide adequate authority to carry out
3 the described program.

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

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

16 “(B) ensure that any ballast water dis-
17 charged within the waters subject to the juris-
18 diction of the State meets the requirements of
19 this section;

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

22 “(D) investigate and abate violations of
23 this section, including the imposition of civil
24 and criminal penalties consistent with sub-
25 section (o); and

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

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

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

21 “(5) LIMITATION ON STATUTORY CONSTRUC-
22 TION.—Nothing in this subsection shall limit the au-
23 thority of the Administrator or the Secretary to
24 carry out inspections of any commercial vessel under
25 subsection (n).

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

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

17 “(1) EVALUATION OF INCIDENTAL DIS-
18 CHARGES.—

19 “(A) IN GENERAL.—Not later than 3 years
20 after the date of enactment of this section, the
21 Administrator, in consultation with the Sec-
22 retary, shall complete an evaluation of dis-
23 charges incidental to the normal operation of a
24 commercial vessel.

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

3 “(i) the characterization of the var-
4 ious types and composition of discharges
5 incidental to the normal operation of a
6 commercial vessel by different classes,
7 types, and sizes of commercial vessels;

8 “(ii) the volume of such discharges for
9 representative individual commercial ves-
10 sels and by classes, types, and sizes of
11 commercial vessels in the aggregate;

12 “(iii) the availability and feasibility of
13 implementing technologies or best manage-
14 ment practices for the control of such dis-
15 charges;

16 “(iv) the characteristics of the receiv-
17 ing waters of such discharges;

18 “(v) the nature and extent of poten-
19 tial effects of such discharges on human
20 health, welfare, and the environment;

21 “(vi) the extent to which such dis-
22 charges are currently subject to and ad-
23 dressed by regulations under existing Fed-
24 eral laws or binding international obliga-
25 tions of the United States; and

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

3 “(2) REGULATION OF INCIDENTAL DIS-
4 CHARGES.—Effective on and after the date of enact-
5 ment of this section—

6 “(A) the Administrator (or a State in the
7 case of a permit program approved under sec-
8 tion 402) shall not require any new permit or
9 permit conditions under section 402 for any dis-
10 charge incidental to the normal operation of a
11 commercial vessel; and

12 “(B) a State or political subdivision there-
13 of shall not adopt or enforce any law or regula-
14 tion of the State or political subdivision with re-
15 spect to such a discharge.

16 “(m) EFFECT ON VESSEL GENERAL PERMIT.—

17 “(1) EXPIRATION.—Notwithstanding the expi-
18 ration date set forth in the Vessel General Permit,
19 the Vessel General Permit shall expire as follows:

20 “(A) The terms and conditions of section
21 6 of such permit or any law of a State regu-
22 lating the discharge of ballast water or any dis-
23 charge incidental to the normal operation of a
24 commercial vessel, upon the date of enactment
25 of this section.

1 “(B) For each commercial vessel, the
2 terms and conditions of such permit (except the
3 terms and conditions referred to in subpara-
4 graph (A)) applicable to a discharge of ballast
5 water—

6 “(i) on the date on which—

7 “(I) a ballast water treatment
8 technology certified under subsection
9 (e) is installed on the commercial ves-
10 sel;

11 “(II) an alternative method of
12 compliance established for the com-
13 mercial vessel under subsection (f) is
14 implemented for the commercial ves-
15 sel;

16 “(III) a petition is granted for
17 the commercial vessel under sub-
18 section (g); or

19 “(IV) a certificate is issued for
20 the commercial vessel under sub-
21 section (h); or

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

24 “(2) DISCHARGES INCIDENTAL TO THE NOR-
25 MAL OPERATION OF COMMERCIAL VESSELS.—Not-

1 withstanding the expiration date set forth in the
2 Vessel General Permit, the terms and conditions of
3 such permit (except the terms and conditions re-
4 ferred to in paragraph (1)(A)) applicable to dis-
5 charges incidental to the normal operation of a com-
6 mercial vessel shall remain in effect.

7 “(n) INSPECTIONS AND ENFORCEMENT.—

8 “(1) IN GENERAL.—

9 “(A) COAST GUARD ENFORCEMENT.—The
10 Secretary shall enforce the requirements of this
11 section and may utilize by agreement, with or
12 without reimbursement, law enforcement offi-
13 cers or other personnel and facilities of the Ad-
14 ministrator, other Federal agencies, and the
15 States.

16 “(B) ENVIRONMENTAL PROTECTION AGEN-
17 CY ACTIONS.—Notwithstanding any enforce-
18 ment decisions of the Secretary under subpara-
19 graph (A), the Administrator may use the au-
20 thorities provided in sections 308, 309, 312,
21 and 504 whenever required to carry out this
22 section.

23 “(2) COAST GUARD INSPECTIONS.—The Sec-
24 retary may carry out inspections of any commercial
25 vessel at any time, including the taking of ballast

1 water samples, to ensure compliance with this sec-
2 tion. The Secretary shall use all appropriate and
3 practical measures of detection and environmental
4 monitoring of such commercial vessels and shall es-
5 tablish adequate procedures for reporting violations
6 of this section and accumulating evidence regarding
7 such violations.

8 “(o) COMPLIANCE.—

9 “(1) DETENTION OF COMMERCIAL VESSEL.—

10 The Secretary, by notice to the owner or operator,
11 may detain the commercial vessel if the Secretary
12 has reasonable cause to believe that the commercial
13 vessel does not comply with a requirement of this
14 section or is being operated in violation of such a re-
15 quirement.

16 “(2) SANCTIONS.—

17 “(A) CIVIL PENALTIES.—

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

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

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

8 “(II) For vessels with a ballast
9 water capacity of 1500 cubic meters
10 but not more than 5,000 cubic me-
11 ters, not to exceed \$28,750 for each
12 violation.

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

17 “(B) CRIMINAL PENALTIES.—Any person
18 who knowingly violates this section shall be
19 punished by a fine of not less than \$5,000 nor
20 more than \$50,000 per day of violation, or by
21 imprisonment for not more than 3 years, or
22 both. If a conviction of a person is for a viola-
23 tion committed after a first conviction of such
24 person under this paragraph, punishment shall
25 be by a fine of not more than \$100,000 per day

1 of violation, or imprisonment of not more than
2 6 years, or both.

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

10 “(3) ENFORCEMENT ACTIONS.—

11 “(A) ADMINISTRATIVE ACTIONS.—If the
12 Secretary finds that a person has violated this
13 section, the Secretary may assess a civil penalty
14 for the violation. In determining the amount of
15 the civil penalty, the Secretary shall take into
16 account the nature, circumstances, extent, and
17 gravity of the prohibited acts committed and,
18 with respect to the violator, the degree of culpa-
19 bility, any history of prior violations, and such
20 other matters as justice may require.

21 “(B) CIVIL ACTIONS.—At the request of
22 the Secretary, the Attorney General may bring
23 a civil action in an appropriate district court of
24 the United States to enforce this section. Any
25 court before which such an action is brought

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

5 “(p) BEST MANAGEMENT PRACTICES FOR COVERED
6 VESSELS.—

7 “(1) DEFINITIONS.—In this subsection, the fol-
8 lowing definitions apply:

9 “(A) COVERED VESSEL.—The term ‘cov-
10 ered vessel’ means every description of
11 watercraft, or other artificial contrivance used
12 or capable of being used as a means of trans-
13 portation on water, that is engaged in commer-
14 cial service (as defined under section 2101 of
15 title 46, United States Code), and—

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

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

20 “(B) DISCHARGE INCIDENTAL TO THE
21 NORMAL OPERATION OF A COVERED VESSEL.—
22 The term ‘discharge incidental to the normal
23 operation of a covered vessel’ means a discharge
24 incidental to the normal operation of a commer-

1 cial vessel (as defined in section 321), insofar
2 as the commercial vessel is a covered vessel.

3 “(2) DETERMINATION OF DISCHARGES SUB-
4 JECT TO BEST MANAGEMENT PRACTICES.—

5 “(A) DETERMINATION.—

6 “(i) IN GENERAL.—The Adminis-
7 trator, in consultation with the Secretary
8 of the department in which the Coast
9 Guard is operating, shall determine the
10 discharges incidental to the normal oper-
11 ation of a covered vessel for which it is
12 reasonable and practicable to develop best
13 management practices to mitigate the ad-
14 verse impacts of such discharges on the
15 waters of the United States.

16 “(ii) PROMULGATION.—The Adminis-
17 trator shall promulgate the determinations
18 under clause (i) in accordance with section
19 553 of title 5, United States Code.

20 “(B) CONSIDERATIONS.—In making a de-
21 termination under subparagraph (A), the Ad-
22 ministrators shall consider—

23 “(i) the nature of the discharge;

1 “(ii) the environmental effects of the
2 discharge, including characteristics of the
3 receiving waters;

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

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

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

13 “(vi) applicable Federal and State
14 law;

15 “(vii) applicable international stand-
16 ards; and

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

19 “(C) TIMING.—The Administrator shall—

20 “(i) make initial determinations under
21 subparagraph (A) not later than 1 year
22 after the date of enactment of this sub-
23 section; and

24 “(ii) every 5 years thereafter—

1 “(I) review the determinations;
2 and

3 “(II) if necessary, revise the de-
4 terminations based on any new infor-
5 mation available to the Administrator.

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

8 “(A) IN GENERAL.—The Secretary of the
9 department in which the Coast Guard is oper-
10 ating shall promulgate regulations on the use of
11 best management practices for discharges inci-
12 dental to the normal operation of a covered ves-
13 sel that the Administrator determines are rea-
14 sonable and practicable to develop under para-
15 graph (2).

16 “(B) REGULATIONS.—

17 “(i) IN GENERAL.—The Secretary
18 shall promulgate the regulations under this
19 paragraph as soon as practicable after the
20 Administrator makes determinations pur-
21 suant to paragraph (2).

22 “(iii) CONSIDERATIONS.—In promul-
23 gating regulations under this paragraph,
24 the Secretary may—

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

3 “(II) distinguish between new
4 and existing vessels; and

5 “(III) provide for a waiver of the
6 applicability of the standards as nec-
7 essary or appropriate to a particular
8 class, type, age, or size of vessel.

9 “(4) EFFECT OF OTHER LAWS.—This sub-
10 section shall not affect the application of section 311
11 to a covered vessel.

12 “(5) PROHIBITION RELATING TO COVERED VES-
13 SELS.—After the effective date of the regulations
14 promulgated by the Secretary of the department in
15 which the Coast Guard is operating under paragraph
16 (3), the owner or operator of a covered vessel shall
17 neither operate in, nor discharge any discharge inci-
18 dental to the normal operation of the vessel into
19 navigable waters, if the owner or operator of the ves-
20 sel is not using any applicable best management
21 practice meeting standards established under this
22 subsection.”.

1 **SEC. 4. CONFORMING AND TECHNICAL AMENDMENTS.**

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

5 (b) REVIEW OF ADMINISTRATOR’S ACTIONS.—The
6 first sentence of section 509(b)(1) of such Act (33 U.S.C.
7 1369(b)(1)) is amended—

8 (1) by striking “and (G)” and inserting “(G)”;
9 and

10 (2) by inserting after “section 304(l),” the fol-
11 lowing: “and (H) in issuing any regulation or other-
12 wise taking final agency action under section 312 or
13 321,”.

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

16 (a) IN GENERAL.—Effective on the date of enact-
17 ment of this Act, the following discharges shall not be reg-
18 ulated in any manner other than as specified in section
19 312 or 321 of the Federal Water Pollution Control Act
20 (as added by this Act):

21 (1) A discharge incidental to the normal oper-
22 ation of a commercial vessel.

23 (2) A discharge of ballast water from a com-
24 mercial vessel.

25 (b) DEFINITIONS.—In this section, the terms “ballast
26 water”, “commercial vessel”, and “discharge incidental to

1 the normal operation of a commercial vessel” have the
2 meanings given those terms in section 321(a) of the Fed-
3 eral Water Pollution Control Act (as added by this Act).

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

6 (a) AQUATIC NUISANCE SPECIES IN WATERS OF THE
7 UNITED STATES.—Effective on the date of issuance of
8 final regulations under section 321(b) of the Federal
9 Water Pollution Control Act (as added by this Act), sec-
10 tion 1101 of the Nonindigenous Aquatic Nuisance Preven-
11 tion and Control Act of 1990 (16 U.S.C. 4711) is re-
12 pealed.

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

