

**Calendar No. 27**115TH CONGRESS  
1ST SESSION**S. 168****[Report No. 115-16]**

To amend and enhance certain maritime programs of the Department of  
Transportation.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 17, 2017

Mr. WICKER (for himself, Mr. CASEY, Mr. RUBIO, Mr. NELSON, Mr. THUNE, Mr. SCHATZ, Mr. SULLIVAN, Mrs. MCCASKILL, Mrs. CAPITO, Mr. CASIDY, Mr. CORNYN, Mr. INHOFE, Mr. BOOZMAN, Mr. BLUNT, Ms. COLLINS, Mr. YOUNG, Mr. KENNEDY, Mr. SHELBY, Mr. COONS, Mr. GRAHAM, and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MARCH 30, 2017

Reported by Mr. THUNE, without amendment

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**A BILL**

To amend and enhance certain maritime programs of the  
Department of Transportation.

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Commercial Vessel Incidental Discharge Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Existing ballast water regulations.
- Sec. 4. Ballast water discharge requirements.
- Sec. 5. Review of ballast water discharge standard.
- Sec. 6. Alternative compliance program.
- Sec. 7. Reception facilities.
- Sec. 8. Requirements for discharges incidental to the normal operation of a  
commercial vessel.
- Sec. 9. Judicial review.
- Sec. 10. State enforcement.
- Sec. 11. Effect on State authority.
- Sec. 12. Effect on other laws.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

11 (2) 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 of the United  
16 States, or commercial, agricultural, aquacultural, or  
17 recreational activities dependent on such waters.

18 (3) BALLAST WATER.—The term “ballast  
19 water” means any water and suspended matter

1 taken on board a commercial vessel to control or  
2 maintain trim, draught, stability, or stresses of the  
3 commercial vessel, regardless of how it is carried.

4 (4) BALLAST WATER DISCHARGE STANDARD.—

5 The term “ballast water discharge standard” means  
6 the numerical ballast water discharge standard set  
7 forth in section 151.2030 of title 33, Code of Fed-  
8 eral Regulations, or section 151.1511 of such title,  
9 or a revised numerical ballast water discharge stand-  
10 ard established under section 5, as applicable.

11 (5) BALLAST WATER MANAGEMENT SYSTEM.—

12 The term “ballast water management system”  
13 means any system (including all ballast water treat-  
14 ment equipment and all associated control and moni-  
15 toring equipment) that processes ballast water to  
16 kill, render harmless, or remove organisms.

17 (6) COMMERCIAL VESSEL.—

18 (A) IN GENERAL.—The term “commercial  
19 vessel” means a vessel (as defined in section 3  
20 of title 1, United States Code) that is engaged  
21 in commercial service (as defined in section  
22 2101 of title 46, United States Code).

23 (B) EXCLUSION.—The term “commercial  
24 vessel” does not include a recreational vessel.

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

3           (A) IN GENERAL.—The term “discharge  
4 incidental to the normal operation of a commer-  
5 cial vessel” means—

6           (i) a discharge into navigable waters  
7 of the United States from a commercial  
8 vessel of—

9           (I)(aa) graywater, bilge water,  
10 cooling water, oil water separator ef-  
11 fluent, anti-fouling hull coating leach-  
12 ate, boiler or economizer blowdown,  
13 byproducts from cathodic protection,  
14 controllable pitch propeller and  
15 thruster hydraulic fluid, distillation  
16 and reverse osmosis brine, elevator pit  
17 effluent, firemain system effluent,  
18 freshwater layup effluent, gas turbine  
19 wash water, motor gasoline and com-  
20 pensating effluent, refrigeration and  
21 air condensate effluent, seawater pip-  
22 ing biofouling prevention substances,  
23 boat engine wet exhaust, sonar dome  
24 effluent, exhaust gas scrubber

1 washwater, or stern tube packing  
2 gland effluent; or

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

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

19 (III) any effluent from a properly  
20 functioning marine engine; or

21 (ii) a discharge of a pollutant into  
22 navigable waters of the United States in  
23 connection with the testing, maintenance,  
24 or repair of a system, equipment, or engine  
25 described in subclause (I)(bb) or (III) of

1 clause (i) whenever the commercial vessel  
2 is waterborne.

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

6 (i) a discharge into navigable waters  
7 of the United States from a commercial  
8 vessel of—

9 (I) ballast water;

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

13 (III) oil or a hazardous substance  
14 (as such terms are defined in section  
15 311 of the Federal Water Pollution  
16 Control Act (33 U.S.C. 1321)); or

17 (IV) sewage (as defined in sec-  
18 tion 312(a)(6) of the Federal Water  
19 Pollution Control Act (33 U.S.C.  
20 1322(a)(6))); or

21 (ii) any emission of an air pollutant  
22 resulting from the operation onboard a  
23 commercial vessel of a commercial vessel  
24 propulsion system, motor driven equip-  
25 ment, or incinerator; or

1 (iii) any discharge into navigable  
2 waters of the United States from a com-  
3 mercial vessel when the commercial vessel  
4 is operating in a capacity other than as a  
5 means of transportation on water.

6 (8) GENERAL PERMIT.—The term “General  
7 Permit” means the Final National Pollutant Dis-  
8 charge Elimination System Vessel General Permit  
9 for Discharges Incidental to the Normal Operation  
10 of a Vessel noticed in the Federal Register on April  
11 12, 2013 (78 Fed. Reg. 21938).

12 (9) GEOGRAPHICALLY LIMITED AREA.—The  
13 term “geographically limited area” means an area—

14 (A) with a physical limitation that prevents  
15 a commercial vessel from operating outside the  
16 area, such as the Great Lakes and Saint Law-  
17 rence River, as determined by the Secretary; or

18 (B) that is ecologically homogeneous, as  
19 determined by the Secretary in consultation  
20 with the heads of other Federal departments or  
21 agencies the Secretary considers appropriate.

22 (10) MAJOR CONVERSION.—The term “major  
23 conversion” has the meaning given such term in sec-  
24 tion 2101(14a) of title 46, United States Code.

1           (11) NAVIGABLE WATERS OF THE UNITED  
2 STATES.—The term “navigable waters of the United  
3 States” has the meaning given such term in section  
4 2101(17a) of title 46, United States Code.

5           (12) OWNER OR OPERATOR.—The term “owner  
6 or operator” means a person owning, operating, or  
7 chartering by demise a commercial vessel.

8           (13) POLLUTANT.—The term “pollutant” has  
9 the meaning given such term in section 502(6) of  
10 the Federal Water Pollution Control Act (33 U.S.C.  
11 1362(6)).

12           (14) RECREATIONAL VESSEL.—The term “rec-  
13 reational vessel” has the meaning given such term in  
14 section 2101(25) of title 46, United States Code.

15           (15) SECRETARY.—The term “Secretary”  
16 means the Secretary of the department in which the  
17 Coast Guard is operating.

18 **SEC. 3. EXISTING BALLAST WATER REGULATIONS.**

19           (a) EFFECT ON EXISTING REGULATIONS.—Any reg-  
20 ulation issued pursuant to the Nonindigenous Aquatic  
21 Nuisance Prevention and Control Act of 1990 that is in  
22 effect on the date immediately preceding the effective date  
23 of this Act, and that relates to a matter subject to regula-  
24 tion under this Act, shall remain in full force and effect



1 unless or until superseded by a new regulation issued  
2 under this Act relating to such matter.

3 (b) APPLICATION OF OTHER REGULATIONS.—The  
4 regulations issued pursuant to the Nonindigenous Aquatic  
5 Nuisance Prevention and Control Act of 1990 (16 U.S.C.  
6 4701 et seq.) relating to sanctions for violating a regula-  
7 tion under that Act shall apply to violations of a regulation  
8 issued under this Act.

9 **SEC. 4. BALLAST WATER DISCHARGE REQUIREMENTS.**

10 (a) IN GENERAL.—

11 (1) REQUIREMENTS.—Except as provided in  
12 paragraph (3), and subject to sections 151.2035 and  
13 151.2036 of title 33, Code of Federal Regulations  
14 (as in effect on the date of the enactment of this  
15 Act), an owner or operator may discharge ballast  
16 water into navigable waters of the United States  
17 from a commercial vessel covered under subsection

18 (b) only if—

19 (A) by applying the best available tech-  
20 nology that is economically achievable, the dis-  
21 charge meets the ballast water discharge stand-  
22 ard; and

23 (B) the owner or operator discharges the  
24 ballast water in accordance with other require-  
25 ments established by the Secretary.

1           (2) COMMERCIAL VESSELS ENTERING THE  
2 GREAT LAKES SYSTEM.—If a commercial vessel en-  
3 ters the Great Lakes through the Saint Lawrence  
4 River after operating outside the exclusive economic  
5 zone of the United States or Canada, the owner or  
6 operator shall—

7           (A) comply with the requirements of—

8                 (i) paragraph (1);

9                 (ii) subpart C of part 151 of title 33,  
10 Code of Federal Regulations; and

11                (iii) section 401.30 of such title; and

12           (B) conduct a complete ballast water ex-  
13 change in an area that is 200 nautical miles or  
14 more from any shore before the owner or oper-  
15 ator may discharge ballast water while oper-  
16 ating in the Saint Lawrence River or the Great  
17 Lakes, subject to any requirements the Sec-  
18 retary determines necessary with regard to such  
19 exchange, or any ballast water management  
20 system that is to be used in conjunction with  
21 such exchange, to ensure that any discharge of  
22 ballast water complies with the requirements  
23 under paragraph (1).

24           (3) SAFETY EXEMPTION.—Notwithstanding  
25 paragraphs (1) and (2), an owner or operator may

1 discharge any ballast water into navigable waters of  
2 the United States from a commercial vessel if—

3 (A) the ballast water is discharged solely  
4 to ensure the safety of life at sea;

5 (B) the ballast water is discharged acci-  
6 dentally as the result of damage to the commer-  
7 cial vessel or its equipment and—

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

11 (ii) the owner or operator did not will-  
12 fully or recklessly cause such damage; or

13 (C) the ballast water is discharged solely  
14 for the purpose of avoiding or minimizing a dis-  
15 charge from the commercial vessel of a pollut-  
16 ant that would violate an applicable Federal or  
17 State law.

18 (4) LIMITATION ON REQUIREMENTS.—In estab-  
19 lishing requirements under this subsection, the Sec-  
20 retary may not require the installation of a ballast  
21 water management system on a commercial vessel  
22 that—

23 (A) carries all of its ballast water in sealed  
24 tanks that are not subject to discharge; or

1 (B) discharges ballast water solely into a  
2 reception facility described in section 7.

3 (b) APPLICABILITY.—

4 (1) COVERED VESSELS.—Except as provided in  
5 paragraph (2), subsection (a) shall apply to any  
6 commercial vessel that is designed, constructed, or  
7 adapted to carry ballast water while such commer-  
8 cial vessel is operating in navigable waters of the  
9 United States.

10 (2) EXEMPTED VESSELS.—Subsection (a) shall  
11 not apply to a commercial vessel—

12 (A) that continuously takes on and dis-  
13 charges ballast water in a flow-through system,  
14 if such system does not introduce aquatic nui-  
15 sance species into navigable waters of the  
16 United States, as determined by the Secretary;

17 (B) that operates exclusively within a geo-  
18 graphically limited area;

19 (C) that operates pursuant to a geographic  
20 restriction issued as a condition under section  
21 3309 of title 46, United States Code, or an  
22 equivalent restriction issued by the country of  
23 registration of the commercial vessel;

1 (D) in the National Defense Reserve Fleet  
 2 that is scheduled to be disposed of through  
 3 scrapping or sinking;

4 (E) that discharges ballast water con-  
 5 sisting solely of water taken aboard from a pub-  
 6 lic or commercial source that, at the time the  
 7 water is taken aboard, meets the applicable reg-  
 8 ulations or permit requirements for such source  
 9 under the Safe Drinking Water Act (42 U.S.C.  
 10 300f et seq.); or

11 (F) in an alternative compliance program  
 12 established pursuant to section 6.

13 (c) TYPE APPROVAL OF BALLAST WATER MANAGE-  
 14 MENT SYSTEMS THAT RENDER BALLAST WATER ORGA-  
 15 NISMS INCAPABLE OF REPRODUCTION.—

16 (1) IN GENERAL.—Notwithstanding chapter 5  
 17 of title 5, United States Code, part 151 of title 33,  
 18 Code of Federal Regulations, and part 162 of title  
 19 46, Code of Federal Regulations, a ballast water  
 20 management system that renders organisms in bal-  
 21 last water incapable of reproduction at the con-  
 22 centrations prescribed in the ballast water discharge  
 23 standard shall be type approved by the Secretary,  
 24 if—

25 (A) such system—

1 (i) undergoes type approval testing at  
2 an independent laboratory designated by  
3 the Secretary under such regulations; and

4 (ii) meets the requirements of subpart  
5 162.060 of title 46, Code of Federal Regu-  
6 lations, other than the requirements re-  
7 lated to staining methods or measuring the  
8 concentration of living organisms; and

9 (B) such laboratory uses a type approval  
10 testing method described in a final policy letter  
11 published under paragraph (2).

12 (2) TYPE APPROVAL TESTING METHODS.—

13 (A) DRAFT POLICY.—Not later than 60  
14 days after the date of enactment of this Act,  
15 the Secretary shall publish a draft policy letter  
16 describing type approval testing methods capa-  
17 ble of measuring the concentration of organisms  
18 in ballast water that are capable of reproduc-  
19 tion.

20 (B) PUBLIC COMMENT.—The Secretary  
21 shall provide for a period of not more than 60  
22 days for the public to comment on the draft  
23 policy letter published under paragraph (1).

24 (C) FINAL POLICY.—Not later than 150  
25 days after the date of the enactment of this

1 Act, the Secretary shall publish a final policy  
2 letter describing type approval testing methods  
3 capable of measuring the concentration of orga-  
4 nisms in ballast water that are capable of re-  
5 production.

6 (D) REVISIONS.—The Secretary shall re-  
7 vise such policy letter as additional testing  
8 methods are determined by the Secretary to be  
9 capable of measuring the concentration of orga-  
10 nisms in ballast water that are capable of re-  
11 production.

12 (E) CONSIDERATIONS.—In developing a  
13 policy letter under this paragraph, the Sec-  
14 retary—

15 (i) shall consider a type approval test-  
16 ing method that uses organism grow out  
17 and most probable number statistical anal-  
18 ysis to determine the concentration of or-  
19 ganisms in ballast water that are capable  
20 of reproduction; and

21 (ii) shall not consider a type approval  
22 testing method that relies on a staining  
23 method that measures the concentration of  
24 organisms greater than or equal to 10 mi-

1                   rometers and organisms less than or  
2                   equal to 50 micrometers.

3 **SEC. 5. REVIEW OF BALLAST WATER DISCHARGE STAND-**  
4                   **ARD.**

5           (a) EFFECTIVENESS REVIEW.—

6                   (1) IN GENERAL.—The Secretary shall conduct  
7                   reviews in accordance with this section to determine  
8                   whether revising the ballast water discharge stand-  
9                   ard based on the application of the best available  
10                  technology that is economically achievable would re-  
11                  sult in a reduction in the risk of the introduction or  
12                  establishment of aquatic nuisance species.

13                  (2) REQUIRED REVIEWS.—Not later than Janu-  
14                  ary 1, 2022, and every 10 years thereafter, the Sec-  
15                  retary, in consultation with the Administrator, shall  
16                  complete a review under paragraph (1).

17                  (3) STATE PETITIONS FOR REVIEW.—

18                   (A) IN GENERAL.—The Governor of a  
19                   State may submit a petition requesting the Sec-  
20                   retary to conduct a review under paragraph (1)  
21                   if there is significant new information that  
22                   could reasonably indicate the ballast water dis-  
23                   charge standard could be revised to result in a  
24                   reduction in the risk of the introduction or es-  
25                   tablishment of aquatic nuisance species.



1 (B) TIMING.—A Governor may not submit  
2 a petition under subparagraph (A) during the  
3 1-year period following the date of completion  
4 of a review under paragraph (1).

5 (C) REQUIRED INFORMATION.—A petition  
6 submitted to the Secretary under subparagraph  
7 (A) shall include—

8 (i) a proposed ballast water discharge  
9 standard that would result in a reduction  
10 in the risk of the introduction or establish-  
11 ment of aquatic nuisance species;

12 (ii) information regarding any ballast  
13 water management systems that may  
14 achieve the proposed ballast water dis-  
15 charge standard;

16 (iii) the scientific and technical infor-  
17 mation on which the petition is based, in-  
18 cluding a description of the risk reduction  
19 that would result from the proposed ballast  
20 water discharge standard included under  
21 clause (i); and

22 (iv) any additional information the  
23 Secretary considers appropriate.

24 (D) PUBLIC AVAILABILITY.—Upon receiv-  
25 ing a petition under subparagraph (A), the Sec-

1           retary shall make publicly available a copy of  
2           the petition, including the information included  
3           under subparagraph (C).

4           (E) TREATMENT OF MORE THAN ONE PE-  
5           TITION AS A SINGLE PETITION.—The Secretary  
6           may treat more than one petition submitted  
7           under subparagraph (A) as a single such peti-  
8           tion.

9           (F) AUTHORITY TO REVIEW.—After receiv-  
10          ing a petition that meets the requirements of  
11          this paragraph, the Secretary, in consultation  
12          with the Administrator, may conduct a review  
13          under paragraph (1).

14         (b) PRACTICABILITY REVIEW.—

15           (1) IN GENERAL.—If the Secretary determines  
16           under subsection (a) that revision of the ballast  
17           water discharge standard would result in a reduction  
18           in the risk of the introduction or establishment of  
19           aquatic nuisance species, the Secretary, in consulta-  
20           tion with the Administrator, shall conduct a prac-  
21           ticability review to determine whether—

22           (A) a ballast water management system  
23           that is capable of achieving the ballast water  
24           discharge standard as proposed to be revised is

1 economically achievable and operationally prac-  
2 ticable; and

3 (B) testing protocols that can assure accu-  
4 rate measurement of compliance with the bal-  
5 last water discharge standard as proposed to be  
6 revised can be practicably implemented.

7 (2) CRITERIA FOR PRACTICABILITY REVIEW.—  
8 In conducting a practicability review under para-  
9 graph (1), the Secretary shall consider—

10 (A) improvements in the scientific under-  
11 standing of biological and ecological processes  
12 that lead to the introduction or establishment of  
13 aquatic nuisance species;

14 (B) improvements in ballast water manage-  
15 ment systems, including—

16 (i) the capability of such systems to  
17 achieve the ballast water discharge stand-  
18 ard as proposed to be revised;

19 (ii) the effectiveness and reliability of  
20 such systems in the shipboard environ-  
21 ment;

22 (iii) the compatibility of such systems  
23 with the design and operation of a com-  
24 mercial vessel by class, type, and size;

1 (iv) the commercial availability of  
2 such systems; and

3 (v) the safety of such systems;

4 (C) improvements in the capabilities to de-  
5 tect, quantify, and assess whether aquatic nui-  
6 sance species are capable of reproduction under  
7 the ballast water discharge standard as pro-  
8 posed to be revised;

9 (D) the impact of ballast water manage-  
10 ment systems on water quality;

11 (E) the costs, cost-effectiveness, and ef-  
12 fects of—

13 (i) a revised ballast water discharge  
14 standard; and

15 (ii) maintaining the existing ballast  
16 water discharge standard; and

17 (F) other criteria that the Secretary con-  
18 siders appropriate.

19 (3) INFORMATION FROM STATES.—In con-  
20 ducting a practicability review under paragraph (1),  
21 the Secretary shall solicit information from the  
22 States concerning matters the Secretary is required  
23 to consider under paragraph (2).

24 (c) REVISED BALLAST WATER DISCHARGE STAND-  
25 ARD.—The Secretary shall issue a rule to revise the ballast

1 water discharge standard if the Secretary, in consultation  
2 with the Administrator, determines on the basis of the  
3 practicability review under subsection (b) that—

4 (1) a ballast water management system that is  
5 capable of achieving the ballast water discharge  
6 standard as proposed to be revised is economically  
7 achievable and operationally practicable; and

8 (2) testing protocols that can assure accurate  
9 measurement of compliance with the ballast water  
10 discharge standard as proposed to be revised can be  
11 practicably implemented.

12 (d) REVISED BALLAST WATER DISCHARGE STAND-  
13 ARD EFFECTIVE DATE AND COMPLIANCE DEADLINE.—

14 (1) IN GENERAL.—If the Secretary issues a  
15 rule to revise the ballast water discharge standard  
16 under subsection (c), the Secretary shall include in  
17 such rule—

18 (A) an effective date for the revised ballast  
19 discharge standard that is three years after the  
20 date on which such rule is published in the Fed-  
21 eral Register; and

22 (B) for the owner or operator of a com-  
23 mercial vessel that is constructed or completes  
24 a major conversion on or after the date that is  
25 three years after the date on which the rule is

1 published in the Federal Register, a deadline to  
2 comply with the revised ballast water discharge  
3 standard that is the first day on which such  
4 commercial vessel operates in navigable waters  
5 of the United States.

6 (2) EXTENSIONS.—The Secretary shall estab-  
7 lish a process for an owner or operator to submit a  
8 petition to the Secretary for an extension of a com-  
9 pliance deadline under paragraph (1)(B).

10 (3) FACTORS.—In reviewing a petition under  
11 this subsection, the Secretary shall consider, with re-  
12 spect to the ability of an owner or operator to meet  
13 a compliance deadline—

14 (A) whether the ballast water management  
15 system to be installed, if applicable, is available  
16 in sufficient quantities to meet the compliance  
17 deadline;

18 (B) whether there is sufficient shipyard or  
19 other installation facility capacity;

20 (C) whether there is sufficient availability  
21 of engineering and design resources;

22 (D) commercial vessel characteristics, such  
23 as engine room size, layout, or a lack of in-  
24 stalled piping;

1           (E) electric power generating capacity  
2           aboard the commercial vessel;

3           (F) the safety of the commercial vessel and  
4           crew; and

5           (G) any other factor that the Secretary de-  
6           termines appropriate.

7           (4) CONSIDERATION OF PETITIONS.—

8           (A) DETERMINATIONS.—The Secretary  
9           shall approve or deny a petition for an exten-  
10          sion of a compliance deadline submitted by an  
11          owner or operator under this subsection.

12          (B) DEADLINE.—If the Secretary does not  
13          approve or deny a petition referred to in sub-  
14          paragraph (A) on or before the last day of the  
15          90-day period beginning on the date of submis-  
16          sion of the petition, the petition shall be deemed  
17          approved.

18          (5) PERIOD OF USE OF INSTALLED BALLAST  
19          WATER MANAGEMENT SYSTEM.—

20          (A) IN GENERAL.—Subject to subpara-  
21          graph (B), an owner or operator shall be con-  
22          sidered to be in compliance with the ballast  
23          water discharge standard if—

24                  (i) the ballast water management sys-  
25                  tem installed on the commercial vessel

1 complies with the ballast water discharge  
2 standard in effect at the time of installa-  
3 tion, notwithstanding any revisions to the  
4 ballast water discharge standard occurring  
5 after the installation;

6 (ii) the owner or operator maintains  
7 the ballast water management system in  
8 proper working condition, as determined by  
9 the Secretary; and

10 (iii) the ballast water management  
11 system continues to meet the ballast water  
12 discharge standard applicable to the com-  
13 mercial vessel at the time of installation,  
14 as determined by the Secretary.

15 (B) LIMITATION.—Subparagraph (A) shall  
16 cease to apply with respect to a commercial ves-  
17 sel after—

18 (i) the expiration of the service life of  
19 the ballast water management system of  
20 the commercial vessel, as determined by  
21 the Secretary;

22 (ii) the expiration of the service life of  
23 the commercial vessel, as determined by  
24 the Secretary; or



1 (iii) the completion of a major conver-  
2 sion of the commercial vessel.

3 **SEC. 6. ALTERNATIVE COMPLIANCE PROGRAM.**

4 The Secretary, in consultation with the Adminis-  
5 trator, may issue a rule establishing one or more compli-  
6 ance programs that may be used by an owner or operator  
7 as an alternative to compliance with the requirements of  
8 section 4(a) for a commercial vessel that—

9 (1) has a maximum ballast water capacity of  
10 less than eight cubic meters; or

11 (2) is less than three years from the end of the  
12 service life of the commercial vessel, as determined  
13 by the Secretary.

14 **SEC. 7. RECEPTION FACILITIES.**

15 (a) IN GENERAL.—Notwithstanding the require-  
16 ments under section 4(a), an owner or operator may dis-  
17 charge ballast water into an onshore or offshore facility  
18 for the reception of ballast water that meets the standards  
19 established by the Administrator, in consultation with the  
20 Secretary, under subsection (b).

21 (b) ISSUANCE OF STANDARDS.—Not later than one  
22 year after the date of the enactment of this Act, the Ad-  
23 ministrator, in consultation with the Secretary, shall pub-  
24 lish a rule in the Federal Register that establishes reason-  
25 able and practicable standards for reception facilities to

1 mitigate adverse effects of aquatic nuisance species on  
2 navigable waters of the United States.

3 **SEC. 8. REQUIREMENTS FOR DISCHARGES INCIDENTAL TO**  
4 **THE NORMAL OPERATION OF A COMMERCIAL**  
5 **VESSEL.**

6 (a) IN GENERAL.—Not later than two years after the  
7 date of the enactment of this Act, the Secretary, in con-  
8 sultation with the Administrator, shall publish a rule in  
9 the Federal Register that establishes best management  
10 practices for discharges incidental to the normal operation  
11 of a commercial vessel for commercial vessels that are—

12 (1) greater than or equal to 79 feet in length;

13 and

14 (2) not fishing vessels, including fish processing  
15 vessels and fish tender vessels (as such terms are de-  
16 fined in section 2101 of title 46, United States  
17 Code).

18 (b) TRANSITION.—

19 (1) IN GENERAL.—Notwithstanding the expira-  
20 tion date for the General Permit, any practice, limi-  
21 tation, or concentration applicable to any discharge  
22 incidental to the normal operation of a commercial  
23 vessel that is required by the General Permit on the  
24 date of the enactment of this Act, and any reporting  
25 requirement required by the General Permit on such

1 date of enactment, shall remain in effect until the  
2 effective date of a rule issued by the Secretary under  
3 subsection (a).

4 (2) PART 6 CONDITIONS.—Notwithstanding  
5 paragraph (1) and any other provision of law, the  
6 terms and conditions of Part 6 of the General Per-  
7 mit (relating to specific requirements for individual  
8 States or Indian country lands) shall expire on the  
9 date of the enactment of this Act.

10 (c) APPLICATION TO CERTAIN VESSELS.—

11 (1) APPLICATION OF FEDERAL WATER POLLU-  
12 TION CONTROL ACT.—No permit shall be required  
13 under section 402 of the Federal Water Pollution  
14 Control Act (33 U.S.C. 1342) or prohibition en-  
15 forced under any other provision of law for, nor shall  
16 any best management practice regarding a discharge  
17 incidental to the normal operation of a commercial  
18 vessel under this Act apply to, a discharge incidental  
19 to the normal operation of a commercial vessel if the  
20 commercial vessel is—

21 (A) less than 79 feet in length; or

22 (B) a fishing vessel, including a fish proc-  
23 essing vessel and a fish tender vessel (as such  
24 terms are defined in section 2101 of title 46,  
25 United States Code).

1           (2) APPLICATION OF GENERAL PERMIT.—The  
2 terms and conditions of the General Permit shall  
3 cease to apply to vessels described in subparagraphs  
4 (A) and (B) of paragraph (1) on the date of the en-  
5 actment of this Act.

6           (d) STATE PETITION FOR REVISION OF BEST MAN-  
7 AGEMENT PRACTICES.—

8           (1) IN GENERAL.—The Governor of a State  
9 may submit a petition to the Secretary requesting  
10 that the Secretary revise a best management prac-  
11 tice established under subsection (a) if there is sig-  
12 nificant new information that could reasonably indi-  
13 cate that—

14                   (A) revising the best management practice  
15 would substantially reduce the adverse effects  
16 on navigable waters of the United States of dis-  
17 charges incidental to the normal operation of a  
18 commercial vessel; and

19                   (B) the revised best management practice  
20 would be economically achievable and operation-  
21 ally practicable.

22           (2) REQUIRED INFORMATION.—A petition sub-  
23 mitted to the Secretary under paragraph (1) shall  
24 include—

1 (A) the scientific and technical information  
2 on which the petition is based; and

3 (B) any additional information the Sec-  
4 retary considers appropriate.

5 (3) PUBLIC AVAILABILITY.—Upon receiving a  
6 petition under paragraph (1), the Secretary shall  
7 make publicly available a copy of the petition, in-  
8 cluding the information included under paragraph  
9 (2).

10 (4) TREATMENT OF MORE THAN ONE PETITION  
11 AS A SINGLE PETITION.—The Secretary may treat  
12 more than one petition submitted under paragraph  
13 (1) as a single petition.

14 (5) REVISION OF BEST MANAGEMENT PRAC-  
15 TICES.—If, after reviewing a petition submitted by a  
16 Governor under paragraph (1), the Secretary, in  
17 consultation with the Administrator, determines that  
18 revising a best management practice would substan-  
19 tially reduce the adverse effects on navigable waters  
20 of the United States of discharges incidental to the  
21 normal operation of a commercial vessel, and the re-  
22 vised best management practice would be economi-  
23 cally achievable and operationally practicable, the  
24 Secretary, in consultation with the Administrator,

1       may issue a rule to revise the best management  
2       practice established under subsection (a).

3       **SEC. 9. JUDICIAL REVIEW.**

4       (a) IN GENERAL.—A person may file a petition for  
5       review of a final rule issued under this Act in the United  
6       States Court of Appeals for the District of Columbia Cir-  
7       cuit.

8       (b) DEADLINE.—

9               (1) IN GENERAL.—A petition shall be filed  
10       under this section not later than 120 days after the  
11       date on which the rule to be reviewed is published  
12       in the Federal Register.

13              (2) EXCEPTION.—Notwithstanding paragraph  
14       (1), a petition that is based solely on grounds that  
15       arise after the deadline to file a petition under para-  
16       graph (1) has passed may be filed not later than  
17       120 days after the date on which such grounds first  
18       arise.

19       **SEC. 10. STATE ENFORCEMENT.**

20       The Secretary may enter into an agreement with the  
21       Governor of a State to authorize the State to enforce the  
22       provisions of this Act, as the Secretary considers appro-  
23       priate.

1 **SEC. 11. EFFECT ON STATE AUTHORITY.**

2 (a) IN GENERAL.—Except as provided in subsection  
3 (b) and as necessary to implement an agreement entered  
4 into under section 10, no State or political subdivision  
5 thereof may adopt or enforce any statute, regulation, or  
6 other requirement of the State or political subdivision with  
7 respect to—

8 (1) a discharge into navigable waters of the  
9 United States from a commercial vessel of ballast  
10 water; or

11 (2) a discharge incidental to the normal oper-  
12 ation of a commercial vessel.

13 (b) PRESERVATION OF AUTHORITY.—Nothing in this  
14 Act may be construed as affecting the authority of a State  
15 or political subdivision thereof to adopt or enforce any  
16 statute, regulation, or other requirement with respect to  
17 any water or other substance discharged or emitted from  
18 a vessel in preparation for transport of the vessel by land  
19 from one body of water to another body of water.

20 **SEC. 12. EFFECT ON OTHER LAWS.**

21 (a) APPLICATION OF FEDERAL WATER POLLUTION  
22 CONTROL ACT.—

23 (1) IN GENERAL.—Except as provided in sec-  
24 tion 8(b), on or after the date of the enactment of  
25 this Act, the Federal Water Pollution Control Act  
26 (33 U.S.C. 1251 et seq.) shall not apply to a dis-

1 charge into navigable waters of the United States of  
2 ballast water from a commercial vessel or a dis-  
3 charge incidental to the normal operation of a com-  
4 mercial vessel.

5 (2) OIL AND HAZARDOUS SUBSTANCE LIABIL-  
6 ITY; MARINE SANITATION DEVICES.—Nothing in this  
7 Act may be construed as affecting the application to  
8 a commercial vessel of section 311 or 312 of the  
9 Federal Water Pollution Control Act (33 U.S.C.  
10 1321 and 1322).

11 (b) ESTABLISHED REGIMES.—Notwithstanding any  
12 other provision of this Act, nothing in this Act may be  
13 construed as affecting the authority of the Federal Gov-  
14 ernment under—

15 (1) the Act to Prevent Pollution from Ships (33  
16 U.S.C. 1901 et seq.) with respect to the regulation  
17 by the Federal Government of any discharge or  
18 emission that, on or after the date of enactment of  
19 this Act, is covered under the International Conven-  
20 tion for the Prevention of Pollution from Ships,  
21 1973, as modified by the Protocol of 1978; and

22 (2) title X of the Coast Guard Authorization  
23 Act of 2010 (33 U.S.C. 3801 et seq.) with respect  
24 to the regulation by the Federal Government of any  
25 anti-fouling system that, on or after the date of en-



1 actment of this Act, is covered under the Inter-  
2 national Convention on the Control of Harmful Anti-  
3 fouling Systems on Ships, done at London October  
4 5, 2001.

5 (c) INTERNATIONAL LAW.—

6 (1) IN GENERAL.—Any action taken under this  
7 Act shall be taken in accordance with international  
8 law.

9 (2) STANDARDS.—Nothing in this Act may be  
10 construed to impose any design, equipment, or oper-  
11 ation standard on a commercial vessel not docu-  
12 mented under the laws of the United States and en-  
13 gaged in innocent passage unless the standard im-  
14 plements a generally accepted international rule, as  
15 determined by the Secretary.

16 (d) OTHER AUTHORITIES.—Nothing in this Act may  
17 construed as affecting the authority of the Secretary of  
18 Commerce or the Secretary of the Interior, as the case  
19 may be, to administer lands or waters under such Sec-  
20 retary’s administrative control.

21 (e) CONFORMING AMENDMENT.—Section 1205 of the  
22 Nonindigenous Aquatic Nuisance Prevention and Control  
23 Act of 1990 (16 U.S.C. 4725) is amended by adding at  
24 the end the following: “Ballast water and discharges inci-  
25 dental to the normal operation of a commercial vessel (as

1 such terms are defined in the Commercial Vessel Inci-  
2 dental Discharge Act), shall be regulated pursuant to such  
3 Act.”.



Calendar No. 27

115<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**S. 168**

[Report No. 115-16]

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**A BILL**

To amend and enhance certain maritime programs  
of the Department of Transportation.

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MARCH 30, 2017

Reported without amendment