

Recent Federal Legislation Pertaining to Vessel Discharge

In January 1999, a number of interested parties submitted a rulemaking petition to EPA asking the Agency to repeal its long-standing regulation at 40 C.F.R. 122.3(a) that excludes certain discharges incidental to the normal operation of vessels, including ballast water, from the requirement to obtain a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act (CWA). Following an EPA denial decision, several groups filed a lawsuit in December 2003 in the U.S. District Court for the Northern District of California (*Northwest Environmental Advocates et al. v. EPA*, No. CV 03-05760 SI). On March 30, 2005, the District Court ruled that the EPA regulation excluding discharges incidental to the normal operation of a vessel from NPDES permitting exceeded the Agency's authority under the CWA. On September 18, 2006, the Court issued an order vacating (revoking) the regulatory exclusions at 40 C.F.R. 122.3(a) as of September 30, 2008. Because the Court's decision is not limited to vessels with ballast water tanks, it appears to implicate an extremely large number of vessels and a range of discharges. Information available from the U.S. Coast Guard indicates that in 2005, vessels equipped with ballast water tanks alone accounted for 8,400 ships reporting over 86,000 port calls. However, there are also 13 *million* State-registered recreational boats, 81,000 commercial fishing vessels, and 53,000 freight and tank barges operating in U.S. waters.

Subsequently, several bills have been introduced in the Congress to address this issue. These bills and a fact sheet on the topic are included in this packet:

- *S.2766 the Clean Boating Act of 2008*, introduced IN the U. S. Senate on March 13, 2008 by Senator Bill Nelson (D-FL) and Senator Barbara Boxer (D-CA).
- *H.R.5594 the Vessel Discharge Evaluation and Review Act*, introduced in the U. S. House of Representatives on March 11, 2008 by Representative Don Young (R-AK).
- *S.2645 the Vessel Discharge Evaluation and Review Act*, introduced in the U.S. Senate on February 14, 2008 by Senator Ted Stevens (R-AK).

United States Environmental Protection Agency
Office of Water
Office of Wastewater Management
Water Permits Division



April 2007

FACT SHEET

District Court Decision Vacating the Federal Regulation Excluding Discharges Incidental to Normal Vessel Operations from Clean Water Act Permitting as of September 30, 2008

How did the lawsuit get started and what is it about?

In January 1999, a number of interested parties submitted a rulemaking petition to EPA asking the Agency to repeal its long-standing regulation at 40 C.F.R. 122.3(a) that excludes certain discharges incidental to the normal operation of vessels, including ballast water, from the requirement to obtain a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act (CWA). The petition seeking repeal expressed concern over discharges of ships' ballast water containing invasive species and other matter. In September 2003, EPA denied the petition. Among its bases for denial, the Agency determined that actions by the federal government under other statutes specific to ballast water were likely to be more effective and efficient in addressing the concerns raised in the petition than reliance on NPDES permits. The denial also noted that the regulation had existed unchallenged since its initial issuance in May 1973, and that Congressional enactment of subsequent statutory schemes and amendments indicated Congress was aware of, and accepted, the regulatory exclusion. Following EPA's denial decision, several groups filed a lawsuit in December 2003 in the U.S. District Court for the Northern District of California (*Northwest Environmental Advocates et al. v. EPA*, No. C 03-05760 SI).

What was the court's ruling?

On March 30, 2005, the District Court ruled that the EPA regulation excluding discharges incidental to the normal operation of a vessel from NPDES permitting exceeded the Agency's authority under the CWA. In subsequent proceedings before the Court, EPA argued that any relief granted by the Court should be limited to ballast water matters alone. However, on September 18, 2006, the Court issued an order vacating (revoking) the regulatory exclusions at 40 C.F.R. 122.3(a) as of September 30, 2008. The Court reasoned that delaying the vacatur by two years would give the Agency time to address the ramifications of the vacatur. Because the Agency respectfully disagrees with the District Court's decision, on November 16, 2006, the United States filed a notice of appeal with the U.S. Court of Appeals for the Ninth Circuit and that appeal is currently pending.

What types of vessels and discharges might become subject to CWA permitting?

Because the Court's decision is not limited to vessels with ballast water tanks, it appears to implicate an extremely large number of vessels and a range of discharges. Information available from the U.S. Coast Guard indicates that in 2005, vessels equipped with ballast water tanks alone accounted for 8,400 ships reporting over 86,000 port calls. However, there are also 13 *million*

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State-registered recreational boats, 81,000 commercial fishing vessels, and 53,000 freight and tank barges operating in U.S. waters. A final rulemaking undertaken specific to the authority of CWA § 312(n) with respect to vessels of the Armed Forces is illustrative as to the potential variety of operational discharges. For purposes of CWA § 312(n), that rulemaking identified 39 such discharges in the context of military vessels, and it would appear that besides ballast water, non-military vessels could generate approximately two dozen, or perhaps more, of these kinds of operational discharges (e.g., bilgewater, deck runoff, graywater). See, 40 CFR 1700.4; 1700.5.

Are there any exemptions relevant to vessel discharges unaffected by the Court's ruling?

The Court's ruling would not affect vessel discharge exemptions from permitting that are specifically provided for in the CWA itself. For example, § 502(6)(A) excludes from the Act's definition of "pollutant" sewage from vessels (including graywater in the case of commercial vessels operating on the Great Lakes) and discharges incidental to the normal operation of a vessel of the Armed Forces within the meaning of the CWA § 312. As another example, the CWA provides in § 502(12)(B) that discharges from vessels (i.e., discharges other than those when the vessel is operating in a capacity other than as a means of transportation) do not constitute the "discharge of a pollutant" when such discharges occur beyond the limit of the three mile territorial sea. Because both "a pollutant" and a "discharge of a pollutant" are prerequisites to the requirement to obtain an NPDES permit, these two statutory provisions have the effect of exempting the vessel discharges they address from the requirement to obtain an NPDES permit.

What are the implications of the Court's ruling and what is EPA doing in response?

Section 301(a) of the CWA generally prohibits the "discharge of a pollutant" without an NPDES permit. If the District Court's order remains unchanged, the regulatory exclusion allowing for the discharge of pollutants incidental to the normal operation of a vessel without an NPDES permit will be vacated by the court on September 30, 2008. This means that, as of that date, that regulatory exclusion will no longer exempt such discharges from the prohibition in CWA section 301(a). The CWA authorizes civil and criminal penalties for violations of the prohibition against the discharge of a pollutant without a permit, and also allows for citizen suits against violators.

Because discharges of pollutants incidental to the normal operation of vessels have been exempt from the NPDES permitting requirement for over 30 years, the Agency lacks practical experience permitting them. These types of discharges pose unique challenges, because vessels are highly mobile and the vessel universe is extremely diverse. In order to address the above ramifications of the Court's ruling, EPA is exploring all available options, including establishment of an appropriate permitting program, and plans to solicit public input as it does so.

For more information:

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Documents related to the rulemaking petition and the Court's ruling are available on-line at: http://www.epa.gov/owow/invasive_species/ballast_water.html

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*** **FOR INFORMATIONAL PURPOSES ONLY** ***

110TH CONGRESS
2D SESSION

S. 2766

To amend the Federal Water Pollution Control Act to address certain discharges incidental to the normal operation of a recreational vessel.

IN THE SENATE OF THE UNITED STATES

MARCH 13, 2008

Mr. NELSON of Florida (for himself and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Federal Water Pollution Control Act to address certain discharges incidental to the normal operation of a recreational vessel.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Clean Boating Act of
5 2008”.

1 **SEC. 2. DISCHARGES INCIDENTAL TO THE NORMAL OPER-**
 2 **ATION OF RECREATIONAL VESSELS.**

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

6 “(r) DISCHARGES INCIDENTAL TO THE NORMAL OP-
 7 ERATION OF RECREATIONAL VESSELS.—No permit shall
 8 be required under this Act by the Administrator (or a
 9 State, in the case of a permit program approved under
 10 subsection (b)) for the discharge of any graywater, bilge
 11 water, cooling water, weather deck runoff, oil water sepa-
 12 rator effluent, or effluent from properly functioning ma-
 13 rine engines, or any other discharge that is incidental to
 14 the normal operation of a vessel, if the discharge is from
 15 a recreational vessel.”.

16 **SEC. 3. DEFINITION.**

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

20 “(25) RECREATIONAL VESSEL.—

21 “(A) IN GENERAL.—The term ‘recreational
 22 vessel’ means any vessel that is—

23 “(i) manufactured or used primarily
 24 for pleasure; or

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

1 “(B) EXCLUSION.—The term ‘recreational
2 vessel’ does not include a vessel that is subject
3 to Coast Guard inspection and that—

4 “(i) is engaged in commercial use; or

5 “(ii) carries paying passengers.”.

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

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

11 “(o) MANAGEMENT PRACTICES FOR RECREATIONAL
12 VESSELS.—

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

16 “(A) incidental to the normal operation of
17 the vessel; and

18 “(B) exempt from permitting requirements
19 under section 402(r).

20 “(2) DETERMINATION OF DISCHARGES SUB-
21 JECT TO MANAGEMENT PRACTICES.—

22 “(A) DETERMINATION.—

23 “(i) IN GENERAL.—The Adminis-
24 trator, in consultation with the Secretary
25 of the department in which the Coast

1 Guard is operating, the Secretary of Com-
2 merce, and interested States, shall deter-
3 mine the discharges incidental to the nor-
4 mal operation of a recreational vessel for
5 which it is reasonable and practicable to
6 develop management practices to mitigate
7 adverse impacts on the waters of the
8 United States.

9 “(ii) PROMULGATION.—The Adminis-
10 trator shall promulgate the determinations
11 under clause (i) in accordance with section
12 553 of title 5, United States Code.

13 “(iii) MANAGEMENT PRACTICES.—The
14 Administrator shall develop management
15 practices for recreational vessels in any
16 case in which the Administrator deter-
17 mines that the use of those practices is
18 reasonable and practicable.

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

22 “(i) the nature of the discharge;

23 “(ii) the environmental effects of the
24 discharge;

1 “(iii) the practicability of using a
2 management practice;

3 “(iv) the effect that the use of a man-
4 agement practice would have on the oper-
5 ation, operational capability, or safety of
6 the vessel;

7 “(v) applicable Federal and State law;

8 “(vi) applicable international stand-
9 ards; and

10 “(vii) the economic costs of the use of
11 the management practice.

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

13 “(i) make the initial determinations
14 under subparagraph (A) not later than 1
15 year after the date of enactment of this
16 subsection; and

17 “(ii) every 5 years thereafter—

18 “(I) review the determinations;

19 and

20 “(II) if necessary, revise the de-
21 terminations based on any new infor-
22 mation available to the Administrator.

23 “(3) PERFORMANCE STANDARDS FOR MANAGE-
24 MENT PRACTICES.—

1 “(A) IN GENERAL.—For each discharge
2 for which a management practice is developed
3 under paragraph (2), the Administrator, in con-
4 sultation with the Secretary of the department
5 in which the Coast Guard is operating, the Sec-
6 retary of Commerce, other interested Federal
7 agencies, and interested States, shall promul-
8 gate, in accordance with section 553 of title 5,
9 United States Code, Federal standards of per-
10 formance for each management practice re-
11 quired with respect to the discharge.

12 “(B) CONSIDERATIONS.—In promulgating
13 standards under this paragraph, the Adminis-
14 trator shall take into account the considerations
15 described in paragraph (2)(B).

16 “(C) CLASSES, TYPES, AND SIZES OF VES-
17 SELS.—The standards promulgated under this
18 paragraph may—

19 “(i) distinguish among classes, types,
20 and sizes of vessels;

21 “(ii) distinguish between new and ex-
22 isting vessels; and

23 “(iii) provide for a waiver of the appli-
24 cability of the standards as necessary or

1 appropriate to a particular class, type, age,
2 or size of vessel.

3 “(D) TIMING.—The Administrator shall—

4 “(i) promulgate standards of perform-
5 ance for a management practice under
6 subparagraph (A) not later than 1 year
7 after the date of a determination under
8 paragraph (2) that the management prac-
9 tice is reasonable and practicable; and

10 “(ii) every 5 years thereafter—

11 “(I) review the standards; and

12 “(II) if necessary, revise the
13 standards, in accordance with sub-
14 paragraph (B) and based on any new
15 information available to the Adminis-
16 trator.

17 “(4) REGULATIONS FOR THE USE OF MANAGE-
18 MENT PRACTICES.—

19 “(A) IN GENERAL.—The Secretary of the
20 department in which the Coast Guard is oper-
21 ating shall promulgate such regulations gov-
22 erning the design, construction, installation,
23 and use of management practices for rec-
24 reational vessels as are necessary to meet the

1 standards of performance promulgated under
2 paragraph (3).

3 “(B) REGULATIONS.—

4 “(i) IN GENERAL.—The Secretary
5 shall promulgate the regulations under this
6 paragraph as soon as practicable after the
7 Administrator promulgates standards with
8 respect to the practice under paragraph
9 (3), but not later than 1 year after the
10 date on which the Administrator promul-
11 gates the standards.

12 “(ii) EFFECTIVE DATE.—The regula-
13 tions promulgated by the Secretary under
14 this paragraph shall be effective upon pro-
15 mulgation unless another effective date is
16 specified in the regulations.

17 “(iii) CONSIDERATION OF TIME.—In
18 determining the effective date of a regula-
19 tion promulgated under this paragraph,
20 the Secretary shall consider the period of
21 time necessary to communicate the exist-
22 ence of the regulation to persons affected
23 by the regulation.

24 “(5) EFFECT OF OTHER LAWS.—This sub-
25 section shall not affect the application of section 311

1 to discharges incidental to the normal operation of
2 a recreational vessel.

3 “(6) PROHIBITION RELATING TO REC-
4 REATIONAL VESSELS.—After the effective date of
5 the regulations promulgated by the Secretary of the
6 department in which the Coast Guard is operating
7 under paragraph (4), the owner or operator of a rec-
8 reational vessel shall neither operate in nor dis-
9 charge any discharge incidental to the normal oper-
10 ation of the vessel into, the waters of the United
11 States or the waters of the contiguous zone, if the
12 owner or operator of the vessel is not using any ap-
13 plicable management practice meeting standards es-
14 tablished under this subsection.”.

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110TH CONGRESS
2D SESSION

H. R. 5594

To require the Commandant of the Coast Guard to conduct an evaluation and review of certain vessel discharges.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2008

Mr. YOUNG of Alaska (for himself and Mr. LOBIONDO) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To require the Commandant of the Coast Guard to conduct an evaluation and review of certain vessel discharges.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Vessel Discharge Eval-
5 uation and Review Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) Starting with passage of the Act to Prevent
9 Pollution from Ships in 1980, the United States
10 Coast Guard has been the principal Federal author-

1 ity charged with administering, enforcing, and pre-
2 scribing regulations relating to the discharge of pol-
3 lutants from vessels engaged in maritime commerce
4 and transportation.

5 (2) There are more than 16 million State-reg-
6 istered boats, 110,000 commercial fishing vessels,
7 and 53,000 freight and tank barges operating in
8 United States waters. Since 1973 certain discharges
9 incidental to the normal operation of these vessels
10 have been exempted from regulation.

11 (3) When required, Congress has specifically
12 mandated Federal programs for control of dis-
13 charges from vessels, including—

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

16 (B) the Nonindigenous Aquatic Nuisance
17 Prevention and Control Act of 1990 (16 U.S.C.
18 4701 et seq.);

19 (C) the National Invasive Species Act of
20 1996 (16 U.S.C. 4701 note); and

21 (D) section 1401 of the 2000 Omnibus
22 Consolidated and Emergency Supplemental Ap-
23 propriations for Fiscal Year 2001, which pre-
24 vented discharge of treated sewage and
25 graywater in certain areas of Alaska.

1 **SEC. 3. EVALUATION AND REVIEW OF CERTAIN DIS-**
2 **CHARGES.**

3 (a) IN GENERAL.—The Commandant of the Coast
4 Guard, in consultation with the heads of appropriate Fed-
5 eral agencies, as determined by the Commandant, shall
6 conduct an evaluation and review of vessel discharges,
7 other than ballast water, that are described in section
8 122.3(a) of title 40, Code of Federal Regulations, as in
9 effect on the date of enactment of this Act. The evaluation
10 shall include—

11 (1) a characterization of the various types and
12 composition of such discharges by different classes
13 of vessels;

14 (2) the volumes of such discharges for rep-
15 resentative individual vessels and by classes of ves-
16 sels in the aggregate;

17 (3) an analysis of current technologies or best
18 management practices, and their associated costs,
19 used to control such discharges;

20 (4) an analysis of the extent to which such dis-
21 charges are currently subject to regulation under ex-
22 isting Federal laws or binding international obliga-
23 tions of the United States;

24 (5) the locations of such discharges;

1 (6) analyses and conclusions as to the nature
2 and extent of potential effects of such discharges on
3 human health, welfare, and the environment;

4 (7) an analysis of practicable measures, includ-
5 ing best management practices, to control such dis-
6 charges; and

7 (8) recommendations as to steps, including reg-
8 ulatory changes, together with a schedule for imple-
9 mentation, that are appropriate to address such dis-
10 charges.

11 (b) PUBLIC COMMENT.—The Commandant shall—

12 (1) publish a draft report containing findings,
13 conclusions, and recommendations from the evalua-
14 tion and review required by subsection (a) in the
15 Federal Register;

16 (2) accept public comments regarding such re-
17 port for a period of not less than 120 days after the
18 date the report is published in the Federal Register;
19 and

20 (3) consider any such public comments in the
21 preparation of a final report under subsection (c).

22 (c) FINAL REPORT.—Not later than 2 years after the
23 date of the enactment of this Act, the Commandant shall
24 prepare and submit to the Senate Committee on Com-
25 merce, Science, and Transportation and the House of Rep-

1 representatives Committee on Transportation and Infrastruc-
2 ture a final report containing findings, conclusions, and
3 recommendations from the evaluation and review required
4 by subsection (a).

5 **SEC. 4. DISCHARGES INCIDENTAL TO NORMAL OPERATION**
6 **OF VESSELS.**

7 (a) STATEMENT OF PURPOSE.—The purposes of this
8 section are—

9 (1) to provide for the establishment of nation-
10 ally uniform, environmentally sound, standards for
11 discharges incidental to the normal operation of ves-
12 sels; and

13 (2) to establish procedures for designation of no
14 discharge zones as necessary to protect waters with-
15 in the jurisdiction of a State from the effects of dis-
16 charges incidental to the normal operation of vessels.

17 (b) EVALUATION AND REVIEW OF CERTAIN DIS-
18 CHARGES.—Subtitle B of the Nonindigenous Aquatic Nui-
19 sance Prevention and Control Act of 1990 (16 U.S.C.
20 4711 et seq.) is amended by adding at the end thereof
21 the following:

22 **“SEC. 1105. REGULATION OF CERTAIN DISCHARGES.**

23 “(a) IN GENERAL.—Notwithstanding any other pro-
24 vision of law, any requirement to obtain a permit for a
25 discharge incidental to the normal operation of a vessel

1 is suspended beginning on the date of enactment of the
2 Vessel Discharge Evaluation and Review Act. The Com-
3 mandant of the Coast Guard, in consultation with the
4 heads of other appropriate Federal agencies, as deter-
5 mined by the Commandant, and based on the findings of
6 the final report submitted under section 3(c) of the Vessel
7 Discharge Evaluation and Review Act, shall promulgate
8 a final rule to establish an appropriate program for estab-
9 lishing enforceable uniform national discharge standards,
10 in lieu of any permit requirement established pursuant to
11 any other provision of law, that are modeled in whole or
12 in part on the regulatory program for vessels of the Armed
13 Forces and based upon the best available technology. Any
14 such national uniform discharge standards or prohibitions
15 shall be enforced by the Secretary and may be enforced
16 by a State.

17 “(b) JUDICIAL REVIEW.—

18 “(1) An interested person may file a petition
19 for review of a final regulation promulgated under
20 this section in the United States Court of Appeals
21 for the District of Columbia Circuit. Any such peti-
22 tion shall be filed within 120 days after the date no-
23 tice of such promulgation appears in the Federal
24 Register, except that if such petition is based solely
25 on grounds arising after such 120th day, then any

1 petition for review under this subsection shall be
2 filed within 120 days after such grounds arise.

3 “(2) Any regulation for which review could have
4 been obtained under paragraph (1) of this sub-
5 section is not subject to judicial review in any civil
6 or criminal proceeding for enforcement.

7 “(c) EFFECT ON STATE AUTHORITY.—

8 “(1) Notwithstanding any other provision of
9 law, except as provided in this subsection, no State
10 or political subdivision thereof may adopt or enforce
11 any statute or regulation of the State or political
12 subdivision with respect to a discharge incidental to
13 the normal operation of a vessel subject to evalua-
14 tion under section 3 of the Vessel Discharge Evalua-
15 tion and Review Act after the promulgation of a
16 final rule under that subsection.

17 “(2) If a State determines that the protection
18 and enhancement of the quality of some or all of the
19 waters within the State require greater environ-
20 mental protection, the State may prohibit one or
21 more such discharges incidental to the normal oper-
22 ation of a vessel. No such prohibition shall apply
23 until the Commandant, in consultation with the
24 heads of appropriate Federal agencies, as deter-
25 mined by the Commandant, determines that—

1 “(A) adequate facilities for the safe and
2 sanitary removal of the relevant discharges are
3 reasonably available for the waters to which the
4 prohibition would apply; and

5 “(B) such prohibition does not create an
6 undue burden on commerce.

7 “(3) The Governor of any State may submit a
8 petition requesting that the Commandant review the
9 regulations promulgated under subsection (a) if
10 there is significant new information, not available
11 previously, that could reasonably result in a change
12 to the regulation. The petition shall be accompanied
13 by the scientific and technical information on which
14 the petition is based.

15 “(d) CERTAIN DISCHARGES UNAFFECTED.—Nothing
16 in this section shall be interpreted to apply to—

17 “(1) a vessel of the Armed Forces;

18 “(2) a discharge of vessel sewage; or

19 “(3) any discharge not subject to the permit ex-
20 clusion contained in section 122.3(a) of title 40,
21 Code of Federal Regulations, as in effect on the date
22 of enactment of the Vessel Discharge Evaluation
23 and Review Act.

24 “(e) EXCLUSIONS.—No permit shall be required
25 under any other provision of law for, nor shall any uniform

1 national discharge standard promulgated under subsection
2 (a) or prohibitions established under subsection (e)(2)
3 apply to—

4 “(1) a discharge incidental to the normal oper-
5 ation of a vessel that is—

6 “(A) less than 79 feet in length and en-
7 gaged in commercial service (as defined in sec-
8 tion 2101 of title 46, United States Code);

9 “(B) a fishing vessel (as defined in section
10 2101 of title 46, United States Code) less than
11 125 feet in length;

12 “(C) a fish tender vessel (as defined in sec-
13 tion 2101 of title 46, United States Code) less
14 than 125 feet in length; or

15 “(D) a recreational vessel (as defined in
16 section 2101 of title 46, United States Code);
17 or

18 “(2) a discharge of ballast water, of sediment,
19 or from other vessel-related vectors subject to sec-
20 tion 1101;

21 “(3) the placement, release, or discharge of
22 equipment, devices, or other material from a vessel
23 for the sole purpose of conducting research on the
24 aquatic environment or its natural resources in ac-

1 cordance with generally recognized scientific meth-
2 ods, principles, or techniques;

3 “(4) any discharge from a vessel authorized by
4 an On-Scene Coordinator in accordance with part
5 300 of title 40, Code of Federal Regulations, or sec-
6 tion 153.10(e) of title 33, Code of Federal Regula-
7 tions;

8 “(5) discharges from a vessel that are necessary
9 to secure the safety of the vessel or human life or
10 to suppress fires onboard or at shoreside facilities;
11 or

12 “(6) a vessel of the armed forces of a foreign
13 nation.

14 “(f) INCIDENTAL DISCHARGE DEFINED.—In this
15 section, the term ‘discharge incidental to the normal oper-
16 ation of a vessel’—

17 “(1) means a discharge, including—

18 “(A) graywater, bilge water, cooling water,
19 weather deck runoff, oil water separator efflu-
20 ent, and any other pollutant discharge from the
21 operation of a marine propulsion system, ship-
22 board maneuvering system, crew habitability
23 system, or installed major equipment, such as
24 an aircraft carrier elevator or a catapult, or

1 from a protective, preservative, or absorptive
2 application to the hull of the vessel; and

3 “(B) a discharge in connection with the
4 testing, maintenance, and repair of a system
5 described in subparagraph (A) whenever the
6 vessel is waterborne; and

7 “(2) does not include—

8 “(A) a discharge of rubbish, trash, gar-
9 bage, or other such material discharged over-
10 board;

11 “(B) an air emission resulting from the op-
12 eration of a vessel propulsion system, motor
13 driven equipment, or incinerator; or

14 “(C) a discharge that is not covered by
15 part 122.3 of title 40, Code of Federal Regula-
16 tions (as in effect on the date of enactment of
17 the Vessel Discharge Evaluation and Review
18 Act).

19 “(g) APPLICATION WITH OTHER STATUTES.—Not-
20 withstanding any other provision of law, this section shall
21 be the exclusive statutory authority for regulation by the
22 Federal Government of vessel discharges to which this sec-
23 tion applies.”.

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110TH CONGRESS
2D SESSION

S. 2645

To require the Commandant of the Coast Guard, in consultation with the Under Secretary of Commerce for Oceans and Atmosphere, to conduct an evaluation and review of certain vessel discharges.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2008

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

A BILL

To require the Commandant of the Coast Guard, in consultation with the Under Secretary of Commerce for Oceans and Atmosphere, to conduct an evaluation and review of certain vessel discharges.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Vessel Discharge Eval-
5 uation and Review Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) Starting with passage of the Act to Prevent
2 Pollution from Ships in 1980, the United States
3 Coast Guard has been the principal Federal author-
4 ity charged with administering, enforcing, and pre-
5 scribing regulations relating to the discharge of pol-
6 lutants from vessels engaged in maritime commerce
7 and transportation.

8 (2) There are more than 16 million State-reg-
9 istered boats, 110,000 commercial fishing vessels,
10 and 53,000 freight and tank barges operating in
11 United States waters. Since 1973 certain discharges
12 incidental to the normal operation of these vessels
13 have been exempted from regulation.

14 (3) When required, Congress has specifically
15 mandated Federal programs for control of dis-
16 charges from vessels, including—

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

19 (B) the Nonindigenous Aquatic Nuisance
20 Prevention and Control Act of 1990 (16 U.S.C.
21 4701 et seq.);

22 (C) the National Invasive Species Act of
23 1996 (16 U.S.C. 4701 note); and

24 (D) section 1401 of the 2000 Omnibus
25 Consolidated and Emergency Supplemental Ap-

1 appropriations for Fiscal Year 2001, which pre-
2 vented discharge of treated sewage and
3 graywater in certain areas of Alaska.

4 **SEC. 3. EVALUATION AND REVIEW OF CERTAIN DIS-**
5 **CHARGES.**

6 (a) IN GENERAL.—The Commandant of the Coast
7 Guard, in consultation with the Under Secretary of Com-
8 merce for Oceans and Atmosphere and the head of any
9 other appropriate agency or department of the United
10 States, shall conduct an evaluation and review of vessel
11 discharges, other than aquatic nuisance species, that are
12 described in section 122.3(a) of title 40, Code of Federal
13 Regulations, as in effect on January 5, 1989. The evalua-
14 tion shall include—

15 (1) a characterization of the various types and
16 composition of such discharges by different classes
17 of vessels;

18 (2) the volumes of such discharges for rep-
19 resentative individual vessels and by classes of ves-
20 sels in the aggregate;

21 (3) an analysis of current technologies or best
22 management practices, and their associated costs,
23 used to control such discharges;

24 (4) an analysis of the extent to which such dis-
25 charges are currently subject to regulation under ex-

1 isting Federal laws or binding international obliga-
2 tions of the United States;

3 (5) the locations of such discharges;

4 (6) analyses and conclusions as to the nature
5 and extent of potential effects of such discharges on
6 human health, welfare, and the environment;

7 (7) an analysis of practicable measures, includ-
8 ing best management practices, to control such dis-
9 charges; and

10 (8) recommendations as to steps, including reg-
11 ulatory changes, together with a schedule for imple-
12 mentation, that are appropriate to address such dis-
13 charges.

14 (b) PUBLIC COMMENT.—The Commandant shall—

15 (1) publish a draft report containing findings,
16 conclusions, and recommendations from the evalua-
17 tion and review required by subsection (a) in the
18 Federal Register;

19 (2) accept public comments regarding such
20 draft for a period of not less than 120 days after the
21 date the draft is published in the Federal Register;
22 and

23 (3) consider any such public comments in the
24 preparation of the final report.

1 (c) FINAL REPORT.—Not later than 2 years after the
2 date of the enactment of this Act, the Commandant shall
3 prepare and submit to the Senate Committee on Com-
4 merce, Science, and Transportation and the House of Rep-
5 resentatives Committee on Transportation and Infrastruc-
6 ture a final report containing findings, conclusions, and
7 recommendations from the evaluation and review required
8 by subsection (a).

9 **SEC. 4. DISCHARGES INCIDENTAL TO NORMAL OPERATION**
10 **OF VESSELS.**

11 (a) STATEMENT OF PURPOSE.—The purposes of this
12 section are—

13 (1) to provide for the establishment of nation-
14 ally uniform, environmentally sound, standards for
15 discharges incidental to the normal operation of ves-
16 sels; and

17 (2) to establish procedures for designation of no
18 discharge zones as necessary to protect waters with-
19 in the jurisdiction of a State from the effects of dis-
20 charges incidental to the normal operation of vessels.

21 (b) EVALUATION AND REVIEW OF CERTAIN DIS-
22 CHARGES.—Subtitle B of the Nonindigenous Aquatic Nui-
23 sance Prevention and Control Act of 1990 (16 U.S.C.
24 4711 et seq.) is amended by adding at the end thereof
25 the following:

1 **“SEC. 1105. REGULATION OF CERTAIN DISCHARGES.**

2 “(a) IN GENERAL.—Notwithstanding any other pro-
3 vision of law, any requirement to obtain a permit for a
4 discharge incidental to the normal operation of a vessel
5 is suspended beginning on the date of enactment of the
6 Vessel Discharge Evaluation and Review Act. The Com-
7 mandant of the Coast Guard, in consultation with the
8 Under Secretary of Commerce for Oceans and Atmosphere
9 shall promulgate a final rule to establish an appropriate
10 program for establishing enforceable uniform national dis-
11 charge standards, in lieu of any permit requirement estab-
12 lished pursuant to any other provision of law, that are
13 modeled in whole or in part on the regulatory program
14 for vessels of the Armed Forces and based upon the best
15 available technology. Any such national uniform discharge
16 standards or prohibitions shall be enforced by the Sec-
17 retary of the department in which the Coast Guard is op-
18 erating and may be enforced by a State.

19 “(b) JUDICIAL REVIEW.—

20 “(1) An interested person may file a petition
21 for review of a final regulation promulgated under
22 this section in the United States Court of Appeals
23 for the District of Columbia Circuit. Any such peti-
24 tion shall be filed within 120 days after the date no-
25 tice of such promulgation appears in the Federal
26 Register, except that if such petition is based solely

1 on grounds arising after such 120th day, then any
2 petition for review under this subsection shall be
3 filed within 120 days after such grounds arise.

4 “(2) Any regulation for which review could have
5 been obtained under paragraph (1) of this sub-
6 section is not subject to judicial review in any civil
7 or criminal proceeding for enforcement.

8 “(c) EFFECT ON STATE AUTHORITY.—

9 “(1) Notwithstanding any other provision of
10 law, except as provided in this subsection, no State
11 or political subdivision thereof may adopt or enforce
12 any statute or regulation of the State or political
13 subdivision with respect to a discharge incidental to
14 the normal operation of a vessel subject to evalua-
15 tion under section 3 of the Vessel Discharge Evalua-
16 tion and Review Act after the promulgation of a
17 final rule under that subsection.

18 “(2) If a State determines that the protection
19 and enhancement of the quality of some or all of the
20 waters within the State require greater environ-
21 mental protection, the State may prohibit one or
22 more such discharges incidental to the normal oper-
23 ation of a vessel. No such prohibition shall apply
24 until—

1 “(A) the Administrator determines that
2 adequate facilities for the safe and sanitary re-
3 moval of the relevant discharges are reasonably
4 available for the waters to which the prohibition
5 would apply; and

6 “(B) the Under Secretary of Commerce for
7 Oceans and Atmosphere determines that such
8 prohibition does not create an undue burden on
9 Commerce.

10 “(3) The Governor of any State may submit a
11 petition requesting that the Commandant review the
12 regulations promulgated under subsection (a) if
13 there is significant new information, not available
14 previously, that could reasonably result in a change
15 to the regulation. The petition shall be accompanied
16 by the scientific and technical information on which
17 the petition is based.

18 “(d) CERTAIN DISCHARGES UNAFFECTED.—Nothing
19 this section shall be interpreted to apply to—

20 “(1) a vessel of the Armed Forces;

21 “(2) a discharge of vessel sewage; or

22 “(3) any discharge not subject to the permit ex-
23 clusion contained in section 122.3(a) of title 40,
24 Code of Federal Regulations, as in effect on March
25 29, 2005.

1 “(e) EXCLUSIONS.—No permit shall be required
2 under any other provision of law for, nor shall any uniform
3 national discharge standard promulgated under subsection
4 (a) apply to—

5 “(1) a discharge incidental to the normal oper-
6 ation of a vessel that is less than 79 feet in length
7 and is—

8 “(A) engaged in commercial service (as de-
9 fined in section 2101(5) of title 46, United
10 States Code); or

11 “(B) a recreational vessel (as defined in
12 section 2101(25) of title 46, United States
13 Code); or

14 “(2) a discharge of aquatic nuisance species in
15 vessel ballast water or sediment or from other vessel-
16 related vectors of aquatic nuisance species subject to
17 section 1101 of the Nonindigenous Aquatic Nuisance
18 Prevention and Control Act of 1990 (16 U.S.C.
19 4711);

20 “(3) the placement, release, or discharge of
21 equipment, devices, or other material from a vessel
22 for the sole purpose of conducting research on the
23 aquatic environment or its natural resources in ac-
24 cordance with generally recognized scientific meth-
25 ods, principles, or techniques;

1 “(4) any discharge from a vessel authorized by
2 an On-Scene Coordinator in accordance with part
3 300 of title 40, Code of Federal Regulations, or sec-
4 tion 153.10(e) of title 33, Code of Federal Regula-
5 tions;

6 “(5) discharges from a vessel that are necessary
7 to secure the safety of the vessel or human life or
8 to suppress fires onboard or at shoreside facilities;
9 or

10 “(6) a vessel of the armed forces of a foreign
11 nation when engaged in noncommercial service.

12 “(f) INCIDENTAL DISCHARGE DEFINED.—In this
13 section, the term ‘discharge incidental to the normal oper-
14 ation of a vessel’—

15 “(1) means a discharge, including—

16 “(A) graywater, bilge water, cooling water,
17 weather deck runoff, ballast water, oil water
18 separator effluent, and any other pollutant dis-
19 charge from the operation of a marine propul-
20 sion system, shipboard maneuvering system,
21 crew habitability system, or installed major
22 equipment, such as an aircraft carrier elevator
23 or a catapult, or from a protective, preservative,
24 or absorptive application to the hull of the ves-
25 sel; and

1 “(B) a discharge in connection with the
2 testing, maintenance, and repair of a system
3 described in subparagraph (A) whenever the
4 vessel is waterborne; and

5 “(2) does not include—

6 “(A) a discharge of rubbish, trash, gar-
7 bage, or other such material discharged over-
8 board;

9 “(B) an air emission resulting from the op-
10 eration of a vessel propulsion system, motor
11 driven equipment, or incinerator; or

12 “(C) a discharge that is not covered by
13 part 122.3 of title 40, Code of Federal Regula-
14 tions (as in effect on Feb. 10, 1996).

15 “(g) APPLICATION WITH OTHER STATUTES.—Not-
16 withstanding any other provision of law, this section shall
17 be the exclusive statutory authority for regulation by the
18 Federal Government of vessel discharges to which this sec-
19 tion applies.”.

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