

One Hundred Fifteenth Congress
of the
United States of America

AT THE SECOND SESSION

*Began and held at the City of Washington on Wednesday,
the third day of January, two thousand and eighteen*

An Act

To authorize appropriations for the Coast Guard, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Frank LoBiondo Coast Guard
Authorization Act of 2018”.

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**TITLE I—REORGANIZATION OF TITLE
14, UNITED STATES CODE**

SEC. 101. INITIAL MATTER.

Title 14, United States Code, is amended by striking the title designation, the title heading, and the table of parts at the beginning and inserting the following:

“TITLE 14—COAST GUARD

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be administered by the Secretary of the Interior acting through the United States Fish and Wildlife Service.

SEC. 838. EMERGENCY RESPONSE.

Not later than 90 days after the date of enactment of this Act, the Commandant of the Coast Guard shall request the National Offshore Safety Advisory Committee to examine whether there are unnecessary regulatory barriers to the use of small passenger vessels, crewboats, and offshore supply vessels in disaster response and provide recommendations, as appropriate, to reduce such barriers.

SEC. 839. DRAWBRIDGES CONSULTATION.

(a) CONSULTATION.—In addition and subsequent to any rule-making conducted under section 117.8 of title 33, Code of Federal Regulations, related to permanent changes to drawbridge openings that result from Amtrak service between New Orleans, Louisiana and Orlando, Florida, the Commandant shall consult with owners or operators of rail lines used for Amtrak passenger service between New Orleans, Louisiana and Orlando, Florida and affected waterway users on changes to drawbridge operating schedules necessary to facilitate the On Time Performance of passenger trains. These changes to schedules shall not impact Coast Guard response times to operational missions.

(b) TIMING.—Consultation in subsection (a) shall occur after commencement of Amtrak passenger service on the rail lines between New Orleans, Louisiana and Orlando, Florida at the following intervals:

(1) Not less than 3 months following the commencement of Amtrak passenger service.

(2) Not less than 6 months following the commencement of Amtrak passenger service.

(c) REPORT.—If after conducting the consultations required by subsection (b)(2), the Commandant finds that permanent changes to drawbridge operations are necessary to mitigate delays in the movement of trains described in subsection (a) and that those changes do not unreasonably obstruct the navigability of the affected waterways, then the Commandant shall submit those findings to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

TITLE IX—VESSEL INCIDENTAL DISCHARGE ACT

SEC. 901. SHORT TITLE.

This title may be cited as the “Vessel Incidental Discharge Act of 2018”.

SEC. 902. PURPOSES; FINDINGS.

(a) PURPOSES.—The purposes of this title are—

(1) to provide for the establishment of uniform, environmentally sound standards and requirements for the management of discharges incidental to the normal operation of a vessel;

(2) to charge the Environmental Protection Agency with primary responsibility for establishing standards relating to the discharge of pollutants from vessels;

(3) to charge the Coast Guard with primary responsibility for prescribing, administering, and enforcing regulations, consistent with the discharge standards established by the Environmental Protection Agency, for the design, construction, installation, and operation of the equipment and management practices required onboard vessels; and

(4) to preserve the flexibility of States, political subdivisions, and certain regions with respect to the administration and enforcement of standards relating to the discharge of pollutants from vessels engaged in maritime commerce and transportation.

(b) FINDINGS.—Congress finds that—

(1) the Environmental Protection Agency is the principal Federal authority charged under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) with regulating through the issuance of permits for the discharge of pollutants into the navigable waters of the United States;

(2) the Coast Guard is the principal Federal authority charged with administering, enforcing, and prescribing regulations relating to the discharge of pollutants from vessels; and

(3) during the period of 1973 to 2010—

(A) the Environmental Protection Agency promulgated regulations exempting certain discharges incidental to the normal operation of vessels from otherwise applicable permitting requirements of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and

(B) Congress enacted laws on numerous occasions governing the regulation of discharges incidental to the normal operation of vessels, including—

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

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

(iii) the National Invasive Species Act of 1996 (16 U.S.C. 4701 note; Public Law 104–332);

(iv) section 415 of the Coast Guard Authorization Act of 1998 (Public Law 105–383; 112 Stat. 3434) and section 623 of the Coast Guard and Maritime Transportation Act of 2004 (33 U.S.C. 1901 note; Public Law 108–293), which established interim and permanent requirements, respectively, for the regulation of vessel discharges of certain bulk cargo residue;

(v) title XIV of division B of Appendix D of the Consolidated Appropriations Act, 2001 (Public Law 106–554; 114 Stat. 2763A–315), which prohibited or limited certain vessel discharges in certain areas of Alaska;

(vi) section 204 of the Maritime Transportation Security Act of 2002 (33 U.S.C. 1902a), which established requirements for the regulation of vessel discharges of agricultural cargo residue material in the form of hold washings; and

(vii) title X of the Coast Guard Authorization Act of 2010 (33 U.S.C. 3801 et seq.), which provided for

the implementation of the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001.

SEC. 903. STANDARDS FOR DISCHARGES INCIDENTAL TO NORMAL OPERATION OF VESSELS.

(a) UNIFORM NATIONAL STANDARDS.—

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

“(p) UNIFORM NATIONAL STANDARDS FOR DISCHARGES INCIDENTAL TO NORMAL OPERATION OF VESSELS.—

“(1) DEFINITIONS.—In this subsection:

“(A) AQUATIC NUISANCE SPECIES.—The term ‘aquatic nuisance species’ means a nonindigenous species that threatens—

“(i) the diversity or abundance of a native species;

“(ii) the ecological stability of—

“(I) waters of the United States; or

“(II) waters of the contiguous zone;

“(iii) a commercial, agricultural, aquacultural, or recreational activity that is dependent on—

“(I) waters of the United States; or

“(II) waters of the contiguous zone.

“(B) BALLAST WATER.—

“(i) IN GENERAL.—The term ‘ballast water’ means any water, suspended matter, and other materials taken onboard a vessel—

“(I) to control or maintain trim, draught, stability, or stresses of the vessel, regardless of the means by which any such water or suspended matter is carried; or

“(II) during the cleaning, maintenance, or other operation of a ballast tank or ballast water management system of the vessel.

“(ii) EXCLUSION.—The term ‘ballast water’ does not include any substance that is added to the water described in clause (i) that is directly related to the operation of a properly functioning ballast water management system.

“(C) BALLAST WATER DISCHARGE STANDARD.—The term ‘ballast water discharge standard’ means—

“(i) the numerical ballast water discharge standard established by section 151.1511 or 151.2030 of title 33, Code of Federal Regulations (or successor regulations); or

“(ii) if a standard referred to in clause (i) is superseded by a numerical standard of performance under this subsection, that superseding standard.

“(D) BALLAST WATER EXCHANGE.—The term ‘ballast water exchange’ means the replacement of water in a ballast water tank using 1 of the following methods:

“(i) Flow-through exchange, in which ballast water is flushed out by pumping in midocean water at the bottom of the tank if practicable, and continuously overflowing the tank from the top, until 3 full volumes

of water have been changed to minimize the number of original organisms remaining in the tank.

“(ii) Empty and refill exchange, in which ballast water taken on in ports, estuarine waters, or territorial waters is pumped out until the pump loses suction, after which the ballast tank is refilled with midocean water.

“(E) BALLAST WATER MANAGEMENT SYSTEM.—The term ‘ballast water management system’ means any marine pollution control device (including all ballast water treatment equipment, ballast tanks, pipes, pumps, and all associated control and monitoring equipment) that processes ballast water—

“(i) to kill, render nonviable, or remove organisms;

or

“(ii) to avoid the uptake or discharge of organisms.

“(F) BEST AVAILABLE TECHNOLOGY ECONOMICALLY ACHIEVABLE.—The term ‘best available technology economically achievable’ means—

“(i) best available technology economically achievable (within the meaning of section 301(b)(2)(A));

“(ii) best available technology (within the meaning of section 304(b)(2)(B)); and

“(iii) best available technology, as determined in accordance with section 125.3(d)(3) of title 40, Code of Federal Regulations (or successor regulations).

“(G) BEST CONVENTIONAL POLLUTANT CONTROL TECHNOLOGY.—The term ‘best conventional pollutant control technology’ means—

“(i) best conventional pollutant control technology (within the meaning of section 301(b)(2)(E));

“(ii) best conventional pollutant control technology (within the meaning of section 304(b)(4)); and

“(iii) best conventional pollutant control technology, as determined in accordance with section 125.3(d)(2) of title 40, Code of Federal Regulations (or successor regulations).

“(H) BEST MANAGEMENT PRACTICE.—

“(i) IN GENERAL.—The term ‘best management practice’ means a schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of—

“(I) the waters of the United States; or

“(II) the waters of the contiguous zone.

“(ii) INCLUSIONS.—The term ‘best management practice’ includes any treatment requirement, operating procedure, or practice to control—

“(I) vessel runoff;

“(II) spillage or leaks;

“(III) sludge or waste disposal; or

“(IV) drainage from raw material storage.

“(I) BEST PRACTICABLE CONTROL TECHNOLOGY CURRENTLY AVAILABLE.—The term ‘best practicable control technology currently available’ means—

“(i) best practicable control technology currently available (within the meaning of section 301(b)(1)(A));

“(ii) best practicable control technology currently available (within the meaning of section 304(b)(1)); and

“(iii) best practicable control technology currently available, as determined in accordance with section 125.3(d)(1) of title 40, Code of Federal Regulations (or successor regulations).

“(J) CAPTAIN OF THE PORT ZONE.—The term ‘Captain of the Port Zone’ means a Captain of the Port Zone established by the Secretary pursuant to sections 92, 93, and 633 of title 14, United States Code.

“(K) EMPTY BALLAST TANK.—The term ‘empty ballast tank’ means a tank that—

“(i) has previously held ballast water that has been drained to the limit of the functional or operational capabilities of the tank (such as loss of suction);

“(ii) is recorded as empty on a vessel log; and

“(iii) contains unpumpable residual ballast water and sediment.

“(L) GREAT LAKES COMMISSION.—The term ‘Great Lakes Commission’ means the Great Lakes Commission established by article IV A of the Great Lakes Compact to which Congress granted consent in the Act of July 24, 1968 (Public Law 90–419; 82 Stat. 414).

“(M) GREAT LAKES STATE.—The term ‘Great Lakes State’ means any of the States of—

“(i) Illinois;

“(ii) Indiana;

“(iii) Michigan;

“(iv) Minnesota;

“(v) New York;

“(vi) Ohio;

“(vii) Pennsylvania; and

“(viii) Wisconsin.

“(N) GREAT LAKES SYSTEM.—The term ‘Great Lakes System’ has the meaning given the term in section 118(a)(3).

“(O) INTERNAL WATERS.—The term ‘internal waters’ has the meaning given the term in section 2.24 of title 33, Code of Federal Regulations (or a successor regulation).

“(P) MARINE POLLUTION CONTROL DEVICE.—The term ‘marine pollution control device’ means any equipment or management practice (or combination of equipment and a management practice), for installation or use onboard a vessel, that is—

“(i) designed to receive, retain, treat, control, or discharge a discharge incidental to the normal operation of a vessel; and

“(ii) determined by the Administrator and the Secretary to be the most effective equipment or management practice (or combination of equipment and a management practice) to reduce the environmental impacts of the discharge, consistent with the factors for consideration described in paragraphs (4) and (5).

“(Q) NONINDIGENOUS SPECIES.—The term ‘nonindigenous species’ means an organism of a species that enters an ecosystem beyond the historic range of the species.

“(R) ORGANISM.—The term ‘organism’ includes—

“(i) an animal, including fish and fish eggs and larvae;

“(ii) a plant;

“(iii) a pathogen;

“(iv) a microbe;

“(v) a virus;

“(vi) a prokaryote (including any archaean or bacterium);

“(vii) a fungus; and

“(viii) a protist.

“(S) PACIFIC REGION.—

“(i) IN GENERAL.—The term ‘Pacific Region’ means any Federal or State water—

“(I) adjacent to the State of Alaska, California, Hawaii, Oregon, or Washington; and

“(II) extending from shore.

“(ii) INCLUSION.—The term ‘Pacific Region’ includes the entire exclusive economic zone (as defined in section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701)) adjacent to each State described in clause (i)(I).

“(T) PORT OR PLACE OF DESTINATION.—The term ‘port or place of destination’ means a port or place to which a vessel is bound to anchor or moor.

“(U) RENDER NONVIABLE.—The term ‘render nonviable’, with respect to an organism in ballast water, means the action of a ballast water management system that renders the organism permanently incapable of reproduction following treatment.

“(V) SALTWATER FLUSH.—

“(i) IN GENERAL.—The term ‘saltwater flush’ means—

“(I)(aa) the addition of as much midocean water into each empty ballast tank of a vessel as is safe for the vessel and crew; and

“(bb) the mixing of the flushwater with residual ballast water and sediment through the motion of the vessel; and

“(II) the discharge of that mixed water, such that the resultant residual water remaining in the tank—

“(aa) has the highest salinity possible; and

“(bb) is at least 30 parts per thousand.

“(ii) MULTIPLE SEQUENCES.—For purposes of clause (i), a saltwater flush may require more than 1 fill-mix-empty sequence, particularly if only small quantities of water can be safely taken onboard a vessel at 1 time.

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

“(X) SMALL VESSEL GENERAL PERMIT.—The term ‘Small Vessel General Permit’ means the permit that is the subject of the notice of final permit issuance entitled ‘Final National Pollutant Discharge Elimination System (NPDES) Small Vessel General Permit for Discharges Incidental to

the Normal Operation of Vessels Less Than 79 Feet' (79 Fed. Reg. 53702 (September 10, 2014)).

“(Y) SMALL VESSEL OR FISHING VESSEL.—The term ‘small vessel or fishing vessel’ means a vessel that is—

“(i) less than 79 feet in length; or

“(ii) a fishing vessel, fish processing vessel, or fish tender vessel (as those terms are defined in section 2101 of title 46, United States Code), regardless of the length of the vessel.

“(Z) VESSEL GENERAL PERMIT.—The term ‘Vessel General Permit’ means the permit that is the subject of the notice of final permit issuance entitled ‘Final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel’ (78 Fed. Reg. 21938 (April 12, 2013)).

“(2) APPLICABILITY.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), this subsection applies to—

“(i) any discharge incidental to the normal operation of a vessel; and

“(ii) any discharge incidental to the normal operation of a vessel (such as most graywater) that is commingled with sewage, subject to the conditions that—

“(I) nothing in this subsection prevents a State from regulating sewage discharges; and

“(II) any such commingled discharge shall comply with all applicable requirements of—

“(aa) this subsection; and

“(bb) any law applicable to discharges of sewage.

“(B) EXCLUSION.—This subsection does not apply to any discharge incidental to the normal operation of a vessel—

“(i) from—

“(I) a vessel of the Armed Forces subject to subsection (n);

“(II) a recreational vessel subject to subsection (o);

“(III) a small vessel or fishing vessel, except that this subsection shall apply to any discharge of ballast water from a small vessel or fishing vessel; or

“(IV) a floating craft that is permanently moored to a pier, including a ‘floating’ casino, hotel, restaurant, or bar;

“(ii) of ballast water from a vessel—

“(I) that continuously takes on and discharges ballast water in a flow-through system, if the Administrator determines that system cannot materially contribute to the spread or introduction of an aquatic nuisance species into waters of the United States;

“(II) in the National Defense Reserve Fleet that is scheduled for disposal, if the vessel does not have an operable ballast water management system;

“(III) that discharges ballast water consisting solely of water taken onboard from a public or commercial source that, at the time the water is taken onboard, meets the applicable requirements or permit requirements of the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

“(IV) that carries all permanent ballast water in sealed tanks that are not subject to discharge;

or

“(V) that only discharges ballast water into a reception facility; or

“(iii) that results from, or contains material derived from, an activity other than the normal operation of the vessel, such as material resulting from an industrial or manufacturing process onboard the vessel.

“(3) CONTINUATION IN EFFECT OF EXISTING REQUIREMENTS.—

“(A) VESSEL GENERAL PERMIT.—Notwithstanding the expiration date of the Vessel General Permit or any other provision of law, all provisions of the Vessel General Permit shall remain in force and effect, and shall not be modified, until the applicable date described in subparagraph (C).

“(B) NONINDIGENOUS AQUATIC NUISANCE PREVENTION AND CONTROL ACT REGULATIONS.—Notwithstanding section 903(a)(2)(A) of the Vessel Incidental Discharge Act of 2018, all regulations promulgated by the Secretary pursuant to section 1101 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711) (as in effect on the day before the date of enactment of this subsection), including the regulations contained in subparts C and D of part 151 of title 33, Code of Federal Regulations, and subpart 162.060 of part 162 of title 46, Code of Federal Regulations (as in effect on the day before that date of enactment), shall remain in force and effect until the applicable date described in subparagraph (C).

“(C) REPEAL ON EXISTENCE OF FINAL, EFFECTIVE, AND ENFORCEABLE REQUIREMENTS.—Effective beginning on the date on which the requirements promulgated by the Secretary under subparagraphs (A), (B), and (C) of paragraph (5) with respect to every discharge incidental to the normal operation of a vessel that is subject to regulation under this subsection are final, effective, and enforceable, the requirements of the Vessel General Permit and the regulations described in subparagraph (B) shall have no force or effect.

“(4) NATIONAL STANDARDS OF PERFORMANCE FOR MARINE POLLUTION CONTROL DEVICES AND WATER QUALITY ORDERS.—

“(A) ESTABLISHMENT.—

“(i) IN GENERAL.—Not later than 2 years after the date of enactment of this subsection, the Administrator, in concurrence with the Secretary (subject to clause (ii)), and in consultation with interested Governors (subject to clause (iii)), shall promulgate Federal standards of performance for marine pollution control devices for each type of discharge incidental to the normal operation of a vessel that is subject to regulation under this subsection.

“(ii) CONCURRENCE WITH SECRETARY.—

“(I) REQUEST.—The Administrator shall submit to the Secretary a request for written concurrence with respect to a proposed standard of performance under clause (i).

“(II) EFFECT OF FAILURE TO CONCUR.—A failure by the Secretary to concur with the Administrator under clause (i) by the date that is 60 days after the date on which the Administrator submits a request for concurrence under subclause (I) shall not prevent the Administrator from promulgating the relevant standard of performance in accordance with the deadline under clause (i), subject to the condition that the Administrator shall include in the administrative record of the promulgation—

“(aa) documentation of the request submitted under subclause (I); and

“(bb) the response of the Administrator to any written objections received from the Secretary relating to the proposed standard of performance during the 60-day period beginning on the date of submission of the request.

“(iii) CONSULTATION WITH GOVERNORS.—

“(I) IN GENERAL.—The Administrator, in promulgating a standard of performance under clause (i), shall develop the standard of performance—

“(aa) in consultation with interested Governors; and

“(bb) in accordance with the deadlines under that clause.

“(II) PROCESS.—The Administrator shall develop a process for soliciting input from interested Governors, including information sharing relevant to such process, to allow interested Governors to inform the development of standards of performance under clause (i).

“(III) OBJECTION BY GOVERNORS.—

“(aa) SUBMISSION.—An interested Governor that objects to a proposed standard of performance under clause (i) may submit to the Administrator in writing a detailed objection to the proposed standard of performance, describing the scientific, technical, or operational factors that form the basis of the objection.

“(bb) RESPONSE.—Before finalizing a standard of performance under clause (i) that is subject to an objection under item (aa) from 1 or more interested Governors, the Administrator shall provide a written response to each interested Governor that submitted an objection under that item that details the scientific, technical, or operational factors that form the basis for that standard of performance.

“(cc) JUDICIAL REVIEW.—A response of the Administrator under item (bb) shall not be subject to judicial review.

“(iv) PROCEDURE.—The Administrator shall promulgate the standards of performance under this subparagraph in accordance with—

“(I) this paragraph; and

“(II) section 553 of title 5, United States Code.

“(B) STRINGENCY.—

“(i) IN GENERAL.—Subject to clause (iii), the standards of performance promulgated under this paragraph shall require—

“(I) with respect to conventional pollutants, toxic pollutants, and nonconventional pollutants (including aquatic nuisance species), the application of the best practicable control technology currently available;

“(II) with respect to conventional pollutants, the application of the best conventional pollutant control technology; and

“(III) with respect to toxic pollutants and nonconventional pollutants (including aquatic nuisance species), the application of the best available technology economically achievable for categories and classes of vessels, which shall result in reasonable progress toward the national goal of eliminating discharges of all pollutants.

“(ii) BEST MANAGEMENT PRACTICES.—The Administrator shall require the use of best management practices to control or abate any discharge incidental to the normal operation of a vessel if—

“(I) numeric standards of performance are infeasible under clause (i); or

“(II) the best management practices are reasonably necessary—

“(aa) to achieve the standards of performance; or

“(bb) to carry out the purpose and intent of this subsection.

“(iii) MINIMUM REQUIREMENTS.—Subject to subparagraph (D)(ii)(II), the combination of any equipment or best management practice comprising a marine pollution control device shall not be less stringent than the following provisions of the Vessel General Permit:

“(I) All requirements contained in parts 2.1 and 2.2 (relating to effluent limits and related requirements), including with respect to waters subject to Federal protection, in whole or in part, for conservation purposes.

“(II) All requirements contained in part 5 (relating to vessel class-specific requirements) that concern effluent limits and authorized discharges (within the meaning of that part), including with respect to waters subject to Federal protection, in whole or in part, for conservation purposes.

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

- “(i) among classes, types, and sizes of vessels; and
- “(ii) between new vessels and existing vessels.

“(D) REVIEW AND REVISION.—

“(i) IN GENERAL.—Not less frequently than once every 5 years, the Administrator, in consultation with the Secretary, shall—

“(I) review the standards of performance in effect under this paragraph; and

“(II) if appropriate, revise those standards of performance—

“(aa) in accordance with subparagraphs (A) through (C); and

“(bb) as necessary to establish requirements for any discharge that is subject to regulation under this subsection.

“(ii) MAINTAINING PROTECTIVENESS.—

“(I) IN GENERAL.—Except as provided in subclause (II), the Administrator shall not revise a standard of performance under this subsection to be less stringent than an applicable existing requirement.

“(II) EXCEPTIONS.—The Administrator may revise a standard of performance to be less stringent than an applicable existing requirement—

“(aa) if information becomes available that—

“(AA) was not reasonably available when the Administrator promulgated the initial standard of performance or comparable requirement of the Vessel General Permit, as applicable (including the subsequent scarcity or unavailability of materials used to control the relevant discharge); and

“(BB) would have justified the application of a less-stringent standard of performance at the time of promulgation; or

“(bb) if the Administrator determines that a material technical mistake or misinterpretation of law occurred when promulgating the existing standard of performance or comparable requirement of the Vessel General Permit, as applicable.

“(E) BEST MANAGEMENT PRACTICES FOR AQUATIC NUISANCE SPECIES EMERGENCIES AND FURTHER PROTECTION OF WATER QUALITY.—

“(i) IN GENERAL.—Notwithstanding any other provision of this subsection, the Administrator, in concurrence with the Secretary (subject to clause (ii)), and in consultation with States, may require, by order, the use of an emergency best management practice for any region or category of vessels in any case in

which the Administrator determines that such a best management practice—

“(I) is necessary to reduce the reasonably foreseeable risk of introduction or establishment of an aquatic nuisance species; or

“(II) will mitigate the adverse effects of a discharge that contributes to a violation of a water quality requirement under section 303, other than a requirement based on the presence of an aquatic nuisance species.

“(ii) CONCURRENCE WITH SECRETARY.—

“(I) REQUEST.—The Administrator shall submit to the Secretary a request for written concurrence with respect to an order under clause (i).

“(II) EFFECT OF FAILURE TO CONCUR.—A failure by the Secretary to concur with the Administrator under clause (i) by the date that is 60 days after the date on which the Administrator submits a request for concurrence under subclause (I) shall not prevent the Administrator from issuing the relevant order, subject to the condition that the Administrator shall include in the administrative record of the issuance—

“(aa) documentation of the request submitted under subclause (I); and

“(bb) the response of the Administrator to any written objections received from the Secretary relating to the proposed order during the 60-day period beginning on the date of submission of the request.

“(iii) DURATION.—An order issued by the Administrator under clause (i) shall expire not later than the date that is 4 years after the date of issuance.

“(iv) EXTENSIONS.—The Administrator may reissue an order under clause (i) for such subsequent periods of not longer than 4 years as the Administrator determines to be appropriate.

“(5) IMPLEMENTATION, COMPLIANCE, AND ENFORCEMENT REQUIREMENTS.—

“(A) ESTABLISHMENT.—

“(i) IN GENERAL.—As soon as practicable, but not later than 2 years, after the date on which the Administrator promulgates any new or revised standard of performance under paragraph (4) with respect to a discharge, the Secretary, in consultation with States, shall promulgate the regulations required under this paragraph with respect to that discharge.

“(ii) MINIMUM REQUIREMENTS.—Subject to subparagraph (C)(ii)(II), the regulations promulgated under this paragraph shall not be less stringent with respect to ensuring, monitoring, and enforcing compliance than—

“(I) the requirements contained in part 3 of the Vessel General Permit (relating to corrective actions);

“(II) the requirements contained in part 4 of the Vessel General Permit (relating to inspections, monitoring, reporting, and recordkeeping), including with respect to waters subject to Federal protection, in whole or in part, for conservation purposes;

“(III) the requirements contained in part 5 of the Vessel General Permit (relating to vessel class-specific requirements) regarding monitoring, inspection, and educational and training requirements (within the meaning of that part), including with respect to waters subject to Federal protection, in whole or in part, for conservation purposes; and

“(IV) any comparable, existing requirements promulgated under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.) (including section 1101 of that Act (16 U.S.C. 4711) (as in effect on the day before the date of enactment of this subsection)) applicable to that discharge.

“(iii) COORDINATION WITH STATES.—The Secretary, in coordination with the Governors of the States, shall develop, publish, and periodically update inspection, monitoring, data management, and enforcement procedures for the enforcement by States of Federal standards and requirements under this subsection.

“(iv) EFFECTIVE DATE.—In determining the effective date of a regulation promulgated under this paragraph, the Secretary shall take into consideration the period of time necessary—

“(I) to communicate to affected persons the applicability of the regulation; and

“(II) for affected persons reasonably to comply with the regulation.

“(v) PROCEDURE.—The Secretary shall promulgate the regulations under this subparagraph in accordance with—

“(I) this paragraph; and

“(II) section 553 of title 5, United States Code.

“(B) IMPLEMENTATION REGULATIONS FOR MARINE POLLUTION CONTROL DEVICES.—The Secretary shall promulgate such regulations governing the design, construction, testing, approval, installation, and use of marine pollution control devices as are necessary to ensure compliance with the standards of performance promulgated under paragraph (4).

“(C) COMPLIANCE ASSURANCE.—

“(i) IN GENERAL.—The Secretary shall promulgate requirements (including requirements for vessel owners and operators with respect to inspections, monitoring, reporting, sampling, and recordkeeping) to ensure, monitor, and enforce compliance with—

“(I) the standards of performance promulgated by the Administrator under paragraph (4); and

“(II) the implementation regulations promulgated by the Secretary under subparagraph (B).

“(ii) MAINTAINING PROTECTIVENESS.—

“(I) IN GENERAL.—Except as provided in subclause (II), the Secretary shall not revise a requirement under this subparagraph or subparagraph (B) to be less stringent with respect to ensuring, monitoring, or enforcing compliance than an applicable existing requirement.

“(II) EXCEPTIONS.—The Secretary may revise a requirement under this subparagraph or subparagraph (B) to be less stringent than an applicable existing requirement—

“(aa) in accordance with this subparagraph or subparagraph (B), as applicable;

“(bb) if information becomes available that—

“(AA) the Administrator determines was not reasonably available when the Administrator promulgated the existing requirement of the Vessel General Permit, or that the Secretary determines was not reasonably available when the Secretary promulgated the existing requirement under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.) or the applicable existing requirement under this subparagraph, as applicable (including subsequent scarcity or unavailability of materials used to control the relevant discharge); and

“(BB) would have justified the application of a less-stringent requirement at the time of promulgation; or

“(cc) if the Administrator determines that a material technical mistake or misinterpretation of law occurred when promulgating an existing requirement of the Vessel General Permit, or if the Secretary determines that a material mistake or misinterpretation of law occurred when promulgating an existing requirement under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.) or this subsection.

“(D) DATA AVAILABILITY.—Beginning not later than 1 year after the date of enactment of this subsection, the Secretary shall provide to the Governor of a State, on request by the Governor, access to Automated Identification System arrival data for inbound vessels to specific ports or places of destination in the State.

“(6) ADDITIONAL PROVISIONS REGARDING BALLAST WATER.—

“(A) IN GENERAL.—In addition to the other applicable requirements of this subsection, the requirements of this paragraph shall apply with respect to any discharge incidental to the normal operation of a vessel that is a discharge of ballast water.

“(B) EMPTY BALLAST TANKS.—

“(i) REQUIREMENTS.—Except as provided in clause (ii), the owner or operator of a vessel with empty

ballast tanks bound for a port or place of destination subject to the jurisdiction of the United States shall, prior to arriving at that port or place of destination, conduct a ballast water exchange or saltwater flush—

“(I) not less than 200 nautical miles from any shore for a voyage originating outside the United States or Canadian exclusive economic zone; or

“(II) not less than 50 nautical miles from any shore for a voyage originating within the United States or Canadian exclusive economic zone.

“(ii) EXCEPTIONS.—Clause (i) shall not apply—

“(I) if the unpumpable residual waters and sediments of an empty ballast tank were subject to treatment, in compliance with applicable requirements, through a type-approved ballast water management system approved by the Secretary;

“(II) except as otherwise required under this subsection, if the unpumpable residual waters and sediments of an empty ballast tank were sourced within—

“(aa) the same port or place of destination;

or

“(bb) contiguous portions of a single Captain of the Port Zone;

“(III) if complying with an applicable requirement of clause (i)—

“(aa) would compromise the safety of the vessel; or

“(bb) is otherwise prohibited by any Federal, Canadian, or international law (including regulations) pertaining to vessel safety;

“(IV) if design limitations of the vessel prevent a ballast water exchange or saltwater flush from being conducted in accordance with clause (i); or

“(V) if the vessel is operating exclusively within the internal waters of the United States or Canada.

“(C) PERIOD OF USE OF INSTALLED BALLAST WATER MANAGEMENT SYSTEMS.—

“(i) IN GENERAL.—Except as provided in clause (ii), a vessel shall be deemed to be in compliance with a standard of performance for a marine pollution control device that is a ballast water management system if the ballast water management system—

“(I) is maintained in proper working condition, as determined by the Secretary;

“(II) is maintained and used in accordance with manufacturer specifications;

“(III) continues to meet the ballast water discharge standard applicable to the vessel at the time of installation, as determined by the Secretary; and

“(IV) has in effect a valid type-approval certificate issued by the Secretary.

“(ii) LIMITATION.—Clause (i) shall cease to apply with respect to any vessel on, as applicable—

“(I) the expiration of the service life, as determined by the Secretary, of—

“(aa) the ballast water management system; or

“(bb) the vessel;

“(II) the completion of a major conversion (as defined in section 2101 of title 46, United States Code) of the vessel; or

“(III) a determination by the Secretary that there are other type-approved systems for the vessel or category of vessels, with respect to the use of which the environmental, health, and economic benefits would exceed the costs.

“(D) REVIEW OF BALLAST WATER MANAGEMENT SYSTEM TYPE-APPROVAL TESTING METHODS.—

“(i) DEFINITION OF LIVE; LIVING.—Notwithstanding any other provision of law (including regulations), for purposes of section 151.1511 of title 33, and part 162 of title 46, Code of Federal Regulations (or successor regulations), the terms ‘live’ and ‘living’ shall not—

“(I) include an organism that has been rendered nonviable; or

“(II) preclude the consideration of any method of measuring the concentration of organisms in ballast water that are capable of reproduction.

“(ii) DRAFT POLICY.—Not later than 180 days after the date of enactment of this subsection, the Secretary, in coordination with the Administrator, shall publish a draft policy letter, based on the best available science, describing type-approval testing methods and protocols for ballast water management systems, if any, that—

“(I) render nonviable organisms in ballast water; and

“(II) may be used in addition to the methods established under subpart 162.060 of title 46, Code of Federal Regulations (or successor regulations)—

“(aa) to measure the concentration of organisms in ballast water that are capable of reproduction;

“(bb) to certify the performance of each ballast water management system under this subsection; and

“(cc) to certify laboratories to evaluate applicable treatment technologies.

“(iii) PUBLIC COMMENT.—The Secretary shall provide a period of not more than 60 days for public comment regarding the draft policy letter published under clause (ii).

“(iv) FINAL POLICY.—

“(I) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Secretary, in coordination with the Administrator, shall publish a final policy letter describing type-approval testing methods, if any, for ballast water management systems that render nonviable organisms in ballast water.

“(II) METHOD OF EVALUATION.—The ballast water management systems under subclause (I) shall be evaluated by measuring the concentration of organisms in ballast water that are capable of reproduction based on the best available science that may be used in addition to the methods established under subpart 162.060 of title 46, Code of Federal Regulations (or successor regulations).

“(III) REVISIONS.—The Secretary shall revise the final policy letter under subclause (I) in any case in which the Secretary, in coordination with the Administrator, determines that additional testing methods are capable of measuring the concentration of organisms in ballast water that have not been rendered nonviable.

“(v) FACTORS FOR CONSIDERATION.—In developing a policy letter under this subparagraph, the Secretary, in coordination with the Administrator—

“(I) shall take into consideration a testing method that uses organism grow-out and most probable number statistical analysis to determine the concentration of organisms in ballast water that are capable of reproduction; and

“(II) shall not take into consideration a testing method that relies on a staining method that measures the concentration of—

“(aa) organisms greater than or equal to 10 micrometers; and

“(bb) organisms less than or equal to 50 micrometers.

“(E) INTERGOVERNMENTAL RESPONSE FRAMEWORK.—

“(i) IN GENERAL.—The Secretary, in consultation with the Administrator and acting in coordination with, or through, the Aquatic Nuisance Species Task Force established by section 1201(a) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4721(a)), shall establish a framework for Federal and intergovernmental response to aquatic nuisance species risks from discharges from vessels subject to ballast water and incidental discharge compliance requirements under this subsection, including the introduction, spread, and establishment of aquatic nuisance species populations.

“(ii) BALLAST DISCHARGE RISK RESPONSE.—The Administrator, in coordination with the Secretary and taking into consideration information from the National Ballast Information Clearinghouse developed under section 1102(f) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4712(f)), shall establish a risk assessment and response framework using ballast water discharge data and aquatic nuisance species monitoring data for the purposes of—

“(I) identifying and tracking populations of aquatic invasive species;

“(II) evaluating the risk of any aquatic nuisance species population tracked under subclause

(I) establishing and spreading in waters of the United States or waters of the contiguous zone; and

“(III) establishing emergency best management practices that may be deployed rapidly, in a local or regional manner, to respond to emerging aquatic nuisance species threats.

“(7) PETITIONS BY GOVERNORS FOR REVIEW.—

“(A) IN GENERAL.—The Governor of a State (or a designee) may submit to the Administrator or the Secretary a petition—

“(i) to issue an order under paragraph (4)(E); or

“(ii) to review any standard of performance, regulation, or policy promulgated under paragraph (4), (5), or (6), respectively, if there exists new information that could reasonably result in a change to—

“(I) the standard of performance, regulation, or policy; or

“(II) a determination on which the standard of performance, regulation, or policy was based.

“(B) INCLUSION.—A petition under subparagraph (A) shall include a description of any applicable scientific or technical information that forms the basis of the petition.

“(C) DETERMINATION.—

“(i) TIMING.—The Administrator or the Secretary, as applicable, shall grant or deny—

“(I) a petition under subparagraph (A)(i) by not later than the date that is 180 days after the date on which the petition is submitted; and

“(II) a petition under subparagraph (A)(ii) by not later than the date that is 1 year after the date on which the petition is submitted.

“(ii) EFFECT OF GRANT.—If the Administrator or the Secretary determines under clause (i) to grant a petition—

“(I) in the case of a petition under subparagraph (A)(i), the Administrator shall immediately issue the relevant order under paragraph (4)(E); or

“(II) in the case of a petition under subparagraph (A)(ii), the Administrator or Secretary shall publish in the Federal Register, by not later than 30 days after the date of that determination, a notice of proposed rulemaking to revise the relevant standard, requirement, regulation, or policy under paragraph (4), (5), or (6), as applicable.

“(iii) NOTICE OF DENIAL.—If the Administrator or the Secretary determines under clause (i) to deny a petition, the Administrator or Secretary shall publish in the Federal Register, by not later than 30 days after the date of that determination, a detailed explanation of the scientific, technical, or operational factors that form the basis of the determination.

“(iv) REVIEW.—A determination by the Administrator or the Secretary under clause (i) to deny a petition shall be—

“(I) considered to be a final agency action;

and

“(II) subject to judicial review in accordance with section 509, subject to clause (v).

“(v) EXCEPTIONS.—

“(I) VENUE.—Notwithstanding section 509(b), a petition for review of a determination by the Administrator or the Secretary under clause (i) to deny a petition submitted by the Governor of a State under subparagraph (A) may be filed in any United States district court of competent jurisdiction.

“(II) DEADLINE FOR FILING.—Notwithstanding section 509(b), a petition for review of a determination by the Administrator or the Secretary under clause (i) shall be filed by not later than 180 days after the date on which the justification for the determination is published in the Federal Register under clause (iii).

“(8) PROHIBITION.—

“(A) IN GENERAL.—It shall be unlawful for any person to violate—

“(i) a provision of the Vessel General Permit in force and effect under paragraph (3)(A);

“(ii) a regulation promulgated pursuant to section 1101 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711) (as in effect on the day before the date of enactment of this subsection) in force and effect under paragraph (3)(B); or

“(iii) an applicable requirement or regulation under this subsection.

“(B) COMPLIANCE WITH REGULATIONS.—Effective beginning on the effective date of a regulation promulgated under paragraph (4), (5), (6), or (10), as applicable, it shall be unlawful for the owner or operator of a vessel subject to the regulation—

“(i) to discharge any discharge incidental to the normal operation of the vessel into waters of the United States or waters of the contiguous zone, except in compliance with the regulation; or

“(ii) to operate in waters of the United States or waters of the contiguous zone, if the vessel is not equipped with a required marine pollution control device that complies with the requirements established under this subsection, unless—

“(I) the owner or operator of the vessel denotes in an entry in the official logbook of the vessel that the equipment was not operational; and

“(II) either—

“(aa) the applicable discharge was avoided; or

“(bb) an alternate compliance option approved by the Secretary as meeting the applicable standard was employed.

“(C) AFFIRMATIVE DEFENSE.—No person shall be found to be in violation of this paragraph if—

“(i) the violation was in the interest of ensuring the safety of life at sea, as determined by the Secretary; and

“(ii) the applicable emergency circumstance was not the result of negligence or malfeasance on the part of—

“(I) the owner or operator of the vessel;

“(II) the master of the vessel; or

“(III) the person in charge of the vessel.

“(D) TREATMENT.—Each day of continuing violation of an applicable requirement of this subsection shall constitute a separate offense.

“(E) IN REM LIABILITY.—A vessel operated in violation of this subsection is liable in rem for any civil penalty assessed for the violation.

“(F) REVOCATION OF CLEARANCE.—The Secretary shall withhold or revoke the clearance of a vessel required under section 60105 of title 46, United States Code, if the owner or operator of the vessel is in violation of this subsection.

“(9) EFFECT ON OTHER LAWS.—

“(A) STATE AUTHORITY.—

“(i) IN GENERAL.—Except as provided in clauses (ii) through (v) and paragraph (10), effective beginning on the date on which the requirements promulgated by the Secretary under subparagraphs (A), (B), and (C) of paragraph (5) with respect to every discharge incidental to the normal operation of a vessel that is subject to regulation under this subsection are final, effective, and enforceable, no State, political subdivision of a State, or interstate agency may adopt or enforce any law, regulation, or other requirement of the State, political subdivision, or interstate agency with respect to any such discharge.

“(ii) IDENTICAL OR LESSER STATE LAWS.—Clause (i) shall not apply to any law, regulation, or other requirement of a State, political subdivision of a State, or interstate agency in effect on or after the date of enactment of this subsection—

“(I) that is identical to a Federal requirement under this subsection applicable to the relevant discharge; or

“(II) compliance with which would be achieved concurrently in achieving compliance with a Federal requirement under this subsection applicable to the relevant discharge.

“(iii) STATE ENFORCEMENT OF FEDERAL REQUIREMENTS.—A State may enforce any standard of performance or other Federal requirement of this subsection in accordance with subsection (k) or other applicable Federal authority.

“(iv) EXCEPTION FOR CERTAIN FEES.—

“(I) IN GENERAL.—Subject to subclauses (II) and (III), a State that assesses any fee pursuant to any State or Federal law relating to the regulation of a discharge incidental to the normal operation of a vessel before the date of enactment of this subsection may assess or retain a fee to

cover the costs of administration, inspection, monitoring, and enforcement activities by the State to achieve compliance with the applicable requirements of this subsection.

“(II) MAXIMUM AMOUNT.—

“(aa) IN GENERAL.—Except as provided in item (bb), a State may assess a fee for activities under this clause equal to not more than \$1,000 against the owner or operator of a vessel that—

“(AA) has operated outside of that State; and

“(BB) arrives at a port or place of destination in the State (excluding movement entirely within a single port or place of destination).

“(bb) VESSELS ENGAGED IN COASTWISE TRADE.—A State may assess against the owner or operator of a vessel registered in accordance with applicable Federal law and lawfully engaged in the coastwise trade not more than \$5,000 in fees under this clause per vessel during a calendar year.

“(III) ADJUSTMENT FOR INFLATION.—

“(aa) IN GENERAL.—A State may adjust the amount of a fee authorized under this clause not more frequently than once every 5 years to reflect the percentage by which the Consumer Price Index for All Urban Consumers published by the Department of Labor for the month of October immediately preceding the date of adjustment exceeds the Consumer Price Index for All Urban Consumers published by the Department of Labor for the month of October that immediately precedes the date that is 5 years before the date of adjustment.

“(bb) EFFECT OF SUBCLAUSE.—Nothing in this subclause prevents a State from adjusting a fee in effect before the date of enactment of this subsection to the applicable maximum amount under subclause (II).

“(cc) APPLICABILITY.—This subclause applies only to increases in fees to amounts greater than the applicable maximum amount under subclause (II).

“(v) ALASKA GRAYWATER.—Clause (i) shall not apply with respect to any discharge of graywater (as defined in section 1414 of the Consolidated Appropriations Act, 2001 (Public Law 106–554; 114 Stat. 2763A–323)) from a passenger vessel (as defined in section 2101 of title 46, United States Code) in the State of Alaska (including all waters in the Alexander Archipelago) carrying 50 or more passengers.

“(vi) PRESERVATION OF AUTHORITY.—Nothing in this subsection preempts any State law, public initiative, referendum, regulation, requirement, or other

State action, except as expressly provided in this subsection.

“(B) ESTABLISHED REGIMES.—Except as expressly provided in this subsection, nothing in this subsection affects the applicability to a vessel of any other provision of Federal law, including—

“(i) this section;

“(ii) section 311;

“(iii) the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.); and

“(iv) title X of the Coast Guard Authorization Act of 2010 (33 U.S.C. 3801 et seq.).

“(C) PERMITTING.—Effective beginning on the date of enactment of this subsection—

“(i) the Small Vessel General Permit is repealed; and

“(ii) the Administrator, or a State in the case of a permit program approved under section 402, shall not require, or in any way modify, a permit under that section for—

“(I) any discharge that is subject to regulation under this subsection;

“(II) any discharge incidental to the normal operation of a vessel from a small vessel or fishing vessel, regardless of whether that discharge is subject to regulation under this subsection; or

“(III) any discharge described in paragraph (2)(B)(ii).

“(D) NO EFFECT ON CIVIL OR CRIMINAL ACTIONS.—Nothing in this subsection, or any standard, regulation, or requirement established under this subsection, modifies or otherwise affects, preempts, or displaces—

“(i) any cause of action; or

“(ii) any provision of Federal or State law establishing a remedy for civil relief or criminal penalty.

“(E) NO EFFECT ON CERTAIN SECRETARIAL AUTHORITY.—Nothing in this subsection affects the authority of the Secretary of Commerce or the Secretary of the Interior to administer any land or waters under the administrative control of the Secretary of Commerce or the Secretary of the Interior, respectively.

“(F) NO LIMITATION ON STATE INSPECTION AUTHORITY.—Nothing in this subsection limits the authority of a State to inspect a vessel pursuant to paragraph (5)(A)(iii) in order to monitor compliance with an applicable requirement of this section.

“(10) ADDITIONAL REGIONAL REQUIREMENTS.—

“(A) MINIMUM GREAT LAKES SYSTEM REQUIREMENTS.—

“(i) IN GENERAL.—Except as provided in clause (ii), the owner or operator of a vessel entering the St. Lawrence Seaway through the mouth of the St. Lawrence River shall conduct a complete ballast water exchange or saltwater flush—

“(I) not less than 200 nautical miles from any shore for a voyage originating outside the United States or Canadian exclusive economic zone; or

“(II) not less than 50 nautical miles from any shore for a voyage originating within the United States or Canadian exclusive economic zone.

“(ii) EXCEPTIONS.—Clause (i) shall not apply to a vessel if—

“(I) complying with an applicable requirement of clause (i)—

“(aa) would compromise the safety of the vessel; or

“(bb) is otherwise prohibited by any Federal, Canadian, or international law (including regulations) pertaining to vessel safety;

“(II) design limitations of the vessel prevent a ballast water exchange from being conducted in accordance with an applicable requirement of clause (i);

“(III) the vessel—

“(aa) is certified by the Secretary as having no residual ballast water or sediments onboard; or

“(bb) retains all ballast water while in waters subject to the requirement; or

“(IV) empty ballast tanks on the vessel are sealed and certified by the Secretary in a manner that ensures that—

“(aa) no discharge or uptake occurs; and

“(bb) any subsequent discharge of ballast water is subject to the requirement.

“(B) ENHANCED GREAT LAKES SYSTEM REQUIREMENTS.—

“(i) PETITIONS BY GOVERNORS FOR PROPOSED ENHANCED STANDARDS AND REQUIREMENTS.—

“(I) IN GENERAL.—The Governor of a Great Lakes State (or a State employee designee) may submit a petition in accordance with subclause (II) to propose that other Governors of Great Lakes States endorse an enhanced standard of performance or other requirement with respect to any discharge that—

“(aa) is subject to regulation under this subsection; and

“(bb) occurs within the Great Lakes System.

“(II) SUBMISSION.—A Governor shall submit a petition under subclause (I), in writing, to—

“(aa) the Executive Director of the Great Lakes Commission, in such manner as may be prescribed by the Great Lakes Commission;

“(bb) the Governor of each other Great Lakes State; and

“(cc) the Director of the Great Lakes National Program Office established by section 118(b).

“(III) PRELIMINARY ASSESSMENT BY GREAT LAKES COMMISSION.—

“(aa) IN GENERAL.—After the date of receipt of a petition under subclause (II)(aa), the Great Lakes Commission (acting through

the Great Lakes Panel on Aquatic Nuisance Species, to the maximum extent practicable) may develop a preliminary assessment regarding each enhanced standard of performance or other requirement described in the petition.

“(bb) PROVISIONS.—The preliminary assessment developed by the Great Lakes Commission under item (aa)—

“(AA) may be developed in consultation with relevant experts and stakeholders;

“(BB) may be narrative in nature;

“(CC) may include the preliminary views, if any, of the Great Lakes Commission on the propriety of the proposed enhanced standard of performance or other requirement;

“(DD) shall be submitted, in writing, to the Governor of each Great Lakes State and the Director of the Great Lakes National Program Office and published on the internet website of the Great Lakes National Program Office; and

“(EE) except as provided in clause (iii), shall not be taken into consideration, or provide a basis for review, by the Administrator or the Secretary for purposes of that clause.

“(ii) PROPOSED ENHANCED STANDARDS AND REQUIREMENTS.—

“(I) PUBLICATION IN FEDERAL REGISTER.—

“(aa) REQUEST BY GOVERNOR.—Not earlier than the date that is 90 days after the date on which the Executive Director of the Great Lakes Commission receives from a Governor of a Great Lakes State a petition under clause (i)(II)(aa), the Governor may request the Director of the Great Lakes National Program Office to publish, for a period requested by the Governor of not less than 30 days, and the Director shall so publish, in the Federal Register for public comment—

“(AA) a copy of the petition; and

“(BB) if applicable as of the date of publication, any preliminary assessment of the Great Lakes Commission developed under clause (i)(III) relating to the petition.

“(bb) REVIEW OF PUBLIC COMMENTS.—On receipt of a written request of a Governor of a Great Lakes State, the Director of the Great Lakes National Program Office shall make available all public comments received in response to the notice under item (aa).

“(cc) NO RESPONSE REQUIRED.—Notwithstanding any other provision of law, a Governor of a Great Lakes State or the Director of the Great Lakes National Program Office shall not be required to provide a response to any comment received in response to the publication of a petition or preliminary assessment under item (aa).

“(dd) PURPOSE.—Any public comments received in response to the publication of a petition or preliminary assessment under item (aa) shall be used solely for the purpose of providing information and feedback to the Governor of each Great Lakes State regarding the decision to endorse the proposed standard or requirement.

“(ee) EFFECT OF PETITION.—A proposed standard or requirement developed under subclause (II) may differ from the proposed standard or requirement described in a petition published under item (aa).

“(II) COORDINATION TO DEVELOP PROPOSED STANDARD OR REQUIREMENT.—After the expiration of the public comment period for the petition under subclause (I), any interested Governor of a Great Lakes State may work in coordination with the Great Lakes Commission to develop a proposed standard of performance or other requirement applicable to a discharge referred to in the petition.

“(III) REQUIREMENTS.—A proposed standard of performance or other requirement under subclause (II)—

“(aa) shall be developed—

“(AA) in consultation with representatives from the Federal and provincial governments of Canada;

“(BB) after notice and opportunity for public comment on the petition published under subclause (I); and

“(CC) taking into consideration the preliminary assessment, if any, of the Great Lakes Commission under clause (i)(II);

“(bb) shall be specifically endorsed in writing by—

“(AA) the Governor of each Great Lakes State, if the proposed standard or requirement would impose any additional equipment requirement on a vessel; or

“(BB) not fewer than 5 Governors of Great Lakes States, if the proposed standard or requirement would not impose any additional equipment requirement on a vessel; and

“(cc) in the case of a proposed requirement to prohibit 1 or more types of discharge regulated under this subsection, whether treated

or not treated, into waters within the Great Lakes System, shall not apply outside the waters of the Great Lakes States of the Governors endorsing the proposed requirement under item (bb).

“(iii) PROMULGATION BY ADMINISTRATOR AND SECRETARY.—

“(I) SUBMISSION.—

“(aa) IN GENERAL.—The Governors endorsing a proposed standard or requirement under clause (ii)(III)(bb) may jointly submit to the Administrator and the Secretary for approval each proposed standard of performance or other requirement developed and endorsed pursuant to clause (ii).

“(bb) INCLUSION.—Each submission under item (aa) shall include an explanation regarding why the applicable standard of performance or other requirement is—

“(AA) at least as stringent as a comparable standard of performance or other requirement under this subsection;

“(BB) in accordance with maritime safety; and

“(CC) in accordance with applicable maritime and navigation laws and regulations.

“(cc) WITHDRAWAL.—

“(AA) IN GENERAL.—The Governor of any Great Lakes State that endorses a proposed standard or requirement under clause (ii)(III)(bb) may withdraw the endorsement by not later than the date that is 90 days after the date on which the Administrator and the Secretary receive the proposed standard or requirement.

“(BB) EFFECT ON FEDERAL REVIEW.—If, after the withdrawal of an endorsement under subitem (AA), the proposed standard or requirement does not have the applicable number of endorsements under clause (ii)(III)(bb), the Administrator and the Secretary shall terminate the review under this clause.

“(dd) DISSENTING OPINIONS.—The Governor of a Great Lakes State that does not endorse a proposed standard or requirement under clause (ii)(III)(bb) may submit to the Administrator and the Secretary any dissenting opinions of the Governor.

“(II) JOINT NOTICE.—On receipt of a proposed standard of performance or other requirement under subclause (I), the Administrator and the Secretary shall publish in the Federal Register a joint notice that, at minimum—

“(aa) states that the proposed standard or requirement is publicly available; and

“(bb) provides an opportunity for public comment regarding the proposed standard or requirement during the 90-day period beginning on the date of receipt by the Administrator and the Secretary of the proposed standard or requirement.

“(III) REVIEW.—

“(aa) IN GENERAL.—As soon as practicable after the date of publication of a joint notice under subclause (II)—

“(AA) the Administrator shall commence a review of each proposed standard of performance or other requirement covered by the notice to determine whether that standard or requirement is at least as stringent as comparable standards and requirements under this subsection; and

“(BB) the Secretary shall commence a review of each proposed standard of performance or other requirement covered by the notice to determine whether that standard or requirement is in accordance with maritime safety and applicable maritime and navigation laws and regulations.

“(bb) CONSULTATION.—In carrying out item (aa), the Administrator and the Secretary—

“(AA) shall consult with the Governor of each Great Lakes State and representatives from the Federal and provincial governments of Canada;

“(BB) shall take into consideration any relevant data or public comments received under subclause (II)(bb); and

“(CC) shall not take into consideration any preliminary assessment by the Great Lakes Commission under clause (i)(III), or any dissenting opinion under subclause (I)(dd), except to the extent that such an assessment or opinion is relevant to the criteria for the applicable determination under item (aa).

“(IV) APPROVAL OR DISAPPROVAL.—Not later than 180 days after the date of receipt of each proposed standard of performance or other requirement under subclause (I), the Administrator and the Secretary shall—

“(aa) determine, as applicable, whether each proposed standard or other requirement satisfies the criteria under subclause (III)(aa);

“(bb) approve each proposed standard or other requirement, unless the Administrator or the Secretary, as applicable, determines under item (aa) that the proposed standard

or other requirement does not satisfy the criteria under subclause (III)(aa); and

“(cc) submit to the Governor of each Great Lakes State, and publish in the Federal Register, a notice of the determination under item (aa).

“(V) ACTION ON DISAPPROVAL.—

“(aa) RATIONALE AND RECOMMENDATIONS.—If the Administrator and the Secretary disapprove a proposed standard of performance or other requirement under subclause (IV)(bb), the notices under subclause (IV)(cc) shall include—

“(AA) a description of the reasons why the standard or requirement is, as applicable, less stringent than a comparable standard or requirement under this subsection, inconsistent with maritime safety, or inconsistent with applicable maritime and navigation laws and regulations; and

“(BB) any recommendations regarding changes the Governors of the Great Lakes States could make to conform the disapproved portion of the standard or requirement to the requirements of this subparagraph.

“(bb) REVIEW.—Disapproval of a proposed standard or requirement by the Administrator and the Secretary under this subparagraph shall be considered to be a final agency action subject to judicial review under section 509.

“(VI) ACTION ON APPROVAL.—On approval by the Administrator and the Secretary of a proposed standard of performance or other requirement under subclause (IV)(bb)—

“(aa) the Administrator shall establish, by regulation, the proposed standard or requirement within the Great Lakes System in lieu of any comparable standard or other requirement promulgated under paragraph (4); and

“(bb) the Secretary shall establish, by regulation, any requirements necessary to implement, ensure compliance with, and enforce the standard or requirement under item (aa), or to apply the proposed requirement, within the Great Lakes System in lieu of any comparable requirement promulgated under paragraph (5).

“(VII) NO JUDICIAL REVIEW FOR CERTAIN ACTIONS.—An action or inaction of a Governor of a Great Lakes State or the Great Lakes Commission under this subparagraph shall not be subject to judicial review.

“(VIII) GREAT LAKES COMPACT.—Nothing in this subsection limits, alters, or amends the Great Lakes Compact to which Congress granted consent

in the Act of July 24, 1968 (Public Law 90-419; 82 Stat. 414).

“(IX) AUTHORIZATION OF APPROPRIATIONS.—

There is authorized to be appropriated to the Great Lakes Commission \$5,000,000, to be available until expended.

“(C) MINIMUM PACIFIC REGION REQUIREMENTS.—

“(i) DEFINITION OF COMMERCIAL VESSEL.—In this subparagraph, the term ‘commercial vessel’ means a vessel operating between—

“(I) 2 ports or places of destination within the Pacific Region; or

“(II) a port or place of destination within the Pacific Region and a port or place of destination on the Pacific Coast of Canada or Mexico north of parallel 20 degrees north latitude, inclusive of the Gulf of California.

“(ii) BALLAST WATER EXCHANGE.—

“(I) IN GENERAL.—Except as provided in subclause (II) and clause (iv), the owner or operator of a commercial vessel shall conduct a complete ballast water exchange in waters more than 50 nautical miles from shore.

“(II) EXEMPTIONS.—Subclause (I) shall not apply to a commercial vessel—

“(aa) using, in compliance with applicable requirements, a type-approved ballast water management system approved by the Secretary; or

“(bb) voyaging—

“(AA) between or to a port or place of destination in the State of Washington, if the ballast water to be discharged from the commercial vessel originated solely from waters located between the parallel 46 degrees north latitude, including the internal waters of the Columbia River, and the internal waters of Canada south of parallel 50 degrees north latitude, including the waters of the Strait of Georgia and the Strait of Juan de Fuca;

“(BB) between ports or places of destination in the State of Oregon, if the ballast water to be discharged from the commercial vessel originated solely from waters located between the parallel 40 degrees north latitude and the parallel 50 degrees north latitude;

“(CC) between ports or places of destination in the State of California within the San Francisco Bay area east of the Golden Gate Bridge, including the Port of Stockton and the Port of Sacramento, if the ballast water to be discharged from the commercial vessel originated solely from ports or places within that area;

“(DD) between the Port of Los Angeles, the Port of Long Beach, and the El Segundo offshore marine oil terminal, if the ballast water to be discharged from the commercial vessel originated solely from the Port of Los Angeles, the Port of Long Beach, or the El Segundo offshore marine oil terminal;

“(EE) between a port or place of destination in the State of Alaska within a single Captain of the Port Zone;

“(FF) between ports or places of destination in different counties of the State of Hawaii, if the vessel may conduct a complete ballast water exchange in waters that are more than 10 nautical miles from shore and at least 200 meters deep; or

“(GG) between ports or places of destination within the same county of the State of Hawaii, if the vessel does not transit outside State marine waters during the voyage.

“(iii) LOW-SALINITY BALLAST WATER.—

“(I) IN GENERAL.—Except as provided in subclause (II) and clause (iv), the owner or operator of a commercial vessel that transports ballast water sourced from waters with a measured salinity of less than 18 parts per thousand and voyages to a Pacific Region port or place of destination with a measured salinity of less than 18 parts per thousand shall conduct a complete ballast water exchange—

“(aa) not less than 50 nautical miles from shore, if the ballast water was sourced from a Pacific Region port or place of destination;

or

“(bb) more than 200 nautical miles from shore, if the ballast water was not sourced from a Pacific Region port or place of destination.

“(II) EXCEPTION.—Subclause (I) shall not apply to a commercial vessel voyaging to a port or place of destination in the Pacific Region that is using, in compliance with applicable requirements, a type-approved ballast water management system approved by the Secretary to achieve standards of performance of—

“(aa) less than 1 organism per 10 cubic meters, if that organism—

“(AA) is living, or has not been rendered nonviable; and

“(BB) is 50 or more micrometers in minimum dimension;

“(bb) less than 1 organism per 10 milliliters, if that organism—

“(AA) is living, or has not been rendered nonviable; and

“(BB) is more than 10, but less than 50, micrometers in minimum dimension;

“(cc) concentrations of indicator microbes that are less than—

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

“(BB) 126 colony-forming units of *Escherichia coli* per 100 milliliters; and

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

“(dd) concentrations of such additional indicator microbes and viruses as may be specified in the standards of performance established by the Administrator under paragraph (4).

“(iv) GENERAL EXCEPTIONS.—The requirements of clauses (ii) and (iii) shall not apply to a commercial vessel if—

“(I) complying with the requirement would compromise the safety of the commercial vessel;

“(II) design limitations of the commercial vessel prevent a ballast water exchange from being conducted in accordance with clause (ii) or (iii), as applicable;

“(III) the commercial vessel—

“(aa) is certified by the Secretary as having no residual ballast water or sediments onboard; or

“(bb) retains all ballast water while in waters subject to those requirements; or

“(IV) empty ballast tanks on the commercial vessel are sealed and certified by the Secretary in a manner that ensures that—

“(aa) no discharge or uptake occurs; and

“(bb) any subsequent discharge of ballast water is subject to those requirements.

“(D) ESTABLISHMENT OF STATE NO-DISCHARGE ZONES.—

“(i) STATE PROHIBITION.—Subject to clause (ii), after the effective date of regulations promulgated by the Secretary under paragraph (5), if any State determines that the protection and enhancement of the quality of some or all of the waters within the State require greater environmental protection, the State may prohibit 1 or more types of discharge regulated under this subsection, whether treated or not treated, into such waters.

“(ii) APPLICABILITY.—A prohibition by a State under clause (i) shall not apply until the date on which the Administrator makes the applicable determinations described in clause (iii).

“(iii) PROHIBITION BY ADMINISTRATOR.—

“(I) DETERMINATION.—On application of a State, the Administrator, in concurrence with the

Secretary (subject to subclause (II)), shall, by regulation, prohibit the discharge from a vessel of 1 or more discharges subject to regulation under this subsection, whether treated or not treated, into the waters covered by the application if the Administrator determines that—

“(aa) prohibition of the discharge would protect and enhance the quality of the specified waters within the State;

“(bb) adequate facilities for the safe and sanitary removal and treatment of the discharge are reasonably available for the water and all vessels to which the prohibition would apply;

“(cc) the discharge can be safely collected and stored until a vessel reaches a discharge facility or other location; and

“(dd) in the case of an application for the prohibition of discharges of ballast water in a port (or in any other location where cargo, passengers, or fuel are loaded and unloaded)—

“(AA) the adequate facilities described in item (bb) are reasonably available for commercial vessels, after considering, at a minimum, water depth, dock size, pumpout facility capacity and flow rate, availability of year-round operations, proximity to navigation routes, and the ratio of pumpout facilities to the population and discharge capacity of commercial vessels operating in those waters; and

“(BB) the prohibition will not unreasonably interfere with the safe loading and unloading of cargo, passengers, or fuel.

“(II) CONCURRENCE WITH SECRETARY.—

“(aa) REQUEST.—The Administrator shall submit to the Secretary a request for written concurrence with respect to a prohibition under subclause (I).

“(bb) EFFECT OF FAILURE TO CONCUR.—A failure by the Secretary to concur with the Administrator under subclause (I) by the date that is 60 days after the date on which the Administrator submits a request for concurrence under item (aa) shall not prevent the Administrator from prohibiting the relevant discharge in accordance with subclause (III), subject to the condition that the Administrator shall include in the administrative record of the promulgation—

“(AA) documentation of the request submitted under item (aa); and

“(BB) the response of the Administrator to any written objections received from the Secretary relating to the proposed standard of performance during the

60-day period beginning on the date of submission of the request.

“(III) TIMING.—The Administrator shall approve or disapprove an application submitted under subclause (I) by not later than 90 days after the date on which the application is submitted to the Administrator.

“(E) MAINTENANCE IN EFFECT OF MORE-STRINGENT STANDARDS.—In any case in which a requirement established under this paragraph is more stringent or environmentally protective than a comparable requirement established under paragraph (4), (5), or (6), the more-stringent or more-protective requirement shall control.”.

(2) REPEALS.—

(A) IN GENERAL.—Effective beginning on the date of enactment of this Act, the following provisions of law are repealed:

(i) Section 1101 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711).

(ii) Public Law 110–299 (33 U.S.C. 1342 note).

(B) CONFORMING AMENDMENTS.—Section 1102 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4712) is amended—

(i) in subsection (c)(1), by inserting “(as in effect on the day before the date of enactment of the Vessel Incidental Discharge Act of 2018)” after “section 1101(b)”; and

(ii) in subsection (f)(1)(B), by inserting “(as in effect on the day before the date of enactment of the Vessel Incidental Discharge Act of 2018)” after “section 1101(c)”.

(b) REGULATIONS FOR USE OF MARINE POLLUTION CONTROL DEVICES.—Section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1322) is amended—

(1) by striking the section designation and heading and all that follows through “For the purpose of” in subsection (a) and inserting the following:

“SEC. 312. MARINE SANITATION DEVICES; DISCHARGES INCIDENTAL TO THE NORMAL OPERATION OF VESSELS.

“(a) DEFINITIONS.—In”;

(2) in subsection (a)—

(A) in paragraph (7), by striking “devices or of vessels” and inserting “devices, marine pollution control device equipment, or vessels”; and

(B) in paragraph (13), in the matter preceding subparagraph (A), by inserting “, except as provided in subsection (p),” after “means”;

(3) in subsection (g)—

(A) by inserting “or marine pollution control device equipment” after “marine sanitation device” each place it appears;

(B) in paragraph (1)—

(i) by inserting “or equipment” after “such device”;

and

- (ii) by inserting “or equipment” after “test device”;
- and
- (C) in paragraph (2)—
 - (i) by inserting “or equipment” after “the device” each place it appears; and
 - (ii) in the fourth sentence, by inserting “or equipment” after “device” each place it appears; and
- (4) in subsection (h)—
 - (A) in paragraph (1), by inserting “and marine pollution control device equipment” after “marine sanitation device”;
 - (B) in paragraph (2), by inserting “or any certified marine pollution control device equipment or element of design of such equipment” after “such device”;
 - (C) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and indenting the subparagraphs appropriately;
 - (D) by striking “(h) After” and inserting the following:
 - “(h) SALE AND RESALE OF PROPERLY EQUIPPED VESSELS; OPERABILITY OF CERTIFIED MARINE SANITATION DEVICES.—
 - “(1) IN GENERAL.—Subject to paragraph (2), after”;
 - “(2) EFFECT OF SUBSECTION.—Nothing in this subsection requires certification of a marine pollution control device for use on any vessel of the Armed Forces.”.
- (c) ENFORCEMENT AUTHORITY.—
 - (1) IN GENERAL.—Section 312(k) of the Federal Water Pollution Control Act (33 U.S.C. 1322(k)) is amended—
 - (A) by striking the second sentence and inserting the following:
 - “(3) STATES.—
 - “(A) IN GENERAL.—This section may be enforced by a State or political subdivision of a State (including the attorney general of a State), including by filing a civil action in an appropriate Federal district court to enforce any violation of subsection (p).
 - “(B) JURISDICTION.—The appropriate Federal district court shall have jurisdiction with respect to a civil action filed pursuant to subparagraph (A), without regard to the amount in controversy or the citizenship of the parties—
 - “(i) to enforce the requirements of this section; and
 - “(ii) to apply appropriate civil penalties under this section or section 309(d), as appropriate.”;
 - (B) by striking “(k) The provisions of this” and inserting the following:
 - “(k) ENFORCEMENT AUTHORITY.—
 - “(1) ADMINISTRATOR.—This section shall be enforced by the Administrator, to the extent provided in section 309.
 - “(2) SECRETARY.—
 - “(A) IN GENERAL.—This”; and
 - (C) in paragraph (2) (as so designated)—
 - (i) in subparagraph (A), by striking “operating and he may utilize by agreement” and inserting “operating, who may use, by agreement”; and
 - (ii) by adding at the end the following:
 - “(B) INSPECTIONS.—For purposes of ensuring compliance with this section, the Secretary—

“(i) may carry out an inspection (including the taking of ballast water samples) of any vessel at any time; and

“(ii) shall—

“(I) establish procedures for—

“(aa) reporting violations of this section;

and

“(bb) accumulating evidence regarding those violations; and

“(II) use appropriate and practicable measures of detection and environmental monitoring of vessels.

“(C) DETENTION.—The Secretary may detain a vessel if the Secretary—

“(i) has reasonable cause to believe that the vessel—

“(I) has failed to comply with an applicable requirement of this section; or

“(II) is being operated in violation of such a requirement; and

“(ii) the Secretary provides to the owner or operator of the vessel a notice of the intent to detain.”.

(2) PRESERVATION OF FEDERAL ENFORCEMENT AUTHORITY.—Section 309 of the Federal Water Pollution Control Act (33 U.S.C. 1319) is amended—

(A) in subsection (a)(3), by striking “318” and inserting “312(p), 318”;

(B) in subsection (c), by striking “318” each place it appears and inserting “312(p), 318”;

(C) in subsection (d), in the first sentence—

(i) by striking “318” and inserting “312(p), 318,”;

and

(ii) by striking “State,,” and inserting “State,;” and

(D) in subsection (g)(1)(A), by striking “318” and inserting “312(p), 318”.

(3) PRESERVATION OF PUBLIC ENFORCEMENT AUTHORITY.—Section 505(f) of the Federal Water Pollution Control Act (33 U.S.C. 1365(f)) is amended by striking “(5) certification” and all that follows through the period at the end and inserting the following: “(5) a standard of performance or requirement under section 312(p); (6) a certification under section 401; (7) a permit or condition of a permit issued under section 402 that is in effect under this Act (including a requirement applicable by reason of section 313); or (8) a regulation under section 405(d).”.

(4) REVIEW.—Section 509(b) of the Federal Water Pollution Control Act (33 U.S.C. 1369(b)) is amended by adding at the end the following:

“(4) DISCHARGES INCIDENTAL TO NORMAL OPERATION OF VESSELS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), any interested person may file a petition for review of a final agency action under section 312(p) of the Administrator or the Secretary of the department in which the Coast Guard is operating in accordance with the requirements of this subsection.

“(B) VENUE EXCEPTION.—Subject to section 312(p)(7)(C)(v), a petition for review of a final agency action under section 312(p) of the Administrator or the Secretary of the department in which the Coast Guard is operating may be filed only in the United States Court of Appeals for the District of Columbia Circuit.”.

(d) LOGBOOK REQUIREMENTS.—Section 11301(b) of title 46, United States Code, is amended by adding at the end the following:

“(13) when a vessel fails to carry out ballast water management requirements as applicable and pursuant to regulations promulgated by the Secretary, including when the vessel fails to carry out ballast water management requirements due to an allowed safety exemption, a statement regarding the failure to comply and the circumstances under which the failure occurred, made immediately after the failure, when practicable to do so.”.

(e) QUAGGA MUSSEL.—Section 42(a)(1) of title 18, United States Code, is amended, in the first sentence, by inserting “of the quagga mussel of the species *Dreissena rostriformis* or *Dreissena bugensis*,” after “*Dreissena polymorpha*,”.

(f) COASTAL AQUATIC INVASIVE SPECIES MITIGATION GRANT PROGRAM AND MITIGATION FUND.—

(1) DEFINITIONS.—In this subsection:

(A) COASTAL ZONE.—The term “coastal zone” has the meaning given the term in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453).

(B) ELIGIBLE ENTITY.—The term “eligible entity” means—

- (i) a State;
- (ii) a unit of local government;
- (iii) an Indian Tribe;
- (iv) a nongovernmental organization; and
- (v) an institution of higher education.

(C) EXCLUSIVE ECONOMIC ZONE.—The term “Exclusive Economic Zone” means the Exclusive Economic Zone of the United States, as established by Presidential Proclamation 5030, dated March 10, 1983 (16 U.S.C. 1453 note).

(D) FOUNDATION.—The term “Foundation” means the National Fish and Wildlife Foundation established by section 2(a) of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3701(a)).

(E) FUND.—The term “Fund” means the Coastal Aquatic Invasive Species Mitigation Fund established by paragraph (3)(A).

(F) PROGRAM.—The term “Program” means the Coastal Aquatic Invasive Species Mitigation Grant Program established under paragraph (2)(A).

(G) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

(2) GRANT PROGRAM.—

(A) ESTABLISHMENT.—The Secretary and the Foundation shall establish a program, to be known as the “Coastal Aquatic Invasive Species Mitigation Grant Program”, under which the Secretary and the Foundation shall award grants to eligible entities in accordance with this paragraph.

(B) PURPOSES.—The purposes of the Program are—

(i) to improve the understanding, prevention, and mitigation of, and response to, aquatic invasive species in—

- (I) the coastal zone; and
- (II) the Exclusive Economic Zone;

(ii) to support the prevention and mitigation of impacts from aquatic invasive species in the coastal zone; and

(iii) to support the restoration of Pacific Island habitats, marine, estuarine, and Great Lakes environments in the coastal zone and the Exclusive Economic Zone that are impacted by aquatic invasive species.

(C) USE OF GRANTS.—

(i) IN GENERAL.—A grant awarded under the Program shall be used for an activity to carry out the purposes of the Program, including an activity—

(I) to develop and implement procedures and programs, including permissible State ballast water inspection programs, to prevent, detect, control, mitigate, and rapidly or progressively eradicate aquatic invasive species in the coastal zone or the Exclusive Economic Zone, particularly in areas with high numbers of established aquatic invasive species;

(II) to restore habitat impacted by an aquatic invasive species;

(III) to develop new shipboard and land-based ballast water treatment system technologies and performance standards to prevent the introduction of aquatic invasive species;

(IV) to develop mitigation measures to protect natural and cultural living resources, including shellfish, from the impacts of aquatic invasive species; or

(V) to develop mitigation measures to protect infrastructure, such as hydroelectric infrastructure, from aquatic invasive species.

(ii) PROHIBITION ON FUNDING LITIGATION.—A grant awarded under the Program may not be used to fund litigation in any matter.

(D) ADMINISTRATION.—Not later than 90 days after the date of enactment of this Act, the Foundation, in consultation with the Secretary, shall establish the following:

(i) Application and review procedures for awarding grants under the Program.

(ii) Approval procedures for awarding grants under the Program, including a requirement for consultation with—

- (I) the Secretary of the Interior; and
- (II) the Administrator.

(iii) Performance accountability and monitoring measures for activities funded by a grant awarded under the Program.

(iv) Procedures and methods to ensure accurate accounting and appropriate administration of grants awarded under the Program, including standards of recordkeeping.

(E) MATCHING REQUIREMENT.—Each eligible entity that receives a grant under the Program shall provide, in cash or through in-kind contributions from non-Federal sources, matching funds to carry out the activities funded by the grant in an amount equal to not less than 25 percent of the cost of the activities.

(F) FUNDING.—The Secretary and the Foundation are authorized to use the amounts available in the Fund to award grants under the Program.

(3) MITIGATION FUND.—

(A) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund, to be known as the “Coastal Aquatic Invasive Species Mitigation Fund”, consisting of such amounts as are appropriated or credited to the Fund in accordance with this paragraph or section 9602 of the Internal Revenue Code of 1986.

(B) TRANSFERS TO FUND.—

(i) APPROPRIATION.—There is authorized to be appropriated from the Treasury to the Fund, for each fiscal year, an amount equal to the amount of penalties assessed for violations of subsection (p) of section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1322) during the preceding fiscal year.

(ii) ADDITIONAL AUTHORIZATION.—In addition to the amounts transferred to the Fund under clause (i), there is authorized to be appropriated to the Fund \$5,000,000 for each fiscal year.

(C) USE OF FUND.—Subject to appropriations, the amounts in the Fund shall be available to the Secretary and the Foundation to award grants under the Program.

(g) GREAT LAKES AND LAKE CHAMPLAIN INVASIVE SPECIES PROGRAM.—

(1) DEFINITIONS.—In this subsection:

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

(B) AQUATIC NUISANCE SPECIES.—The term “aquatic nuisance species” has the meaning given that term in subsection (p)(1) of section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1322).

(C) DIRECTOR.—The term “Director” means the Director of the Great Lakes National Program Office established by section 118(b) of the Federal Water Pollution Control Act (33 U.S.C. 1268(b)).

(D) GREAT LAKES AND LAKE CHAMPLAIN SYSTEMS.—The term “Great Lakes and Lake Champlain Systems” includes—

- (i) Lake Champlain; and
- (ii) all bodies of water (including wetlands)

within—
(I) the Great Lakes System (as defined in section 118(a)(3) of the Federal Water Pollution Control Act (33 U.S.C. 1268(a)(3))); or

(II) the Lake Champlain drainage basin (as defined in section 120(g) of the Federal Water Pollution Control Act (33 U.S.C. 1270(g))).

(E) PROGRAM.—The term “Program” means the Great Lakes and Lake Champlain Invasive Species Program established under paragraph (2)(A).

(2) ESTABLISHMENT OF PROGRAM.—

(A) IN GENERAL.—The Administrator shall establish within the Great Lakes National Program Office a program, to be known as the “Great Lakes and Lake Champlain Invasive Species Program”—

(i) in collaboration with—

(I) the Director of the United States Fish and Wildlife Service;

(II) the Administrator of the National Oceanic and Atmospheric Administration;

(III) the Director of the United States Geological Survey; and

(IV) the Secretary of the department in which the Coast Guard is operating; and

(ii) in consultation with—

(I) the head of Great Lakes Aquatic Nonindigenous Species Information System of the National Oceanic and Atmospheric Administration; and

(II) the head of Great Lakes Environmental Research Laboratory of the National Oceanic and Atmospheric Administration.

(B) PURPOSES.—The purposes of the Program shall be—

(i) to monitor for the introduction and spread of aquatic nuisance species into or within the Great Lakes and Lake Champlain Systems;

(ii) to detect newly introduced aquatic nuisance species prior to the establishment of the aquatic nuisance species in the Great Lakes and Lake Champlain Systems;

(iii) to inform, and assist with, management and response actions to prevent or stop the establishment or spread of an aquatic nuisance species;

(iv) to establish a watch list of candidate aquatic nuisance species that may be introduced or spread, and that may survive and establish, within the Great Lakes and Lake Champlain Systems;

(v) to monitor vectors likely to be contributing to the introduction or spread of aquatic nuisance species, including ballast water operations;

(vi) to work collaboratively with the Federal, State, local, and Tribal agencies to develop criteria for prioritizing and distributing monitoring efforts;

(vii) to develop, achieve type approval for, and pilot shipboard or land-based ballast water management systems installed on, or available for use by, commercial vessels operating solely within the Great Lakes and Lake Champlain Systems to prevent the spread of aquatic nuisance species populations within the Great Lakes and Lake Champlain Systems; and

(viii) to facilitate meaningful Federal and State implementation of the regulatory framework in this subsection, including monitoring, shipboard education, inspection, and compliance conducted by States.

(3) METHODOLOGY.—The Program shall seek—

- (A) to build on—
 - (i) existing aquatic nuisance species monitoring efforts; and
 - (ii) efforts to develop criteria for prioritizing and distributing monitoring efforts, geographically and among taxa, in the Great Lakes and Lake Champlain Systems;
- (B) to advance early detection and monitoring, and capacity to control the establishment and spread, of aquatic nuisance species within the Great Lakes and Lake Champlain Systems;
- (C) to identify opportunities to interdict the introduction and spread of aquatic nuisance species through sound science and technological advancements;
- (D) to assess the risk of aquatic nuisance species introduction and spread via the range of vectors active within the Great Lakes and Lake Champlain Systems;
- (E) to advance the development of type-approved ballast water management system (as defined in subsection (p)(1) of section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1322) equipment for commercial, non-seagoing vessels that operate solely within the Great Lakes System (as defined in section 118(a)(3) of the Federal Water Pollution Control Act (33 U.S.C. 1268(a)(3)));
- (F) to immediately make available to the public information regarding—
 - (i) the detection of new aquatic nuisance species within the Great Lakes and Lake Champlain Systems;
 - or
 - (ii) the spread of aquatic nuisance species within the Great Lakes and Lake Champlain Systems;
- (G) to annually submit to appropriate individuals and entities in each affected region a report describing the findings and activities of the Program;
- (H) to identify roles and responsibilities of Federal agencies in aquatic nuisance species monitoring and response; and
- (I) to provide resource assistance to States implementing State-level programs to enter into partnerships with Federal agencies in enforcing the requirements under subsection (p) of section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1322).

(4) COLLABORATION.—In carrying out and developing the Program, the Director shall collaborate with—

- (A) applicable Federal, State, local, and Tribal agencies; and
- (B) such other research entities or stakeholders as the Director determines to be appropriate.

(5) DATA AVAILABILITY.—The Director shall—

- (A) make the data collected under the Program available on a publicly accessible internet website, including in an annual summary report; and
- (B) in coordination with the entities identified under paragraph (4), develop communication and notification protocols for the purpose of communicating the range of aquatic nuisance species and any identification of a new

aquatic nuisance species introduced to the Great Lakes and Lake Champlain Systems.

(6) REPORT TO CONGRESS.—

(A) IN GENERAL.—Not later than December 31, 2019, the Director shall submit to Congress a report summarizing the outcomes of activities carried out under the Program.

(B) CONTENTS.—The report under subparagraph (A) shall include—

(i) a description of activities carried out under the Program, including an explanation of how those activities help to achieve the purposes described in paragraph (2)(B);

(ii) an analysis of Federal, State, and local efforts to enhance multidisciplinary approaches to achieve the purposes described in paragraph (2)(B);

(iii) recommendations relating to activities that would contribute to achievement of the purposes described in paragraph (2)(B); and

(iv) recommendations to improve the efficiency and effectiveness of the Program.

(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the Program \$50,000,000 for each of fiscal years 2019 through 2023.

(h) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 1102(f) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4712(f)) is amended by striking paragraph (2) and inserting the following:

“(2) BALLAST WATER REPORTING REQUIREMENTS.—

“(A) IN GENERAL.—The owner or operator of a vessel subject to this title shall submit to the National Ballast Information Clearinghouse, by not later than 6 hours after the arrival of the vessel at a United States port or place of destination, the ballast water management report form approved by the Office of Management and Budget numbered OMB 1625–0069 (or a successor form), unless the vessel is operating exclusively on a voyage between ports or places within contiguous portions of a single Captain of the Port Zone.

“(B) MULTIPLE DISCHARGES.—The owner or operator of a vessel subject to this title may submit a single report under subparagraph (A) for multiple ballast water discharges within a single port or place of destination during the same voyage.

“(C) ADVANCE REPORT TO STATES.—A State may require the owner or operator of a vessel subject to this title to submit directly to the State, or to an appropriate regional forum, a ballast water management report form—

“(i) not later than 24 hours prior to arrival at a United States port or place of destination in the State, if the voyage of the vessel is anticipated to exceed 24 hours; or

“(ii) before departing the port or place of departure, if the voyage of the vessel to the United States port or place of destination is not anticipated to exceed 24 hours.

“(3) VESSEL REPORTING DATA.—

“(A) DISSEMINATION TO STATES.—On receipt of a ballast water management report under paragraph (2), the National Ballast Information Clearinghouse shall—

“(i) in the case of a form submitted electronically, immediately disseminate the report to interested States; or

“(ii) in the case of a form submitted by means other than electronically, disseminate the report to interested States as soon as practicable.

“(B) AVAILABILITY TO PUBLIC.—Not later than 30 days after the date of receipt of a ballast water management report under paragraph (2), the National Ballast Information Clearinghouse shall make the data in the report fully and readily available to the public in a searchable and fully retrievable electronic format.

“(4) REPORT.—

“(A) IN GENERAL.—Not later than July 1, 2019, and annually thereafter, the Secretary shall prepare and submit a report in accordance with this paragraph.

“(B) CONTENTS.—Each report under this paragraph shall synthesize and analyze the data described in paragraph (1) for the preceding 2-year period to evaluate nationwide status and trends relating to—

“(i) ballast water delivery and management; and

“(ii) invasions of aquatic nuisance species resulting from ballast water.

“(C) DEVELOPMENT.—The Secretary shall prepare each report under this paragraph in consultation and cooperation with—

“(i) the Task Force; and

“(ii) the Smithsonian Institution (acting through the Smithsonian Environmental Research Center).

“(D) SUBMISSION.—The Secretary shall—

“(i) submit each report under this paragraph to—

“(I) the Task Force;

“(II) the Committee on Commerce, Science, and Transportation of the Senate; and

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

“(ii) make each report available to the public.

“(5) WORKING GROUP.—Not later than 1 year after the date of enactment of this paragraph, the Secretary shall establish a working group, including members from the National Ballast Information Clearinghouse and States with ballast water management programs, to establish a process for compiling and readily sharing Federal and State commercial vessel reporting and enforcement data regarding compliance with this Act.”

(2) Section 1205 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4725) is amended—

(A) in the third sentence, by striking “Compliance” and inserting the following:

“(c) EFFECT OF COMPLIANCE.—Compliance”;

(B) in the second sentence, by striking “Nothing” and inserting the following:

“(b) EFFECT OF TITLE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), nothing”;

(C) in the first sentence, by striking “All actions” and inserting the following:

“(a) CONSISTENCY WITH ENVIRONMENTAL LAWS.—All actions”;
and

(D) in subsection (b) (as so designated), by adding at the end the following:

“(2) EXCEPTION.—Any discharge incidental to the normal operation of a vessel, including any discharge of ballast water (as those terms are defined in subsections (a) and (p)(1) of section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1322)), shall be regulated in accordance with that section.”.

TITLE X—HYDROGRAPHIC SERVICES AND OTHER MATTERS

SEC. 1001. REAUTHORIZATION OF HYDROGRAPHIC SERVICES IMPROVEMENT ACT OF 1998.

(a) REAUTHORIZATIONS.—Section 306 of the Hydrographic Services Improvement Act of 1998 (33 U.S.C. 892d) is amended—

(1) in the matter before paragraph (1), by striking “There are” and inserting the following:

“(a) IN GENERAL.—There are”;

(2) in subsection (a) (as designated by paragraph (1))—

(A) in paragraph (1), by striking “surveys—” and all that follows through the end of the paragraph and inserting “surveys, \$70,814,000 for each of fiscal years 2019 through 2023.”;

(B) in paragraph (2), by striking “vessels—” and all that follows through the end of the paragraph and inserting “vessels, \$25,000,000 for each of fiscal years 2019 through 2023.”;

(C) in paragraph (3), by striking “Administration—” and all that follows through the end of the paragraph and inserting “Administration, \$29,932,000 for each of fiscal years 2019 through 2023.”;

(D) in paragraph (4), by striking “title—” and all that follows through the end of the paragraph and inserting “title, \$26,800,000 for each of fiscal years 2019 through 2023.”; and

(E) in paragraph (5), by striking “title—” and all that follows through the end of the paragraph and inserting “title, \$30,564,000 for each of fiscal years 2019 through 2023.”; and

(3) by adding at the end the following:

“(b) ARCTIC PROGRAMS.—Of the amount authorized by this section for each fiscal year—

“(1) \$10,000,000 is authorized for use in the Arctic—

“(A) to acquire hydrographic data;

“(B) to provide hydrographic services;

“(C) to conduct coastal change analyses necessary to ensure safe navigation;