

110TH CONGRESS  
2D SESSION

# H. R. 5594

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

---

## IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2008

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

---

## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (5) the locations of such discharges;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 “(b) JUDICIAL REVIEW.—

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

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

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

7 “(c) EFFECT ON STATE AUTHORITY.—

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

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

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

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

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

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

17                 “(1) a vessel of the Armed Forces;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 “(1) means a discharge, including—

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

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

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

7 “(2) does not include—

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

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

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

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

○