

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2645

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

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2008

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

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## A BILL

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

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

3       **SECTION 1. SHORT TITLE.**

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

6       **SEC. 2. FINDINGS.**

7       The Congress finds the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3               (5) the locations of such discharges;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19       “(b) JUDICIAL REVIEW.—

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

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

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

8 “(c) EFFECT ON STATE AUTHORITY.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15           “(1) means a discharge, including—

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

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

5           “(2) does not include—

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

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

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

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

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