20

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 2830 OFFERED BY MR. LATOURETTE OF OHIO

At the end of title V add the following:

SEC. 508. EVALUATION AND REVIEW OF CERTAIN DISCHARGES.

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

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

(2) the volumes of such discharges for representative individual vessels and by classes of vessels in the aggregate;

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

1 (4) an analysis of the extent to which such dis-
2 charges are currently subject to regulation under ex-
3 isting Federal laws or binding international obliga-
4 tions of the United States;
5 (5) the locations of such discharges;
6 (6) analyses and conclusions as to the nature
7 and extent of potential effects of such discharges on
8 human health, welfare, and the environment;
9 (7) an analysis of practicable measures, includ-
10 ing best management practices, to control such dis-
11 charges; and
12 (8) recommendations as to steps, including reg-
13 ulatory changes, together with a schedule for imple-
14 mentation, that are appropriate to address such dis-
15 charges.
16 (b) PUBLIC COMMENT.—The Commandant shall—
17 (1) publish a draft report containing findings,
18 conclusions, and recommendations from the evalua-
19 tion and review required by subsection (a) in the
20 Federal Register;
21 (2) accept public comments regarding such re-
22 port for a period of not less than 120 days after the
23 date the report is published in the Federal Register;
24 and

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

11 **SEC. 509. DISCHARGES INCIDENTAL TO NORMAL OPER-**
12 **ATION OF VESSELS.**

13 (a) STATEMENT OF PURPOSE.—The purposes of this
14 section are—
15 (1) to provide for the establishment of nation-
16 ally uniform, environmentally sound, standards for
17 discharges incidental to the normal operation of ves-
18 sels; and
19 (2) to establish procedures for designation of no
20 discharge zones as necessary to protect waters with-
21 in the jurisdiction of a State from the effects of dis-
22 charges incidental to the normal operation of vessels.
23 (b) EVALUATION AND REVIEW OF CERTAIN DIS-
24 CHARGES.—Subtitle B of the Nonindigenous Aquatic Nui-
25 sance Prevention and Control Act of 1990 (16 U.S.C.

1 4711 et seq.) is amended by adding at the end thereof
2 the following:

3 **"SEC. 1105. REGULATION OF CERTAIN DISCHARGES.**

4 "(a) IN GENERAL.—Notwithstanding any other pro-
5 vision of law, any requirement to obtain a permit for a
6 discharge incidental to the normal operation of a vessel
7 is suspended beginning on the date of enactment of the
8 Coast Guard Authorization Act of 2008. The Com-
9 mandant of the Coast Guard, in consultation with the
10 heads of other appropriate Federal agencies, as deter-
11 mined by the Commandant, and based on the findings of
12 the final report submitted under section 508 of the Coast
13 Guard Authorization Act of 2008, shall promulgate a final
14 rule to establish an appropriate program for establishing
15 enforceable uniform national discharge standards, in lieu
16 of any permit requirement established pursuant to any
17 other provision of law, that are modeled in whole or in
18 part on the regulatory program for vessels of the Armed
19 Forces and based upon the best available technology. Any
20 such national uniform discharge standards or prohibitions
21 shall be enforced by the Secretary and may be enforced
22 by a State.

23 "(b) JUDICIAL REVIEW.—

24 "(1) An interested person may file a petition
25 for review of a final regulation promulgated under

1 this section in the United States Court of Appeals
2 for the District of Columbia Circuit. Any such peti-
3 tion shall be filed within 120 days after the date no-
4 tice of such promulgation appears in the Federal
5 Register, except that if such petition is based solely
6 on grounds arising after such 120th day, then any
7 petition for review under this subsection shall be
8 filed within 120 days after such grounds arise.

9 "(2) Any regulation for which review could have
10 been obtained under paragraph (1) of this sub-
11 section is not subject to judicial review in any civil
12 or criminal proceeding for enforcement.

13 "(c) EFFECT ON STATE AUTHORITY.—

14 "(1) Notwithstanding any other provision of
15 law, except as provided in this subsection, no State
16 or political subdivision thereof may adopt or enforce
17 any statute or regulation of the State or political
18 subdivision with respect to a discharge incidental to
19 the normal operation of a vessel subject to evalua-
20 tion under section 508 of the Coast Guard Author-
21 ization Act of 2008 after the promulgation of a final
22 rule under that subsection.

23 "(2) If a State determines that the protection
24 and enhancement of the quality of some or all of the
25 waters within the State require greater environ-

1 mental protection, the State may prohibit one or
2 more such discharges incidental to the normal oper-
3 ation of a vessel. No such prohibition shall apply
4 until the Commandant, in consultation with the
5 heads of appropriate Federal agencies, as deter-
6 mined by the Commandant, determines that—
7 "(A) adequate facilities for the safe and
8 sanitary removal of the relevant discharges are
9 reasonably available for the waters to which the
10 prohibition would apply; and
11 "(B) such prohibition does not create an
12 undue burden on commerce.
13 "(3) The Governor of any State may submit a
14 petition requesting that the Commandant review the
15 regulations promulgated under subsection (a) if
16 there is significant new information, not available
17 previously, that could reasonably result in a change
18 to the regulation. The petition shall be accompanied
19 by the scientific and technical information on which
20 the petition is based.
21 "(d) CERTAIN DISCHARGES UNAFFECTED.—Nothing
22 in this section shall be interpreted to apply to—
23 "(1) a vessel of the Armed Forces;
24 "(2) a discharge of vessel sewage; or

1 "(3) any discharge not subject to the permit ex-
2 clusion contained in section 122.3(a) of title 40,
3 Code of Federal Regulations, as in effect on the date
4 of enactment of the Coast Guard Authorization Act
5 of 2008.
6 "(e) EXCLUSIONS.—No permit shall be required
7 under any other provision of law for, nor shall any uniform
8 national discharge standard promulgated under subsection
9 (a) or prohibitions established under subsection (c)(2)
10 apply to—
11 "(1) a discharge incidental to the normal oper-
12 ation of a vessel that is—
13 "(A) less than 79 feet in length and en-
14 gaged in commercial service (as defined in sec-
15 tion 2101 of title 46, United States Code); or
16 "(B) a recreational vessel (as defined in
17 section 2101 of title 46, United States Code);
18 or
19 "(2) a discharge of ballast water, of sediment,
20 or from other vessel-related vectors subject to sec-
21 tion 1101;
22 "(3) the placement, release, or discharge of
23 equipment, devices, or other material from a vessel
24 for the sole purpose of conducting research on the
25 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 effflu-
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.".