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1ST SESSION

# H. R. 2854

To restore, protect, and preserve the natural, chemical, physical, and biological integrity, and the economic potentialities, of the New York/New Jersey Bight through designation and establishment of the New Jersey/New York Clean Ocean Zone and the regulation of various activities therein, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2007

Mr. PALLONE introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To restore, protect, and preserve the natural, chemical, physical, and biological integrity, and the economic potentialities, of the New York/New Jersey Bight through designation and establishment of the New Jersey/New York Clean Ocean Zone and the regulation of various activities therein, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “New Jersey/New York  
3 Clean Ocean Zone Act of 2007”.

4 **SEC. 2. CONGRESSIONAL FINDINGS, POLICY, AND DEC-**  
5 **LARATION OF PURPOSE.**

6 (a) FINDINGS.—The Congress finds the following:

7 (1) The New York/New Jersey Bight is an es-  
8 sential natural and scenic resource of the United  
9 States, providing innumerable recreational, commer-  
10 cial, economic and aesthetic benefits and extraor-  
11 dinary ecological, biological, and environmental bene-  
12 fits.

13 (2) Various harmful activities within the New  
14 York/New Jersey Bight, including the dumping of  
15 contaminated dredged material, the dumping of var-  
16 ious wastes, point source and nonpoint source pollu-  
17 tion, the extraction of nonrenewable natural re-  
18 sources, and the potential development of deepwater  
19 oil and gas facilities, have caused or may cause seri-  
20 ous adverse impacts to human health, welfare, and  
21 amenities, or threaten the marine environment, eco-  
22 logical systems, and economic potentialities of the  
23 New York/New Jersey Bight.

24 (3) Ecologically unique areas at risk from deg-  
25 radation caused by pollution, such as the New York/  
26 New Jersey Bight, are worthy of special protections

1 to reduce such threats. Pollution-preventing protec-  
2 tions have been established for and awarded to the  
3 Great Lakes and the Everglades, for example.

4 (b) PURPOSE.—

5 (1) IN GENERAL.—The purpose of this Act is to  
6 restore, protect and preserve, the natural, chemical,  
7 physical, and biological integrity, and the economic  
8 potentialities, of the New York/New Jersey Bight.

9 (2) LIMITATION.—This Act is not intended—

10 (A) to authorize or require any fisheries  
11 management actions within the New Jersey/  
12 New York Clean Ocean Zone, including fish-  
13 eries management allocation and techniques or  
14 any similar fisheries management related activ-  
15 ity; or

16 (B) to prohibit or limit beach replenish-  
17 ment activities, flood control activities, erosion  
18 control activities, or habitat restoration projects  
19 on or along the shoreline adjoining the New  
20 Jersey/New York Clean Ocean Zone.

21 **SEC. 3. DESIGNATION OF NEW JERSEY/NEW YORK CLEAN**  
22 **OCEAN ZONE.**

23 (a) DESIGNATION.—The New York/New Jersey  
24 Bight shall be known and designated as the “New Jersey/  
25 New York Clean Ocean Zone”.

1 (b) REFERENCES.—Any reference in a law, map, reg-  
2 ulation, document, paper, or other record of the United  
3 States to the area referred to in subsection (a) shall be  
4 deemed to be a reference to the “New Jersey/New York  
5 Clean Ocean Zone”.

6 **SEC. 4. REGULATION OF THE NEW JERSEY/NEW YORK**  
7 **CLEAN OCEAN ZONE.**

8 (a) OCEAN DUMPSITES.—

9 (1) PROHIBITION OF DESIGNATION OR ESTAB-  
10 LISHMENT OF NEW SITES.—Neither the Adminis-  
11 trator, the Secretary, nor any State may issue a per-  
12 mit for ocean dumping, nor designate or establish  
13 any new disposal site, within the New Jersey/New  
14 York Clean Ocean Zone, including pursuant to sec-  
15 tion 102, 103, 104A, or 104B of the Marine Protec-  
16 tion, Research, and Sanctuaries Act of 1972 (33  
17 U.S.C. 1412, 1413, 1414a, 1414b) or section 4 of  
18 Public Law 95–153 (33 U.S.C. 1412a).

19 (2) TERMINATION OF EXISTING DESIGNA-  
20 TIONS.—Except as provided by paragraph (3), all  
21 existing designations of disposal sites within the  
22 New Jersey/New York Clean Ocean Zone are hereby  
23 terminated, and such sites shall not be used as dis-  
24 posal sites.

1           (3) USE OF HARS.—Notwithstanding para-  
2           graphs (1) and (2), and consistent with the terms,  
3           conditions, and limitations of section 228.15(d)(6) of  
4           title 40, Code of Federal Regulations, dredged mate-  
5           rial may be placed in the Primary Remediation Area  
6           of the HARS for the purposes of ecological remedi-  
7           ation and protection of sensitive species at sensitive  
8           life stages, if the Administrator determines, fol-  
9           lowing testing and analytical measures established  
10          by regulation for materials proposed for ocean  
11          dumping, that the dredged material qualifies as ma-  
12          terial for remediation.

13          (b) REGULATION OF POINT SOURCES.—

14           (1) PROHIBITION ON DISCHARGES FROM NEW  
15          POINT SOURCES.—The discharge of a pollutant into  
16          the New Jersey/New York Clean Ocean Zone from  
17          a point source constructed or put into use after the  
18          date of enactment of this Act is prohibited under  
19          section 301 of the Federal Water Pollution Control  
20          Act (33 U.S.C. 1311). Neither the Administrator,  
21          nor any State, may issue a permit, pursuant to sec-  
22          tion 402 of the Federal Water Pollution Control Act  
23          (33 U.S.C. 1342) or comparable State law, for the  
24          discharge of a pollutant into the New Jersey/New  
25          York Clean Ocean Zone from a point source con-

1       structured or put into use after such date of enact-  
2       ment.

3               (2) LIMITATIONS ON EXISTING PERMITS.—A  
4       State or Federal permit issued pursuant to section  
5       402 of the Federal Water Pollution Control Act (33  
6       U.S.C. 1342) for the discharge of a pollutant into  
7       the New Jersey/New York Clean Ocean Zone may  
8       not be renewed, reissued, or modified after the date  
9       of enactment of this Act to allow for any increase of  
10      discharge capacity of any point source or sources.  
11      The renewed, reissued, or modified permit may not  
12      contain any effluent limitation that is less stringent  
13      than comparable effluent limitations in such permit  
14      and shall otherwise require compliance with all other  
15      applicable laws and regulations under the Federal  
16      Water Pollution Control Act, including applicable  
17      water quality standards.

18              (c) EXTRACTION OF NONRENEWABLE NATURAL RE-  
19      SOURCES.—

20              (1) PROHIBITION.—The permanent extraction  
21      of any nonrenewable natural resource from the New  
22      Jersey/New York Clean Ocean Zone for commercial  
23      or industrial use is prohibited, unless such removal  
24      is undertaken for the primary purpose of maintain-  
25      ing or establishing navigation channels.

1           (2) LIMITATION.—This Act shall not be used to  
2 restrict or otherwise limit beach replenishment ac-  
3 tivities, flood control activities, erosion control activi-  
4 ties, or habitat restoration projects on or along the  
5 shores of the New Jersey/New York Clean Ocean  
6 Zone.

7           (d) NONRENEWABLE ENERGY FACILITIES.—Except  
8 as set forth in subsection (e)—

9           (1) the creation of any type of nonrenewable en-  
10 energy facility or pipeline within the New Jersey/New  
11 York Clean Ocean Zone is prohibited;

12           (2) the Secretary of Transportation shall not  
13 issue any license pursuant to section 4 of the Deep-  
14 water Port Act (33 U.S.C. 1503) or section 106 of  
15 the Maritime Transportation Security Act of 2002  
16 (116 Stat. 2086) for the ownership, construction, or  
17 operation of a deepwater port used for the produc-  
18 tion, storage, transport, or transfer of nonrenewable  
19 energy in the New Jersey/New York Clean Ocean  
20 Zone;

21           (3) there shall be no conveyance of any interest  
22 in any federally owned, submerged or subterranean  
23 land within the New Jersey/New York Clean Ocean  
24 Zone for the purpose of establishing or operating a  
25 nonrenewable energy facility, including—

1 (A) the conveyance of such an interest for  
2 any pipeline that transports any nonrenewable  
3 natural resource or any refined product pro-  
4 duced therefrom, within or through the New  
5 Jersey/New York Clean Ocean Zone; and

6 (B) the grant or lease of such right-of-  
7 ways by the Secretary of the Interior pursuant  
8 to section 28 of the Mineral Leasing Act (30  
9 U.S.C. 185), or the Outer Continental Shelf  
10 Lands Act (43 U.S.C. 1301 et seq.).

11 (e) RENEWABLE ENERGY FACILITIES.—

12 (1) LIMITATION ON GRANTING LEASES, ETC.—  
13 No lease, easement, or right-of-way for a renewable  
14 energy facility may be granted for any federally  
15 owned, submerged, or subterranean land in the New  
16 Jersey/New York Clean Ocean Zone except in ac-  
17 cordance with this subsection, section 8(p) of the  
18 Outer Continental Shelf Lands Act (43 U.S.C.  
19 1337(p)), and section 388 of the Energy Policy Act  
20 of 2005 (43 U.S.C. 1337 note).

21 (2) COMPLIANCE WITH APPLICABLE LAWS.—  
22 The granting of any lease, easement, or right-of-way  
23 referred to in paragraph (1) shall comply with all  
24 applicable laws and regulations and shall not be ex-  
25 empt nor categorically excluded from the require-

1       ments of section 102 of the National Environmental  
2       Policy Act of 1969 (42 U.S.C. 4332). Section 102  
3       of such Act shall be applied to each such lease, ease-  
4       ment, and right-of-way on a project-by-project basis.

5               (3) DETERMINATION REQUIRED.—No lease,  
6       easement, or right-of-way referred to in paragraph  
7       (1) may be granted unless—

8               (A) the Secretary of the Interior, after  
9       completion of any review required by paragraph  
10       (2), determines that such action—

11               (i) complies with all environmental  
12       criteria, conditions, and restrictions estab-  
13       lished by or pursuant to section 8(p) of the  
14       Outer Continental Shelf Lands Act (43  
15       U.S.C. 1337(p)) or section 388 of the En-  
16       ergy Policy Act of 2005; and

17               (ii) will not unreasonably degrade or  
18       endanger human health, welfare, or amen-  
19       ities, the marine environment, or ecological  
20       systems or economic potentialities thereof;  
21       and

22               (B) the Secretary of Commerce, acting  
23       through the Administrator of the National Oce-  
24       anic and Atmospheric Administration, concurs

1 in writing with the determination of the Sec-  
2 retary of the Interior under subparagraph (A).

3 (4) STANDARD OF REVIEW.—For purposes of  
4 paragraph (3), an action is deemed to unreasonably  
5 degrade or endanger human health, welfare, or  
6 amenities, the marine environment, or ecological sys-  
7 tems or economic potentialities thereof, only if the  
8 action is likely to cause, on an individual or cumu-  
9 lative basis—

10 (A) significant adverse impacts to marine  
11 habitat, ecosystem diversity, productivity, and  
12 stability of the biological community within the  
13 area of the renewable energy facility concerned  
14 and surrounding biological communities;

15 (B) a threat to human life, health, or exist-  
16 ing or potential amenities through—

17 (i) the creation of a hazard to naviga-  
18 tion, fishing, or recreation;

19 (ii) direct exposure to pollutants; or

20 (iii) consumption of exposed aquatic  
21 organisms; or

22 (C) significant impairment of recreational,  
23 scientific, or economic benefits currently or po-  
24 tentially derived from or within the area of the

1 renewable energy facility and surrounding wa-  
2 ters.

3 (f) UNDERWATER RESEARCH AND EXPLORATION.—

4 (1) IN GENERAL.—Nothing in this Act restricts  
5 or otherwise limits underwater research or explo-  
6 ration of the aquatic environment within the New  
7 Jersey/New York Clean Ocean Zone, if such re-  
8 search or exploration—

9 (A) will not adversely affect, or will be per-  
10 formed for the sole purpose of furthering, the  
11 restoration, protection and preservation of, the  
12 natural, chemical, physical and biological integ-  
13 rity of the New Jersey/New York Clean Ocean  
14 Zone; and

15 (B) is conducted in accordance with all  
16 other applicable laws and regulations.

17 (2) PROHIBITION.—The conduct of any under-  
18 water research or exploration of the aquatic environ-  
19 ment within the New Jersey/New York Clean Ocean  
20 Zone that does not comply with paragraph (1) is  
21 prohibited.

22 **SEC. 5. SUPPORT FOR MARINE ACTIVITIES.**

23 (a) MARINE ACTIVITIES.—

24 (1) ACTIVITIES NOT LIMITED.—Nothing in this  
25 Act shall be considered to restrict or otherwise limit

1 the conduct of any of the maritime activities de-  
2 scribed in paragraph (2) in the New Jersey/New  
3 York Clean Ocean Zone, to the extent that such ac-  
4 tivity does not violate any other applicable law or  
5 regulation.

6 (2) MARINE ACTIVITIES DESCRIBED.—The  
7 maritime activities referred to in paragraph (1) are  
8 the following:

9 (A) Boating.

10 (B) Underwater diving.

11 (C) Surfing, swimming, and other similar  
12 recreational activities.

13 (D) Recreational fishing and commercial  
14 fishing.

15 (E) The creation of artificial reefs.

16 (b) FISHERIES MANAGEMENT ACTIONS NOT AU-  
17 THORIZED.—This Act shall not be used to adopt or enact  
18 fisheries management actions within the New Jersey/New  
19 York Clean Ocean Zone, including fisheries management  
20 allocation and techniques or any similar fisheries manage-  
21 ment related activity.

22 **SEC. 6. ENFORCEMENT.**

23 This Act may be enforced under sections 105 and 107  
24 of the Marine Protection, Research, and Sanctuaries Act  
25 of 1972 (33 U.S.C. 1415 and 1417), except that section

1 4(b) of this Act may be enforced under sections 309 and  
2 505 of the Federal Water Pollution Control Act (33  
3 U.S.C. 1319 and 1365).

4 **SEC. 7. DEFINITIONS.**

5 Except as otherwise specifically provided, in this Act:

6 (1) ADMINISTRATOR.—The term “Adminis-  
7 trator” means the Administrator of the Environ-  
8 mental Protection Agency.

9 (2) ARTIFICIAL REEF.—The term “artificial  
10 reef” means a federally or State approved structure  
11 that is constructed or placed in the waters of the  
12 New York/New Jersey Bight for the purpose of en-  
13 hancing one or more of benthic relief, fishery re-  
14 sources, commercial diving, recreational diving, surf-  
15 ing, commercial fishing opportunities, and rec-  
16 reational fishing opportunities.

17 (3) CONTINENTAL SHELF.—The term “Conti-  
18 nental Shelf” means the seabed and subsoil of the  
19 submarine areas adjacent to the coast of the United  
20 States, and all submerged lands lying seaward and  
21 outside of the area of lands beneath navigable wa-  
22 ters (as that term is defined in section 2 of the Sub-  
23 merged Lands Act (43 U.S.C. 1301)), extending to  
24 a depth of 1000 fathoms.

1           (4) DISCHARGE OF A POLLUTANT.—The term  
2           “discharge of a pollutant” means any addition of  
3           any pollutant to the waters of the New York/New  
4           Jersey Bight from any point source.

5           (5) DISPOSAL SITE.—The term “disposal site”  
6           means a precise geographical area designated under  
7           Federal law for the dumping of any material into  
8           the waters of the New York/New Jersey Bight, in-  
9           cluding, but not limited to, any site at which dump-  
10          ing is authorized under a permit issued under sec-  
11          tion 102 or 103 of the Marine Protection, Research,  
12          and Sanctuaries Act of 1972 (33 U.S.C. 1412,  
13          1413).

14          (6) DREDGED MATERIAL.—The term “dredged  
15          material” means any material excavated or dredged  
16          from the navigable waters of the United States.

17          (7) DUMPING.—The term “dumping” has the  
18          meaning that term has under section 3(f) of the Ma-  
19          rine Protection, Research, and Sanctuaries Act of  
20          1972 (33 U.S.C. 1402(f)).

21          (8) EFFLUENT LIMITATION.—The term “efflu-  
22          ent limitation” has the meaning that term has in  
23          section 502(11) of the Federal Water Pollution Con-  
24          trol Act (33 U.S.C. 1362(11)).

1           (9) HARS.—The term “HARS” means the  
2 dredged material disposal site located within the  
3 New York/New Jersey Bight and bounded by the co-  
4 ordinates set forth in section 228.15(d)(6) of title  
5 40, Code of Federal Regulations (in effect as of July  
6 1, 1999), also known as the Historic Area Remedi-  
7 ation Site.

8           (10) MATERIAL.—The term “material” has the  
9 meaning that term has in section 3(c) of the Marine  
10 Protection, Research, and Sanctuaries Act of 1972  
11 (33 U.S.C. 1402(c)).

12           (11) MATERIAL FOR REMEDIATION.—

13           (A) IN GENERAL.—The term “material for  
14 remediation” means dredged material that,  
15 through testing and analysis, is determined by  
16 the Administrator to—

17           (i) contain, or to cause through bio-  
18 accumulation, chemical concentrations of  
19 any Contaminant of Concern that are less  
20 than those concentrations present in, or  
21 caused through bioaccumulation by, the  
22 surficial sediment collected at a depth of  
23 no more than 6 inches from the proposed  
24 placement site within the HARS;

1           (ii) have fewer screening level  
2 exceedances for Contaminants of Concern  
3 than the surficial sediment collected at a  
4 depth of no more than 6 inches from the  
5 proposed placement site within the HARS,  
6 except material for remediation shall have  
7 no Screening Level exceedances if such  
8 surface sediment have no such exceedance;  
9 and

10           (iii) otherwise complies with applicable  
11 Federal and State laws and regulations es-  
12 tablished for materials proposed for ocean  
13 dumping, including, without limitation,  
14 section 227.6 of title 40, Code of Federal  
15 Regulations.

16           (B) CONTAMINANT OF CONCERN DE-  
17 FINED.—In this paragraph, the term “Contami-  
18 nant of Concern” means—

19           (i) any of the pollutants specified in  
20 the chart in subparagraph (C) and having  
21 the corresponding Screening Level value  
22 (in parts per billion dry weight); and

23           (ii) any additional pollutant des-  
24 ignated under subparagraph (D).

1 (C) CHART.—The chart referred to in sub-  
 2 paragraph (B) is as follows:

<b>Pollutant</b>	<b>Screening level</b>
Cadmium .....	1,200.0000
Chlordane .....	0.5000
Dieldrin .....	0.0200
2,3,7,8 TCDD (Dioxin) .....	0.0036
Total DDTs .....	1.5800
Lead .....	46,700.0000
Mercury .....	150.0000
Total Polychlorinated Biphenyls (PCBs) .....	22.7000
Total Polynuclear Aromatic Hydrocarbons (PAHs) .....	4,022.0000.

3 (D) ADDITIONAL POLLUTANTS.—The Ad-  
 4 ministrators shall designate additional pollutants  
 5 and corresponding Screening Level values for  
 6 purposes of this paragraph as is necessary to  
 7 achieve the purpose and intent of section  
 8 4(a)(3).

9 (12) NAVIGATION CHANNEL.—The term “navi-  
 10 gation channel” means a channel that is federally or  
 11 State designated and open to permit free and unob-  
 12 structed navigation by all types of vessels and tows  
 13 normally using such waterways.

14 (13) NEW YORK/NEW JERSEY BIGHT.—The  
 15 term “New York/New Jersey Bight” means the geo-  
 16 graphic area within the Atlantic Ocean generally  
 17 known by that name and located within the bound-  
 18 aries described more particularly as follows: Begin-  
 19 ning at a point at the southern tip of Cape May,  
 20 New Jersey, and running—

1 (A) northerly along the mean high water  
2 mark of the coast of New Jersey to the north-  
3 ern tip of Sandy Hook, New Jersey, then

4 (B) northeasterly along the transect of the  
5 northern tip of Sandy Hook and the western tip  
6 of Long Island, New York, then

7 (C) easterly along the mean high water  
8 mark of the south shore of Long Island to the  
9 eastern tip of Long Island, New York, then

10 (D) southerly to the eastern bank of Block  
11 Canyon to the 1,000 fathom line of the Conti-  
12 nental Shelf, then

13 (E) southwesterly along the 1,000 fathom  
14 line to the western bank of Baltimore Canyon,  
15 and then

16 (F) northwesterly to the point of beginning  
17 at the southern tip of Cape May, New Jersey.

18 (14) NONRENEWABLE ENERGY.—The term  
19 “nonrenewable energy” means any form of energy  
20 that is produced from a nonrenewable natural re-  
21 source, including oil, natural gas, liquid or gaseous  
22 fuels, sand, or rock, any product produced there-  
23 from, or any synthetic version thereof.

24 (15) NONRENEWABLE ENERGY FACILITY.—The  
25 term “nonrenewable energy facility” means any

1 equipment, pipeline, or facility, other than an elec-  
2 trical transmission cable, a communication cable, or  
3 a vessel in transit, that is or will be used pri-  
4 marily—

5 (A) in the development, production, conver-  
6 sion, storage, transfer, processing, or transpor-  
7 tation of any non-renewable natural resource;  
8 or

9 (B) for the manufacture, production, or as-  
10 sembly of any equipment, machinery, product,  
11 or device that is involved in any activity de-  
12 scribed in subparagraph (A).

13 (16) NONRENEWABLE NATURAL RESOURCE.—

14 The term “nonrenewable natural resource”—

15 (A) except as provided in subparagraph  
16 (B), means any naturally occurring, inanimate  
17 object, mineral, or nonliving resource that can-  
18 not be replenished by natural means at the  
19 same rate that it is consumed; and

20 (B) does not include any manmade object.

21 (17) PERMANENT EXTRACTION.—The term  
22 “permanent extraction” means the permanent re-  
23 moval of any nonrenewable natural resource from  
24 the marine environment, including the water column,  
25 the seabed, or subsoil.

1 (18) PIPELINE.—The term “pipeline”—

2 (A) except as provided in subparagraph  
3 (B), means any pipe or conveyance constructed  
4 or used primarily for the transport of non-  
5 renewable energy; and

6 (B) does not include an electrical trans-  
7 mission cable or communications cable.

8 (19) POLLUTANT.—The term “pollutant”—

9 (A) except as provided in subparagraph  
10 (B), has the meaning that term has in section  
11 502(6) of the Federal Water Pollution Control  
12 Act (33 U.S.C. 1362(6)); and

13 (B) does not include any material approved  
14 under Federal law or a stricter State standard  
15 for use in the construction or maintenance of a  
16 permitted artificial reef.

17 (20) POINT SOURCE.—The term “point source”  
18 has the meaning that term has in section 502(14)  
19 of the Federal Water Pollution Control Act (33  
20 U.S.C. 1362(14)).

21 (21) RENEWABLE ENERGY RESOURCE.—The  
22 term “renewable energy resource”—

23 (A) means a source of energy that is re-  
24 generative and is produced without depleting or

1 otherwise diminishing the resource from which  
2 such energy is derived; and

3 (B) includes solar, thermal, photochemical,  
4 photoelectric, photosynthetic, hydropower, geo-  
5 thermal, tidal, and wind energy sources.

6 (22) RENEWABLE ENERGY FACILITY.—The  
7 term “renewable energy facility” means any equip-  
8 ment or facility, other than a vessel in transit, that  
9 is or will be used primarily—

10 (A) in the development, production, conver-  
11 sion, storage, transfer, processing, or transpor-  
12 tation of any renewable energy resource; or

13 (B) for the manufacture, production, or as-  
14 sembly of equipment, machinery, products, or  
15 devices, which are involved in any activity de-  
16 scribed in subparagraph (A).

17 (23) SECRETARY.—The term “Secretary”  
18 means the Secretary of the Army.

19 (24) VESSEL IN TRANSIT.—The term “vessel in  
20 transit”—

21 (A) means a vessel that has departed for,  
22 but has not yet arrived at, its next point of des-  
23 tination; and

1                   (B) includes any vessel described in sub-  
2                   paragraph (A) that is temporarily anchored  
3                   pending such arrival.

○