

AMENDMENT TO RULES COMMITTEE PRINT 117-

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OFFERED BY MR. THOMPSON OF CALIFORNIA

Add at the end the following new title:

1 **TITLE IV—REFUGE SYSTEM**
2 **PROTECTION**

3 **SEC. 401. DEFINITIONS.**

4 In this title:

5 (1) **DAMAGES.**—The term “damages” in-
6 cludes—

7 (A) compensation for—

8 (i)(I) the cost of replacing, restoring,
9 or acquiring the equivalent of a system re-
10 source; and

11 (II) the value of any significant loss of
12 use of a system resource, pending—

13 (aa) restoration or replacement
14 of the system resource; or

15 (bb) the acquisition of an equiva-
16 lent resource; or

17 (ii) the value of a system resource, if
18 the system resource cannot be replaced or
19 restored; and

1 (B) the cost of any relevant damage as-
2 sessment carried out pursuant to section
3 404(c).

4 (2) RESPONSE COST.—The term “response
5 cost” means the cost of any action carried out by
6 the Secretary—

7 (A) to prevent, minimize, or abate the de-
8 struction or loss of, or injury to, a system re-
9 source;

10 (B) to abate or minimize the imminent risk
11 of any destruction, loss, or injury described in
12 subparagraph (A); or

13 (C) to monitor the ongoing effects of any
14 incident causing any destruction, loss, or injury
15 described in subparagraph (A).

16 (3) SECRETARY.—The term “Secretary” means
17 the Secretary of the Interior.

18 (4) SYSTEM RESOURCE.—The term “system re-
19 source” means any living, nonliving, historical, cul-
20 tural, or archeological resource that is located within
21 the boundaries of—

22 (A) a unit of the National Wildlife Refuge
23 System;

24 (B) a unit of the National Fish Hatchery
25 System; or

1 (C) any other land or water managed by
2 the Director of the United States Fish and
3 Wildlife Service, including any land or water
4 managed cooperatively with any other Federal
5 or State agency.

6 **SEC. 402. ACTIONS.**

7 (a) IN GENERAL.—The Attorney General, on request
8 of the Secretary, may bring in the district court of the
9 United States of appropriate jurisdiction—

10 (1) a civil action against any individual or enti-
11 ty that—

12 (A) destroys, causes the loss of, or injures
13 any system resource; or

14 (B) causes the Secretary to carry out any
15 action to prevent, minimize, or abate the de-
16 struction or loss of, or injury or risk to, any
17 system resource; or

18 (2) an in rem action against any instrumen-
19 tality (including a vessel, vehicle, aircraft, or other
20 equipment or mechanism) that—

21 (A) destroys, causes the loss of, or injures
22 any system resource; or

23 (B) causes the Secretary to carry out any
24 action to prevent, minimize, or abate destruc-

1 tion or loss of, or injury or risk to, a system re-
2 source.

3 (b) AFFIRMATIVE DEFENSES.—It shall be an affirm-
4 ative defense in an action under subsection (a) that—

5 (1) the applicable destruction or loss of, or in-
6 jury to, the system resource was caused by an other-
7 wise legal act or omission that occurred outside of
8 the boundaries of the system resource;

9 (2) the applicable destruction or loss of, or in-
10 jury to, the system resource was caused by an activ-
11 ity performed in accordance with Federal, State, or
12 local law, regulation, or court order;

13 (3) the applicable destruction or loss of, or in-
14 jury to, the system resource was caused solely by an
15 act of God or an act of war;

16 (4)(A) the applicable individual, entity, or in-
17 strumentality exercised due care; and

18 (B) the applicable destruction or loss of, or in-
19 jury to, the system resource was caused solely by an
20 act or omission of a third party, other than an em-
21 ployee or agent of the individual, entity, or instru-
22 mentality; or

23 (5)(A) the applicable destruction or loss of, or
24 injury to, the system resource was caused by an in-
25 dividual, entity, or instrumentality, including an em-

1 ployee or agent of the individual, entity, or instru-
2 mentality, acting in physical self-defense or defense
3 of others against physical harm; and

4 (B) the physical defense was—

5 (i) reasonably necessary;

6 (ii) without reasonable alternative; and

7 (iii) not excessive under the circumstances.

8 (c) DAMAGES.—In an action under subsection (a),
9 the court may award response costs and damages resulting
10 from the applicable destruction or loss of, or injury to,
11 the system resource.

12 (d) ADMINISTRATIVE ACTIONS FOR RESPONSE
13 COSTS AND DAMAGES.—

14 (1) ACTION BY SECRETARY.—

15 (A) IN GENERAL.—Subject to paragraph
16 (2), the Secretary, after making a finding de-
17 scribed in subparagraph (B), may consider,
18 compromise, and settle a claim for response
19 costs and damages if the claim has not been re-
20 ferred to the Attorney General under subsection
21 (a).

22 (B) DESCRIPTION OF FINDINGS.—A find-
23 ing referred to in subparagraph (A) is a finding
24 that—

1 (i) destruction or loss of, or injury to,
2 a system resource has occurred; or

3 (ii) that destruction, loss, or injury
4 would occur absent an action by the Sec-
5 retary to prevent, minimize, or abate the
6 destruction, loss, or injury.

7 (2) REQUIREMENT.—In any case in which the
8 total amount to be recovered in an action under sub-
9 section (a) may exceed \$500,000 (excluding inter-
10 est), a claim may be compromised and settled under
11 paragraph (1) only with the prior written approval
12 of the Attorney General.

13 (e) RESPONSE ACTIONS, ASSESSMENTS OF DAM-
14 AGES, AND INJUNCTIVE RELIEF.—

15 (1) IN GENERAL.—The Secretary may carry out
16 any necessary action (including making a request to
17 the Attorney General to seek injunctive relief)—

18 (A) to prevent, minimize, or abate the de-
19 struction or loss of, or injury to, a system re-
20 source; or

21 (B) to abate or minimize the imminent risk
22 of that destruction, loss, or injury.

23 (2) ASSESSMENT AND MONITORING.—

24 (A) IN GENERAL.—The Secretary may as-
25 sess and monitor the destruction or loss of, or

1 injury to, any system resource for purposes of
2 paragraph (1).

3 (B) JUDICIAL REVIEW.—Any determina-
4 tion or assessment of damage to a system re-
5 source carried out under subparagraph (A)
6 shall be subject to judicial review under sub-
7 chapter II of chapter 5, and chapter 7, of title
8 5, United States Code (commonly known as the
9 “Administrative Procedure Act”), on the basis
10 of the administrative record developed by the
11 Secretary.

12 (f) SCOPE.—The liability established by this section
13 shall be in addition to any other liability arising under
14 Federal or State law.

15 **SEC. 403. USE OF RECOVERED AMOUNTS.**

16 (a) IN GENERAL.—An amount equal to the total
17 amount of the response costs and damages recovered by
18 the Secretary under this title and any amounts recovered
19 by the Federal Government under any provision of Fed-
20 eral, State, or local law (including regulations) or other-
21 wise as a result of the destruction or loss of, or injury
22 to, any system resource shall be made available to the Sec-
23 retary, without further appropriation, for use in accord-
24 ance with subsection (b).

1 (b) USE.—The Secretary may use amounts made
2 available under subsection (a) only, in accordance with ap-
3 plicable law—

4 (1) to reimburse response costs and damage as-
5 sessments carried out pursuant to this title by the
6 Secretary or such other Federal agency as the Sec-
7 retary determines to be appropriate;

8 (2) to restore, replace, or acquire the equivalent
9 of a system resource that was destroyed, lost, or in-
10 jured; or

11 (3) to monitor and study the recovery of the
12 system resources that were destroyed, lost, or in-
13 jured.

14 (c) ALLOCATION.—The Secretary shall—

15 (1) allocate for use under subsection (b) the
16 amount of response costs and damages recovered
17 with respect to each system resource and made
18 available under subsection (a) to the unit, land, or
19 water described in section 402(4) within which the
20 system resource was located at the time of the de-
21 struction, loss, or injury; and

22 (2) after the allocation under paragraph (1), al-
23 locate any remaining amounts for such use under
24 subsection (b) as the Secretary determines to be ap-
25 propriate.

1 **SEC. 404. DONATIONS.**

2 (a) IN GENERAL.—In addition to any other authority
3 to accept donations, the Secretary may accept donations
4 of money or services for expenditure or use to meet ex-
5 pected, immediate, or ongoing response costs and dam-
6 ages.

7 (b) TIMING.—A donation described in subsection (a)
8 may be expended or used at any time after acceptance of
9 the donation, without further action by Congress.

10 **SEC. 405. TRANSFER OF FUNDS FROM NATURAL RESOURCE**
11 **DAMAGE ASSESSMENT AND RESTORATION**
12 **FUND.**

13 The matter under the heading “NATURAL RESOURCE
14 DAMAGE ASSESSMENT AND RESTORATION FUND” under
15 the heading “UNITED STATES FISH AND WILDLIFE
16 SERVICE” in title I of the Department of the Interior and
17 Related Agencies Appropriations Act, 1994 (43 U.S.C.
18 1474b–1), is amended by striking “*Provided, That*” and
19 all that follows through “activities.” and inserting the fol-
20 lowing: “*Provided, That* notwithstanding any other provi-
21 sion of law, any amounts appropriated or credited during
22 fiscal year 1992 or any fiscal year thereafter may be trans-
23 ferred to any account (including through a payment to any
24 Federal or non-Federal trustee) to carry out a negotiated
25 legal settlement or other legal action for a restoration ac-
26 tivity under the Comprehensive Environmental Response,

1 Compensation, and Liability Act of 1980 (42 U.S.C. 9601
2 et seq.), the Federal Water Pollution Control Act (33
3 U.S.C. 1251 et seq.), the Oil Pollution Act of 1990 (33
4 U.S.C. 2701 et seq.), section 100721 of title 54, United
5 States Code, or title III of the Recovering America’s Wild-
6 life Act of 2022: *Provided further*, That sums provided by
7 any individual or entity before or after the date of enact-
8 ment of this Act shall remain available until expended and
9 shall not be limited to monetary payments, but may in-
10 clude stocks, bonds, or other personal or real property,
11 which may be retained, liquidated, or otherwise disposed
12 of by the Secretary for the restoration of injured resources
13 or to conduct any new damage assessment activity.”.

