AMENDMENT TO RULES COMMITTEE PRINT 117–47

OFFERED BY MR. THOMPSON OF CALIFORNIA

Add at the end the following new title:

TITLE IV—REFUGE SYSTEM PROTECTION

SEC. 401. DEFINITIONS.

In this title:

(1) DAMAGES.—The term “damages” includes—

(A) compensation for—

(i)(I) the cost of replacing, restoring, or acquiring the equivalent of a system resource; and

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

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

(bb) the acquisition of an equivalent resource; or

(ii) the value of a system resource, if the system resource cannot be replaced or restored; and
(B) the cost of any relevant damage assessment carried out pursuant to section 404(c).

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

(A) to prevent, minimize, or abate the destruction or loss of, or injury to, a system resource;

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

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

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

(4) SYSTEM RESOURCE.—The term “system resource” means any living, nonliving, historical, cultural, or archeological resource that is located within the boundaries of—

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

(B) a unit of the National Fish Hatchery System; or
(C) any other land or water managed by
the Director of the United States Fish and
Wildlife Service, including any land or water
managed cooperatively with any other Federal
or State agency.

SEC. 402. ACTIONS.

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

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

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

(B) causes the Secretary to carry out any
action to prevent, minimize, or abate the destruc-
tion or loss of, or injury or risk to, any
system resource; or

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

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

(B) causes the Secretary to carry out any
action to prevent, minimize, or abate destruc-
tion or loss of, or injury or risk to, a system resource.

(b) **AFFIRMATIVE DEFENSES.**—It shall be an affirmative defense in an action under subsection (a) that—

(1) the applicable destruction or loss of, or injury to, the system resource was caused by an otherwise legal act or omission that occurred outside of the boundaries of the system resource;

(2) the applicable destruction or loss of, or injury to, the system resource was caused by an activity performed in accordance with Federal, State, or local law, regulation, or court order;

(3) the applicable destruction or loss of, or injury to, the system resource was caused solely by an act of God or an act of war;

(4)(A) the applicable individual, entity, or instrumentality exercised due care; and

(B) the applicable destruction or loss of, or injury to, the system resource was caused solely by an act or omission of a third party, other than an employee or agent of the individual, entity, or instrumentality; or

(5)(A) the applicable destruction or loss of, or injury to, the system resource was caused by an individual, entity, or instrumentality, including an em-
ployee or agent of the individual, entity, or instrumentality, acting in physical self-defense or defense of others against physical harm; and

(B) the physical defense was—

(i) reasonably necessary;

(ii) without reasonable alternative; and

(iii) not excessive under the circumstances.

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

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

(1) ACTION BY SECRETARY.—

(A) IN GENERAL.—Subject to paragraph (2), the Secretary, after making a finding described in subparagraph (B), may consider, compromise, and settle a claim for response costs and damages if the claim has not been referred to the Attorney General under subsection (a).

(B) DESCRIPTION OF FINDINGS.—A finding referred to in subparagraph (A) is a finding that—
(i) destruction or loss of, or injury to,

a system resource has occurred; or

(ii) that destruction, loss, or injury

would occur absent an action by the Sec-

cretry to prevent, minimize, or abate the
destruction, loss, or injury.

(2) REQUIREMENT.—In any case in which the

total amount to be recovered in an action under sub-

section (a) may exceed $500,000 (excluding inter-

est), a claim may be compromised and settled under

paragraph (1) only with the prior written approval

of the Attorney General.

(e) RESPONSE ACTIONS, ASSESSMENTS OF DAM-

AGES, AND INJUNCTIVE RELIEF.—

(1) IN GENERAL.—The Secretary may carry out

any necessary action (including making a request to

the Attorney General to seek injunctive relief)—

(A) to prevent, minimize, or abate the de-

struction or loss of, or injury to, a system re-

source; or

(B) to abate or minimize the imminent risk

of that destruction, loss, or injury.

(2) ASSESSMENT AND MONITORING.—

(A) IN GENERAL.—The Secretary may as-

sess and monitor the destruction or loss of, or
injury to, any system resource for purposes of paragraph (1).

(B) JUDICIAL REVIEW.—Any determination or assessment of damage to a system resource carried out under subparagraph (A) shall be subject to judicial review under subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”), on the basis of the administrative record developed by the Secretary.

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

SEC. 403. USE OF RECOVERED AMOUNTS.

(a) IN GENERAL.—An amount equal to the total amount of the response costs and damages recovered by the Secretary under this title and any amounts recovered by the Federal Government under any provision of Federal, State, or local law (including regulations) or otherwise as a result of the destruction or loss of, or injury to, any system resource shall be made available to the Secretary, without further appropriation, for use in accordance with subsection (b).
(b) Use.—The Secretary may use amounts made available under subsection (a) only, in accordance with applicable law—

(1) to reimburse response costs and damage assessments carried out pursuant to this title by the Secretary or such other Federal agency as the Secretary determines to be appropriate;

(2) to restore, replace, or acquire the equivalent of a system resource that was destroyed, lost, or injured; or

(3) to monitor and study the recovery of the system resources that were destroyed, lost, or injured.

(c) Allocation.—The Secretary shall—

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

(2) after the allocation under paragraph (1), allocate any remaining amounts for such use under subsection (b) as the Secretary determines to be appropriate.
SEC. 404. DONATIONS.

(a) IN GENERAL.—In addition to any other authority to accept donations, the Secretary may accept donations of money or services for expenditure or use to meet expected, immediate, or ongoing response costs and damages.

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

SEC. 405. TRANSFER OF FUNDS FROM NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION FUND.

The matter under the heading “NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION FUND” under the heading “UNITED STATES FISH AND WILDLIFE SERVICE” in title I of the Department of the Interior and Related Agencies Appropriations Act, 1994 (43 U.S.C. 1474b–1), is amended by striking “Provided, That” and all that follows through “activities.” and inserting the following: “Provided, That notwithstanding any other provision of law, any amounts appropriated or credited during fiscal year 1992 or any fiscal year thereafter may be transferred to any account (including through a payment to any Federal or non-Federal trustee) to carry out a negotiated legal settlement or other legal action for a restoration activity under the Comprehensive Environmental Response,
Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), section 100721 of title 54, United States Code, or title III of the Recovering America’s Wildlife Act of 2022: Provided further, That sums provided by any individual or entity before or after the date of enactment of this Act shall remain available until expended and shall not be limited to monetary payments, but may include stocks, bonds, or other personal or real property, which may be retained, liquidated, or otherwise disposed of by the Secretary for the restoration of injured resources or to conduct any new damage assessment activity.”