

118TH CONGRESS
1ST SESSION

H. R. 6583

To authorize the United States Fish and Wildlife Service to seek compensation for injuries to trust resources and to use funds received as that compensation to restore, replace, or acquire equivalent resources, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 4, 2023

Mr. THOMPSON of California (for himself, Mr. WITTMAN, Mr. KRISHNAMOORTHY, Mrs. DINGELL, Ms. NORTON, Ms. DEGETTE, Mr. HUFFMAN, Mr. NADLER, and Ms. MATSUI) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To authorize the United States Fish and Wildlife Service to seek compensation for injuries to trust resources and to use funds received as that compensation to restore, replace, or acquire equivalent resources, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Refuge System Protec-
5 tion Act of 2023”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) DAMAGES.—The term “damages” means—

4 (A) compensation for—

5 (i)(I) the cost of replacing, restoring,

6 or acquiring the equivalent of a system re-

7 source; and

8 (II) the value of any significant loss of

9 use of a system resource, pending—

10 (aa) restoration or replacement

11 of the system resource; or

12 (bb) the acquisition of an equiva-

13 lent resource; or

14 (ii) the value of a system resource, if

15 the system resource cannot be replaced or

16 restored; and

17 (B) the cost of any relevant damage as-

18 sessment carried out pursuant to section 4(c).

19 (2) RESPONSE COST.—The term “response

20 cost” means the cost of any action carried out by

21 the Secretary—

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

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

24 source;

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

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

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

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

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

15 (B) a unit of the National Fish Hatchery
16 System; or

17 (C) any other land or water managed by
18 the Director of the United States Fish and
19 Wildlife Service, including any land or water
20 managed cooperatively with any other Federal
21 or State agency.

22 **SEC. 3. ACTIONS.**

23 (a) IN GENERAL.—The Attorney General, at the re-
24 quest of the Secretary, may bring in the district court of
25 the United States of appropriate jurisdiction—

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

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

5 (B) causes the Secretary to carry out any
6 action to prevent, minimize, or abate the de-
7 struction or loss of, or injury or risk to, any
8 system resource; or

9 (2) an in rem action against any instrumen-
10 tality (including a vessel, vehicle, aircraft, or other
11 equipment or mechanism) 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 destruc-
16 tion or loss of, or injury or risk to, a system re-
17 source.

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

20 (1) the applicable destruction or loss of, or in-
21 jury to, the system resource was caused by an other-
22 wise legal act or omission that occurred outside of
23 the boundaries of the system resource;

24 (2) the applicable destruction or loss of, or in-
25 jury to, the system resource was caused by an activ-

1 ity performed in accordance with Federal, State, or
2 local law, regulation, or court order;

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

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

8 (B) the applicable destruction or loss of, or in-
9 jury to, the system resource was caused solely by an
10 act or omission of a third party, other than an em-
11 ployee or agent of the individual, entity, or instru-
12 mentality; or

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

19 (B) the physical defense was—

20 (i) reasonably necessary;

21 (ii) without reasonable alternative; and

22 (iii) not excessive under the circumstances.

23 (c) DAMAGES.—In an action under subsection (a),
24 the court may award response costs and damages resulting

1 from the applicable destruction or loss of, or injury to,
2 the system resource.

3 (d) DE MINIMIS THRESHOLD.—The Secretary may
4 not make a request to the Attorney General under sub-
5 section (a) if the amount that could be awarded under sub-
6 section (c) relating to the cause of action would not exceed
7 \$5,000.

8 (e) ADMINISTRATIVE ACTIONS FOR RESPONSE COSTS
9 AND DAMAGES.—

10 (1) ACTION BY SECRETARY.—

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

18 (B) DESCRIPTION OF FINDINGS.—A find-
19 ing referred to in subparagraph (A) is a finding
20 that—

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

23 (ii) that destruction, loss, or injury
24 would occur absent an action by the Sec-

1 retary to prevent, minimize, or abate the
2 destruction, loss, or injury.

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

9 (f) RESPONSE ACTIONS, ASSESSMENTS OF DAMAGES,
10 AND INJUNCTIVE RELIEF.—

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

14 (A) to prevent, minimize, or abate the de-
15 struction or loss of, or injury to, a system re-
16 source; or

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

19 (2) ASSESSMENT AND MONITORING.—

20 (A) IN GENERAL.—The Secretary may as-
21 sess and monitor the destruction or loss of, or
22 injury to, any system resource for purposes of
23 paragraph (1).

24 (B) JUDICIAL REVIEW.—Any determina-
25 tion or assessment of damage to a system re-

1 source carried out under subparagraph (A)
2 shall be subject to judicial review under sub-
3 chapter II of chapter 5, and chapter 7, of title
4 5, United States Code (commonly known as the
5 “Administrative Procedure Act”), on the basis
6 of the administrative record developed by the
7 Secretary.

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

11 **SEC. 4. USE OF RECOVERED AMOUNTS.**

12 (a) IN GENERAL.—Amounts of the response costs
13 and damages recovered by the Secretary under this Act
14 and any amounts recovered by the Federal Government
15 under any provision of Federal, State, or local law or oth-
16 erwise as a result of the destruction or loss of, or injury
17 to, any system resource shall be credited as discretionary
18 offsetting collections to the Construction account of the
19 United States Fish and Wildlife Service for use in accord-
20 ance with subsection (b), and shall be made available for
21 such purposes only to the extent and in the amounts pro-
22 vided in advance in appropriations Acts.

23 (b) USE.—The Secretary may only use amounts
24 made available under subsection (a)—

25 (1) to reimburse expenditures incurred for—

- 1 (A) response costs;
- 2 (B) damage assessments;
- 3 (C) remediation action planning costs; or
- 4 (D) other activities the Secretary deter-
- 5 mines to be necessary to respond to, assess, and
- 6 remediate damages to a system resource;
- 7 (2) to restore, replace, or acquire the equivalent
- 8 of a system resource that was destroyed, lost, or in-
- 9 jured; or
- 10 (3) to monitor and study the recovery of a sys-
- 11 tem resource that was destroyed, lost, or injured.

12 (c) ALLOCATION.—The Secretary shall—

- 13 (1) allocate for use under subsection (b) the
- 14 amount of response costs and damages recovered
- 15 with respect to each system resource and made
- 16 available under subsection (a) to the unit, land, or
- 17 water described in section 2(4) within which the sys-
- 18 tem resource was located at the time of the destruc-
- 19 tion, loss, or injury; and
- 20 (2) after the allocation under paragraph (1), al-
- 21 locate any remaining amounts for such use under
- 22 subsection (b) as the Secretary determines to be ap-
- 23 propriate.

1 **SEC. 5. DONATIONS.**

2 (a) ACCEPTANCE OF MONETARY DONATIONS AND
3 SERVICES.—Subject to subsection (b), the Secretary may
4 accept donations of money or services to meet expected,
5 immediate, or ongoing response costs and damages.

6 (b) USE OF MONETARY DONATIONS.—Amounts ac-
7 cepted under subsection (a) shall be credited as discre-
8 tionary offsetting collections to the Construction account
9 of the United States Fish and Wildlife Service for meeting
10 such expected, immediate, or ongoing response costs and
11 damages, and shall be made available for such purposes
12 only to the extent and in the amounts provided in advance
13 in appropriations Acts.

14 **SEC. 6. STATUTORY CONSTRUCTION WITH RESPECT TO**
15 **ALASKA.**

16 If any conflict arises between any provision of this
17 Act and any provision of the Alaska National Interest
18 Lands Conservation Act (16 U.S.C. 3101 et seq.), then
19 the provision in such Act shall control.

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