

116TH CONGRESS
1ST SESSION

S. 1899

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 SENATE OF THE UNITED STATES

JUNE 19, 2019

Mr. CARDIN (for himself and Mr. GARDNER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) DAMAGES.—The term “damages” in-
2 cludes—

3 (A) compensation for—

4 (i)(I) the cost of replacing, restoring,
5 or acquiring the equivalent of a system re-
6 source; and

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

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

11 (bb) the acquisition of an equiva-
12 lent resource; or

13 (ii) the value of a system resource, if
14 the system resource cannot be replaced or
15 restored; and

16 (B) the cost of any relevant damage as-
17 sessment carried out pursuant to section 4(c).

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

21 (A) to prevent, minimize, or abate the de-
22 struction or loss of, or injury to, a system re-
23 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, on request
24 of the Secretary, may bring in the district court of the
25 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) ADMINISTRATIVE ACTIONS FOR RESPONSE
4 COSTS AND DAMAGES.—

5 (1) ACTION BY SECRETARY.—

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

13 (B) DESCRIPTION OF FINDINGS.—A find-
14 ing referred to in subparagraph (A) is a finding
15 that—

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

18 (ii) that destruction, loss, or injury
19 would occur absent an action by the Sec-
20 retary to prevent, minimize, or abate the
21 destruction, loss, or injury.

22 (2) REQUIREMENT.—In any case in which the
23 total amount to be recovered in an action under sub-
24 section (a) may exceed \$500,000 (excluding inter-
25 est), a claim may be compromised and settled under

1 paragraph (1) only with the prior written approval
 2 of the Attorney General.

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

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

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

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

13 (2) ASSESSMENT AND MONITORING.—

14 (A) IN GENERAL.—The Secretary may as-
 15 sess and monitor the destruction or loss of, or
 16 injury to, any system resource for purposes of
 17 paragraph (1).

18 (B) JUDICIAL REVIEW.—Any determina-
 19 tion or assessment of damage to a system re-
 20 source carried out under subparagraph (A)
 21 shall be subject to judicial review under sub-
 22 chapter II of chapter 5, and chapter 7, of title
 23 5, United States Code (commonly known as the
 24 “Administrative Procedure Act”), on the basis

1 of the administrative record developed by the
2 Secretary.

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

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

7 (a) IN GENERAL.—An amount equal to the total
8 amount of the response costs and damages recovered by
9 the Secretary under this Act and any amounts recovered
10 by the Federal Government under any provision of Fed-
11 eral, State, or local law (including regulations) or other-
12 wise as a result of the destruction or loss of, or injury
13 to, any system resource shall be made available to the Sec-
14 retary, without further appropriation, for use in accord-
15 ance with subsection (b).

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

19 (1) to reimburse response costs and damage as-
20 sessments carried out pursuant to this Act by the
21 Secretary or such other Federal agency as the Sec-
22 retary determines to be appropriate;

23 (2) to restore, replace, or acquire the equivalent
24 of a system resource that was destroyed, lost, or in-
25 jured; or

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

4 (c) ALLOCATION.—The Secretary shall—

5 (1) allocate for use under subsection (b) the
6 amount of response costs and damages recovered
7 with respect to each system resource and made
8 available under subsection (a) to the unit, land, or
9 water described in section 2(4) within which the sys-
10 tem resource was located at the time of the destruc-
11 tion, loss, or injury; and

12 (2) after the allocation under paragraph (1), al-
13 locate any remaining amounts for such use under
14 subsection (b) as the Secretary determines to be ap-
15 propriate.

16 **SEC. 5. DONATIONS.**

17 (a) IN GENERAL.—In addition to any other authority
18 to accept donations, the Secretary may accept donations
19 of money or services for expenditure or use to meet ex-
20 pected, immediate, or ongoing response costs and dam-
21 ages.

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

1 **SEC. 6. TRANSFER OF FUNDS FROM NATURAL RESOURCE**
 2 **DAMAGE ASSESSMENT AND RESTORATION**
 3 **FUND.**

4 The matter under the heading “NATURAL RESOURCE
 5 DAMAGE ASSESSMENT AND RESTORATION FUND” under
 6 the heading “UNITED STATES FISH AND WILDLIFE
 7 SERVICE” in title I of the Department of the Interior and
 8 Related Agencies Appropriations Act, 1994 (43 U.S.C.
 9 1474b–1), is amended by striking “*Provided, That*” and
 10 all that follows through “activities.” and inserting the fol-
 11 lowing: “*Provided, That* notwithstanding any other provi-
 12 sion of law, any amounts appropriated or credited during
 13 fiscal year 1992 or any fiscal year thereafter may be trans-
 14 ferred to any account (including through a payment to any
 15 Federal or non-Federal trustee) to carry out a negotiated
 16 legal settlement or other legal action for a restoration ac-
 17 tivity under the Comprehensive Environmental Response,
 18 Compensation, and Liability Act of 1980 (42 U.S.C. 9601
 19 et seq.), the Federal Water Pollution Control Act (33
 20 U.S.C. 1251 et seq.), the Oil Pollution Act of 1990 (33
 21 U.S.C. 2701 et seq.), section 100721 of title 54, United
 22 States Code, or the Refuge System Protection Act: *Pro-*
 23 *vided further*, That sums provided by any individual or en-
 24 tity before or after the date of enactment of this Act shall
 25 remain available until expended and shall not be limited
 26 to monetary payments, but may include stocks, bonds, or

1 other personal or real property, which may be retained,
2 liquidated, or otherwise disposed of by the Secretary for
3 the restoration of injured resources or to conduct any new
4 damage assessment activity.”.

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