

113TH CONGRESS
2D SESSION

S. 2560

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

IN THE SENATE OF THE UNITED STATES

JUNE 26, 2014

Mr. CARDIN (by request) 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 use those funds 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 “United States Fish
5 and Wildlife Service Resource Protection Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

1 (A) compensation for—

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

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

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

9 (bb) the acquisition of an equiva-
10 lent resource; or

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

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

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

19 (A) to prevent, minimize, or abate destruc-
20 tion or loss of, or injury to, a system resource;

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

23 (C) to monitor the ongoing effects of any
24 incident causing such destruction, loss, or in-
25 jury.

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

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

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

9 (B) a unit of the National Fish Hatchery
10 System; or

11 (C) any other land managed by the United
12 States Fish and Wildlife Service, including any
13 land managed cooperatively with any other Fed-
14 eral or State agency.

15 **SEC. 3. LIABILITY.**

16 (a) IN GENERAL.—Subject to subsection (c), any in-
17 dividual or entity that destroys, causes the loss of, or in-
18 jures any system resource, or that causes the Secretary
19 to carry out any action to prevent, minimize, or abate de-
20 struction or loss of, or injuries or risk to, any system re-
21 source, shall be liable to the United States for any re-
22 sponse costs or damages resulting from the destruction,
23 loss, or injury.

24 (b) LIABILITY IN REM.—Any instrumentality (includ-
25 ing a vessel, vehicle, aircraft, or other equipment or mech-

1 anism) that destroys, causes the loss of, or injures any
2 system resource, or that causes the Secretary to carry out
3 any action to prevent, minimize, or abate destruction or
4 loss of, or injury or risk to, a system resource shall be
5 liable in rem to the United States for any response costs
6 or damages resulting from the destruction, loss, or injury,
7 to the same extent that an individual or entity is liable
8 under subsection (a).

9 (c) DEFENSES.—An individual or entity shall not be
10 liable under this section, if the individual or entity can
11 establish that—

12 (1) the destruction or loss of, or injury to, the
13 system resource was caused solely by an act of God
14 or an act of war; or

15 (2)(A) the individual or entity exercised due
16 care; and

17 (B) the destruction or loss of, or injury to, the
18 system resource was caused solely by an act or omis-
19 sion of a third party, other than an employee or
20 agent of the individual or entity.

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

1 **SEC. 4. ACTIONS.**

2 (a) CIVIL ACTIONS FOR RESPONSE COSTS AND DAM-
 3 AGES.—The Attorney General, on request of the Sec-
 4 retary, may commence a civil action in the United States
 5 district court of appropriate jurisdiction against any indi-
 6 vidual, entity, or instrumentality that may be liable under
 7 section 3 for response costs or damages.

8 (b) ADMINISTRATIVE ACTIONS FOR RESPONSE
 9 COSTS 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) such destruction, loss, or injury
 24 would occur absent an action by the Sec-
 25 retary to prevent, minimize, or abate the
 26 destruction, loss, or injury.

1 (2) REQUIREMENT.—In any case in which the
 2 total amount to be recovered in a civil action under
 3 subsection (a) may exceed \$500,000 (excluding in-
 4 terest), a claim may be compromised and settled
 5 under paragraph (1) only with the prior written ap-
 6 proval of the Attorney General.

7 (c) RESPONSE ACTIONS, ASSESSMENTS OF DAM-
 8 AGES, AND INJUNCTIVE RELIEF.—

9 (1) IN GENERAL.—The Secretary may carry out
 10 all necessary actions (including making a request to
 11 the Attorney General to seek injunctive relief)—

12 (A) to prevent, minimize, or abate destruc-
 13 tion or loss of, or injury to, a system resource;
 14 or

15 (B) to abate or minimize the imminent risk
 16 of such destruction, loss, or injury.

17 (2) ASSESSMENT AND MONITORING.—

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

22 (B) JUDICIAL REVIEW.—Any determina-
 23 tion or assessment of damage to a system re-
 24 source carried out under subparagraph (A)
 25 shall be subject to judicial review under sub-

1 chapter II of chapter 5, and chapter 7, of title
2 5, United States Code (commonly known as the
3 “Administrative Procedure Act”), on the basis
4 of the administrative record developed by the
5 Secretary.

6 **SEC. 5. 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 system resources.

2 **SEC. 6. DONATIONS.**

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

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

11 **SEC. 7. TRANSFER OF FUNDS FROM NATURAL RESOURCE**
12 **DAMAGE ASSESSMENT AND RESTORATION**
13 **FUND.**

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

1 legal settlement or other legal action for a restoration ac-
2 tivity under the Comprehensive Environmental Response,
3 Compensation, and Liability Act (42 U.S.C. 9601 et seq.),
4 the Federal Water Pollution Control Act (33 U.S.C. 1251
5 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. 2701
6 et seq.), the Act of July 27, 1990 (16 U.S.C. 19jj et seq.),
7 or the United States Fish and Wildlife Service Resource
8 Protection Act, or for any damage assessment activity:
9 *Provided further*, That sums provided by any individual
10 or entity before or after the date of enactment of this Act
11 shall remain available until expended and shall not be lim-
12 ited to monetary payments, but may include stocks, bonds,
13 or other personal or real property, which may be retained,
14 liquidated, or otherwise disposed of by the Secretary for
15 the restoration of injured resources or to conduct any new
16 damage assessment activity.”.

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