

109TH CONGRESS
1ST SESSION

H. R. 2376

To designate the Northwestern Hawaiian Islands National Marine Refuge,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 16, 2005

Mr. CASE introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To designate the Northwestern Hawaiian Islands National
Marine Refuge, 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 “Northwestern Hawai-
5 ian Islands National Marine Refuge Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) The Northwestern Hawaiian Islands
9 (NWHI) and their associated waters encompass the

1 most isolated coral reefs in the world, with the high-
2 est proportion of marine endemic species, and a
3 plethora of valuable and unique natural and cultural
4 resources, most of which are highly vulnerable.

5 (2) These 1,200 miles of coral islands, sea
6 mounts, banks, and shoals are unquestionably the
7 healthiest and most extensive coral reefs in the
8 United States.

9 (3) This vast area of exceptional coral reef eco-
10 systems supports more than 7,000 marine species, of
11 which approximately one quarter are unique to the
12 NWHI.

13 (4) The waters of the NWHI must be set aside
14 as a fully protected national marine refuge to pre-
15 serve in perpetuity their unique and fragile eco-
16 systems, habitats, and communities of flora and
17 fauna, as well as areas of traditional Hawaiian cul-
18 tural significance.

19 (5) A Northwestern Hawaiian Islands National
20 Marine Refuge would best preserve and protect the
21 foraging grounds of the endangered monk seal, the
22 nesting green sea turtle, and the multitude of
23 seabirds that make the NWHI their home.

24 (6) Designating the waters of the NWHI as a
25 national marine refuge would also best preserve and

1 protect invaluable nursery and spawning grounds of
2 many species of fish and invertebrates, and may help
3 replenish severely depleted marine populations in the
4 main Hawaiian Islands.

5 (7) As yet, only a few invasive aquatic species
6 have become established in the NWHI and their as-
7 sociated waters, and continued vessel and other ac-
8 cess to this area is highly likely to cause further con-
9 tamination by alien aquatic species from the main
10 Hawaiian Islands and elsewhere.

11 (8) Establishing the waters of the NWHI as a
12 national marine refuge will protect and conserve the
13 largest contiguous coral reef ecosystem in the United
14 States and in the world and will strengthen global
15 protection of coral reef resources at a critical time.

16 (9) The preservation and protection of the wa-
17 ters of the NWHI as a national marine refuge is in
18 conformity with the findings and recommendations
19 on marine protected areas by the United States
20 Commission on Ocean Policy, the purposes of Execu-
21 tive Order 13196 of January 18, 2001, Executive
22 Order 13178 of December 4, 2000, Executive Order
23 13158 of May 26, 2000, the National Marine Sanc-
24 tuaries Act (16 U.S.C. 1431 et seq.), the National
25 Wildlife Refuge System Administration Act of 1966

1 (16 U.S.C. 668dd et seq.), the Act of August 25,
2 1916, popularly known as the National Park Service
3 Organic Act (16 U.S.C. 1 et seq.), the National His-
4 toric Preservation Act (16 U.S.C. 470 et seq.), the
5 Wilderness Act (16 U.S.C. 1131 et seq.), the Endan-
6 gered Species Act of 1973 (16 U.S.C. 1531 et seq.),
7 the Marine Mammal Protection Act (16 U.S.C. 1361
8 et seq.), the Clean Water Act (33 U.S.C. 1251 et
9 seq.), the National Environmental Policy Act of
10 1969 (42 U.S.C. 4321 et seq.), and other pertinent
11 statutes.

12 **SEC. 3. PURPOSES AND POLICIES.**

13 The purposes and policies of this Act are as follows:

14 (1) To designate the Northwestern Hawaiian
15 Islands National Marine Refuge.

16 (2) To set aside the waters of the NWHI as a
17 national marine refuge that fully preserves and pro-
18 tects in perpetuity the natural resources and cultural
19 heritage of the area described in section 6.

20 (3) To provide that the preservation of biodiver-
21 sity and the protection and conservation of the nat-
22 ural resources and cultural heritage of that area
23 shall be the exclusive basis for all associated deci-
24 sions by Federal agencies.

1 (4) To provide authority for comprehensive and
2 coordinated conservation and management of the
3 Northwestern Hawaiian Islands National Marine
4 Refuge utilizing ecosystem and precautionary man-
5 agement approaches and best available science.

6 (5) To allow research and other activities in the
7 Northwestern Hawaiian Islands National Marine
8 Refuge only for the purposes of understanding,
9 maintaining, protecting, and if necessary restoring
10 the natural biological communities, habitats, native
11 species, populations, and ecological processes of such
12 Refuge, in conformity with paragraph (3).

13 (6) To provide that all human activities in the
14 Northwestern Hawaiian Islands National Marine
15 Refuge shall be limited to those entirely consistent
16 with preservation and protection in the true nature
17 of a fully protected refuge, and that all commercial
18 use of such refuge shall be prohibited, in conformity
19 with paragraph (3).

20 (7) To provide that access to and transit
21 through the Northwestern Hawaiian Islands Na-
22 tional Marine Refuge shall be allowed only if author-
23 ized by a valid permit issued pursuant to this Act,
24 except as necessary for valid law enforcement pur-
25 poses.

1 **SEC. 4. DEFINITIONS.**

2 As used in this Act, the following definitions apply:

3 (1) NATIVE HAWAIIAN SUBSISTENCE PRAC-
4 TICES.—The term “Native Hawaiian subsistence
5 practices”—

6 (A) means traditional Native Hawaiian
7 uses of ocean resources for the purposes of per-
8 petuating traditional knowledge, taking respon-
9 sibility and caring for the environment, engag-
10 ing in direct personal consumption while in the
11 NWHI or the Refuge, and strengthening cul-
12 tural and spiritual connections to the NWHI
13 and the Refuge; and

14 (B) does not include sale in any place of
15 any marine resources.

16 (2) SUSTENANCE FISHING.—The term “suste-
17 nance fishing” means harvesting any marine re-
18 sources for personal consumption while in the
19 NWHI or the Refuge, and only as incidental to
20 other permitted activity, with all such catch con-
21 sumed while in the NWHI or the Refuge.

22 (3) REFUGE RESOURCES.—The term “Refuge
23 resources” includes all natural resources within the
24 Refuge, including without limitation, mammals, fish,
25 including aquaria species and live fish trade species,
26 crustaceans, coral, live rock, fossil coral, rock, sand,

1 mollusks, sponges and other invertebrates, plants
2 and algae, and other species, subspecies, and any
3 part, product, egg, or offspring thereof.

4 (4) VESSEL MONITORING SYSTEM.—The term
5 “vessel monitoring system” means real time satellite
6 position fixing transmitters that allow for remote
7 tracking of the position of vessels, and, where spe-
8 cifically permitted, communications with vessels.

9 (5) COOPERATIVE MANAGEMENT.—The term
10 “cooperative management” means management
11 under cooperative arrangements between the Na-
12 tional Ocean Service and other Federal agencies and
13 the State of Hawaii that specify how such agencies
14 and the State will cooperate with the National
15 Ocean Service in the management of the Refuge.

16 (6) DAMAGES.—The term “damages” in-
17 cludes—

18 (A) compensation for—

19 (i)(I) the cost of replacing, restoring,
20 or acquiring the equivalent of a Refuge re-
21 source; and

22 (II) the value of the lost use of a Ref-
23 uge resource pending its restoration or re-
24 placement or the acquisition of an equiva-
25 lent Refuge resource; or

1 (ii) the value of a Refuge resource if
2 the Refuge resource cannot be restored or
3 replaced or if the equivalent of such re-
4 source cannot be acquired;

5 (B) the cost of damage assessments under
6 section 9(b)(2);

7 (C) the reasonable cost of monitoring ap-
8 propriate to the injured, restored, or replaced
9 Refuge resources;

10 (D) the cost of curation and conservation
11 of archeological, historical, and cultural Refuge
12 resources; and

13 (E) the cost of enforcement actions under-
14 taken by the Secretary in response to the de-
15 struction or loss of, or injury to, a Refuge re-
16 source.

17 (7) RESPONSE COSTS.—The term “response
18 costs” means the costs of actions taken or author-
19 ized by the Secretary to minimize destruction or loss
20 of, or injury to, Refuge resources, or to minimize the
21 imminent risks of such destruction, loss, or injury,
22 including costs related to seizure, forfeiture, storage,
23 or disposal arising from liability under section 10.

24 (8) NWHI.—The term “NWHI” means the
25 Northwestern Hawaiian Islands, and encompasses

1 all terrestrial possessions of the United States from
2 the Island of Nihoa through and including Kure
3 Atoll.

4 (9) REFUGE.—The term “Refuge” means the
5 Northwestern Hawaiian Islands National Marine
6 Refuge designated by section 5.

7 (10) ONMSR.—The term “ONMSR” means
8 the Office of National Marine Sanctuaries and Ref-
9 uges established under section 6.

10 **SEC. 5. DESIGNATION.**

11 (a) DESIGNATION.—The area described in this sec-
12 tion is designated as the Northwestern Hawaiian Islands
13 National Marine Refuge.

14 (b) INCLUDED ISLANDS, ATOLLS, ROCKS, AND
15 REEFS.—Subject to the specific boundaries set forth in
16 subsections (c) and (d), the Northwestern Hawaiian Is-
17 lands National Marine Refuge shall include the islands,
18 atolls, rocks, reefs and other substrate, submerged reefs
19 and other substrate, and oceans and waters of the North-
20 western Hawaiian Islands Archipelago between latitudes
21 22 degrees and 30 degrees north and longitudes 161 de-
22 grees and 180 degrees west.

23 (c) SEAWARD BOUNDARY.—

24 (1) IN GENERAL.—The seaward boundary of
25 the Refuge is a line that is 50 nautical miles from

1 the approximate geographic center positions of each
2 of Nihoa Island, Necker Island (also known as
3 Mokumanamana Island), French Frigate Shoals,
4 Gardner Pinnacles, Maro Reef, Laysan Island,
5 Lisianski Island, Pearl and Hermes Reef, Midway
6 Atoll and Kure Atoll, except that at Kure Atoll the
7 seaward boundary shall extend northwest by west
8 (approximately 300 compass degrees) to the limits of
9 the United States exclusive economic zone between
10 two parallel lines that are tangent to the 50 nautical
11 mile boundary around Kure Atoll.

12 (2) INTERMEDIATE AREAS.—Where the areas
13 described in paragraph (1) are not contiguous, par-
14 allel lines drawn tangent to and connecting those
15 semicircles of the 50 nautical mile areas that lie
16 around such areas shall delimit the remainder of the
17 Refuge.

18 (d) INLAND BOUNDARY.—The inland boundary of
19 the Refuge around each of the areas described in sub-
20 section (b) is, as appropriate—

21 (1) the seaward boundary of the Hawaiian Is-
22 lands National Wildlife Refuge;

23 (2) the seaward boundary of the Midway Atoll
24 National Wildlife Refuge; and

25 (3) the ordinary low watermark of Kure Atoll.

1 **SEC. 6. MANAGEMENT.**

2 (a) ESTABLISHMENT OF OFFICE.—There is estab-
3 lished within the National Ocean Service of the Depart-
4 ment of Commerce the Office of National Marine Sanc-
5 tuaries and Refuges.

6 (b) PRIMARY AUTHORITY.—The Secretary of Com-
7 merce, acting through the ONMSR, has primary jurisdic-
8 tion and ultimate management authority and control over
9 the Refuge area and its resources.

10 (c) MANAGEMENT OF REFUGE.—The Secretary of
11 Commerce, acting through the ONMSR, shall provide for
12 the following:

13 (1) Cooperative management arrangements with
14 the Hawaiian Islands National Wildlife Refuge, Mid-
15 way Atoll National Wildlife Refuge, other appro-
16 priate Federal agencies, and the State of Hawaii, all
17 consistent with relevant authorities.

18 (2) Coordination among Federal agencies and
19 the Director of the National Science Foundation to
20 make vessels and other resources available for con-
21 servation and research activities in the Refuge.

22 (3) Research and monitoring for the purposes
23 of understanding, maintaining, protecting, and if
24 necessary restoring the natural biological commu-
25 nities, habitats, native species, populations, and eco-
26 logical processes of the Refuge.

1 (4) The cleanup and prevention of marine de-
2 bris in the Refuge.

3 (5) The anticipation and mitigation of threats
4 to Refuge resources and cooperation with other Fed-
5 eral and State agencies to maintain contingency
6 planning, emergency response, damage assessment,
7 and restoration measures.

8 (6) The development and maintenance of en-
9 forcement and surveillance programs to maximize
10 protection of the Refuge, including the use of new
11 technologies and coordination with the Coast Guard
12 and other relevant agencies.

13 (7) Identification, in consultation with Native
14 Hawaiian interests, of culturally significant, non-
15 commercial subsistence, cultural, and religious prac-
16 tices and locations within the Refuge.

17 (8) Any regulations, in addition to the con-
18 servation measures established under this Act, that
19 the Secretary determines are necessary to manage the
20 Refuge in accordance with this Act.

21 (9) A report to the Congress every 12 months
22 on the status of the Refuge.

23 (d) MEMORANDA OF AGREEMENT.—To promote co-
24 operative management of the entirety of the shallow areas
25 of the coral reef ecosystem throughout the Northwestern

1 Hawaiian Islands, the Secretary shall work with the Sec-
2 retary of the Interior and the Governor of the State of
3 Hawaii to enter into memoranda of agreement for the co-
4 operative management of the Refuge, Midway Atoll Na-
5 tional Wildlife Refuge, Hawaiian Islands National Wildlife
6 Refuge, and State waters and submerged lands within the
7 Northwestern Hawaiian Islands National Marine Refuge.

8 (e) ADVISORY COUNCIL.—

9 (1) ESTABLISHMENT.—The Secretary shall es-
10 tablish a Northwestern Hawaiian Islands National
11 Marine Refuge Advisory Council to provide advice
12 and recommendations to the Secretary regarding
13 management of the Refuge. The Federal Advisory
14 Committee Act (5 App. U.S.C.) shall not apply to
15 the Advisory Council.

16 (2) FUNCTIONS.—The Advisory Council shall—

17 (A) review permitted activities pursuant to
18 the purposes, policies, and management require-
19 ments of the Refuge, other pertinent laws, and
20 international conventions;

21 (B) recommend to the Secretary and to
22 other Federal officials such steps as it considers
23 necessary or desirable for the protection and
24 conservation of the natural and cultural re-
25 sources of the Refuge;

1 (C) in cooperation with the National Ocean
2 Service, recommend to the Secretary such revi-
3 sions of the endangered species list and threat-
4 ened species list, critical habitat designations,
5 and conservation measures pursuant thereto as
6 may be appropriate; and

7 (D) recommend to the Secretary, other ap-
8 propriate Federal officials, and the Congress,
9 such additional measures as it considers nec-
10 essary or desirable to further the purposes and
11 policies of this Act, including provisions for the
12 protection and exercise of the traditional prac-
13 tices of Native Hawaiians.

14 (3) VOTING MEMBERS.—The voting members of
15 the Advisory Council shall include the following:

16 (A) Two Native Hawaiian representatives,
17 including one Native Hawaiian elder with expe-
18 rience or knowledge regarding Native Hawaiian
19 subsistence, cultural, religious, or other prac-
20 tices in the Northwestern Hawaiian Islands.

21 (B) Three representatives from the science
22 community with experience specific to the
23 Northwestern Hawaiian Islands and with exper-
24 tise in at least one of the following areas:

25 (i) Marine mammal science.

1 (ii) Coral reef ecology.

2 (iii) Native marine flora and fauna of
3 the Hawaiian Islands.

4 (iv) Oceanography.

5 (v) Any other scientific discipline the
6 Secretary determines to be appropriate.

7 (C) Two representatives from nongovern-
8 mental wildlife, marine life, environmental, or
9 conservation organizations with a demonstrated
10 interest in conservation and protection of refuge
11 resources.

12 (4) NONVOTING MEMBERS.—The nonvoting
13 members of the Advisory Council shall include the
14 following:

15 (A) One representative from the State of
16 Hawaii appointed by the Governor.

17 (B) One representative from each of the
18 Department of the Interior, the Coast Guard,
19 the National Marine Sanctuary Program, and
20 the Marine Mammal Commission.

21 (5) COMPENSATION AND EXPENSES.—The vot-
22 ing members of the Advisory Council who are not
23 employed by the Federal Government or any State
24 or local government shall receive compensation at
25 the daily rate or the daily equivalent rate for step

1 7 of GS–15 of the General Schedule under section
2 5332 of title 5, United States Code, when engaged
3 in the actual performance of duties for the Council.
4 The voting members of the Council shall be reim-
5 bursed for actual expenses incurred in the perform-
6 ance of their duties, including travel expenses and
7 per diem in lieu of subsistence, as authorized by sec-
8 tion 5703 of title 5, United States Code for persons
9 in Government service employed intermittently. Non-
10 voting members and Council staff members may be
11 reimbursed for actual expenses.

12 (6) STAFFING AND ASSISTANCE.—The Sec-
13 retary may make available to the Council any staff,
14 information, administrative services, or assistance
15 the Secretary determines are reasonably required to
16 enable the Council to carry out its functions.

17 (7) PUBLIC PARTICIPATION AND PROCEDURAL
18 MATTERS.—The following guidelines apply with re-
19 spect to the conduct of business meetings of the
20 Council:

21 (A) Each meeting should be open to the
22 public, and interested persons should be per-
23 mitted to present oral or written statements on
24 items on the agenda.

1 (B) Emergency meetings may be held at
2 the call of the chairman or presiding officer.

3 (C) Minutes of each meeting should be
4 kept and contain a summary of the attendees
5 and matters discussed.

6 **SEC. 7. PROTECTION AND CONSERVATION MEASURES.**

7 (a) VESSEL REQUIREMENT.—Any United States-
8 flagged vessel over 25 feet in length traveling through or
9 in the Refuge—

10 (1) shall be inspected for and certified to be
11 free of any species alien to the NWHI, including any
12 hull-encrusting organisms, by an inspector author-
13 ized by the head of ONMSR within no more than 14
14 days before entering the Refuge;

15 (2) shall carry an approved and active vessel
16 monitoring system;

17 (3) shall carry a Federal Government observer;

18 (4) shall post a \$1,000,000 vessel-grounding
19 bond, or carry an equivalent amount of vessel
20 grounding insurance; and

21 (5) shall notify the Refuge manager by tele-
22 phone, radio, or other electronic means when enter-
23 ing and leaving the Refuge.

24 (b) PROHIBITED ACTIVITIES.—Except as authorized
25 by a permit under subsection (d), it shall be unlawful for

1 any person to take, injure, destroy, cause the loss of, or
2 disturb any Refuge resource, including the following acts:

3 (1) To possess, sell, offer for sale, purchase, im-
4 port, export, deliver, carry, transport, or ship by any
5 means any Refuge resource taken in violation of this
6 section.

7 (2) To anchor in any area of the Refuge that
8 contains available mooring buoys, or to anchor out-
9 side an available anchoring area if such area has
10 been designated by the Secretary.

11 (3) To touch living coral or live rock in the Ref-
12 uge.

13 (4) To anchor a vessel in the Refuge on any liv-
14 ing coral or live rock with an anchor, an anchor
15 chain, or an anchor rope when visibility is such that
16 the seabed can be seen.

17 (5) To explore for, develop, or produce oil, gas,
18 or any mineral in the Refuge.

19 (6) To drill into, dredge, or otherwise alter the
20 seabed in the Refuge.

21 (7) To construct, place, or abandon any struc-
22 ture, material, or other matter on the seabed in the
23 Refuge.

1 (8) To discard plastic in the Refuge, including
2 any synthetic rope, synthetic fishing net, or plastic
3 garbage bag.

4 (9) To discard rags, glass, metal, bottles, crock-
5 ery, paper products, dunnage, lining, or packing ma-
6 terial in the Refuge that will float, or any similar
7 refuse.

8 (10) To discharge or deposit any material or
9 other matter in the Refuge, or to discharge or de-
10 posit any material or other matter outside the Ref-
11 uge that subsequently enters the Refuge and injures
12 any resource of the Refuge, except the following may
13 be discharged or deposited by permit only:

14 (A) Fish parts used in and during oper-
15 ations authorized under this Act.

16 (B) Biodegradable effluent incident to ves-
17 sel use and generated by a marine sanitation
18 device in accordance with section 312 of the
19 Federal Water Pollution Control Act (33 U.S.C.
20 1322).

21 (C) Water generated by routine vessel op-
22 erations, including water from deck washdown
23 and gray water as defined in section 312 of the
24 Federal Water Pollution Control Act (33 U.S.C.

1 1322), but excluding oily wastes from bilge
2 pumping.

3 (D) Cooling water from vessels or engine
4 exhaust.

5 (11) To interfere with the enforcement of this
6 Act by—

7 (A) refusing to allow any officer authorized
8 to enforce this Act to board a vessel that is sub-
9 ject to such person's control, other than a vessel
10 operated by the Department of Defense or the
11 Coast Guard, for the purposes of conducting
12 any search or inspection in connection with the
13 enforcement of this Act;

14 (B) resisting, opposing, impeding, intimi-
15 dating, harassing, bribing, interfering with, or
16 forcibly assaulting any person authorized by the
17 Secretary to implement this Act or any such
18 authorized officer in the conduct of any search
19 or inspection performed under this Act;

20 (C) knowingly and willfully submitting
21 false information to the Secretary or any officer
22 authorized to enforce this Act in connection
23 with any search or inspection conducted under
24 this Act; or

1 (D) violating any provision of this Act or
2 any regulation or permit issued pursuant to this
3 Act.

4 (c) COMPENSATION FOR DISPLACED FISHERMEN.—
5 Any person who, on the date of the enactment of this Act,
6 holds a valid Federal permit that authorizes fishing in a
7 NWHI or Refuge fisher and is actively engaged in fishing
8 under such permit during the 1-year period preceding the
9 date of the enactment of this Act shall be eligible for fish-
10 eries disaster relief under section 312(a) of the Magnuson-
11 Stevens Fishery Conservation and Management Act (16
12 U.S.C. 1861a(a)).

13 (d) PERMITS.—

14 (1) IN GENERAL.—The Secretary of Commerce,
15 acting through the National Ocean Service, may
16 issue permits only for activities in the Refuge that
17 are consistent with this Act. In issuing such permits,
18 the Secretary shall apply the precautionary ap-
19 proach, particularly in any case in which there is a
20 lack of information regarding the potential impacts
21 of any activity.

22 (2) PERMITABLE ACTIVITIES.—The Secretary
23 may issue permits under this subsection for—

24 (A) research for the purposes of assessing
25 and monitoring the health of Refuge eco-

1 systems, which may include extraction of a
2 small amount of natural resources otherwise
3 prohibited by subsection (b);

4 (B) Native Hawaiian subsistence practices;

5 (C) sustenance fishing for pelagic and
6 bottomfish species using pole and line, trolling
7 and handline methods within the Refuge, except
8 where specifically prohibited;

9 (D) marine debris removal; and

10 (E) other activities in furtherance of the
11 purposes and policies of this Act.

12 **SEC. 8. ENFORCEMENT.**

13 (a) IN GENERAL.—The Secretary shall conduct such
14 enforcement activities as are necessary and reasonable to
15 carry out this Act.

16 (b) POWERS OF AUTHORIZED OFFICERS.—Any per-
17 son who is authorized to enforce this act may—

18 (1) board, search, inspect, and seize any vessel
19 suspected of being used to violate this Act or any
20 regulation or permit issued under this Act and any
21 equipment, stores, and cargo of such vessel;

22 (2) seize wherever found any Refuge resource
23 taken or retained in violation of this Act or any reg-
24 ulation or permit issued under this Act;

1 (3) seize any evidence of a violation of this Act
2 or of any regulation or permit issued under this Act;

3 (4) execute any warrant or other process issued
4 by any court of competent jurisdiction;

5 (5) exercise any other lawful authority; and

6 (6) arrest any person, if there is reasonable
7 cause to believe that such person has committed an
8 act prohibited by section 8(b)(11).

9 (c) CRIMINAL OFFENSES.—

10 (1) OFFENSES.—A person is guilty of an of-
11 fense under this subsection if the person commits
12 any act prohibited by section 8(b)(11) of this Act.

13 (2) PUNISHMENT.—Any person that is guilty of
14 an offense under this subsection—

15 (A) except as provided in subparagraph
16 (B), shall be fined under title 18, United States
17 Code, imprisoned for not more than 6 months,
18 or both; or

19 (B) in the case of a person who in the
20 commission of such an offense uses a dangerous
21 weapon, engages in conduct that causes bodily
22 injury to any person authorized to enforce this
23 Act or any person authorized to implement the
24 provisions of this Act, or places any such per-
25 son in fear of imminent bodily injury, shall be

1 fined under title 18, United States Code, im-
2 prisoned for not more than 10 years, or both.

3 (d) CIVIL PENALTIES.—

4 (1) CIVIL PENALTY.—Any person subject to the
5 jurisdiction of the United States who violates this
6 Act or any regulation or permit issued under this
7 Act shall be liable to the United States for a civil
8 penalty of not more than \$100,000 for each such
9 violation, to be assessed by the Secretary. Each day
10 of a continuing violation shall constitute a separate
11 violation.

12 (2) NOTICE.—No penalty shall be assessed
13 under this subsection until after the person charged
14 has been given notice and an opportunity for a hear-
15 ing.

16 (3) IN REM JURISDICTION.—A vessel used in
17 violating this Act or any regulation or permit issued
18 under this Act shall be liable in rem for any civil
19 penalty assessed for such violation. Such penalty
20 shall constitute a maritime lien on the vessel and
21 may be recovered in an action in rem in the district
22 court of the United States having jurisdiction over
23 the vessel.

24 (4) REVIEW OF CIVIL PENALTY.—Any person
25 against whom a civil penalty is assessed under this

1 subsection may obtain review in the United States
2 district court for the appropriate district by filing a
3 complaint in such court not later than 30 days after
4 the date of such order.

5 (5) COLLECTION OF PENALTIES.—If any per-
6 son fails to pay an assessment of a civil penalty
7 under this section after it has become a final and
8 unappealable order, or after the appropriate court
9 has entered final judgment in favor of the Secretary,
10 the Secretary shall refer the matter to the Attorney
11 General, who shall recover the amount assessed in
12 any appropriate district court of the United States.
13 In such action, the validity and appropriateness of
14 the final order imposing the civil penalty shall not
15 be subject to review.

16 (6) COMPROMISE OR OTHER ACTION BY SEC-
17 RETARY.—The Secretary may compromise, modify,
18 or remit, with or without conditions, any civil pen-
19 alty which is or may be imposed under this section.

20 (e) FORFEITURE.—

21 (1) IN GENERAL.—Any vessel (including the
22 vessel's equipment, stores, and cargo) and other
23 item used, and any Refuge resource taken or re-
24 tained, in any manner, in connection with or as a re-
25 sult of any violation of this Act or of any regulation

1 or permit issued under this Act shall be subject to
2 forfeiture to the United States pursuant to a civil
3 proceeding under this subsection. The proceeds from
4 forfeiture actions under this subsection shall con-
5 stitute a separate recovery in addition to any
6 amounts recovered as civil penalties under this sec-
7 tion or as civil damages under section 10. None of
8 those proceeds shall be subject to setoff.

9 (2) APPLICATION OF THE CUSTOMS LAWS.—

10 The Secretary may exercise the authority of any
11 United States official granted by any relevant cus-
12 toms law relating to the seizure, forfeiture, con-
13 demnation, disposition, remission, and mitigation of
14 property in enforcing this Act.

15 (3) DISPOSAL OF REFUGE RESOURCES.—Any

16 Refuge resource seized pursuant to this Act may be
17 disposed of pursuant to an order of the appropriate
18 court, or, if perishable, in a manner prescribed by
19 regulations promulgated by the Secretary. Any pro-
20 ceeds from the sale of such Refuge resource shall for
21 all purposes represent the Refuge resource so dis-
22 posed of in any subsequent legal proceedings.

23 (4) PRESUMPTION.—For the purposes of this

24 section there is a rebuttable presumption that all
25 Refuge resources found on board a vessel that are

1 used or seized in connection with a violation of this
2 Act or of any regulation or permit issued under this
3 Act were taken or retained in violation of this Act
4 or of a regulation or permit issued under this Act.

5 (f) PAYMENT OF STORAGE, CARE, AND OTHER
6 COSTS.—

7 (1) EXPENDITURES.—

8 (A) RETENTION OF PENALTIES, FORFEIT-
9 URES, AND COSTS.—Notwithstanding any other
10 law, amounts received by the United States as
11 civil penalties, forfeitures of property, and costs
12 imposed under paragraph (2) shall be retained
13 by the Secretary in the manner provided for in
14 section 107(f)(1) of the Comprehensive Envi-
15 ronmental Response, Compensation and Liabil-
16 ity Act (42 U.S.C. 9607 (f)(1)).

17 (B) USE OF FORFEITURES AND COSTS.—
18 Amounts received under this section for forfeit-
19 ures and costs imposed under paragraph (2)
20 shall be used to pay the reasonable and nec-
21 essary costs incurred by the Secretary to pro-
22 vide temporary storage, care, maintenance, and
23 disposal of any Refuge resource or other prop-
24 erty seized in connection with a violation of this

1 Act or any regulation or permit issued under
2 this Act.

3 (C) USE OF CIVIL PENALTIES AND RE-
4 MAINING AMOUNTS.—Amounts received under
5 this section as civil penalties and any amounts
6 remaining after the operation of subparagraph
7 (B) shall be used, in order of priority, to—

8 (i) manage and improve the Refuge
9 with respect to which the violation oc-
10 curred that resulted in the penalty or for-
11 feiture; and

12 (ii) pay a reward to any person who
13 furnishes information leading to an assess-
14 ment of a civil penalty, or to a forfeiture
15 of property, for a violation of this Act or
16 any regulation or permit issued under this
17 Act.

18 (2) LIABILITY FOR COSTS.—Any person as-
19 sessed a civil penalty for a violation of this Act or
20 of any regulation or permit issued under this Act,
21 and any claimant in a forfeiture action brought for
22 such a violation, shall be liable for the reasonable
23 costs incurred by the Secretary in storage, care, and
24 maintenance of any Refuge resource or other prop-
25 erty seized in connection with the violation.

1 (g) SUBPOENAS.—In the case of any hearing under
2 this section which is determined on the record in accord-
3 ance with the procedures provided for under section 554
4 of title 5, United States Code, the Secretary may issue
5 subpoenas for the attendance and testimony of witnesses
6 and the production of relevant papers, books, electronic
7 files, and documents, and may administer oaths.

8 (h) USE OF RESOURCES OF STATE AND OTHER FED-
9 ERAL AGENCIES.—The Secretary shall, whenever appro-
10 priate, use by agreement the personnel, services, and fa-
11 cilities of State and other Federal departments, agencies,
12 and instrumentalities, on a reimbursable or nonreimburs-
13 able basis, to carry out the Secretary's responsibilities
14 under this section.

15 (i) COAST GUARD AUTHORITY NOT LIMITED.—Noth-
16 ing in this section shall be considered to limit the authority
17 of the Coast Guard to enforce this or any other Federal
18 law under section 89 of title 14, United States Code.

19 (j) INJUNCTIVE RELIEF.—If the Secretary deter-
20 mines that there is an imminent risk of destruction or loss
21 of or injury to a Refuge resource, or that there has been
22 actual destruction or loss of, or injury to a Refuge re-
23 source that may give rise to liability under section 10, the
24 Attorney General, upon request of the Secretary, shall
25 seek to obtain such relief as may be necessary to abate

1 such risk or actual destruction, loss, or injury, or to re-
2 store or replace the Refuge resource, or both. The district
3 courts of the United States shall have jurisdiction in such
4 a case to order such relief as the public interest and the
5 equities of the case may require.

6 (k) AREA OF APPLICATION AND ENFORCEABILITY.—
7 The area of application and enforceability of this Act in-
8 cludes the territorial sea of the United States, as described
9 in Presidential Proclamation 5928 of December 27, 1988,
10 and the United States exclusive economic zone, consistent
11 with international law.

12 (l) NATIONWIDE SERVICE OF PROCESS.—In any ac-
13 tion by the United States under this Act, process may be
14 served in any district where the defendant is found, re-
15 sides, transacts business, or has appointed an agent for
16 the service of process.

17 **SEC. 9. DESTRUCTION OR LOSS OF, OR INJURY TO, REFUGE**
18 **RESOURCES.**

19 (a) LIABILITY.—

20 (1) LIABILITY TO UNITED STATES.—Any per-
21 son who destroys, causes the loss of, or injures any
22 Refuge resource is liable to the United States for an
23 amount equal to the sum of—

1 (A) the amount of response costs and dam-
2 ages resulting from the destruction, loss, or in-
3 jury; and

4 (B) interest on that amount calculated in
5 the manner described under section 1005 of the
6 Oil Pollution Act of 1990 (33 U.S.C. 2705).

7 (2) LIABILITY IN REM.—Any vessel used to de-
8 stroy, cause the loss of, or injure any Refuge re-
9 source shall be liable in rem to the United States for
10 response costs and damages resulting from such de-
11 struction, loss, or injury. The amount of that liabil-
12 ity shall constitute a maritime lien on the vessel and
13 may be recovered in an action in rem in any district
14 court of the United States that has jurisdiction over
15 the vessel.

16 (3) DEFENSES.—A person is not liable under
17 this subsection if that person establishes that—

18 (A) the destruction or loss of, or injury to,
19 the Refuge resource was caused solely by an act
20 of God, an act of war, or an act or omission of
21 a third party, and the person acted with due
22 care;

23 (B) the destruction, loss, or injury was
24 caused by an activity authorized by Federal or
25 State law; or

1 (C) the destruction, loss, or injury was
2 negligible.

3 (4) LIMITS TO LIABILITY.—Nothing in sections
4 4281 through 4289 of the Revised Statutes of the
5 United States or section 3 of the Act of February
6 13, 1893, shall limit the liability of any person
7 under this Act.

8 (b) RESPONSE ACTIONS AND DAMAGE ASSESS-
9 MENT.—

10 (1) RESPONSE ACTIONS.—The Secretary may
11 undertake or authorize all necessary actions to pre-
12 vent or minimize the destruction or loss of, or injury
13 to, Refuge resources, or to minimize the imminent
14 risk of such destruction, loss, or injury.

15 (2) DAMAGE ASSESSMENT.—The Secretary
16 shall assess damages to Refuge resources in accord-
17 ance with section 4(6).

18 (c) CIVIL ACTIONS FOR RESPONSE COSTS AND DAM-
19 AGES.—

20 (1) COMMENCEMENT.—The Attorney General,
21 upon request of the Secretary, may commence a civil
22 action against any person or vessel who may be lia-
23 ble under subsection (a) for response costs and dam-
24 ages. The Secretary, acting as trustee for Refuge re-
25 sources, shall submit a request for such an action to

1 the Attorney General whenever a person may be lia-
2 ble for such costs or damages.

3 (2) VENUE.—An action under this subsection
4 may be brought in the United States district court
5 for any district in which—

6 (A) the defendant is located, resides, or is
7 doing business, in the case of an action against
8 a person;

9 (B) the vessel is located, in the case of an
10 action against a vessel; or

11 (C) the destruction of, loss of, or injury to
12 a refuge resource occurred.

13 (d) USE OF RECOVERED AMOUNTS.—Response costs
14 and damages recovered by the Secretary under this section
15 shall be retained by the Secretary in the manner provided
16 for in section 107(f)(1) of the Comprehensive Environ-
17 mental Response, Compensation and Liability Act (42
18 U.S.C. 9607 (f)(1)), and used as follows:

19 (1) RESPONSE COSTS.—amounts recovered by
20 the United States for costs of response actions and
21 damage assessments under this section shall be
22 used, as the Secretary considers appropriate—

23 (A) to reimburse the Secretary or any
24 other Federal or State agency that conducted
25 those activities; and

1 (B) after reimbursement of such costs, to
2 restore, replace, or acquire the equivalent of
3 any refuge resource.

4 (2) OTHER AMOUNTS.—All other amounts re-
5 covered shall be used, in order of priority—

6 (A) to restore, replace, or acquire the
7 equivalent of the Refuge resources that were
8 the subject of the action, including for costs of
9 monitoring and the costs of curation and con-
10 servation of archeological, historical, and cul-
11 tural Refuge resources; and

12 (B) to restore degraded Refuge resources
13 that were the subject of the action.

14 (3) FEDERAL-STATE COORDINATION.—Amounts
15 recovered under this section with respect to Refuge
16 resources lying within the jurisdiction of the State
17 shall be used under paragraph (2) in accordance
18 with the court decree or settlement agreement and
19 an agreement entered into by the Secretary and the
20 Governor of the State.

21 (e) STATUTE OF LIMITATIONS.—An action for re-
22 sponse costs or damages under subsection (c) shall be
23 barred unless the complaint is filed within 3 years after
24 the date on which the Secretary completes a damage as-

1 assessment and restoration plan for the Refuge resources
2 to which the action relates.

3 **SEC. 10. REPEAL OF SUPERSEDED PROVISIONS.**

4 (a) NATIONAL MARINE SANCTUARIES ACT.—Section
5 304(f)(3) of the National Marine Sanctuaries Act (16
6 U.S.C. 1434(f)(3)) is amended by striking “documents
7 for” and all that follows through the period and inserting
8 “documents for a Thunder Bay National Marine Sanc-
9 tuary.”.

10 (b) NATIONAL MARINE SANCTUARIES AMENDMENTS
11 ACT OF 2000.—Subsection (g) of section 6 of the National
12 Marine Sanctuaries Amendments Act of 2000 (Public Law
13 106–513; 114 Stat 2385) is repealed.

14 **SEC. 11. IMPLEMENTATION.**

15 The Secretary shall issue any regulations necessary
16 to implement this Act within 6 months after the date of
17 its enactment.

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