

AMENDMENT TO H.R. 3668

OFFERED BY MR. HUFFMAN OF CALIFORNIA

At the end of the bill, add the following:

1 **TITLE XX—UNITED STATES FISH**
2 **AND WILDLIFE SERVICE RE-**
3 **SOURCE PROTECTION**

4 **SEC. 2001. SHORT TITLE.**

5 This title may be cited as the “United States Fish
6 and Wildlife Service Resource Protection Act”.

7 **SEC. 2002. DEFINITIONS.**

8 In this Act:

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

10 (A) compensation for—

11 (i)(I) the cost of replacing, restoring,
12 or acquiring the equivalent of a system re-
13 source; and

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

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

18 (bb) the acquisition of an equiva-
19 lent resource; or

1 (ii) the value of a system resource, if
2 the system resource cannot be replaced or
3 restored; and

4 (B) the cost of any relevant damage as-
5 sessment carried out pursuant to section
6 2004(c).

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

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

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

14 (C) to monitor the ongoing effects of any
15 incident causing such destruction, loss, or in-
16 jury.

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

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

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

1 (B) a unit of the National Fish Hatchery
2 System; or

3 (C) any other land managed by the United
4 States Fish and Wildlife Service, including any
5 land managed cooperatively with any other Fed-
6 eral or State agency.

7 **SEC. 2003. LIABILITY.**

8 (a) IN GENERAL.—Subject to subsection (c), any in-
9 dividual or entity that destroys, causes the loss of, or in-
10 jures any system resource, or that causes the Secretary
11 to carry out any action to prevent, minimize, or abate de-
12 struction or loss of, or injuries or risk to, any system re-
13 source, shall be liable to the United States for any re-
14 sponse costs or damages resulting from the destruction,
15 loss, or injury.

16 (b) LIABILITY IN REM.—Any instrumentality (includ-
17 ing a vessel, vehicle, aircraft, or other equipment or mech-
18 anism) that destroys, causes the loss of, or injures any
19 system resource, or that causes the Secretary to carry out
20 any action to prevent, minimize, or abate destruction or
21 loss of, or injury or risk to, a system resource shall be
22 liable in rem to the United States for any response costs
23 or damages resulting from the destruction, loss, or injury,
24 to the same extent that an individual or entity is liable
25 under subsection (a).

1 (c) DEFENSES.—An individual or entity shall not be
2 liable under this section, if the individual or entity can
3 establish that—

4 (1) the destruction or loss of, or injury to, the
5 system resource was caused solely by an act of God
6 or an act of war; or

7 (2)(A) the individual or entity exercised due
8 care; and

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

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

16 **SEC. 2004. ACTIONS.**

17 (a) CIVIL ACTIONS FOR RESPONSE COSTS AND DAM-
18 AGES.—The Attorney General, on request of the Sec-
19 retary, may commence a civil action in the United States
20 district court of appropriate jurisdiction against any indi-
21 vidual, entity, or instrumentality that may be liable under
22 section 2003 for response costs or damages.

23 (b) ADMINISTRATIVE ACTIONS FOR RESPONSE
24 COSTS AND DAMAGES.—

25 (1) ACTION BY SECRETARY.—

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

8 (B) DESCRIPTION OF FINDINGS.—A find-
9 ing referred to in subparagraph (A) is a finding
10 that—

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

13 (ii) such destruction, loss, or injury
14 would occur absent an action by the Sec-
15 retary to prevent, minimize, or abate the
16 destruction, loss, or injury.

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

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

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

4 (A) to prevent, minimize, or abate destruc-
5 tion or loss of, or injury to, a system resource;
6 or

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

9 (2) ASSESSMENT AND MONITORING.—

10 (A) IN GENERAL.—The Secretary may as-
11 sess and monitor the destruction or loss of, or
12 injury to, any system resource for purposes of
13 paragraph (1).

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

23 **SEC. 2005. USE OF RECOVERED AMOUNTS.**

24 (a) IN GENERAL.—An amount equal to the total
25 amount of the response costs and damages recovered by

1 the Secretary under this Act and any amounts recovered
2 by the Federal Government under any provision of Fed-
3 eral, State, or local law (including regulations) or other-
4 wise as a result of the destruction or loss of, or injury
5 to, any system resource shall be made available to the Sec-
6 retary, without further appropriation, for use in accord-
7 ance with subsection (b).

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

11 (1) to reimburse response costs and damage as-
12 sessments carried out pursuant to this Act by the
13 Secretary or such other Federal agency as the Sec-
14 retary determines to be appropriate;

15 (2) to restore, replace, or acquire the equivalent
16 of a system resource that was destroyed, lost, or in-
17 jured; or

18 (3) to monitor and study system resources.

19 **SEC. 2006. DONATIONS.**

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

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

4 **SEC. 2007. TRANSFER OF FUNDS FROM NATURAL RE-**
5 **SOURCE DAMAGE ASSESSMENT AND RES-**
6 **TORATION FUND.**

7 The matter under the heading “NATURAL RESOURCE
8 DAMAGE ASSESSMENT AND RESTORATION FUND” under
9 the heading “UNITED STATES FISH AND WILDLIFE SERV-
10 ICE” of title I of the Department of the Interior and Re-
11 lated Agencies Appropriations Act, 1994 (43 U.S.C.
12 1474b–1), is amended by striking “*Provided, That*” and
13 all that follows through “activities.” and inserting the fol-
14 lowing: “*Provided, That* notwithstanding any other provi-
15 sion of law, any amounts appropriated for or credited dur-
16 ing fiscal year 1992 or any fiscal year thereafter may be
17 transferred to any account (including through a payment
18 to any Federal or non-Federal trustee) to carry out a ne-
19 gotiated legal settlement or other legal action for a res-
20 toration activity under the Comprehensive Environmental
21 Response, Compensation, and Liability Act (42 U.S.C.
22 9601 et seq.), the Federal Water Pollution Control Act
23 (33 U.S.C. 1251 et seq.), the Oil Pollution Act of 1990
24 (33 U.S.C. 2701 et seq.), the Act of July 27, 1990 (16
25 U.S.C. 19jj et seq.), or the United States Fish and Wild-

1 life Service Resource Protection Act, or for any damage
2 assessment activity: *Provided further*, That sums provided
3 by any individual or entity before or after the date of en-
4 actment of this Act shall remain available until expended
5 and shall not be limited to monetary payments, but may
6 include stocks, bonds, or other personal or real property,
7 which may be retained, liquidated, or otherwise disposed
8 of by the Secretary for the restoration of injured resources
9 or to conduct any new damage assessment activity.”.

