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(Original Signature of Member)

109TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. CASE introduced the following bill; which was referred to the Committee
on _____

A BILL

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

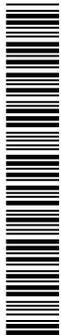
1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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:



1 (1) The Northwestern Hawaiian Islands
2 (NWHI) and their associated waters encompass the
3 most isolated coral reefs in the world, with the high-
4 est proportion of marine endemic species, and a
5 plethora of valuable and unique natural and cultural
6 resources, most of which are highly vulnerable.

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

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

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

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



1 (6) Designating the waters of the NWHI as a
2 national marine refuge would also best preserve and
3 protect invaluable nursery and spawning grounds of
4 many species of fish and invertebrates, and may help
5 replenish severely depleted marine populations in the
6 main Hawaiian Islands.

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

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

18 (9) The preservation and protection of the wa-
19 ters of the NWHI as a national marine refuge is in
20 conformity with the findings and recommendations
21 on marine protected areas by the United States
22 Commission on Ocean Policy, the purposes of Execu-
23 tive Order 13196 of January 18, 2001, Executive
24 Order 13178 of December 4, 2000, Executive Order
25 13158 of May 26, 2000, the National Marine Sanc-



1 tuaries Act (16 U.S.C. 1431 et seq.), the National
2 Wildlife Refuge System Administration Act of 1966
3 (16 U.S.C. 668dd et seq.), the Act of August 25,
4 1916, popularly known as the National Park Service
5 Organic Act (16 U.S.C. 1 et seq.), the National His-
6 toric Preservation Act (16 U.S.C. 470 et seq.), the
7 Wilderness Act (16 U.S.C. 1131 et seq.), the Endan-
8 gered Species Act of 1973 (16 U.S.C. 1531 et seq.),
9 the Marine Mammal Protection Act (16 U.S.C. 1361
10 et seq.), the Clean Water Act (33 U.S.C. 1251 et
11 seq.), the National Environmental Policy Act of
12 1969 (42 U.S.C. 4321 et seq.), and other pertinent
13 statutes.

14 **SEC. 3. PURPOSES AND POLICIES.**

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

16 (1) To designate the Northwestern Hawaiian
17 Islands National Marine Refuge.

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

22 (3) To provide that the preservation of biodiver-
23 sity and the protection and conservation of the nat-
24 ural resources and cultural heritage of that area



1 shall be the exclusive basis for all associated deci-
2 sions by Federal agencies.

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

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

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

22 (7) To provide that access to and transit
23 through the Northwestern Hawaiian Islands Na-
24 tional Marine Refuge shall be allowed only if author-
25 ized by a valid permit issued pursuant to this Act,



1 except as necessary for valid law enforcement pur-
2 poses.

3 **SEC. 4. DEFINITIONS.**

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

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

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

16 (B) does not include sale in any place of
17 any marine resources.

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

24 (3) REFUGE RESOURCES.—The term “Refuge
25 resources” includes all natural resources within the



1 Refuge, including without limitation, mammals, fish,
2 including aquaria species and live fish trade species,
3 crustaceans, coral, live rock, fossil coral, rock, sand,
4 mollusks, sponges and other invertebrates, plants
5 and algae, and other species, subspecies, and any
6 part, product, egg, or offspring thereof.

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

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

19 (6) DAMAGES.—The term “damages”
20 includes—

21 (A) compensation for—

22 (i)(I) the cost of replacing, restoring,
23 or acquiring the equivalent of a Refuge re-
24 source; and



1 (II) the value of the lost use of a Ref-
2 uge resource pending its restoration or re-
3 placement or the acquisition of an equiva-
4 lent Refuge resource; or

5 (ii) the value of a Refuge resource if
6 the Refuge resource cannot be restored or
7 replaced or if the equivalent of such re-
8 source cannot be acquired;

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

11 (C) the reasonable cost of monitoring ap-
12 propriate to the injured, restored, or replaced
13 Refuge resources;

14 (D) the cost of curation and conservation
15 of archeological, historical, and cultural Refuge
16 resources; and

17 (E) the cost of enforcement actions under-
18 taken by the Secretary in response to the de-
19 struction or loss of, or injury to, a Refuge re-
20 source.

21 (7) RESPONSE COSTS.—The term “response
22 costs” means the costs of actions taken or author-
23 ized by the Secretary to minimize destruction or loss
24 of, or injury to, Refuge resources, or to minimize the
25 imminent risks of such destruction, loss, or injury,



1 including costs related to seizure, forfeiture, storage,
2 or disposal arising from liability under section 10.

3 (8) NWHI.—The term “NWHI” means the
4 Northwestern Hawaiian Islands, and encompasses
5 all terrestrial possessions of the United States from
6 the Island of Nihoa through and including Kure
7 Atoll.

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

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

14 **SEC. 5. DESIGNATION.**

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

18 (b) INCLUDED ISLANDS, ATOLLS, ROCKS, AND
19 REEFS.—Subject to the specific boundaries set forth in
20 subsections (c) and (d), the Northwestern Hawaiian Is-
21 lands National Marine Refuge shall include the islands,
22 atolls, rocks, reefs and other substrate, submerged reefs
23 and other substrate, and oceans and waters of the North-
24 western Hawaiian Islands Archipelago between latitudes



1 22 degrees and 30 degrees north and longitudes 161 de-
2 grees and 180 degrees west.

3 (c) SEAWARD BOUNDARY.—

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

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

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



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

3 (2) the seaward boundary of the Midway Atoll
4 National Wildlife Refuge; and

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

6 **SEC. 6. MANAGEMENT.**

7 (a) ESTABLISHMENT OF OFFICE.—There is estab-
8 lished within the National Ocean Service of the Depart-
9 ment of Commerce the Office of National Marine Sanc-
10 tuaries and Refuges.

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

15 (c) MANAGEMENT OF REFUGE.—The Secretary of
16 Commerce, acting through the ONMSR, shall provide for
17 the following:

18 (1) Cooperative management arrangements with
19 the Hawaiian Islands National Wildlife Refuge, Mid-
20 way Atoll National Wildlife Refuge, other appro-
21 priate Federal agencies, and the State of Hawaii, all
22 consistent with relevant authorities.

23 (2) Coordination among Federal agencies and
24 the Director of the National Science Foundation to



1 make vessels and other resources available for con-
2 servation and research activities in the Refuge.

3 (3) Research and monitoring for the purposes
4 of understanding, maintaining, protecting, and if
5 necessary restoring the natural biological commu-
6 nities, habitats, native species, populations, and eco-
7 logical processes of the Refuge.

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

10 (5) The anticipation and mitigation of threats
11 to Refuge resources and cooperation with other Fed-
12 eral and State agencies to maintain contingency
13 planning, emergency response, damage assessment,
14 and restoration measures.

15 (6) The development and maintenance of en-
16 forcement and surveillance programs to maximize
17 protection of the Refuge, including the use of new
18 technologies and coordination with the Coast Guard
19 and other relevant agencies.

20 (7) Identification, in consultation with Native
21 Hawaiian interests, of culturally significant, non-
22 commercial subsistence, cultural, and religious prac-
23 tices and locations within the Refuge.

24 (8) Any regulations, in addition to the con-
25 servation measures established under this Act, that



1 the Secretary determines are necessary to manage the
2 Refuge in accordance with this Act.

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

5 (d) MEMORANDA OF AGREEMENT.—To promote co-
6 operative management of the entirety of the shallow areas
7 of the coral reef ecosystem throughout the Northwestern
8 Hawaiian Islands, the Secretary shall work with the Sec-
9 retary of the Interior and the Governor of the State of
10 Hawaii to enter into memoranda of agreement for the co-
11 operative management of the Refuge, Midway Atoll Na-
12 tional Wildlife Refuge, Hawaiian Islands National Wildlife
13 Refuge, and State waters and submerged lands within the
14 Northwestern Hawaiian Islands National Marine Refuge.

15 (e) ADVISORY COUNCIL.—

16 (1) ESTABLISHMENT.—The Secretary shall es-
17 tablish a Northwestern Hawaiian Islands National
18 Marine Refuge Advisory Council to provide advice
19 and recommendations to the Secretary regarding
20 management of the Refuge. The Federal Advisory
21 Committee Act (5 App. U.S.C.) shall not apply to
22 the Advisory Council.

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

24 (A) review permitted activities pursuant to
25 the purposes, policies, and management require-



1 ments of the Refuge, other pertinent laws, and
2 international conventions;

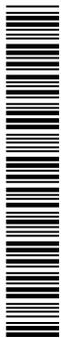
3 (B) recommend to the Secretary and to
4 other Federal officials such steps as it considers
5 necessary or desirable for the protection and
6 conservation of the natural and cultural re-
7 sources of the Refuge;

8 (C) in cooperation with the National Ocean
9 Service, recommend to the Secretary such revi-
10 sions of the endangered species list and threat-
11 ened species list, critical habitat designations,
12 and conservation measures pursuant thereto as
13 may be appropriate; and

14 (D) recommend to the Secretary, other ap-
15 propriate Federal officials, and the Congress,
16 such additional measures as it considers nec-
17 essary or desirable to further the purposes and
18 policies of this Act, including provisions for the
19 protection and exercise of the traditional prac-
20 tices of Native Hawaiians.

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

23 (A) Two Native Hawaiian representatives,
24 including one Native Hawaiian elder with expe-
25 rience or knowledge regarding Native Hawaiian



1 subsistence, cultural, religious, or other prac-
2 tices in the Northwestern Hawaiian Islands.

3 (B) Three representatives from the science
4 community with experience specific to the
5 Northwestern Hawaiian Islands and with exper-
6 tise in at least one of the following areas:

7 (i) Marine mammal science.

8 (ii) Coral reef ecology.

9 (iii) Native marine flora and fauna of
10 the Hawaiian Islands.

11 (iv) Oceanography.

12 (v) Any other scientific discipline the
13 Secretary determines to be appropriate.

14 (C) Two representatives from nongovern-
15 mental wildlife, marine life, environmental, or
16 conservation organizations with a demonstrated
17 interest in conservation and protection of refuge
18 resources.

19 (4) NONVOTING MEMBERS.—The nonvoting
20 members of the Advisory Council shall include the
21 following:

22 (A) One representative from the State of
23 Hawaii appointed by the Governor.

24 (B) One representative from each of the
25 Department of the Interior, the Coast Guard,



1 the National Marine Sanctuary Program, and
2 the Marine Mammal Commission.

3 (5) COMPENSATION AND EXPENSES.—The vot-
4 ing members of the Advisory Council who are not
5 employed by the Federal Government or any State
6 or local government shall receive compensation at
7 the daily rate or the daily equivalent rate for step
8 7 of GS–15 of the General Schedule under section
9 5332 of title 5, United States Code, when engaged
10 in the actual performance of duties for the Council.
11 The voting members of the Council shall be reim-
12 bursed for actual expenses incurred in the perform-
13 ance of their duties, including travel expenses and
14 per diem in lieu of subsistence, as authorized by sec-
15 tion 5703 of title 5, United States Code for persons
16 in Government service employed intermittently. Non-
17 voting members and Council staff members may be
18 reimbursed for actual expenses.

19 (6) STAFFING AND ASSISTANCE.—The Sec-
20 retary may make available to the Council any staff,
21 information, administrative services, or assistance
22 the Secretary determines are reasonably required to
23 enable the Council to carry out its functions.

24 (7) PUBLIC PARTICIPATION AND PROCEDURAL
25 MATTERS.—The following guidelines apply with re-



1 spect to the conduct of business meetings of the
2 Council:

3 (A) Each meeting should be open to the
4 public, and interested persons should be per-
5 mitted to present oral or written statements on
6 items on the agenda.

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

9 (C) Minutes of each meeting should be
10 kept and contain a summary of the attendees
11 and matters discussed.

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

13 (a) VESSEL REQUIREMENT.—Any United States-
14 flagged vessel over 25 feet in length traveling through or
15 in the Refuge—

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

21 (2) shall carry an approved and active vessel
22 monitoring system;

23 (3) shall carry a Federal Government observer;



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

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

7 (b) PROHIBITED ACTIVITIES.—Except as authorized
8 by a permit under subsection (d), it shall be unlawful for
9 any person to take, injure, destroy, cause the loss of, or
10 disturb any Refuge resource, including the following acts:

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

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

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

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



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

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

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

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

11 (9) To discard rags, glass, metal, bottles, crock-
12 ery, paper products, dunnage, lining, or packing ma-
13 terial in the Refuge that will float, or any similar
14 refuse.

15 (10) To discharge or deposit any material or
16 other matter in the Refuge, or to discharge or de-
17 posit any material or other matter outside the Ref-
18 uge that subsequently enters the Refuge and injures
19 any resource of the Refuge, except the following may
20 be discharged or deposited by permit only:

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

23 (B) Biodegradable effluent incident to ves-
24 sel use and generated by a marine sanitation
25 device in accordance with section 312 of the



1 Federal Water Pollution Control Act (33 U.S.C.
2 1322).

3 (C) Water generated by routine vessel op-
4 erations, including water from deck washdown
5 and gray water as defined in section 312 of the
6 Federal Water Pollution Control Act (33 U.S.C.
7 1322), but excluding oily wastes from bilge
8 pumping.

9 (D) Cooling water from vessels or engine
10 exhaust.

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

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

20 (B) resisting, opposing, impeding, intimi-
21 dating, harassing, bribing, interfering with, or
22 forcibly assaulting any person authorized by the
23 Secretary to implement this Act or any such
24 authorized officer in the conduct of any search
25 or inspection performed under this Act;



1 (C) knowingly and willfully submitting
2 false information to the Secretary or any officer
3 authorized to enforce this Act in connection
4 with any search or inspection conducted under
5 this Act; or

6 (D) violating any provision of this Act or
7 any regulation or permit issued pursuant to this
8 Act.

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

18 (d) PERMITS.—

19 (1) IN GENERAL.—The Secretary of Commerce,
20 acting through the National Ocean Service, may
21 issue permits only for activities in the Refuge that
22 are consistent with this Act. In issuing such permits,
23 the Secretary shall apply the precautionary ap-
24 proach, particularly in any case in which there is a



1 lack of information regarding the potential impacts
2 of any activity.

3 (2) PERMITTABLE ACTIVITIES.—The Secretary
4 may issue permits under this subsection for—

5 (A) research for the purposes of assessing
6 and monitoring the health of Refuge eco-
7 systems, which may include extraction of a
8 small amount of natural resources otherwise
9 prohibited by subsection (b);

10 (B) Native Hawaiian subsistence practices;

11 (C) sustenance fishing for pelagic and
12 bottomfish species using pole and line, trolling
13 and handline methods within the Refuge, except
14 where specifically prohibited;

15 (D) marine debris removal; and

16 (E) other activities in furtherance of the
17 purposes and policies of this Act.

18 **SEC. 8. ENFORCEMENT.**

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

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

24 (1) board, search, inspect, and seize any vessel
25 suspected of being used to violate this Act or any



1 regulation or permit issued under this Act and any
2 equipment, stores, and cargo of such vessel;

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

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

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

10 (5) exercise any other lawful authority; and

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

14 (c) CRIMINAL OFFENSES.—

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

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

20 (A) except as provided in subparagraph

21 (B), shall be fined under title 18, United States
22 Code, imprisoned for not more than 6 months,
23 or both; or

24 (B) in the case of a person who in the
25 commission of such an offense uses a dangerous



1 weapon, engages in conduct that causes bodily
2 injury to any person authorized to enforce this
3 Act or any person authorized to implement the
4 provisions of this Act, or places any such per-
5 son in fear of imminent bodily injury, shall be
6 fined under title 18, United States Code, im-
7 prisoned for not more than 10 years, or both.

8 (d) CIVIL PENALTIES.—

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

17 (2) NOTICE.—No penalty shall be assessed
18 under this subsection until after the person charged
19 has been given notice and an opportunity for a hear-
20 ing.

21 (3) IN REM JURISDICTION.—A vessel used in
22 violating this Act or any regulation or permit issued
23 under this Act shall be liable in rem for any civil
24 penalty assessed for such violation. Such penalty
25 shall constitute a maritime lien on the vessel and



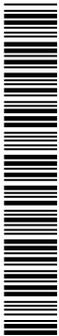
1 may be recovered in an action in rem in the district
2 court of the United States having jurisdiction over
3 the vessel.

4 (4) REVIEW OF CIVIL PENALTY.—Any person
5 against whom a civil penalty is assessed under this
6 subsection may obtain review in the United States
7 district court for the appropriate district by filing a
8 complaint in such court not later than 30 days after
9 the date of such order.

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

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

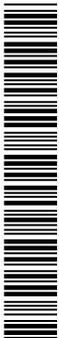
25 (e) FORFEITURE.—



1 (1) IN GENERAL.—Any vessel (including the
2 vessel's equipment, stores, and cargo) and other
3 item used, and any Refuge resource taken or re-
4 tained, in any manner, in connection with or as a re-
5 sult of any violation of this Act or of any regulation
6 or permit issued under this Act shall be subject to
7 forfeiture to the United States pursuant to a civil
8 proceeding under this subsection. The proceeds from
9 forfeiture actions under this subsection shall con-
10 stitute a separate recovery in addition to any
11 amounts recovered as civil penalties under this sec-
12 tion or as civil damages under section 10. None of
13 those proceeds shall be subject to setoff.

14 (2) APPLICATION OF THE CUSTOMS LAWS.—
15 The Secretary may exercise the authority of any
16 United States official granted by any relevant cus-
17 toms law relating to the seizure, forfeiture, con-
18 demnation, disposition, remission, and mitigation of
19 property in enforcing this Act.

20 (3) DISPOSAL OF REFUGE RESOURCES.—Any
21 Refuge resource seized pursuant to this Act may be
22 disposed of pursuant to an order of the appropriate
23 court, or, if perishable, in a manner prescribed by
24 regulations promulgated by the Secretary. Any pro-
25 ceeds from the sale of such Refuge resource shall for



1 all purposes represent the Refuge resource so dis-
2 posed of in any subsequent legal proceedings.

3 (4) PRESUMPTION.—For the purposes of this
4 section there is a rebuttable presumption that all
5 Refuge resources found on board a vessel that are
6 used or seized in connection with a violation of this
7 Act or of any regulation or permit issued under this
8 Act were taken or retained in violation of this Act
9 or of a regulation or permit issued under this Act.

10 (f) PAYMENT OF STORAGE, CARE, AND OTHER
11 COSTS.—

12 (1) EXPENDITURES.—

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

22 (B) USE OF FORFEITURES AND COSTS.—
23 Amounts received under this section for forfeit-
24 ures and costs imposed under paragraph (2)
25 shall be used to pay the reasonable and nec-



1 essary costs incurred by the Secretary to pro-
2 vide temporary storage, care, maintenance, and
3 disposal of any Refuge resource or other prop-
4 erty seized in connection with a violation of this
5 Act or any regulation or permit issued under
6 this Act.

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

12 (i) manage and improve the Refuge
13 with respect to which the violation oc-
14 curred that resulted in the penalty or for-
15 feiture; and

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

22 (2) LIABILITY FOR COSTS.—Any person as-
23 sessed a civil penalty for a violation of this Act or
24 of any regulation or permit issued under this Act,
25 and any claimant in a forfeiture action brought for



1 such a violation, shall be liable for the reasonable
2 costs incurred by the Secretary in storage, care, and
3 maintenance of any Refuge resource or other prop-
4 erty seized in connection with the violation.

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

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

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

23 (j) INJUNCTIVE RELIEF.—If the Secretary deter-
24 mines that there is an imminent risk of destruction or loss
25 of or injury to a Refuge resource, or that there has been



1 actual destruction or loss of, or injury to a Refuge re-
2 source that may give rise to liability under section 10, the
3 Attorney General, upon request of the Secretary, shall
4 seek to obtain such relief as may be necessary to abate
5 such risk or actual destruction, loss, or injury, or to re-
6 store or replace the Refuge resource, or both. The district
7 courts of the United States shall have jurisdiction in such
8 a case to order such relief as the public interest and the
9 equities of the case may require.

10 (k) AREA OF APPLICATION AND ENFORCEABILITY.—

11 The area of application and enforceability of this Act in-
12 cludes the territorial sea of the United States, as described
13 in Presidential Proclamation 5928 of December 27, 1988,
14 and the United States exclusive economic zone, consistent
15 with international law.

16 (l) NATIONWIDE SERVICE OF PROCESS.—In any ac-

17 tion by the United States under this Act, process may be
18 served in any district where the defendant is found, re-
19 sides, transacts business, or has appointed an agent for
20 the service of process.

21 **SEC. 9. DESTRUCTION OR LOSS OF, OR INJURY TO, REFUGE**

22 **RESOURCES.**

23 (a) LIABILITY.—

24 (1) LIABILITY TO UNITED STATES.—Any per-

25 son who destroys, causes the loss of, or injures any



1 Refuge resource is liable to the United States for an
2 amount equal to the sum of—

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

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

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

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

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



1 (B) the destruction, loss, or injury was
2 caused by an activity authorized by Federal or
3 State law; or

4 (C) the destruction, loss, or injury was
5 negligible.

6 (4) LIMITS TO LIABILITY.—Nothing in sections
7 4281 through 4289 of the Revised Statutes of the
8 United States or section 3 of the Act of February
9 13, 1893, shall limit the liability of any person
10 under this Act.

11 (b) RESPONSE ACTIONS AND DAMAGE ASSESS-
12 MENT.—

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

18 (2) DAMAGE ASSESSMENT.—The Secretary
19 shall assess damages to Refuge resources in accord-
20 ance with section 4(6).

21 (c) CIVIL ACTIONS FOR RESPONSE COSTS AND DAM-
22 AGES.—

23 (1) COMMENCEMENT.—The Attorney General,
24 upon request of the Secretary, may commence a civil
25 action against any person or vessel who may be lia-



1 ble under subsection (a) for response costs and dam-
2 ages. The Secretary, acting as trustee for Refuge re-
3 sources, shall submit a request for such an action to
4 the Attorney General whenever a person may be lia-
5 ble for such costs or damages.

6 (2) VENUE.—An action under this subsection
7 may be brought in the United States district court
8 for any district in which—

9 (A) the defendant is located, resides, or is
10 doing business, in the case of an action against
11 a person;

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

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

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

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



1 (A) to reimburse the Secretary or any
2 other Federal or State agency that conducted
3 those activities; and

4 (B) after reimbursement of such costs, to
5 restore, replace, or acquire the equivalent of
6 any refuge resource.

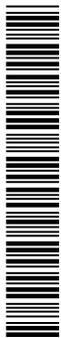
7 (2) OTHER AMOUNTS.—All other amounts re-
8 covered shall be used, in order of priority—

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

15 (B) to restore degraded Refuge resources
16 that were the subject of the action.

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

24 (e) STATUTE OF LIMITATIONS.—An action for re-
25 sponse costs or damages under subsection (c) shall be



1 barred unless the complaint is filed within 3 years after
2 the date on which the Secretary completes a damage as-
3 sessment and restoration plan for the Refuge resources
4 to which the action relates.

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

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

12 (b) NATIONAL MARINE SANCTUARIES AMENDMENTS
13 ACT OF 2000.—Subsection (g) of section 6 of the National
14 Marine Sanctuaries Amendments Act of 2000 (Public Law
15 106–513; 114 Stat 2385) is repealed.

16 **SEC. 11. IMPLEMENTATION.**

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

