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
4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Northwestern Hawai-
6 ian Islands National Marine Refuge Act of 2005”.
7
8 SEC. 2. FINDINGS.
9 The Congress finds the following:
(1) The Northwestern Hawaiian Islands (NWHI) and their associated waters encompass the most isolated coral reefs in the world, with the highest proportion of marine endemic species, and a plethora of valuable and unique natural and cultural resources, most of which are highly vulnerable.

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

(3) This vast area of exceptional coral reef ecosystems supports more than 7,000 marine species, of which approximately one quarter are unique to the NWHI.

(4) The waters of the NWHI must be set aside as a fully protected national marine refuge to preserve in perpetuity their unique and fragile ecosystems, habitats, and communities of flora and fauna, as well as areas of traditional Hawaiian cultural significance.

(5) A Northwestern Hawaiian Islands National Marine Refuge would best preserve and protect the foraging grounds of the endangered monk seal, the nesting green sea turtle, and the multitude of seabirds that make the NWHI their home.
(6) Designating the waters of the NWHI as a national marine refuge would also best preserve and protect invaluable nursery and spawning grounds of many species of fish and invertebrates, and may help replenish severely depleted marine populations in the main Hawaiian Islands.

(7) As yet, only a few invasive aquatic species have become established in the NWHI and their associated waters, and continued vessel and other access to this area is highly likely to cause further contamination by alien aquatic species from the main Hawaiian Islands and elsewhere.

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

(9) The preservation and protection of the waters of the NWHI as a national marine refuge is in conformity with the findings and recommendations on marine protected areas by the United States Commission on Ocean Policy, the purposes of Executive Order 13196 of January 18, 2001, Executive Order 13178 of December 4, 2000, Executive Order 13158 of May 26, 2000, the National Marine San-

SEC. 3. PURPOSES AND POLICIES.

The purposes and policies of this Act are as follows:

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

(2) To set aside the waters of the NWHI as a national marine refuge that fully preserves and protects in perpetuity the natural resources and cultural heritage of the area described in section 6.

(3) To provide that the preservation of biodiversity and the protection and conservation of the natural resources and cultural heritage of that area
shall be the exclusive basis for all associated decisions by Federal agencies.

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

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

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

(7) To provide that access to and transit through the Northwestern Hawaiian Islands National Marine Refuge shall be allowed only if authorized by a valid permit issued pursuant to this Act,
except as necessary for valid law enforcement purposes.

SEC. 4. DEFINITIONS.

As used in this Act, the following definitions apply:

(1) NATIVE HAWAIIAN SUBSISTENCE PRACTICES.—The term “Native Hawaiian subsistence practices” —

(A) means traditional Native Hawaiian uses of ocean resources for the purposes of perpetuating traditional knowledge, taking responsibility and caring for the environment, engaging in direct personal consumption while in the NWHI or the Refuge, and strengthening cultural and spiritual connections to the NWHI and the Refuge; and

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

(2) SUSTENANCE FISHING.—The term “sustenance fishing” means harvesting any marine resources for personal consumption while in the NWHI or the Refuge, and only as incidental to other permitted activity, with all such catch consumed while in the NWHI or the Refuge.

(3) REFUGE RESOURCES.—The term “Refuge resources” includes all natural resources within the
Refuge, including without limitation, mammals, fish, including aquaria species and live fish trade species, crustaceans, coral, live rock, fossil coral, rock, sand, mollusks, sponges and other invertebrates, plants and algae, and other species, subspecies, and any part, product, egg, or offspring thereof.

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

(5) COOPERATIVE MANAGEMENT.—The term “cooperative management” means management under cooperative arrangements between the National Ocean Service and other Federal agencies and the State of Hawaii that specify how such agencies and the State will cooperate with the National Ocean Service in the management of the Refuge.

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

(A) compensation for—

(i)(I) the cost of replacing, restoring, or acquiring the equivalent of a Refuge resource; and
(II) the value of the lost use of a Refuge resource pending its restoration or replacement or the acquisition of an equivalent Refuge resource; or

(ii) the value of a Refuge resource if the Refuge resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired;

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

(C) the reasonable cost of monitoring appropriate to the injured, restored, or replaced Refuge resources;

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

(E) the cost of enforcement actions undertaken by the Secretary in response to the destruction or loss of, or injury to, a Refuge resource.

(7) RESPONSE COSTS.—The term "response costs" means the costs of actions taken or authorized by the Secretary to minimize destruction or loss of, or injury to, Refuge resources, or to minimize the imminent risks of such destruction, loss, or injury,
including costs related to seizure, forfeiture, storage, or disposal arising from liability under section 10.

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

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

(10) ONMSR.—The term “ONMSR” means the Office of National Marine Sanctuaries and Refuges established under section 6.

SEC. 5. DESIGNATION.

(a) DESIGNATION.—The area described in this section is designated as the Northwestern Hawaiian Islands National Marine Refuge.

(b) INCLUDED ISLANDS, ATOLLS, ROCKS, AND REEFS.—Subject to the specific boundaries set forth in subsections (c) and (d), the Northwestern Hawaiian Islands National Marine Refuge shall include the islands, atolls, rocks, reefs and other substrate, submerged reefs and other substrate, and oceans and waters of the Northwestern Hawaiian Islands Archipelago between latitudes
22 degrees and 30 degrees north and longitudes 161 degrees and 180 degrees west.

(c) SEAWARD BOUNDARY.—

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

(2) INTERMEDIATE AREAS.—Where the areas described in paragraph (1) are not contiguous, parallel lines drawn tangent to and connecting those semicircles of the 50 nautical mile areas that lie around such areas shall delimit the remainder of the Refuge.

(d) INLAND BOUNDARY.—The inland boundary of the Refuge around each of the areas described in subsection (b) is, as appropriate—
(1) the seaward boundary of the Hawaiian Islands National Wildlife Refuge;

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

(3) the ordinary low watermark of Kure Atoll.

**SEC. 6. MANAGEMENT.**

(a) **ESTABLISHMENT OF OFFICE.**—There is established within the National Ocean Service of the Department of Commerce the Office of National Marine Sanctuaries and Refuges.

(b) **PRIMARY AUTHORITY.**—The Secretary of Commerce, acting through the ONMSR, has primary jurisdiction and ultimate management authority and control over the Refuge area and its resources.

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

(1) Cooperative management arrangements with the Hawaiian Islands National Wildlife Refuge, Midway Atoll National Wildlife Refuge, other appropriate Federal agencies, and the State of Hawaii, all consistent with relevant authorities.

(2) Coordination among Federal agencies and the Director of the National Science Foundation to
make vessels and other resources available for conservation and research activities in the Refuge.

(3) Research and monitoring for the purposes of understanding, maintaining, protecting, and if necessary restoring the natural biological communities, habitats, native species, populations, and ecological processes of the Refuge.

(4) The cleanup and prevention of marine debris in the Refuge.

(5) The anticipation and mitigation of threats to Refuge resources and cooperation with other Federal and State agencies to maintain contingency planning, emergency response, damage assessment, and restoration measures.

(6) The development and maintenance of enforcement and surveillance programs to maximize protection of the Refuge, including the use of new technologies and coordination with the Coast Guard and other relevant agencies.

(7) Identification, in consultation with Native Hawaiian interests, of culturally significant, non-commercial subsistence, cultural, and religious practices and locations within the Refuge.

(8) Any regulations, in addition to the conservation measures established under this Act, that
the Secretary determines are necessary to manage the Refuge in accordance with this Act.

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

(d) **Memoranda of Agreement.**—To promote cooperative management of the entirety of the shallow areas of the coral reef ecosystem throughout the Northwestern Hawaiian Islands, the Secretary shall work with the Secretary of the Interior and the Governor of the State of Hawaii to enter into memoranda of agreement for the cooperative management of the Refuge, Midway Atoll National Wildlife Refuge, Hawaiian Islands National Wildlife Refuge, and State waters and submerged lands within the Northwestern Hawaiian Islands National Marine Refuge.

(e) **Advisory Council.**—

(1) **Establishment.**—The Secretary shall establish a Northwestern Hawaiian Islands National Marine Refuge Advisory Council to provide advice and recommendations to the Secretary regarding management of the Refuge. The Federal Advisory Committee Act (5 App. U.S.C.) shall not apply to the Advisory Council.

(2) **Functions.**—The Advisory Council shall—

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

(B) recommend to the Secretary and to other Federal officials such steps as it considers necessary or desirable for the protection and conservation of the natural and cultural resources of the Refuge;

(C) in cooperation with the National Ocean Service, recommend to the Secretary such revisions of the endangered species list and threatened species list, critical habitat designations, and conservation measures pursuant thereto as may be appropriate; and

(D) recommend to the Secretary, other appropriate Federal officials, and the Congress, such additional measures as it considers necessary or desirable to further the purposes and policies of this Act, including provisions for the protection and exercise of the traditional practices of Native Hawaiians.

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

(A) Two Native Hawaiian representatives, including one Native Hawaiian elder with experience or knowledge regarding Native Hawaiian
subsistence, cultural, religious, or other practices in the Northwestern Hawaiian Islands.

(B) Three representatives from the science community with experience specific to the Northwestern Hawaiian Islands and with expertise in at least one of the following areas:

(i) Marine mammal science.

(ii) Coral reef ecology.

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

(iv) Oceanography.

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

(C) Two representatives from nongovernmental wildlife, marine life, environmental, or conservation organizations with a demonstrated interest in conservation and protection of refuge resources.

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

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

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

(5) COMPENSATION AND EXPENSES.—The voting members of the Advisory Council who are not employed by the Federal Government or any State or local government shall receive compensation at the daily rate or the daily equivalent rate for step 7 of GS–15 of the General Schedule under section 5332 of title 5, United States Code, when engaged in the actual performance of duties for the Council. The voting members of the Council shall be reimbursed for actual expenses incurred in the performance of their duties, including travel expenses and per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code for persons in Government service employed intermittently. Non-voting members and Council staff members may be reimbursed for actual expenses.

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

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

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

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

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

SEC. 7. PROTECTION AND CONSERVATION MEASURES.

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

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

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

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

(5) shall notify the Refuge manager by telephone, radio, or other electronic means when entering and leaving the Refuge.

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

(1) To possess, sell, offer for sale, purchase, import, export, deliver, carry, transport, or ship by any means any Refuge resource taken in violation of this section.

(2) To anchor in any area of the Refuge that contains available mooring buoys, or to anchor outside an available anchoring area if such area has been designated by the Secretary.

(3) To touch living coral or live rock in the Refuge.

(4) To anchor a vessel in the Refuge on any living coral or live rock with an anchor, an anchor chain, or an anchor rope when visibility is such that the seabed can be seen.
(5) To explore for, develop, or produce oil, gas, or any mineral in the Refuge.

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

(7) To construct, place, or abandon any structure, material, or other matter on the seabed in the Refuge.

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

(9) To discard rags, glass, metal, bottles, crockery, paper products, dunnage, lining, or packing material in the Refuge that will float, or any similar refuse.

(10) To discharge or deposit any material or other matter in the Refuge, or to discharge or deposit any material or other matter outside the Refuge that subsequently enters the Refuge and injures any resource of the Refuge, except the following may be discharged or deposited by permit only:

(A) Fish parts used in and during operations authorized under this Act.

(B) Biodegradable effluent incident to vessel use and generated by a marine sanitation device in accordance with section 312 of the
Federal Water Pollution Control Act (33 U.S.C. 1322).

(C) Water generated by routine vessel operations, including water from deck washdown and gray water as defined in section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1322), but excluding oily wastes from bilge pumping.

(D) Cooling water from vessels or engine exhaust.

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

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

(B) resisting, opposing, impeding, intimidating, harassing, bribing, interfering with, or forcibly assaulting any person authorized by the Secretary to implement this Act or any such authorized officer in the conduct of any search or inspection performed under this Act;
(C) knowingly and willfully submitting
false information to the Secretary or any officer
authorized to enforce this Act in connection
with any search or inspection conducted under
this Act; or

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

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

(d) PERMITS.—

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

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

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

(B) Native Hawaiian subsistence practices;

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

(D) marine debris removal; and

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

SEC. 8. ENFORCEMENT.

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

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

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

(2) seize wherever found any Refuge resource taken or retained in violation of this Act or any regulation or permit issued under this Act;

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

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

(5) exercise any other lawful authority; and

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

(e) CRIMINAL OFFENSES.—

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

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

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

(B) in the case of a person who in the commission of such an offense uses a dangerous
weapon, engages in conduct that causes bodily injury to any person authorized to enforce this Act or any person authorized to implement the provisions of this Act, or places any such person in fear of imminent bodily injury, shall be fined under title 18, United States Code, imprisoned for not more than 10 years, or both.

(d) CIVIL PENALTIES.—

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

(2) NOTICE.—No penalty shall be assessed under this subsection until after the person charged has been given notice and an opportunity for a hearing.

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

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

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

(6) Compromise or other action by sec-
retary.—The Secretary may compromise, modify,
or remit, with or without conditions, any civil pen-
alty which is or may be imposed under this section.

(c) Forfeiture.—
(1) IN GENERAL.—Any vessel (including the vessel’s equipment, stores, and cargo) and other item used, and any Refuge resource taken or retained, in any manner, in connection with or as a result of any violation of this Act or of any regulation or permit issued under this Act shall be subject to forfeiture to the United States pursuant to a civil proceeding under this subsection. The proceeds from forfeiture actions under this subsection shall constitute a separate recovery in addition to any amounts recovered as civil penalties under this section or as civil damages under section 10. None of those proceeds shall be subject to setoff.

(2) APPLICATION OF THE CUSTOMS LAWS.—The Secretary may exercise the authority of any United States official granted by any relevant customs law relating to the seizure, forfeiture, condemnation, disposition, remission, and mitigation of property in enforcing this Act.

(3) DISPOSAL OF REFUGE RESOURCES.—Any Refuge resource seized pursuant to this Act may be disposed of pursuant to an order of the appropriate court, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary. Any proceeds from the sale of such Refuge resource shall for
all purposes represent the Refuge resource so disposed of in any subsequent legal proceedings.

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

(f) Payment of Storage, Care, and Other Costs.—

(1) Expenditures.—

(A) Retention of Penalties, Forfeitures, and Costs.—Notwithstanding any other law, amounts received by the United States as civil penalties, forfeitures of property, and costs imposed under paragraph (2) shall be retained by the Secretary in the manner provided for in section 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9607 (f)(1)).

(B) Use of Forfeitures and Costs.—Amounts received under this section for forfeitures and costs imposed under paragraph (2) shall be used to pay the reasonable and nec-
necessary costs incurred by the Secretary to provide temporary storage, care, maintenance, and disposal of any Refuge resource or other property seized in connection with a violation of this Act or any regulation or permit issued under this Act.

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

(i) manage and improve the Refuge with respect to which the violation occurred that resulted in the penalty or forfeiture; and

(ii) pay a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this Act or any regulation or permit issued under this Act.

(2) LIABILITY FOR COSTS.—Any person assessed a civil penalty for a violation of this Act or of any regulation or permit issued under this Act, and any claimant in a forfeiture action brought for
such a violation, shall be liable for the reasonable

costs incurred by the Secretary in storage, care, and

maintenance of any Refuge resource or other prop-

erty seized in connection with the violation.

(g) SUBPOENAS.—In the case of any hearing under

this section which is determined on the record in accord-

ance with the procedures provided for under section 554

of title 5, United States Code, the Secretary may issue

subpoenas for the attendance and testimony of witnesses

and the production of relevant papers, books, electronic

files, and documents, and may administer oaths.

(h) USE OF RESOURCES OF STATE AND OTHER FED-

ERAL AGENCIES.—The Secretary shall, whenever appro-

priate, use by agreement the personnel, services, and fa-

cilities of State and other Federal departments, agencies,

and instrumentalities, on a reimbursable or nonreimburs-

able basis, to carry out the Secretary’s responsibilities

under this section.

(i) COAST GUARD AUTHORITY NOT LIMITED.—Noth-

ing in this section shall be considered to limit the authority

of the Coast Guard to enforce this or any other Federal

law under section 89 of title 14, United States Code.

(j) INJUNCTIVE RELIEF.—If the Secretary deter-

mines that there is an imminent risk of destruction or loss

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

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

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

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

(a) LIABILITY.—

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

(A) the amount of response costs and damages resulting from the destruction, loss, or injury; and

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

(2) LIABILITY IN REM.—Any vessel used to destroy, cause the loss of, or injure any Refuge resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury. The amount of that liability shall constitute a maritime lien on the vessel and may be recovered in an action in rem in any district court of the United States that has jurisdiction over the vessel.

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

(A) the destruction or loss of, or injury to, the Refuge resource was caused solely by an act of God, an act of war, or an act or omission of a third party, and the person acted with due care;
(B) the destruction, loss, or injury was caused by an activity authorized by Federal or State law; or

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

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

(b) RESPONSE ACTIONS AND DAMAGE ASSESSMENT.—

(1) RESPONSE ACTIONS.—The Secretary may undertake or authorize all necessary actions to prevent or minimize the destruction or loss of, or injury to, Refuge resources, or to minimize the imminent risk of such destruction, loss, or injury.

(2) DAMAGE ASSESSMENT.—The Secretary shall assess damages to Refuge resources in accordance with section 4(6).

(c) CIVIL ACTIONS FOR RESPONSE COSTS AND DAMAGES.—

(1) COMMENCEMENT.—The Attorney General, upon request of the Secretary, may commence a civil action against any person or vessel who may be lia-
ble under subsection (a) for response costs and damages. The Secretary, acting as trustee for Refuge resources, shall submit a request for such an action to the Attorney General whenever a person may be liable for such costs or damages.

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

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

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

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

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

(1) RESPONSE COSTS.—amounts recovered by the United States for costs of response actions and damage assessments under this section shall be used, as the Secretary considers appropriate—
(A) to reimburse the Secretary or any other Federal or State agency that conducted those activities; and

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

(2) OTHER AMOUNTS.—All other amounts recovered shall be used, in order of priority—

(A) to restore, replace, or acquire the equivalent of the Refuge resources that were the subject of the action, including for costs of monitoring and the costs of curation and conservation of archeological, historical, and cultural Refuge resources; and

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

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

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

essment and restoration plan for the Refuge resources
to which the action relates.

SEC. 10. REPEAL OF SUPERSEDED PROVISIONS.

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

tuary.”.

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

SEC. 11. IMPLEMENTATION.

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