

103^D CONGRESS
1ST SESSION

S. 1440

To amend the Endangered Species Act of 1973 with common sense amendments to strengthen the Act, enhance wildlife conservation and management, augment funding, and protect fishing, hunting, and trapping.

IN THE SENATE OF THE UNITED STATES

AUGUST 6 (legislative day, JUNE 30), 1993

Mr. BURNS introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Endangered Species Act of 1973 with common sense amendments to strengthen the Act, enhance wildlife conservation and management, augment funding, and protect fishing, hunting, and trapping.

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 “Common Sense
5 Amendments for All Endangered Species Act”.

1 **SEC. 2. WILDLIFE MANAGEMENT EFFECTS EVALUATION.**

2 (a) AMENDMENT TO ACT.—Section 13 of the Endan-
3 gered Species Act of 1973 (87 Stat. 901) is amended to
4 read as follows:

5 “WILDLIFE MANAGEMENT EFFECTS EVALUATION

6 “SEC. 13. (a) IN GENERAL.—The Secretary shall
7 evaluate the impact on fish and wildlife management prac-
8 tices, including fishing, hunting, and trapping, of any pro-
9 posed action under this Act, including the listing of any
10 species or the designation of critical habitat under section
11 4, the making of any taking determination pursuant to
12 section 9, or the taking of any action under the Conven-
13 tion, which may have a significant effect on such practices.
14 Such evaluation shall include—

15 “(1) notification of the appropriate State or
16 local agencies responsible for the conduct or over-
17 sight of fish and wildlife management practices; and

18 “(2) notice and conduct of a hearing in the vi-
19 cinity of the proposed action.

20 “(b) DISCLAIMER.—Nothing in this section shall af-
21 fect the substantive standards for listing determinations
22 set forth in section 4.”.

23 (b) CONFORMING AMENDMENT.—The entry for that
24 section in the table of contents to such Act of 1973 is
25 amended to read as follows:

“Sec. 13. Wildlife management effects evaluation.”.

1 **SEC. 3. FISH AND WILDLIFE CONSERVATION AND MANAGE-**
2 **MENT PROJECTS.**

3 Section 6 of the Endangered Species Act of 1973 (16
4 U.S.C. 1535) is amended by adding the following new sub-
5 section at the end:

6 “(j) ACTIVITIES THAT CONSTITUTE TAKING.—(1)
7 No action to plan or execute fish and wildlife management
8 activities and projects authorized by Federal or State fish
9 and wildlife management authorities, including those that
10 alter habitat for the benefit of selected species, shall con-
11 stitute a taking pursuant to section 9 unless such activity
12 or project actually wounds or kills an endangered or
13 threatened species.

14 “(2) Nothing in this subsection shall alter or affect
15 consultation, if necessary, as provided in section 7 nor af-
16 fect the ability of a State agency or private entity to obtain
17 permits pursuant to section 10.”.

18 **SEC. 4. CITES AND SPORT HUNTING.**

19 Section 8A(c) of the Endangered Species Act of 1973
20 (16 U.S.C. 1537a(c)) is amended—

21 (1) by striking out “practices;” in paragraph
22 (2) and inserting “practices and shall give due
23 weight to the conservation benefits of wildlife man-
24 agement practices, including sport hunting,”; and

25 (2) by inserting after paragraph (2) the follow-
26 ing new paragraph:

1 “(3)(A) The Secretary shall recognize and abide by
2 the determinations made by contracting parties to the
3 Convention as to which of their indigenous species are
4 threatened, endangered, or subject to the provisions of the
5 Convention, in all actions which the Secretary takes pur-
6 suant to the Convention.

7 “(B) The Secretary may reject any determination re-
8 ferred to in subparagraph (A) if the Secretary possesses
9 clear and convincing evidence that the determination was
10 fraudulently rendered or was based on erroneous or gross-
11 ly inadequate scientific data.”.

12 **SEC. 5. FAIR NOTICE OF FOREIGN LAWS.**

13 Section 11(b)(1) of the Endangered Species Act of
14 1973 (16 U.S.C. 1540(b)(1)) is amended by adding at the
15 end the following new sentence: “To constitute a violation
16 under this subsection to which criminal penalties apply,
17 a violation of foreign law must be of a reasonably ascer-
18 tainable wildlife conservation statute. All other violations
19 of foreign law and foreign administrative requirements
20 with respect to the provisions of this Act shall be subject
21 to subsection (a)(1).”.

1 **SEC. 6. SUBSPECIES AND POPULATION CRITERIA; ADJU-**
2 **DICATION AND PEER REVIEW.**

3 Section 4(b) of the Endangered Species Act (16
4 U.S.C. 1533(b)) is amended by adding at the end the fol-
5 lowing new paragraphs:

6 “(9) The Secretary shall by regulation establish cri-
7 teria by which to determine whether any fish or wildlife
8 stock constitutes a subspecies or distinct population seg-
9 ment, or plant stock constitutes a subspecies, so as to be
10 eligible for listing as a threatened or endangered species
11 under this section. The criteria shall include a requirement
12 that genetic data analysis be employed where or when such
13 data are available and shall establish a reasonable burden
14 of proof for determinations of subspecies and distinct pop-
15 ulation segments.

16 “(10) In making the determinations pursuant to this
17 section, the Secretary may, at his sole discretion, employ
18 an adjudicative procedure to assist the Secretary in ac-
19 quiring the best scientific and commercial data pursuant
20 to subsection (b)(1). Any scientific determination on a
21 proposed listing made by the United States Fish and Wild-
22 life Service or the National Marine Fisheries Service may
23 be submitted by the Secretary for peer review to a scientif-
24 ically qualified entity or entities before a final determina-
25 tion is made by the Secretary. Such peer review process

1 shall not be subject to the provisions of the Federal Advi-
2 sory Committee Act.”.

3 **SEC. 7. FUNDING AUGMENTATION STUDY.**

4 The Secretary of the Interior shall study and report
5 to Congress within 18 months after the date of the enact-
6 ment of this Act on the feasibility of a program or pro-
7 grams (similar to the Dingell-Johnson and Pittman-Rob-
8 ertson programs which fund sport fishing, boating, and
9 hunting projects) under which monies shall be collected
10 from those who may benefit specifically from the provi-
11 sions of the Endangered Species Act of 1973 and used
12 in furtherance of the goals and purposes set forth in such
13 Act.

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