103D 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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Common Sense Amendments for All Endangered Species Act".
SEC. 2. WILDLIFE MANAGEMENT EFFECTS EVALUATION.

(a) AMENDMENT TO ACT.—Section 13 of the Endangered Species Act of 1973 (87 Stat. 901) is amended to read as follows:

"WILDLIFE MANAGEMENT EFFECTS EVALUATION"

"Sec. 13. (a) IN GENERAL.—The Secretary shall evaluate the impact on fish and wildlife management practices, including fishing, hunting, and trapping, of any proposed action under this Act, including the listing of any species or the designation of critical habitat under section 4, the making of any taking determination pursuant to section 9, or the taking of any action under the Convention, which may have a significant effect on such practices. Such evaluation shall include—

"(1) notification of the appropriate State or local agencies responsible for the conduct or oversight of fish and wildlife management practices; and"

"(2) notice and conduct of a hearing in the vicinity of the proposed action.

"(b) DISCLAIMER.—Nothing in this section shall affect the substantive standards for listing determinations set forth in section 4."

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

"Sec. 13. Wildlife management effects evaluation."
"(3)(A) The Secretary shall recognize and abide by the determinations made by contracting parties to the Convention as to which of their indigenous species are threatened, endangered, or subject to the provisions of the Convention, in all actions which the Secretary takes pursuant to the Convention.

"(B) The Secretary may reject any determination referred to in subparagraph (A) if the Secretary possesses clear and convincing evidence that the determination was fraudulently rendered or was based on erroneous or grossly inadequate scientific data."

SEC. 5. FAIR NOTICE OF FOREIGN LAWS.

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

SEC. 6. SUBSPECIES AND POPULATION CRITERIA; ADJUDICATION AND PEER REVIEW.

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

"(9) The Secretary shall by regulation establish criteria by which to determine whether any fish or wildlife stock constitutes a subspecies or distinct population segment, or plant stock constitutes a subspecies, so as to be eligible for listing as a threatened or endangered species under this section. The criteria shall include a requirement that genetic data analysis be employed where or when such data are available and shall establish a reasonable burden of proof for determinations of subspecies and distinct population segments.

"(10) In making the determinations pursuant to this section, the Secretary may, at his sole discretion, employ an adjudicative procedure to assist the Secretary in acquiring the best scientific and commercial data pursuant to subsection (b)(1). Any scientific determination on a proposed listing made by the United States Fish and Wildlife Service or the National Marine Fisheries Service may be submitted by the Secretary for peer review to a scientifically qualified entity or entities before a final determination is made by the Secretary. Such peer review process
1 shall not be subject to the provisions of the Federal Advisory Committee Act.”.

SEC. 7. FUNDING AUGMENTATION STUDY.

The Secretary of the Interior shall study and report to Congress within 18 months after the date of the enactment of this Act on the feasibility of a program or programs (similar to the Dingell-Johnson and Pittman-Robertson programs which fund sport fishing, boating, and hunting projects) under which monies shall be collected from those who may benefit specifically from the provisions of the Endangered Species Act of 1973 and used in furtherance of the goals and purposes set forth in such Act.

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