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1ST SESSION

# H. R. 1845

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 1 (legislative day, OCTOBER 13), 1993

Received; read twice and referred to the Committee on Environment and  
Public Works

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## AN ACT

To establish the Biological Survey in the Department of  
the Interior.

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 “National Biological  
5       Survey Act of 1993”.

6       **SEC. 2. FINDINGS AND PURPOSE.**

7       (a) FINDINGS.—The Congress finds the following:

8               (1) The Department of the Interior needs a co-  
9       ordinated and comprehensive source of information  
10      about the nation’s biological resources in order to  
11      address national, regional, and local natural resource

1 conflicts and to avoid future natural resource prob-  
2 lems.

3 (2) Research, information, and analysis are  
4 critical to the management of biological and natural  
5 resources on an ecosystem basis.

6 (3) In recent years, the need for broader and  
7 more timely biological information has been readily  
8 apparent in the numerous controversies and poten-  
9 tial economic dislocations surrounding natural re-  
10 source management.

11 (4) Presently, biological research, information,  
12 and analysis are dispersed and fragmented among  
13 different bureaus in the Department of the Interior.

14 (b) PURPOSE.—It is the purpose of this Act to estab-  
15 lish a National Biological Survey to provide a national  
16 focus for research, inventorying, and monitoring of Ameri-  
17 ca's biological resources on an ecosystem basis.

18 **SEC. 3. NATIONAL BIOLOGICAL SURVEY.**

19 (a) ESTABLISHMENT.—There is established in the  
20 Department of the Interior an office which shall be known  
21 as the National Biological Survey.

22 (b) DIRECTOR.—

23 (1) IN GENERAL.—The Survey shall be under  
24 the supervision of the Director of the National Bio-  
25 logical Survey, who shall—

1 (A) be appointed by the President, by and  
2 with the advice and consent of the Senate, from  
3 among individuals having expertise in the bio-  
4 logical sciences; and

5 (B) be compensated, subject to appropria-  
6 tion, at the rate provided for level V of the Ex-  
7 ecutive Schedule.

8 (2) FUNCTIONS.—The Director, under the su-  
9 pervision of the Assistant Secretary and to the ex-  
10 tent practicable in cooperation with other Federal,  
11 State, and local agencies, Tribal governments, pri-  
12 vate organizations, and other entities, shall perform  
13 the following functions:

14 (A) Conduct research on biological re-  
15 sources, including plants, fish, wildlife, and  
16 their habitat.

17 (B) Monitor methods by which ecosystems  
18 are managed.

19 (C) Collect and analyze data and informa-  
20 tion to determine and inventory the distribu-  
21 tion, abundance, health, and status and trends  
22 of biological resources.

23 (D) Develop methods for the consistent  
24 and systematic collection and analysis of data  
25 on ecosystems and their components.

1 (E) Disseminate information to resource  
2 managers, scientists, and the public.

3 (F) Provide technical assistance within the  
4 Department of the Interior and to other Fed-  
5 eral agencies, States, Tribal governments, pri-  
6 vate organizations, and other entities with re-  
7 spect to research, inventory, and monitoring of  
8 biological resources.

9 (G) Establish, in cooperation with other  
10 Federal, State, and local agencies, Tribal gov-  
11 ernments, private organizations, and other enti-  
12 ties, a network to assist in collecting and main-  
13 taining data concerning the distribution, abun-  
14 dance, health, and status and trends of the Na-  
15 tion's biological resources.

16 (H) After the date that is 90 days after  
17 the date of the enactment of this Act, or such  
18 earlier date as may be specified by the Sec-  
19 retary, perform functions under the National  
20 Wetlands Inventory Project that were per-  
21 formed before the date of the enactment of this  
22 Act by the United States Fish and Wildlife  
23 Service under section 401 of the Emergency  
24 Wetlands Resources Act of 1986 (16 U.S.C.  
25 3931), except that this subparagraph shall not

1 be considered to authorize the Director to per-  
2 form any such function that is completed before  
3 that date of enactment.

4 (I) Cooperate, as appropriate, with the  
5 United States Fish and Wildlife Service, the  
6 National Park Service, and other Federal agen-  
7 cies to help provide technical and scientific as-  
8 sistance to other countries which seek to per-  
9 form biological research monitoring and inven-  
10 tory to manage biological diversity for the pur-  
11 pose of meeting their obligations under the  
12 Convention on Biological Diversity and other  
13 international agreements.

14 (c) POWERS.—

15 (1) IN GENERAL.—In addition to such powers  
16 as may be delegated to the Director by the Sec-  
17 retary, and as necessary to carry out the functions  
18 enumerated in subsection (b)(2), the Director shall  
19 have the authority to—

20 (A) enter into contracts and cooperative  
21 agreements with, and provide grants to, any ap-  
22 propriate Federal, State, and local agencies,  
23 Tribal governments, private organizations, and  
24 other entities;

1 (B) subject to paragraph (2), accept lands,  
2 buildings, equipment, and other contributions of  
3 real or personal property, either in cash or in-  
4 kind, from public or private sources; and

5 (C) carry out projects in cooperation with  
6 other Federal, State, and local agencies, Tribal  
7 governments, private organizations, and other  
8 entities.

9 (2) LIMITATION ON ACCEPTANCE OF LANDS,  
10 BUILDINGS, AND OTHER REAL PROPERTY.—The Di-  
11 rector may not accept real property under paragraph  
12 (1)(B) except—

13 (A) buildings;

14 (B) land on which is located a building ac-  
15 cepted under that paragraph; and

16 (C) land adjoining land described in sub-  
17 paragraph (B) of this paragraph, that is nec-  
18 essary for functions of the Survey to be con-  
19 ducted in a building accepted under paragraph  
20 (1)(B).

21 (d) PEER REVIEW.—The Director shall provide for  
22 a scientific peer review process to ensure the validity and  
23 reliability of the research conducted and the data collected  
24 in carrying out the functions enumerated in subsection  
25 (b)(2). Such a process shall provide for (1) review by inde-

1 pendent referees appointed by the Director from among  
2 individuals recommended by the National Academy of  
3 Sciences, and (2) consideration of other data or informa-  
4 tion that is submitted to the Director and is relevant to  
5 the validity and reliability of the research conducted and  
6 the data collected in carrying out the functions enumer-  
7 ated in subsection (b)(2).

8 (e) ENSURING INTEGRITY OF SURVEY FUNCTIONS.—

9 A person who is an officer, employee, or agent of the Sur-  
10 vey may not in that capacity—

11 (1) perform any function of the Survey on land  
12 in which any officer, employee, or agent of the Sur-  
13 vey owns any interest; or

14 (2) conduct any activity for or on behalf of any  
15 private person.

16 (f) MAINTENANCE OF RESEARCH OF LOCAL IMPOR-

17 TANCE.—The Director shall seek to ensure, to the greatest  
18 extent practicable, the continued performance of research  
19 of significant local importance that is being conducted by  
20 any individual, in their capacity as a Federal employee,  
21 on the day before the date the individual becomes em-  
22 ployed by the Survey (including such research conducted  
23 on the day before an individual became employed by the  
24 National Biological Survey established by the Secretary  
25 before the enactment of this Act).

1 **SEC. 4. NATIONAL BIOLOGICAL SURVEY SCIENCE ADVI-**  
2 **SORY COUNCIL.**

3 (a) ESTABLISHMENT.—There is established a Na-  
4 tional Biological Survey Science Advisory Council to ad-  
5 vise the Director on structuring appropriate collaborative  
6 relationships for research, inventorying and monitoring of  
7 biological resources and on scientific peer review proce-  
8 dures to ensure the validity and reliability of the research  
9 conducted and the data collected by the Survey. Section  
10 14(a)(2) of the Federal Advisory Committee Act (5 U.S.C.  
11 App.) shall not apply to the National Biological Survey  
12 Science Advisory Council.

13 (b) MEMBERSHIP.—The Council shall consist of not  
14 more than 15 members appointed by the Secretary from  
15 among individuals who are qualified based on scientific  
16 education and experience and who are representatives of  
17 executive departments, including—

- 18 (1) the Office of Science and Technology Policy;
- 19 (2) the Department of the Interior;
- 20 (3) the Environmental Protection Agency;
- 21 (4) the National Science Foundation;
- 22 (5) the National Oceanic and Atmospheric Ad-  
23 ministration;
- 24 (6) the Department of Agriculture;
- 25 (7) the Department of Defense; and



1           (8) State and local agencies, Tribal govern-  
2           ments, private organizations, research institutions,  
3           and other entities.

4           (c) COMPENSATION.—An individual may not receive  
5           compensation from the United States by reason of their  
6           service on the Council.

7   **SEC. 5. SURVEY ACTIVITIES ON PRIVATE AND OTHER NON-**  
8           **FEDERAL LANDS.**

9           (a) COMPLIANCE WITH STATE LAWS.—The Survey  
10          shall comply with applicable State and Tribal government  
11          laws, including laws relating to private property rights and  
12          privacy.

13          (b) CONSENT AND NOTICE REQUIREMENTS.—

14               (1) IN GENERAL.—The Survey shall not enter  
15          non-Federal real property for the purpose of collect-  
16          ing information regarding the property, unless the  
17          owner of the property has—

18                       (A) consented in writing to that entry;

19                       (B) after providing that consent, been pro-  
20          vided notice of that entry; and

21                       (C) been notified that any raw data col-  
22          lected from the property must be made avail-  
23          able at no cost, if requested by the land owner.

24               (2) LIMITATION.—Paragraph (1) does not pro-  
25          hibit entry of property for the purpose of obtaining

1 consent or providing notice as required by that para-  
2 graph.

3 (c) LIMITATION ON USE OF INFORMATION.—Infor-  
4 mation that is collected by the Survey from non-Federal  
5 real property may not be used by the Survey, and may  
6 not be provided by the Survey to any other person, un-  
7 less—

8 (1) the Secretary has provided to the owner of  
9 the property—

10 (A) access to the information;

11 (B) a detailed description of the manner in  
12 which the information was collected; and

13 (C) an opportunity to dispute the accuracy  
14 of the information; and

15 (2) if the owner of the property disputes the in-  
16 formation pursuant to subparagraph (C), the Sec-  
17 retary determines that the information is accurate.

18 (d) IMMUNITY FROM CIVIL LIABILITY.—The owner  
19 of privately-owned property is not liable for any costs, fees,  
20 or damages under any State or Federal law for any injury  
21 incurred by a person in performing any activity on the  
22 property as an officer, employee, or agent of the Survey  
23 (including the performance of an activity pursuant to a  
24 contract or cooperative agreement with the Survey), other

1 than an injury caused by the gross negligence or willful  
2 misconduct of the owner.

3 (e) REPORT TO CONGRESS.—On January 1, 1995,  
4 and January 1, 1996, and biennially thereafter, the Sec-  
5 retary shall provide a report to the Committee on Mer-  
6 chant Marine and Fisheries in the House of Representa-  
7 tives and the Committee on Environment and Public  
8 Works in the Senate. The report shall identify all activities  
9 of the Survey on non-Federal lands and shall certify com-  
10 pliance with subsection (b)(1).

11 (f) SURVEY POLICY ON ACCESS TO PRIVATE AND  
12 NON-FEDERAL LANDS.—Within six months of enactment,  
13 the Director shall develop a policy for Survey employees  
14 and agents to follow in order to help ensure compliance  
15 with subsection (b)(1). The Director shall provide this pol-  
16 icy to the Committee on Merchant Marine and Fisheries  
17 in the House of Representatives and the Committee on  
18 Environment and Public Works in the Senate.

19 (g) SURVEY DEFINED.—In this section, the term  
20 “Survey” includes any person that is an officer, employee,  
21 or agent of the Survey, including any such person acting  
22 pursuant to a contract or cooperative agreement with or  
23 any grant from the Survey.

24 (h) The Director shall notify in writing the relevant  
25 State and county committees established under section

1 8(b) of the Soil Conservation and Domestic Allotment Act  
2 (16 U.S.C. 590h(b)), or the successors to such commit-  
3 tees, in a timely manner and prior to the Survey entering  
4 onto non-Federal real property for which the State and  
5 county committees maintain records or have responsibility  
6 as provided in programs administered by the Secretary of  
7 Agriculture.

8 **SEC. 6. DEFINITIONS.**

9 As used in this Act—

10 (1) the term “Assistant Secretary” means the  
11 Assistant Secretary for Fish and Wildlife of the De-  
12 partment of the Interior established under section 3  
13 of the Fish and Wildlife Act of 1956 (16 U.S.C.  
14 742b);

15 (2) the term “biological resources” means  
16 plants, fish, invertebrates, and wildlife inhabiting  
17 terrestrial, aquatic, and marine ecosystems;

18 (3) the term “Director” means the Director of  
19 the National Biological Survey appointed under sec-  
20 tion 3(b);

21 (4) the term “Secretary” means the Secretary  
22 of the Interior;

23 (5) the term “Survey” means the National Bio-  
24 logical Survey established under this Act; and

1           (6) the term “Tribal government” means the  
2       government of any Indian tribe, band, nation, or  
3       other organized group or community, including any  
4       Alaska Native village or regional corporation as de-  
5       fined in or established pursuant to the Alaska Na-  
6       tive Claims Settlement Act (43 U.S.C. 1601 et seq.),  
7       which is recognized as eligible for the special pro-  
8       grams and services provided by the United States to  
9       Indians because of their status as Indians.

10 **SEC. 7. CONFORMING AMENDMENTS.**

11       (a) TITLE 5.—Section 5316 of title 5, United States  
12       Code, is amended by inserting after the item relating to  
13       the Director, United States Fish and Wildlife Service, De-  
14       partment of the Interior, the following:

15           “Director of the National Biological Survey,  
16       Department of the Interior.”.

17       (b) NATIONAL WETLANDS INVENTORY.—Section  
18       401(a) of the Emergency Wetlands Resources Act of 1986  
19       (16 U.S.C. 3931(a)) is amended—

20           (1) by striking “the United States Fish and  
21       Wildlife Service” and inserting “the National Bio-  
22       logical Survey”; and

23           (2) in paragraph (1) by striking “the Service”  
24       and inserting “the National Biological Survey”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 subsection (b) shall take effect on the date that is 90 days  
3 after the date of the enactment of this Act, or such earlier  
4 date as is specified by the Secretary for purposes of sec-  
5 tion 3(b)(2)(H).

6 **SEC. 8. AUTHORIZATION AND REPORTS.**

7 (a) CURRENT AUTHORIZATIONS.—There are author-  
8 ized to be appropriated—

9 (1) for fiscal year 1994, an amount not to ex-  
10 ceed \$170,319,000; and

11 (2) for fiscal year 1995, such sums as may be  
12 necessary to carry out the purposes of this Act.

13 (b) FUTURE AUTHORIZATIONS.—After September  
14 30, 1995, no amounts shall be appropriated to carry out  
15 any program, function, or activity of the Survey unless  
16 those amounts have been authorized to be appropriated  
17 by an Act of Congress.

18 (c) PERIODIC REPORTS AND PROPOSALS.—

19 (1) REPORTS.—At the time that the President  
20 submits to the Congress an annual budget proposal,  
21 the Secretary shall submit to the appropriate com-  
22 mittees of the House of Representatives and the  
23 Senate a report concerning the utilization of  
24 amounts previously appropriated for programs, func-  
25 tions, and activities of the Survey and the proposed

1 utilization of such appropriated amounts during the  
2 following fiscal year.

3 (2) PROPOSALS.—Beginning on January 1,  
4 1997, and not later than January 1 of each second  
5 odd-numbered year thereafter, the Secretary shall  
6 submit to the Speaker of the House of Representa-  
7 tives and the President of the Senate a proposal for  
8 any requested further authorization of appropria-  
9 tions for all programs, functions, and activities of  
10 the Survey to be carried out during the 4 full fiscal  
11 years beginning on October 1 of the calendar year  
12 following the calendar year in which such proposal  
13 is submitted.

14 **SEC. 9. RELATIONSHIP TO OTHER LAWS.**

15 Except as provided in sections 3(b)(2)(I), 4(a), and  
16 7, this Act shall not be construed to amend, repeal, super-  
17 sede, or otherwise affect any other law.

18 **SEC. 10. COMPLIANCE WITH BUY AMERICAN ACT.**

19 No funds appropriated pursuant to this Act may be  
20 expended by an entity unless the entity agrees that in ex-  
21 pending the assistance the entity will comply with sections  
22 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a–  
23 10c, popularly known as the “Buy American Act”).

1 **SEC. 11. SENSE OF CONGRESS; REQUIREMENT REGARDING**  
2 **NOTICE.**

3 (a) PURCHASE OF AMERICAN-MADE EQUIPMENT  
4 AND PRODUCTS.—In the case of any equipment or prod-  
5 ucts that may be authorized to be purchased with financial  
6 assistance provided under this Act, it is the sense of the  
7 Congress that entities receiving such assistance should, in  
8 expending the assistance, purchase only American-made  
9 equipment and products.

10 (b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In  
11 providing financial assistance under this Act, the Director  
12 of the National Biological Survey shall provide to each re-  
13 cipient of the assistance a notice describing the statement  
14 made in subsection (a) by the Congress.

15 **SEC. 12. PROHIBITION OF CONTRACTS.**

16 If it has been finally determined by a court or Federal  
17 agency that any person intentionally affixed a fraudulent  
18 label bearing a “Made in America” inscription, or any in-  
19 scription with the same meaning, to any product sold in  
20 or shipped to the United States that was not made in the  
21 United States, such person shall be ineligible to receive  
22 any contract or subcontract made with funds provided  
23 pursuant to this Act, pursuant to the debarment, suspen-  
24 sion, and ineligibility procedures described in sections  
25 9.400 through 9.409 of title 48, Code of Federal Regula-  
26 tions.



1 **SEC. 13. FISH AND WILDLIFE MANAGEMENT.**

2 (a) The establishment and operations of the National  
3 Biological Survey shall not be construed to enlarge or di-  
4 minish the authorities or responsibilities of the States, ter-  
5 ritories, or possessions of the United States, for the man-  
6 agement of fish and wildlife and their habitats.

7 (b) The establishment and operations of the National  
8 Biological Survey shall maintain the scientific research  
9 programs on fish and wildlife and their habitats conducted  
10 by States, colleges, and universities with appropriate funds  
11 or personnel provided, in whole or in part, by the Depart-  
12 ment of the Interior.

13 (c) The National Biological Survey shall provide ade-  
14 quate support for research and related efforts necessary  
15 for the proper management of wildlife, fish, and their  
16 habitats, including the provision of data and information  
17 from the Migratory Bird Banding Laboratory that is nec-  
18 essary for the United States Fish and Wildlife Service to  
19 fulfill its responsibilities for the management of migratory  
20 birds, including hunting programs.

Passed the House of Representatives October 26,  
1993.

Attest: DONNALD K. ANDERSON,  
*Clerk.*