

Union Calendar No. 648

115TH CONGRESS
2D SESSION**H. R. 3916****[Report No. 115–838]**

To amend the Endangered Species Act of 1973 to vest in the Secretary of the Interior functions under that Act with respect to species of fish that spawn in fresh or estuarine waters and migrate to ocean waters, and species of fish that spawn in ocean waters and migrate to fresh waters.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 3, 2017

Mr. CALVERT (for himself, Mr. LAMALFA, Mr. SIMPSON, Mr. COSTA, and Mr. VALADAO) introduced the following bill; which was referred to the Committee on Natural Resources

JULY 18, 2018

Additional sponsors: Mrs. McMORRIS RODGERS and Mr. MCCLINTOCK

JULY 18, 2018

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on October 3, 2017]

A BILL

To amend the Endangered Species Act of 1973 to vest in the Secretary of the Interior functions under that Act with respect to species of fish that spawn in fresh or estuarine waters and migrate to ocean waters, and species of fish that spawn in ocean waters and migrate to fresh waters.

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 “Federally Integrated*
 5 *Species Health Act” or the “FISH Act”.*

6 **SEC. 2. TRANSFER OF FUNCTIONS WITH RESPECT TO ANAD-**
 7 **ROMOUS SPECIES AND CATADROMOUS SPE-**
 8 **CIES.**

9 *(a) TRANSFER OF FUNCTIONS.—All functions with re-*
 10 *spect to anadromous species and catadromous species under*
 11 *the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)*
 12 *that were vested in the Secretary of Commerce or the Na-*
 13 *tional Marine Fisheries Service immediately before the en-*
 14 *actment of this Act are transferred to the Secretary of the*
 15 *Interior.*

16 *(b) CONFORMING AMENDMENTS.—The Endangered*
 17 *Species Act of 1973 is amended—*

18 *(1) in section 3(15) (16 U.S.C. 1532(15))—*

19 *(A) by inserting “(A)” after “(15)”;* and

20 *(B) by adding at the end the following:*

21 *“(B) Notwithstanding subparagraph (A), with respect*
 22 *to anadromous species and catadromous species, the term*
 23 *‘Secretary’ means the Secretary of the Interior.”;* and

24 *(2) in section 3 (16 U.S.C. 1532) by adding at*
 25 *the end the following:*

1 “(22) *The term ‘anadromous species’ means a species*
 2 *of fish that spawn in fresh or estuarine waters and that*
 3 *migrate to ocean waters.*

4 “(23) *The term ‘catadromous species’ means a species*
 5 *of fish that spawn in ocean waters and migrate to fresh*
 6 *waters.’’.*

7 **SEC. 3. MISCELLANEOUS PROVISIONS.**

8 (a) *REFERENCES.—Any reference in any other Federal*
 9 *law, Executive order, rule, regulation, or delegation of au-*
 10 *thority, or any document of or pertaining to a department*
 11 *or office from which a function is transferred by this Act—*

12 (1) *to the head of such department or office is*
 13 *deemed to refer to the Secretary of the Interior; or*

14 (2) *to such department or office is deemed to*
 15 *refer to the Department of the Interior.*

16 (b) *EXERCISE OF AUTHORITIES.—Except as otherwise*
 17 *provided by law, the Secretary of the Interior may, for pur-*
 18 *poses of performing the functions transferred by this Act,*
 19 *exercise all authorities under the Endangered Species Act*
 20 *of 1973 that were available with respect to the performance*
 21 *of that function immediately before the effective date of the*
 22 *transfer of the function under this Act.*

23 (c) *SAVINGS PROVISIONS.—*

24 (1) *LEGAL DOCUMENTS.—All orders, determina-*
 25 *tions, rules, regulations, permits, grants, loans, con-*

1 *tracts, agreements, certificates, licenses, and privi-*
2 *leges—*

3 *(A) that have been issued, made, granted, or*
4 *allowed to become effective by the Secretary of*
5 *Commerce, any officer or employee of the De-*
6 *partment of Commerce, or any other Government*
7 *official in the performance of any function that*
8 *is transferred by this Act, or by a court of com-*
9 *petent jurisdiction with respect to such perform-*
10 *ance; and*

11 *(B) that are in effect on the effective date of*
12 *this Act (or become effective after such date pur-*
13 *suant to their terms as in effect on such effective*
14 *date),*

15 *shall continue in effect according to their terms until*
16 *modified, terminated, superseded, set aside, or revoked*
17 *in accordance with law by the President, any other*
18 *authorized official, a court of competent jurisdiction,*
19 *or operation of law.*

20 *(2) PROCEEDINGS.—*

21 *(A) IN GENERAL.—This Act shall not affect*
22 *any proceedings or any application for any ben-*
23 *efits, service, license, permit, certificate, or fi-*
24 *nancial assistance pending on the date of the en-*
25 *actment of this Act before an office transferred*

1 *by this Act. Such proceedings and applications*
2 *shall be continued. Orders shall be issued in such*
3 *proceedings, appeals shall be taken therefrom,*
4 *and payments shall be made pursuant to such*
5 *orders, as if this Act had not been enacted, and*
6 *orders issued in any such proceeding shall con-*
7 *tinue in effect until modified, terminated, super-*
8 *seded, or revoked by a duly authorized official,*
9 *by a court of competent jurisdiction, or by oper-*
10 *ation of law.*

11 (B) *LIMITATION.—Nothing in this para-*
12 *graph shall be considered to prohibit the dis-*
13 *continuance or modification of any such pro-*
14 *ceeding under the same terms and conditions*
15 *and to the same extent that such proceeding*
16 *could have been discontinued or modified if this*
17 *Act had not been enacted.*

18 (3) *SUITS.—This Act shall not affect suits com-*
19 *menced before the date of the enactment of this Act,*
20 *and in all such suits, proceeding shall be had, appeals*
21 *taken, and judgments rendered in the same manner*
22 *and with the same effect as if this Act had not been*
23 *enacted.*

24 (4) *NONABATEMENT OF ACTIONS.—No suit, ac-*
25 *tion, or other proceeding commenced by or against the*

1 *Department of Commerce or the Secretary of Com-*
2 *merce, or by or against any individual in the official*
3 *capacity of such individual as an officer or employee*
4 *of the Department of Commerce, shall abate by reason*
5 *of the enactment of this Act.*

6 (5) *CONTINUANCE OF SUITS.—If any Govern-*
7 *ment officer in the official capacity of such officer is*
8 *party to a suit with respect to a function of the offi-*
9 *cer, and under this Act such function is transferred*
10 *to any other officer or office, then such suit shall be*
11 *continued with the other officer or the head of such*
12 *other office, as applicable, substituted or added as a*
13 *party.*

14 (6) *ADMINISTRATIVE PROCEDURE AND JUDICIAL*
15 *REVIEW.—Except as otherwise provided by this Act,*
16 *any statutory requirements relating to notice, hear-*
17 *ings, action upon the record, or administrative or ju-*
18 *dicial review that apply to any function transferred*
19 *by this Act shall apply to the exercise of such function*
20 *by the head of the Federal agency, and other officers*
21 *of the agency, to which such function is transferred by*
22 *this Act.*

23 **SEC. 4. DEFINITIONS.**

24 *For purposes of this Act:*

1 (1) *ANADROMOUS SPECIES AND CATADROMOUS*
2 *SPECIES.*—*Each of the terms “anadromous species”*
3 *and “catadromous species” has the meaning that term*
4 *has under section 3 of the Endangered Species Act of*
5 *1973, as amended by section 2 of this Act.*

6 (2) *FUNCTION.*—*The term “function” includes*
7 *any duty, obligation, power, authority, responsibility,*
8 *right, privilege, activity, or program.*

9 (3) *OFFICE.*—*The term “office” includes any of-*
10 *fice, administration, agency, bureau, institute, coun-*
11 *cil, unit, organizational entity, or component thereof.*

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