



To: Water Resources Committee/Board of Directors

From: Frances Mizuno, Interim Executive Director

Subject: H.R. 3916 (Rep. Ken Calvert) – “Federally Integrated Species Health (FISH) Act”

Date: July 2, 2018

### **Bill Summary**

The *Federally Integrated Species Health Act* (H.R. 3916; FISH Act) would consolidate the management and regulation of the Endangered Species Act (ESA) within the Department of Interior’s Fish and Wildlife Service (FWS). The ESA is currently administered by FWS and the Commerce Department’s National Marine Fisheries Service (NMFS). The FWS primarily has responsibility for terrestrial and freshwater organisms (i.e. Delta Smelt), while NMFS responsibilities are mainly for marine wildlife, such as anadromous fish (i.e. salmon). The FISH Act would transfer all of the NMFS’ ESA responsibilities to the FWS.

### **Background**

Under the Endangered Species Act (ESA), the Secretary of the Interior, through the U.S. Fish and Wildlife Service (FWS), has responsibility for plants, wildlife and inland fisheries. The Secretary of Commerce, through NMFS is responsible for implementing the ESA with respect to ocean-going fish and some marine mammals. If federal actions might affect a listed species, Section 7 of the ESA requires federal agencies that would carry out such actions to consult with FWS or NMFS to “ensure that their actions are not likely to jeopardize the continued existence’ of any endangered or threatened species, nor to adversely modify critical habitat”.

FWS or NMFS completes its Section 7 consultation process with the issuance of a Biological Opinion (BiOp) determining whether the federal action will or will not jeopardize the continued existence of the species in question nor adversely modify critical habitat. If the BiOp concludes “no jeopardy” then the agency issues an incidental take statement allowing the action to continue. If the BiOp concludes a “jeopardy” determination, then the agency either outlines Reasonable and Prudent Alternative courses of action (RPAs) that will allow the action to move forward without jeopardizing the species. If no such alternatives exist, the action is not permitted to proceed.

In many cases, federal and private actions impact multiple species that fall under the jurisdiction of both the DOI and the National Oceanic Atmospheric Administration (NOAA). In such instances, both FWS and NMFS issue BiOps detailing impacts on their respective species and detailing RPAs to mitigate jeopardy determinations if necessary. This redundant exercise can result in competing recommendations from different agencies, and in some cases, irreconcilable mandates

The operations of the Central Valley Project (CVP) and the State Water Project (SWP) in the Sacramento-San Joaquin Bay-Delta (Bay-Delta) is a prime example of the agency duplication. CVP Operations required BiOps from FWS and NMFS relating to impacts on the Delta Smelt and certain species of listed salmon species respectively.

### **Benefit of Act**

This legislation will allow one wildlife management agency to comprehensively evaluate impacts on species interacting in a shared ecosystem and determine a holistic management approach.

### **Recommendation**

Water Resources Committee recommend to the Board of Directors the adoption of a support position for the Federally Integrated Species Health (FISH) Act, HR 3916.

115TH CONGRESS  
1ST SESSION

# H. R. 3916

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.

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## 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

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## 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”.

1 **SEC. 2. TRANSFER OF FUNCTIONS WITH RESPECT TO**  
2 **ANADROMOUS SPECIES AND CATADROMOUS**  
3 **SPECIES.**

4 (a) **TRANSFER OF FUNCTIONS.**—All functions with  
5 respect to anadromous species and catadromous species  
6 under the Endangered Species Act of 1973 (16 U.S.C.  
7 1531 et seq.) that were vested in the Secretary of Com-  
8 merce or the National Marine Fisheries Service imme-  
9 diately before the enactment of this Act are transferred  
10 to the Secretary of the Interior.

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

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

14 (A) by inserting “(A)” after “(15)”; and

15 (B) by adding at the end the following:

16 “(B) Notwithstanding subparagraph (A),  
17 with respect to anadromous species and  
18 catadromous species, the term ‘Secretary’  
19 means the Secretary of the Interior.”; and

20 (2) in section 3 (16 U.S.C. 1532) by adding at  
21 the end the following:

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

1           “(23) The term ‘catadromous species’ means a  
2           species of fish that spawn in ocean waters and mi-  
3           grate to fresh waters.”.

4 **SEC. 3. MISCELLANEOUS PROVISIONS.**

5           (a) REFERENCES.—Any reference in any other Fed-  
6           eral law, Executive order, rule, regulation, or delegation  
7           of authority, or any document of or pertaining to a depart-  
8           ment or office from which a function is transferred by this  
9           Act—

10           (1) to the head of such department or office is  
11           deemed to refer to the Secretary of the Interior; or

12           (2) to such department or office is deemed to  
13           refer to the Department of the Interior.

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

22           (c) SAVINGS PROVISIONS.—

23           (1) LEGAL DOCUMENTS.—All orders, deter-  
24           minations, rules, regulations, permits, grants, loans,

1 contracts, agreements, certificates, licenses, and  
2 privileges—

3 (A) that have been issued, made, granted,  
4 or allowed to become effective by the Secretary  
5 of Commerce, any officer or employee of the  
6 Department of Commerce, or any other Govern-  
7 ment official in the performance of any function  
8 that is transferred by this Act, or by a court of  
9 competent jurisdiction with respect to such per-  
10 formance; and

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

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

20 (2) PROCEEDINGS.—

21 (A) IN GENERAL.—This Act shall not af-  
22 fect any proceedings or any application for any  
23 benefits, service, license, permit, certificate, or  
24 financial assistance pending on the date of the  
25 enactment of this Act before an office trans-

1           ferred by this Act. Such proceedings and appli-  
2           cations shall be continued. Orders shall be  
3           issued in such proceedings, appeals shall be  
4           taken therefrom, and payments shall be made  
5           pursuant to such orders, as if this Act had not  
6           been enacted, and orders issued in any such  
7           proceeding shall continue in effect until modi-  
8           fied, terminated, superseded, or revoked by a  
9           duly authorized official, by a court of competent  
10          jurisdiction, or by operation 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, ap-  
21          peals taken, and judgments rendered in the same  
22          manner and with the same effect as if this Act had  
23          not been enacted.

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

1 the Department of Commerce or the Secretary of  
2 Commerce, or by or against any individual in the of-  
3 ficial capacity of such individual as an officer or em-  
4 ployee of the Department of Commerce, shall abate  
5 by reason of the enactment of this Act.

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

14 (6) ADMINISTRATIVE PROCEDURE AND JUDI-  
15 CIAL REVIEW.—Except as otherwise provided by this  
16 Act, any statutory requirements relating to notice,  
17 hearings, action upon the record, or administrative  
18 or judicial review that apply to any function trans-  
19 ferred by this Act shall apply to the exercise of such  
20 function by the head of the Federal agency, and  
21 other officers of the agency, to which such function  
22 is transferred by 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  
4 term has under section 3 of the Endangered Species  
5 Act of 1973, as amended by section 3 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  
10 office, administration, agency, bureau, institute,  
11 council, unit, organizational entity, or component  
12 thereof.

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