

107TH CONGRESS  
1ST SESSION

# H. R. 2409

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

JUNE 28, 2001

Mr. OTTER (for himself and Mr. SIMPSON) introduced the following bill; which was referred to the Committee on 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 “Endangered Species  
5 Consolidation Act of 2001”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The National Marine Fisheries Service was  
4 created in the Department of Commerce under Reor-  
5 ganization Plan Number 4 of 1970 (15 U.S.C. 1511  
6 note). Before creation of the Service, the programs  
7 that are administered by the Service were adminis-  
8 tered by the Bureau of Commercial Fisheries within  
9 the United States Fish and Wildlife Service in the  
10 Department of Interior.

11 (2) The Endangered Species Act of 1973 (16  
12 U.S.C. 1531 et. seq.) currently delegates authority  
13 to both the Secretary of the Interior and the Sec-  
14 retary of Commerce to conduct activities related to  
15 the listing and recovery of threatened species and  
16 endangered species.

17 (3) The National Marine Fisheries Service is  
18 responsible for the recovery of 33 species of marine  
19 mammals and fish, while the United States Fish and  
20 Wildlife Service has jurisdiction over 1,800 species  
21 of plants, mammals, birds, and fish, including sev-  
22 eral species that have been co-listed and managed by  
23 both the National Marine Fisheries Service and the  
24 United States Fish and Wildlife Service.

25 (4) In order to better coordinate Federal agen-  
26 cy functions relating to the listing and recovery of

1 threatened species and endangered species, eliminate  
2 duplication of efforts in the performance of those  
3 functions, and ensure that the maximum amount of  
4 resources are focused on the objectives of the En-  
5 dangered Species Act 1973, one Federal agency  
6 should be given exclusive responsibility for those  
7 functions with respect to anadromous species and  
8 catadromous species.

9 **SEC. 3. TRANSFER OF FUNCTIONS WITH RESPECT TO**  
10 **ANADROMOUS SPECIES AND CATADROMOUS**  
11 **SPECIES.**

12 (a) **TRANSFER OF FUNCTIONS.**—All functions with  
13 respect to anadromous species and catadromous species  
14 under the Endangered Species Act of 1973 (16 U.S.C.  
15 1531 et seq.) that were vested in the Secretary of Com-  
16 merce or the National Marine Fisheries Service imme-  
17 diately before the enactment of this Act are transferred  
18 to the Secretary of the Interior.

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

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

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

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

24 “(B) Notwithstanding subparagraph (A), with re-  
25 spect to anadromous species and catadromous species, the

1 term ‘Secretary’ means the Secretary of the Interior.”;  
2 and

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

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

8 “(23) The term ‘catadromous species’ means a spe-  
9 cies of fish that spawn in ocean waters and migrate to  
10 fresh waters.”.

11 **SEC. 4. MISCELLANEOUS PROVISIONS.**

12 (a) REFERENCES.—Any reference in any other Fed-  
13 eral law, Executive order, rule, regulation, or delegation  
14 of authority, or any document of or pertaining to a depart-  
15 ment or office from which a function is transferred by this  
16 Act—

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

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

21 (b) EXERCISE OF AUTHORITIES.—Except as other-  
22 wise provided by law, the Secretary of the Interior may,  
23 for purposes of performing the functions transferred by  
24 this Act, exercise all authorities under the Endangered  
25 Species Act of 1973 that were available with respect to

1 the performance of that function immediately before the  
2 effective date of the transfer of the function under this  
3 Act.

4 (c) SAVINGS PROVISIONS.—

5 (1) LEGAL DOCUMENTS.—All orders, deter-  
6 minations, rules, regulations, permits, grants, loans,  
7 contracts, agreements, certificates, licenses, and  
8 privileges—

9 (A) that have been issued, made, granted,  
10 or allowed to become effective by the Secretary  
11 of Commerce, any officer or employee of the  
12 Department of Commerce, or any other Govern-  
13 ment official in the performance of any function  
14 that is transferred by this Act, or by a court of  
15 competent jurisdiction with respect to such per-  
16 formance, and

17 (B) that are in effect on the effective date  
18 of this Act (or become effective after such date  
19 pursuant to their terms as in effect on such ef-  
20 fective date),

21 shall continue in effect according to their terms until  
22 modified, terminated, superseded, set aside, or re-  
23 voked in accordance with law by the President, any  
24 other authorized official, a court of competent juris-  
25 diction, or operation of law.

## 1 (2) PROCEEDINGS.—

2 (A) IN GENERAL.—This Act shall not af-  
3 fect any proceedings or any application for any  
4 benefits, service, license, permit, certificate, or  
5 financial assistance pending on the date of the  
6 enactment of this Act before an office trans-  
7 ferred by this Act. Such proceedings and appli-  
8 cations shall be continued. Orders shall be  
9 issued in such proceedings, appeals shall be  
10 taken therefrom, and payments shall be made  
11 pursuant to such orders, as if this Act had not  
12 been enacted, and orders issued in any such  
13 proceeding shall continue in effect until modi-  
14 fied, terminated, superseded, or revoked by a  
15 duly authorized official, by a court of competent  
16 jurisdiction, or by operation of law.

17 (B) LIMITATION.—Nothing in this para-  
18 graph shall be considered to prohibit the dis-  
19 continuance or modification of any such pro-  
20 ceeding under the same terms and conditions  
21 and to the same extent that such proceeding  
22 could have been discontinued or modified if this  
23 Act had not been enacted.

24 (3) SUITS.—This Act shall not affect suits com-  
25 menced before the date of the enactment of this Act,

1 and in all such suits, proceeding shall be had, ap-  
2 peals taken, and judgments rendered in the same  
3 manner and with the same effect as if this Act had  
4 not been enacted.

5 (4) NONABATEMENT OF ACTIONS.—No suit, ac-  
6 tion, or other proceeding commenced by or against  
7 the Department of Commerce or the Secretary of  
8 Commerce, or by or against any individual in the of-  
9 ficial capacity of such individual as an officer or em-  
10 ployee of the Department of Commerce, shall abate  
11 by reason of the enactment of this Act.

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

20 (6) ADMINISTRATIVE PROCEDURE AND JUDI-  
21 CIAL REVIEW.—Except as otherwise provided by this  
22 Act, any statutory requirements relating to notice,  
23 hearings, action upon the record, or administrative  
24 or judicial review that apply to any function trans-  
25 ferred by this Act shall apply to the exercise of such

1 function by the head of the Federal agency, and  
2 other officers of the agency, to which such function  
3 is transferred by this Act.

4 **SEC. 5. DEFINITIONS.**

5 For purposes of this Act:

6 (1) ANADROMOUS SPECIES AND CATADROMOUS  
7 SPECIES.—Each of the terms “anadromous species”  
8 and “catadromous species” has the meaning that  
9 term has under section 3 of the Endangered Species  
10 Act of 1973, as amended by section 3 of this Act.

11 (2) FUNCTION.—The term “function” includes  
12 any duty, obligation, power, authority, responsibility,  
13 right, privilege, activity, or program.

14 (3) OFFICE.—The term ‘office’ includes any of-  
15 fice, administration, agency, bureau, institute, coun-  
16 cil, unit, organizational entity, or component thereof.

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