



FISH Act

President Obama made a joke, but spoke the truth.

“The Interior Department is in charge of salmon while they’re in fresh water, but the Commerce Department handles them when they’re in saltwater. I hear it gets even more complicated once they’re smoked.” – President Obama, State of the Union address, January 25, 2011



PROBLEM

Overlapping jurisdiction among federal agencies has led to conflicting policies and contradictory regulatory requirements that are harming the communities and environmental areas the agencies are required to serve.

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, while NMFS responsibilities are mainly for marine wildlife, such as whales, and anadromous fish, such as salmon. The FISH Act would transfer all of the NMFS’ ESA responsibilities to the FWS.

HISTORY

In 1966, a federally-appointed commission recommended the creation of a national oceanographic program. President Nixon incorporated the commission’s recommendation into his Advisory Council on Executive Organization which recommended that this new agency be housed in the Department of the Interior, where FWS is located. However, then-Secretary of Commerce, Maurice Stans – possibly aided by political strife between President Nixon and his Interior Secretary – successfully argued that the program be temporarily housed in the Department of Commerce. The anticipated and generally expected “more consistent realignment” of agency functions to the Department of the Interior has not yet occurred.

In 2011, President Obama highlighted this duplicative authority as his “favorite example” of government inefficiency. Furthermore, President Obama formally proposed the idea behind the FISH Act in his FY 2013 and 2016 budget requests.

EXAMPLES OF DYSFUNCTION

CENTRAL VALLEY OF CALIFORNIA:

Federal agencies pursue separate and uncoordinated agendas, impose requirements that directly contradict each other

Two separate biological opinions have been issued for the continued joint operation of the federal Central Valley Project and the State Water Project. FWS has issued a biological opinion that considers how joint operations impact Delta Smelt, and NMFS has issued a biological opinion that considers how joint operations impact anadromous species, including several species of salmon. In March 2016, despite an abundance of water in the Shasta Reservoir, NMFS called for reduced releases from Shasta Dam to 8,000 cubic feet per second (cfs) throughout the summer and into the fall to preserve cold water for Winter-run Chinook salmon. While NMFS sought to limit releases, FWS called for *increased* releases from Shasta for the Delta smelt during the same period. The two agencies, pursuant to their separate and uncoordinated authority under the ESA, imposed requirements that directly contradicted each other. At a July 2016 Subcommittee on Water, Power and Oceans hearing, Mr. Ara Azhderian, then-Water Policy Administrator for the San Luis & Delta-Mendota Water Authority, testified that this confusion amplified the damaging effects of the drought with “devastating effect throughout the Central Valley Project service area, but especially in the San Joaquin Valley.”

VENTURA COUNTY IN SOUTHERN CALIFORNIA:

NMFS unwilling to cooperate in facilitating solutions regarding steelhead

NMFS monitors the Vern Freeman Diversion for compliance regarding Southern California steelhead. However, California Department of Fish and Game regulates the remediation of invasive quagga mussels. NMFS has been unwilling to cooperate in facilitating solutions between the two agencies. Meanwhile, FWS is more accustomed to working with state agencies on land species issues. Furthermore, NMFS has proven to be an intransigent organization with unfair regulatory demands of the United Water Conservation District, who maintain and operate the Vern Freeman Diversion.

PACIFIC NORTHWEST:

Agencies take different approach for permits creating uncertainty and delay for public

In 2001, NMFS and FWS each issued new biological opinions (for shortnose suckers and coho salmon, respectively) for water in the Klamath Project. To fulfill these opinions, water was completely shut off for 170,000 acres. The crisis that ensued received national media attention. Hundreds of farm and ranch families were without income. Two of the nation’s premier national wildlife refuges were left without water for wetlands and waterfowl habitat. Following protests, the government then released a series of studies that called into question some of the initial scientific findings by both NMFS and FWS.

FWS refuses to issue certain permits to forestland owners for the marbled murrelet and spotted owl unless the applicants also undertake the conservation measures required to obtain a permit from NMFS for Oregon coast coho. Each service takes a different approach for their permits and this creates further uncertainty and adds unnecessary hurdles for those attempting to navigate the interjurisdictional regulatory web.

Sources:

Committee on Natural Resources Markup Memorandum, May 11, 2018

Dan Keppen testimony in a Committee on Resources Oversight Hearing, June 22, 2005