

115TH CONGRESS
1ST SESSION

H. R. 3043

AN ACT

To modernize hydropower policy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Hydropower Policy
3 Modernization Act of 2017”.

4 **SEC. 2. HYDROPOWER REGULATORY IMPROVEMENTS.**

5 (a) SENSE OF CONGRESS ON THE USE OF HYDRO-
6 POWER RENEWABLE RESOURCES.—It is the sense of Con-
7 gress that—

8 (1) hydropower is a renewable resource for pur-
9 poses of all Federal programs and is an essential
10 source of energy in the United States; and

11 (2) the United States should increase substan-
12 tially the capacity and generation of clean, renewable
13 hydropower that would improve environmental qual-
14 ity in the United States.

15 (b) MODIFYING THE DEFINITION OF RENEWABLE
16 ENERGY TO INCLUDE HYDROPOWER.—Section 203 of the
17 Energy Policy Act of 2005 (42 U.S.C. 15852) is amend-
18 ed—

19 (1) in subsection (a), by striking “the following
20 amounts” and all that follows through paragraph (3)
21 and inserting “not less than 15 percent in fiscal year
22 2017 and each fiscal year thereafter shall be renew-
23 able energy.”; and

24 (2) in subsection (b), by striking paragraph (2)
25 and inserting the following:

1 “(2) RENEWABLE ENERGY.—The term ‘renew-
2 able energy’ means electric energy generated from
3 solar, wind, biomass, landfill gas, ocean (including
4 tidal, wave, current, and thermal), geothermal, or
5 municipal solid waste, or from a hydropower
6 project.”.

7 (c) PRELIMINARY PERMITS.—Section 5 of the Fed-
8 eral Power Act (16 U.S.C. 798) is amended—

9 (1) in subsection (a), by striking “three” and
10 inserting “4”; and

11 (2) by amending subsection (b) to read as fol-
12 lows:

13 “(b) The Commission may—

14 “(1) extend the period of a preliminary permit
15 once for not more than 4 additional years beyond
16 the 4 years permitted by subsection (a) if the Com-
17 mission finds that the permittee has carried out ac-
18 tivities under such permit in good faith and with
19 reasonable diligence; and

20 “(2) if the period of a preliminary permit is ex-
21 tended under paragraph (1), extend the period of
22 such preliminary permit once for not more than 4
23 additional years beyond the extension period granted
24 under paragraph (1), if the Commission determines

1 that there are extraordinary circumstances that war-
2 rant such additional extension.”.

3 (d) TIME LIMIT FOR CONSTRUCTION OF PROJECT
4 WORKS.—Section 13 of the Federal Power Act (16 U.S.C.
5 806) is amended in the second sentence by striking “once
6 but not longer than two additional years” and inserting
7 “for not more than 8 additional years,”.

8 (e) LICENSE TERM.—Section 15(e) of the Federal
9 Power Act (16 U.S.C. 808(e)) is amended—

10 (1) by striking “(e) Except” and inserting the
11 following:

12 “(e) LICENSE TERM ON RELICENSING.—

13 “(1) IN GENERAL.—Except”; and

14 (2) by adding at the end the following:

15 “(2) CONSIDERATION.—In determining the
16 term of a license under paragraph (1), the Commis-
17 sion shall consider, among other things, project-re-
18 lated investments to be made by the licensee under
19 a new license issued under this section, as well as
20 project-related investments made by a licensee over
21 the term of the existing license (including any terms
22 under annual licenses). In considering such invest-
23 ments, the Commission shall give the same weight
24 to—

1 “(A) investments to be made by the li-
2 censee to implement a new license issued under
3 this section, including—

4 “(i) investments in redevelopment,
5 new construction, new capacity, efficiency,
6 modernization, rehabilitation, and safety
7 improvements; and

8 “(ii) investments in environmental,
9 recreation, and other protection, mitiga-
10 tion, or enhancement measures that will be
11 required or authorized by the license; and

12 “(B) investments made by the licensee over
13 the term of the existing license (including any
14 terms under annual licenses), beyond those re-
15 quired by the existing license when issued,
16 that—

17 “(i) resulted in, during the term of
18 the existing license—

19 “(I) redevelopment, new con-
20 struction, new capacity, efficiency,
21 modernization, rehabilitation, or safe-
22 ty improvements; or

23 “(II) environmental, recreation,
24 or other protection, mitigation, or en-
25 hancement measures; and

1 “(ii) did not result in the extension of
2 the term of the existing license by the
3 Commission.”.

4 (f) ALTERNATIVE CONDITIONS AND PRESCRIP-
5 TIONS.—Section 33 of the Federal Power Act (16 U.S.C.
6 823d) is amended—

7 (1) in subsection (a)—

8 (A) in paragraph (1), by striking “deems”
9 and inserting “determines”;

10 (B) in paragraph (2)(B), in the matter
11 preceding clause (i), by inserting “determined
12 to be necessary” before “by the Secretary”;

13 (C) by striking paragraph (4); and

14 (D) by striking paragraph (5);

15 (2) in subsection (b)—

16 (A) by striking paragraph (4); and

17 (B) by striking paragraph (5); and

18 (3) by adding at the end the following:

19 “(c) FURTHER CONDITIONS.—This section applies to
20 any further conditions or prescriptions proposed or im-
21 posed pursuant to section 4(e), 6, or 18.”.

22 **SEC. 3. HYDROPOWER LICENSING AND PROCESS IMPROVE-**
23 **MENTS.**

24 (a) HYDROPOWER LICENSING AND PROCESS IM-
25 PROVEMENTS.—Part I of the Federal Power Act (16

1 U.S.C. 792 et seq.) is amended by adding at the end the
2 following:

3 **“SEC. 34. HYDROPOWER LICENSING AND PROCESS IM-**
4 **PROVEMENTS.**

5 “(a) DEFINITION.—In this section, the term ‘Federal
6 authorization’—

7 “(1) means any authorization required under
8 Federal law with respect to an application for a li-
9 cense under this part; and

10 “(2) includes any permits, special use author-
11 izations, certifications, opinions, or other approvals
12 as may be required under Federal law to approve or
13 implement the license under this part.

14 “(b) DESIGNATION AS LEAD AGENCY.—

15 “(1) IN GENERAL.—The Commission shall act
16 as the lead agency for the purposes of coordinating
17 all applicable Federal authorizations and for the
18 purposes of complying with the National Environ-
19 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

20 “(2) OTHER AGENCIES AND INDIAN TRIBES.—

21 “(A) IN GENERAL.—Each Federal, State,
22 and local government agency and Indian tribe
23 considering an aspect of an application for Fed-
24 eral authorization shall coordinate with the
25 Commission and comply with the deadline es-

1 tablished in the schedule developed for the li-
2 cense under this part in accordance with the
3 rule issued by the Commission under subsection
4 (c).

5 “(B) IDENTIFICATION.—The Commission
6 shall identify, as early as practicable after it is
7 notified by the applicant for a license under this
8 part, any Federal or State agency, local govern-
9 ment, or Indian tribe that may consider an as-
10 pect of an application for a Federal authoriza-
11 tion.

12 “(C) NOTIFICATION.—

13 “(i) IN GENERAL.—The Commission
14 shall notify any agency and Indian tribe
15 identified under subparagraph (B) of the
16 opportunity to participate in the process of
17 reviewing an aspect of an application for a
18 Federal authorization.

19 “(ii) DEADLINE.—Each agency and
20 Indian tribe receiving a notice under clause
21 (i) shall submit a response acknowledging
22 receipt of the notice to the Commission
23 within 30 days of receipt of such notice
24 and request.

1 “(D) ISSUE IDENTIFICATION AND RESOLU-
2 TION.—

3 “(i) IDENTIFICATION OF ISSUES.—
4 Federal, State, and local government agen-
5 cies and Indian tribes that may consider
6 an aspect of an application for Federal au-
7 thorization shall identify, as early as pos-
8 sible, and share with the Commission and
9 the applicant, any issues of concern identi-
10 fied during the pendency of the Commis-
11 sion’s action under this part relating to
12 any Federal authorization that may delay
13 or prevent the granting of such authoriza-
14 tion, including any issues that may prevent
15 the agency or Indian tribe from meeting
16 the schedule established for the license
17 under this part in accordance with the rule
18 issued by the Commission under subsection
19 (c).

20 “(ii) ISSUE RESOLUTION.—The Com-
21 mission may forward any issue of concern
22 identified under clause (i) to the heads of
23 the relevant State and Federal agencies
24 (including, in the case of an issue of con-
25 cern identified by a State or local govern-

1 ment agency or Indian tribe, the Federal
2 agency overseeing the delegated authority,
3 or the Secretary of the Interior with re-
4 gard to an issue of concern identified by
5 an Indian tribe, as applicable) for resolu-
6 tion. If the Commission forwards an issue
7 of concern to the head of a relevant agen-
8 cy, the Commission and the relevant agen-
9 cy shall enter into a memorandum of un-
10 derstanding to facilitate interagency co-
11 ordination and resolution of such issues of
12 concern, as appropriate.

13 “(c) SCHEDULE.—

14 “(1) COMMISSION RULEMAKING TO ESTABLISH
15 PROCESS TO SET SCHEDULE.—Not later than 180
16 days after the date of enactment of this section the
17 Commission shall, in consultation with the appro-
18 priate Federal agencies, issue a rule, after providing
19 for notice and public comment, establishing a proc-
20 ess for setting a schedule following the filing of an
21 application under this part for a license for the re-
22 view and disposition of each Federal authorization.

23 “(2) ELEMENTS OF SCHEDULING RULE.—In
24 issuing a rule under this subsection, the Commission

1 shall ensure that the schedule for each Federal au-
2 thorization—

3 “(A) includes deadlines for actions by—

4 “(i) any Federal or State agency, local
5 government, or Indian tribe that may con-
6 sider an aspect of an application for the
7 Federal authorization;

8 “(ii) the applicant;

9 “(iii) the Commission; and

10 “(iv) other participants in any appli-
11 cable proceeding;

12 “(B) is developed in consultation with the
13 applicant and any agency and Indian tribe that
14 submits a response under subsection
15 (b)(2)(C)(ii);

16 “(C) provides an opportunity for any Fed-
17 eral or State agency, local government, or In-
18 dian tribe that may consider an aspect of an
19 application for the applicable Federal authoriza-
20 tion to identify and resolve issues of concern, as
21 provided in subsection (b)(2)(D);

22 “(D) complies with applicable schedules es-
23 tablished under Federal and State law;

1 “(E) ensures expeditious completion of all
2 proceedings required under Federal and State
3 law, to the extent practicable; and

4 “(F) facilitates completion of Federal and
5 State agency studies, reviews, and any other
6 procedures required prior to, or concurrent
7 with, the preparation of the Commission’s envi-
8 ronmental document required under the Na-
9 tional Environmental Policy Act of 1969 (42
10 U.S.C. 4321 et seq.).

11 “(d) TRANSMISSION OF FINAL SCHEDULE.—

12 “(1) IN GENERAL.—For each application for a
13 license under this part, the Commission shall estab-
14 lish a schedule in accordance with the rule issued by
15 the Commission under subsection (c). The Commis-
16 sion shall publicly notice and transmit the final
17 schedule to the applicant and each agency and In-
18 dian tribe identified under subsection (b)(2)(B).

19 “(2) RESPONSE.—Each agency and Indian
20 tribe receiving a schedule under this subsection shall
21 acknowledge receipt of such schedule in writing to
22 the Commission within 30 days.

23 “(e) ADHERENCE TO SCHEDULE.—All applicants,
24 other licensing participants, and agencies and Indian
25 tribes considering an aspect of an application for a Fed-

1 eral authorization shall meet the deadlines set forth in the
2 schedule established pursuant to subsection (d)(1).

3 “(f) APPLICATION PROCESSING.—The Commission,
4 Federal, State, and local government agencies, and Indian
5 tribes may allow an applicant seeking a Federal authoriza-
6 tion to fund a third-party contractor selected by such an
7 agency or tribe to assist in reviewing the application. All
8 costs of an agency or tribe incurred pursuant to direct
9 funding by the applicant, including all costs associated
10 with the third party contractor, shall not be considered
11 costs of the United States for the administration of this
12 part under section 10(e).

13 “(g) COMMISSION RECOMMENDATION ON SCOPE OF
14 ENVIRONMENTAL REVIEW.—For the purposes of coordi-
15 nating Federal authorizations for each license under this
16 part, the Commission shall consult with and make a rec-
17 ommendation to agencies and Indian tribes receiving a
18 schedule under subsection (d) on the scope of the environ-
19 mental review for all Federal authorizations for such li-
20 cense. Each Federal and State agency and Indian tribe
21 shall give due consideration and may give deference to the
22 Commission’s recommendations, to the extent appropriate
23 under Federal law.

24 “(h) EXTENSION OF DEADLINE.—

1 “(1) APPLICATION.—A Federal, State, or local
2 government agency or Indian tribe that is unable to
3 complete its disposition of a Federal authorization
4 by the deadline set forth in the schedule established
5 under subsection (d)(1) shall, not later than 30 days
6 prior to such deadline, file for an extension with the
7 Commission.

8 “(2) EXTENSION.—The Commission shall only
9 grant an extension filed for under paragraph (1) if
10 the agency or Indian tribe demonstrates, based on
11 the record maintained under subsection (i), that
12 complying with the schedule established under sub-
13 section (d)(1) would prevent the agency or tribe
14 from complying with applicable Federal or State law.
15 If the Commission grants the extension, the Com-
16 mission shall set a reasonable schedule and deadline,
17 that is not later than 90 days after the deadline set
18 forth in the schedule established under subsection
19 (d)(1), for the agency or tribe to complete its dis-
20 position of the Federal authorization.

21 “(i) CONSOLIDATED RECORD.—The Commission
22 shall, with the cooperation of Federal, State, and local
23 government agencies and Indian tribes, maintain a com-
24 plete consolidated record of all decisions made or actions
25 taken by the Commission or by a Federal administrative

1 agency or officer (or State or local government agency or
2 officer or Indian tribe acting under delegated Federal au-
3 thority) with respect to any Federal authorization. Such
4 record shall constitute the record for judicial review under
5 section 313(b).

6 “(j) SUBMISSION OF LICENSE RECOMMENDATIONS,
7 CONDITIONS, AND PRESCRIPTIONS.—

8 “(1) SUBMISSION OF RECOMMENDATIONS.—

9 Any Federal or State agency that is providing rec-
10 ommendations with respect to a license proceeding
11 under this part shall submit to the Commission for
12 inclusion in the consolidated record relating to the li-
13 cense proceeding maintained under subsection (i)—

14 “(A) the recommendations;

15 “(B) the rationale for the recommenda-
16 tions; and

17 “(C) any supporting materials relating to
18 the recommendations.

19 “(2) WRITTEN STATEMENT.—In a case in
20 which a Federal agency is making a determination
21 with respect to a covered measure (as defined in sec-
22 tion 35(a)), the head of the Federal agency shall
23 submit to the Commission for inclusion in the con-
24 solidated record, in addition to the information re-
25 quired under paragraph (1), a written statement

1 demonstrating that the Federal agency gave equal
2 consideration to the effects of the covered measure
3 on—

4 “(A) energy supply, distribution, cost, and
5 use;

6 “(B) flood control;

7 “(C) navigation;

8 “(D) water supply; and

9 “(E) air quality and the preservation of
10 other aspects of environmental quality.

11 “(3) INFORMATION FROM OTHER AGENCIES.—

12 In preparing a written statement under paragraph
13 (2), the head of a Federal agency may make use of
14 information produced or made available by other
15 agencies with relevant expertise in the factors de-
16 scribed in subparagraphs (A) through (E) of that
17 paragraph.

18 “(k) DELEGATION.—A Secretary may delegate the
19 authority to determine a condition to be necessary under
20 section 4(e), or to prescribe a fishway under section 18,
21 to an officer of the applicable department based, in part,
22 on the ability of the officer to evaluate the broad effects
23 of such condition or prescription on—

24 “(1) the applicable project; and

1 “(2) the factors described in subparagraphs (A)
2 through (E) of subsection (j)(2).

3 “(1) NO EFFECT ON OTHER LAWS.—Nothing in this
4 section shall be construed to affect any requirement of the
5 Federal Water Pollution Control Act, the Fish and Wild-
6 life Coordination Act, the Endangered Species Act of
7 1973, section 14 of the Act of March 3, 1899 (commonly
8 known as the Rivers and Harbors Appropriation Act of
9 1899), and those provisions in subtitle III of title 54,
10 United States Code commonly known as the National His-
11 toric Preservation Act, with respect to an application for
12 a license under this part.

13 **“SEC. 35. TRIAL-TYPE HEARINGS.**

14 “(a) DEFINITION OF COVERED MEASURE.—In this
15 section, the term ‘covered measure’ means—

16 “(1) a condition determined to be necessary
17 under section 4(e), including an alternative condition
18 proposed under section 33(a);

19 “(2) fishways prescribed under section 18, in-
20 cluding an alternative prescription proposed under
21 section 33(b); or

22 “(3) any action by the Secretary to exercise re-
23 served authority under the license to prescribe, sub-
24 mit, or revise any condition to a license under the

1 first proviso of section 4(e) or fishway prescribed
2 under section 18.

3 “(b) AUTHORIZATION OF TRIAL-TYPE HEARING.—

4 An applicant for a license under this part (including an
5 applicant for a license under section 15) and any party
6 to a license proceeding shall be entitled to a determination
7 on the record, after opportunity for a trial-type hearing
8 of not more than 120 days, on any disputed issues of ma-
9 terial fact with respect to an applicable covered measure.

10 “(c) DEADLINE FOR REQUEST.—A request for a
11 trial-type hearing under this section shall be submitted not
12 later than 60 days after the date on which, as applicable—

13 “(1) the Secretary determines the condition to
14 be necessary under section 4(e) or prescribes the
15 fishway under section 18; or

16 “(2) the Secretary exercises reserved authority
17 under the license to prescribe, submit, or revise any
18 condition to a license under the first proviso of sec-
19 tion 4(e) or fishway prescribed under section 18, as
20 appropriate.

21 “(d) NO REQUIREMENT TO EXHAUST.—By electing
22 not to request a trial-type hearing under subsection (c),
23 a license applicant and any other party to a license pro-
24 ceeding shall not be considered to have waived the right
25 of the applicant or other party to raise any issue of fact

1 or law in a non-trial-type proceeding, but no issue may
2 be raised for the first time on rehearing or judicial review
3 of the license decision of the Commission.

4 “(e) ADMINISTRATIVE LAW JUDGE.—

5 “(1) IN GENERAL.—All disputed issues of mate-
6 rial fact raised by a party in a request for a trial-
7 type hearing submitted under subsection (c) shall be
8 determined in a single trial-type hearing to be con-
9 ducted by an Administrative Law Judge within the
10 Office of Administrative Law Judges and Dispute
11 Resolution of the Commission, in accordance with
12 the Commission rules of practice and procedure
13 under part 385 of title 18, Code of Federal Regula-
14 tions (or successor regulations), and within the time-
15 frame established by the Commission for each li-
16 cense proceeding (including a proceeding for a li-
17 cense under section 15) under section 34(d).

18 “(2) REQUIREMENT.—The trial-type hearing
19 shall include the opportunity—

20 “(A) to undertake discovery; and

21 “(B) to cross-examine witnesses, as appli-
22 cable.

23 “(f) STAY.—The Administrative Law Judge may im-
24 pose a stay of a trial-type hearing under this section for
25 a period of not more than 120 days to facilitate settlement

1 negotiations relating to resolving the disputed issues of
2 material fact with respect to the covered measure.

3 “(g) DECISION OF THE ADMINISTRATIVE LAW
4 JUDGE.—

5 “(1) CONTENTS.—The decision of the Adminis-
6 trative Law Judge shall contain—

7 “(A) findings of fact on all disputed issues
8 of material fact;

9 “(B) conclusions of law necessary to make
10 the findings of fact, including rulings on mate-
11 riality and the admissibility of evidence; and

12 “(C) reasons for the findings and conclu-
13 sions.

14 “(2) LIMITATION.—The decision of the Admin-
15 istrative Law Judge shall not contain conclusions as
16 to whether—

17 “(A) any condition or prescription should
18 be adopted, modified, or rejected; or

19 “(B) any alternative condition or prescrip-
20 tion should be adopted, modified, or rejected.

21 “(3) FINALITY.—A decision of an Administra-
22 tive Law Judge under this section with respect to a
23 disputed issue of material fact shall not be subject
24 to further administrative review.

1 “(4) SERVICE.—The Administrative Law Judge
2 shall serve the decision on each party to the hearing
3 and forward the complete record of the hearing to
4 the Commission and the Secretary that proposed the
5 original condition or prescription.

6 “(h) SECRETARIAL DETERMINATION.—

7 “(1) IN GENERAL.—Not later than 60 days
8 after the date on which the Administrative Law
9 Judge issues the decision under subsection (g) and
10 in accordance with any applicable schedule estab-
11 lished by the Commission under section 34(d), the
12 Secretary proposing a covered measure shall file
13 with the Commission a final determination to adopt,
14 modify, or withdraw any condition or prescription
15 that was the subject of a hearing under this section,
16 based on the decision of the Administrative Law
17 Judge.

18 “(2) RECORD OF DETERMINATION.—The final
19 determination of the Secretary filed with the Com-
20 mission shall identify the reasons for the decision
21 and any considerations taken into account that were
22 not part of, or were inconsistent with, the findings
23 of the Administrative Law Judge and shall be in-
24 cluded in the consolidated record maintained under
25 section 34(i).

1 “(i) RESOLUTION OF MATTERS.—Notwithstanding
2 sections 4(e) and 18, if the Commission finds that a final
3 determination under (h)(1) of the Secretary is inconsistent
4 with the purposes of this part or other applicable law, the
5 Commission may enter into a memorandum of under-
6 standing with the Secretary to facilitate interagency co-
7 ordination and resolve the matter.

8 “(j) JUDICIAL REVIEW.—The decision of the Admin-
9 istrative Law Judge and the record of determination of
10 the Secretary shall be included in the record of the appli-
11 cable licensing proceeding and subject to judicial review
12 of the final licensing decision of the Commission under
13 section 313(b).

14 **“SEC. 36. LICENSING STUDY IMPROVEMENTS.**

15 “(a) IN GENERAL.—To facilitate the timely and effi-
16 cient completion of the license proceedings under this part,
17 the Commission shall, in consultation with applicable Fed-
18 eral and State agencies and interested members of the
19 public—

20 “(1) compile current and accepted best prac-
21 tices in performing studies required in such license
22 proceedings, including methodologies and the design
23 of studies to assess the full range of environmental
24 impacts of a project that reflect the most recent
25 peer-reviewed science;

1 “(2) compile a comprehensive collection of stud-
2 ies and data accessible to the public that could be
3 used to inform license proceedings under this part;
4 and

5 “(3) encourage license applicants, agencies, and
6 Indian tribes to develop and use, for the purpose of
7 fostering timely and efficient consideration of license
8 applications, a limited number of open-source meth-
9 odologies and tools applicable across a wide array of
10 projects, including water balance models and
11 streamflow analyses.

12 “(b) USE OF STUDIES.—To the extent practicable,
13 the Commission and other Federal, State, and local gov-
14 ernment agencies and Indian tribes considering an aspect
15 of an application for Federal authorization (as defined in
16 section 34) shall use studies and data based on current,
17 accepted science in support of their actions. Any partici-
18 pant in a proceeding with respect to such a Federal au-
19 thorization shall demonstrate that a study requested by
20 the participant is not duplicative of current, existing stud-
21 ies that are applicable to the project.

22 “(c) INTRA-WATERSHED REVIEW.—The Commission
23 shall establish a program to develop comprehensive plans,
24 at the request of project applicants, on a watershed-wide
25 scale, in consultation with the applicants, appropriate

1 Federal agencies, and affected States, local governments,
2 and Indian tribes, in watersheds with respect to which
3 there are more than one application for a project. Upon
4 such a request, the Commission, in consultation with the
5 applicants, such Federal agencies, and affected States,
6 local governments, and Indian tribes, may conduct or com-
7 mission watershed-wide environmental studies, with the
8 participation of at least 2 applicants. Any study conducted
9 under this subsection shall apply only to a project with
10 respect to which the applicants participate.

11 **“SEC. 37. LICENSE AMENDMENT IMPROVEMENTS.**

12 “(a) QUALIFYING PROJECT UPGRADES.—

13 “(1) IN GENERAL.—As provided in this section,
14 the Commission may approve an application under
15 this section for an amendment to a license issued
16 under this part for a qualifying project upgrade.

17 “(2) APPLICATION.—A licensee filing an appli-
18 cation for an amendment to a project license, for
19 which the licensee is seeking approval as a qualified
20 project upgrade under this section, shall include in
21 such application information sufficient to dem-
22 onstrate that the proposed change to the project de-
23 scribed in the application is a qualifying project up-
24 grade.

1 “(3) NOTICE AND INITIAL DETERMINATION ON
2 QUALIFICATION.—Not later than 30 days after re-
3 ceipt of an application under paragraph (2), the
4 Commission, in consultation with other Federal
5 agencies, States, and Indian tribes the Commission
6 determines appropriate, shall publish in the Federal
7 Register a notice containing—

8 “(A) notice of the application filed under
9 paragraph (2);

10 “(B) an initial determination as to whether
11 the proposed change to the project described in
12 the application for a license amendment is a
13 qualifying project upgrade; and

14 “(C) a request for public comment on the
15 application and the initial determination.

16 “(4) PUBLIC COMMENT AND CONSULTATION.—
17 The Commission shall, for a period of 45 days be-
18 ginning on the date of publication of a notice under
19 paragraph (3)—

20 “(A) accept public comment regarding the
21 application and whether the proposed license
22 amendment is for a qualifying project upgrade;
23 and

24 “(B) consult with each Federal, State, and
25 local government agency and Indian tribe con-

1 sidering an aspect of an application for any au-
2 thorization required under Federal law with re-
3 spect to the proposed license amendment, as
4 well as other interested agencies and Indian
5 tribes.

6 “(5) FINAL DETERMINATION ON QUALIFICA-
7 TION.—Not later than 15 days after the end of the
8 public comment and consultation period under para-
9 graph (4), the Commission shall publish in the Fed-
10 eral Register a final determination as to whether the
11 proposed license amendment is for a qualifying
12 project upgrade.

13 “(6) FEDERAL AUTHORIZATIONS.—In estab-
14 lishing the schedule for a proposed license amend-
15 ment for a qualifying project upgrade, the Commis-
16 sion shall require final disposition of all authoriza-
17 tions required under Federal law with respect to an
18 application for such license amendment, other than
19 final action by the Commission, by not later than
20 120 days after the date on which the Commission
21 publishes a final determination under paragraph (5)
22 that the proposed license amendment is for a quali-
23 fying project upgrade.

24 “(7) COMMISSION ACTION.—Not later than 150
25 days after the date on which the Commission pub-

1 lishes a final determination under paragraph (5)
2 that a proposed license amendment is for a quali-
3 fying project upgrade, the Commission shall take
4 final action on the license amendment application.

5 “(8) LICENSE AMENDMENT CONDITIONS.—Any
6 condition or prescription included in or applicable to
7 a license amendment for a qualifying project up-
8 grade approved under this subsection, including any
9 condition, prescription, or other requirement of a
10 Federal authorization, shall be limited to those that
11 are—

12 “(A) necessary to protect public safety; or

13 “(B) reasonable, economically feasible, and
14 essential to prevent loss of or damage to, or to
15 mitigate adverse effects on, fish and wildlife re-
16 sources, water supply, and water quality that
17 are directly caused by the construction and op-
18 eration of the qualifying project upgrade, as
19 compared to the environmental baseline existing
20 at the time the Commission approves the appli-
21 cation for the license amendment.

22 “(9) RULEMAKING.—Not later than 180 days
23 after the date of enactment of this section, the Com-
24 mission shall, after notice and opportunity for public
25 comment, issue a rule to implement this subsection.

1 “(10) DEFINITIONS.—For purposes of this sub-
2 section:

3 “(A) QUALIFYING PROJECT UPGRADE.—
4 The term ‘qualifying project upgrade’ means a
5 change to a project licensed under this part
6 that meets the qualifying criteria, as deter-
7 mined by the Commission.

8 “(B) QUALIFYING CRITERIA.—The term
9 ‘qualifying criteria’ means, with respect to a
10 project licensed under this part, a change to the
11 project that—

12 “(i) if carried out, would be unlikely
13 to adversely affect any species listed as
14 threatened or endangered under the En-
15 dangered Species Act of 1973 or result in
16 the destruction or adverse modification of
17 critical habitat, as determined in consulta-
18 tion with the Secretary of the Interior or
19 Secretary of Commerce, as appropriate, in
20 accordance with section 7 of the Endan-
21 gered Species Act of 1973;

22 “(ii) is consistent with any applicable
23 comprehensive plan under section 10(a)(2);

24 “(iii) includes only changes to project
25 lands, waters, or operations that, in the

1 judgment of the Commission, would result
2 in only insignificant or minimal cumulative
3 adverse environmental effects;

4 “(iv) would be unlikely to adversely
5 affect water quality or water supply; and

6 “(v) proposes to implement—

7 “(I) capacity increases, efficiency
8 improvements, or other enhancements
9 to hydropower generation at the li-
10 censed project;

11 “(II) environmental protection,
12 mitigation, or enhancement measures
13 to benefit fish and wildlife resources
14 or other natural and cultural re-
15 sources; or

16 “(III) improvements to public
17 recreation at the licensed project.

18 “(b) AMENDMENT APPROVAL PROCESSES.—

19 “(1) RULE.—Not later than 1 year after the
20 date of enactment of this section, the Commission
21 shall, after notice and opportunity for public com-
22 ment, issue a rule establishing new standards and
23 procedures for license amendment applications under
24 this part. In issuing such rule, the Commission shall
25 seek to develop the most efficient and expedient

1 process, consultation, and review requirements, com-
2 mensurate with the scope of different categories of
3 proposed license amendments. Such rule shall ac-
4 count for differences in environmental effects across
5 a wide range of categories of license amendment ap-
6 plications.

7 “(2) CAPACITY.—In issuing a rule under this
8 subsection, the Commission shall take into consider-
9 ation that a change in generating or hydraulic ca-
10 pacity may indicate the potential environmental ef-
11 fects of a proposed license amendment but is not de-
12 terminative of such effects.

13 “(3) PROCESS OPTIONS.—In issuing a rule
14 under this subsection, the Commission shall take
15 into consideration the range of process options avail-
16 able under the Commission’s regulations for license
17 applications and adapt such options to amendment
18 applications, where appropriate.”.

19 **SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.**

20 (a) LICENSES.—Section 4(e) of the Federal Power
21 Act (16 U.S.C. 797(e)) is amended—

22 (1) by striking “adequate protection and utili-
23 zation of such reservation” and all that follows
24 through “That no license affecting the navigable ca-
25 pacity” and inserting “adequate protection and utili-

1 zation of such reservation: *Provided further*, That no
2 license affecting the navigable capacity”; and

3 (2) by striking “deem” and inserting “deter-
4 mine”.

5 (b) OPERATION OF NAVIGATION FACILITIES.—Sec-
6 tion 18 of the Federal Power Act (16 U.S.C. 811) is
7 amended by striking the second, third, and fourth sen-
8 tences.

9 **SEC. 5. CONSIDERATION OF INVASIVE SPECIES.**

10 Section 18 of the Federal Power Act (16 U.S.C. 811)
11 is amended by inserting after “the Secretary of Com-
12 merce.” the following: “In prescribing a fishway, the Sec-
13 retary of Commerce or the Secretary of the Interior, as
14 appropriate, shall consider the threat of invasive species.”.

15 **SEC. 6. EXAMINATION OF LICENSES FOR PROJECTS LO-**
16 **CATED IN DISASTER AREAS.**

17 Not later than one year after the date of enactment
18 of this Act, the Federal Energy Regulatory Commission
19 may examine the license issued by the Commission under
20 part I of the Federal Power Act for any project that is
21 located in an area that was declared by the President to
22 be a disaster area in 2017.

23 **SEC. 7. STUDIES FOR NON-FEDERAL HYDROPOWER.**

24 Notwithstanding any other provision of law, if the
25 Federal Energy Regulatory Commission has in place a

1 memorandum of understanding with another Federal
2 agency for non-federal hydropower with respect to a
3 project licensed under part I of the Federal Power Act
4 (regardless of explicit Congressional authorization for
5 such non-federal hydropower), the other Federal agency
6 may fully study and review the potential expansion of such
7 non-federal hydropower at the project, including a review
8 of seasonal pool levels and slowing flood releases.

Passed the House of Representatives November 8,
2017.

Attest:

Clerk.

115TH CONGRESS
1ST SESSION

H. R. 3043

AN ACT

To modernize hydropower policy, and for other purposes.