

115TH CONGRESS
1ST SESSION

H. R. 3043

To modernize hydropower policy, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2017

Mrs. MCMORRIS RODGERS introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Hydropower Policy
5 Modernization Act of 2017”.

6 **SEC. 2. HYDROPOWER REGULATORY IMPROVEMENTS.**

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

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

4 (2) the United States should increase substan-
5 tially the capacity and generation of clean, renewable
6 hydropower that would improve environmental qual-
7 ity in the United States.

8 (b) MODIFYING THE DEFINITION OF RENEWABLE
9 ENERGY TO INCLUDE HYDROPOWER.—Section 203 of the
10 Energy Policy Act of 2005 (42 U.S.C. 15852) is amend-
11 ed—

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

17 (2) in subsection (b), by striking paragraph (2)
18 and inserting the following:

19 “(2) RENEWABLE ENERGY.—The term ‘renew-
20 able energy’ means electric energy generated from
21 solar, wind, biomass, landfill gas, ocean (including
22 tidal, wave, current, and thermal), geothermal, or
23 municipal solid waste, or from a hydropower
24 project.”.

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

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

5 (2) by amending subsection (b) to read as fol-
6 lows:

7 “(b) The Commission may—

8 “(1) extend the period of a preliminary permit
9 once for not more than 4 additional years beyond
10 the 4 years permitted by subsection (a) if the Com-
11 mission finds that the permittee has carried out ac-
12 tivities under such permit in good faith and with
13 reasonable diligence; and

14 “(2) if the period of a preliminary permit is ex-
15 tended under paragraph (1), extend the period of
16 such preliminary permit once for not more than 4
17 additional years beyond the extension period granted
18 under paragraph (1), if the Commission determines
19 that there are extraordinary circumstances that war-
20 rant such additional extension.”.

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

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

3 (1) by striking “(e) Except” and inserting the
4 following:

5 “(e) LICENSE TERM ON RELICENSING.—

6 “(1) IN GENERAL.—Except”; and

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

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

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

21 “(i) investments in redevelopment,
22 new construction, new capacity, efficiency,
23 modernization, rehabilitation, and safety
24 improvements; and

1 “(ii) investments in environmental,
2 recreation, and other protection, mitiga-
3 tion, or enhancement measures that will be
4 required or authorized by the license; and

5 “(B) investments made by the licensee over
6 the term of the existing license (including any
7 terms under annual licenses), beyond those re-
8 quired by the existing license when issued,
9 that—

10 “(i) resulted in, during the term of
11 the existing license—

12 “(I) redevelopment, new con-
13 struction, new capacity, efficiency,
14 modernization, rehabilitation, or safe-
15 ty improvements; or

16 “(II) environmental, recreation,
17 or other protection, mitigation, or en-
18 hancement measures; and

19 “(ii) did not result in the extension of
20 the term of the existing license by the
21 Commission.”.

22 (f) ALTERNATIVE CONDITIONS AND PRESCRIP-
23 TIONS.—Section 33 of the Federal Power Act (16 U.S.C.
24 823d) is amended—

25 (1) in subsection (a)—

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

3 (B) in paragraph (2)(B), in the matter
4 preceding clause (i), by inserting “determined
5 to be necessary” before “by the Secretary”;

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

7 (D) by striking paragraph (5);

8 (2) in subsection (b)—

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

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

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

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

15 **SEC. 3. HYDROPOWER LICENSING AND PROCESS IMPROVE-**
16 **MENTS.**

17 (a) HYDROPOWER LICENSING AND PROCESS IM-
18 PROVEMENTS.—Part I of the Federal Power Act (16
19 U.S.C. 792 et seq.) is amended by adding at the end the
20 following:

21 **“SEC. 34. HYDROPOWER LICENSING AND PROCESS IM-**
22 **PROVEMENTS.**

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

1 “(1) means any authorization required under
2 Federal law with respect to an application for a li-
3 cense, license amendment, or exemption under this
4 part; and

5 “(2) includes any permits, special use author-
6 izations, certifications, opinions, or other approvals
7 as may be required under Federal law to approve or
8 implement the license, license amendment, or exemp-
9 tion under this part.

10 “(b) DESIGNATION AS LEAD AGENCY.—

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

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

17 “(A) IN GENERAL.—Each Federal, State,
18 and local government agency and Indian tribe
19 considering an aspect of an application for Fed-
20 eral authorization shall coordinate with the
21 Commission and comply with the deadline es-
22 tablished in the schedule developed for the li-
23 cense, license amendment, or exemption under
24 this part in accordance with the rule issued by
25 the Commission under subsection (c).

1 “(B) IDENTIFICATION.—The Commission
2 shall identify, as early as practicable after it is
3 notified by the applicant for a license, license
4 amendment, or exemption under this part, any
5 Federal or State agency, local government, or
6 Indian tribe that may consider an aspect of an
7 application for a Federal authorization.

8 “(C) NOTIFICATION.—

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

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

21 “(D) ISSUE IDENTIFICATION AND RESOLU-
22 TION.—

23 “(i) IDENTIFICATION OF ISSUES.—
24 Federal, State, and local government agen-
25 cies and Indian tribes that may consider

1 an aspect of an application for Federal au-
2 thorization shall identify, as early as pos-
3 sible, and share with the Commission and
4 the applicant, any issues of concern identi-
5 fied during the pendency of the Commis-
6 sion’s action under this part relating to
7 any Federal authorization that may delay
8 or prevent the granting of such authoriza-
9 tion, including any issues that may prevent
10 the agency or Indian tribe from meeting
11 the schedule established for the license, li-
12 cense amendment, or exemption under this
13 part in accordance with the rule issued by
14 the Commission under subsection (c).

15 “(ii) ISSUE RESOLUTION.—The Com-
16 mission may forward any issue of concern
17 identified under clause (i) to the heads of
18 the relevant State and Federal agencies
19 (including, in the case of an issue of con-
20 cern identified by a State or local govern-
21 ment agency or Indian tribe, the Federal
22 agency overseeing the delegated authority,
23 or the Secretary of the Interior with re-
24 gard to an issue of concern identified by
25 an Indian tribe, as applicable) for resolu-

1 tion. If the Commission forwards an issue
2 of concern to the head of a relevant agen-
3 cy, the Commission and the relevant agen-
4 cy shall enter into a memorandum of un-
5 derstanding to facilitate interagency co-
6 ordination and resolution of such issues of
7 concern, as appropriate.

8 “(c) SCHEDULE.—

9 “(1) COMMISSION RULEMAKING TO ESTABLISH
10 PROCESS TO SET SCHEDULE.—Not later than 180
11 days after the date of enactment of this section the
12 Commission shall, in consultation with the appro-
13 priate Federal agencies, issue a rule, after providing
14 for notice and public comment, establishing a proc-
15 ess for setting a schedule following the filing of an
16 application under this part for a license, license
17 amendment, or exemption for the review and disposi-
18 tion of each Federal authorization.

19 “(2) ELEMENTS OF SCHEDULING RULE.—In
20 issuing a rule under this subsection, the Commission
21 shall ensure that the schedule for each Federal au-
22 thorization—

23 “(A) includes deadlines for actions by—

24 “(i) any Federal or State agency, local
25 government, or Indian tribe that may con-

1 sider an aspect of an application for the
2 Federal authorization;

3 “(ii) the applicant;

4 “(iii) the Commission; and

5 “(iv) other participants in any appli-
6 cable proceeding;

7 “(B) is developed in consultation with the
8 applicant and any agency and Indian tribe that
9 submits a response under subsection
10 (b)(2)(C)(ii);

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

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

19 “(E) ensures expeditious completion of all
20 proceedings required under Federal and State
21 law, to the extent practicable; and

22 “(F) facilitates completion of Federal and
23 State agency studies, reviews, and any other
24 procedures required prior to, or concurrent
25 with, the preparation of the Commission’s envi-

1 ronmental document required under the Na-
2 tional Environmental Policy Act of 1969 (42
3 U.S.C. 4321 et seq.).

4 “(d) TRANSMISSION OF FINAL SCHEDULE.—

5 “(1) IN GENERAL.—For each application for a
6 license, license amendment, or exemption under this
7 part, the Commission shall establish a schedule in
8 accordance with the rule issued by the Commission
9 under subsection (c). The Commission shall publicly
10 notice and transmit the final schedule to the appli-
11 cant and each agency and Indian tribe identified
12 under subsection (b)(2)(B).

13 “(2) RESPONSE.—Each agency and Indian
14 tribe receiving a schedule under this subsection shall
15 acknowledge receipt of such schedule in writing to
16 the Commission within 30 days.

17 “(e) ADHERENCE TO SCHEDULE.—All applicants,
18 other licensing participants, and agencies and Indian
19 tribes considering an aspect of an application for a Fed-
20 eral authorization shall meet the deadlines set forth in the
21 schedule established pursuant to subsection (d)(1).

22 “(f) APPLICATION PROCESSING.—The Commission,
23 Federal, State, and local government agencies, and Indian
24 tribes may allow an applicant seeking a Federal authoriza-
25 tion to fund a third-party contractor selected by such an

1 agency or tribe to assist in reviewing the application. All
2 costs of an agency or tribe incurred pursuant to direct
3 funding by the applicant, including all costs associated
4 with the third-party contractor, shall not be considered
5 costs of the United States for the administration of this
6 part under section 10(e).

7 “(g) COMMISSION RECOMMENDATION ON SCOPE OF
8 ENVIRONMENTAL REVIEW.—For the purposes of coordi-
9 nating Federal authorizations for each license, license
10 amendment, or exemption under this part, the Commis-
11 sion shall consult with and make a recommendation to
12 agencies and Indian tribes receiving a schedule under sub-
13 section (d) on the scope of the environmental review for
14 all Federal authorizations for such license, license amend-
15 ment, or exemption. Each Federal and State agency and
16 Indian tribe shall give due consideration and may give def-
17 erence to the Commission’s recommendations, to the ex-
18 tent appropriate under Federal law.

19 “(h) EXTENSION OF DEADLINE.—

20 “(1) APPLICATION.—A Federal, State, or local
21 government agency or Indian tribe that is unable to
22 complete its disposition of a Federal authorization
23 by the deadline set forth in the schedule established
24 under subsection (d)(1) shall, not later than 30 days

1 prior to such deadline, file for an extension with the
2 Commission.

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

16 “(i) CONSOLIDATED RECORD.—The Commission
17 shall, with the cooperation of Federal, State, and local
18 government agencies and Indian tribes, maintain a com-
19 plete consolidated record of all decisions made or actions
20 taken by the Commission or by a Federal administrative
21 agency or officer (or State or local government agency or
22 officer or Indian tribe acting under delegated Federal au-
23 thority) with respect to any Federal authorization. Such
24 record shall constitute the record for judicial review under
25 section 313(b).

1 “(j) SUBMISSION OF LICENSE RECOMMENDATIONS,
2 CONDITIONS, AND PRESCRIPTIONS.—

3 “(1) SUBMISSION OF RECOMMENDATIONS.—

4 Any Federal or State agency that is providing rec-
5 ommendations with respect to a license proceeding
6 under this part shall submit to the Commission for
7 inclusion in the consolidated record relating to the li-
8 cense proceeding maintained under subsection (i)—

9 “(A) the recommendations;

10 “(B) the rationale for the recommenda-
11 tions; and

12 “(C) any supporting materials relating to
13 the recommendations.

14 “(2) WRITTEN STATEMENT.—In a case in
15 which a Federal agency is making a determination
16 with respect to a covered measure (as defined in sec-
17 tion 35(a)), the head of the Federal agency shall
18 submit to the Commission for inclusion in the con-
19 solidated record, in addition to the information re-
20 quired under paragraph (1), a written statement
21 demonstrating that the Federal agency gave equal
22 consideration to the effects of the covered measure
23 on—

24 “(A) energy supply, distribution, cost, and
25 use;

1 “(B) flood control;

2 “(C) navigation;

3 “(D) water supply; and

4 “(E) air quality and the preservation of
5 other aspects of environmental quality.

6 “(3) INFORMATION FROM OTHER AGENCIES.—

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

13 “(k) DELEGATION.—

14 “(1) DEPARTMENT OF AGRICULTURE.—The
15 Secretary of Agriculture shall not delegate the au-
16 thority to require a condition under section 4(e),
17 other than to the Chief of the Forest Service or the
18 Under Secretary for Natural Resources and Envi-
19 ronment.

20 “(2) DEPARTMENT OF COMMERCE.—The Sec-
21 retary of Commerce shall not delegate the authority
22 to prescribe fishways under section 18, other than to
23 the Assistant Administrator for Fisheries or the
24 Under Secretary for Oceans and Atmosphere.

1 “(3) DEPARTMENT OF THE INTERIOR.—The
2 Secretary of the Interior shall not delegate the au-
3 thority to require a condition under section 4(e),
4 other than to, as appropriate, the Assistant Sec-
5 retary for Fish, Wildlife and Parks, the Assistant
6 Secretary for Indian Affairs, the Assistant Secretary
7 for Land and Minerals Management, the Assistant
8 Secretary for Water and Science, the Director of the
9 U.S. Fish and Wildlife Service, the Director of the
10 Bureau of Indian Affairs, the Director of the Bu-
11 reau of Land Management, or the Commissioner of
12 the Bureau of Reclamation. The Secretary of the In-
13 terior shall not delegate the authority to prescribe
14 fishways under section 18, other than to the Assist-
15 ant Secretary for Fish, Wildlife and Parks or the
16 Director of the U.S. Fish and Wildlife Service.

17 “(1) NO EFFECT ON FEDERAL WATER POLLUTION
18 CONTROL ACT.—Nothing in this section shall be con-
19 strued to affect any requirement of the Federal Water Pol-
20 lution Control Act with respect to an application for a li-
21 cense, license amendment, or exemption under this part.

22 **“SEC. 35. TRIAL-TYPE HEARINGS.**

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

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

4 “(2) fishways prescribed under section 18, in-
5 cluding an alternative prescription proposed under
6 section 33(b); or

7 “(3) any further condition pursuant to section
8 4(e), 6, or 18.

9 “(b) AUTHORIZATION OF TRIAL-TYPE HEARING.—
10 An applicant for a license under this part (including an
11 applicant for a license under section 15) and any party
12 to a license proceeding shall be entitled to a determination
13 on the record, after opportunity for a trial-type hearing
14 of not more than 120 days, on any disputed issues of ma-
15 terial fact with respect to an applicable covered measure.

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

19 “(1) the Secretary determines the condition
20 necessary under section 4(e) or prescription under
21 section 18; or

22 “(2)(A) the Commission publishes notice of the
23 intention to use the reserved authority of the Com-
24 mission to prescribe a further condition under sec-
25 tion 6; or

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

6 “(d) NO REQUIREMENT TO EXHAUST.—By electing
7 not to request a trial-type hearing under subsection (c),
8 a license applicant and any other party to a license pro-
9 ceeding shall not be considered to have waived the right
10 of the applicant or other party to raise any issue of fact
11 or law in a non-trial-type proceeding, but no issue may
12 be raised for the first time on rehearing or judicial review
13 of the license decision of the Commission.

14 “(e) ADMINISTRATIVE LAW JUDGE.—

15 “(1) IN GENERAL.—All disputed issues of mate-
16 rial fact raised by a party in a request for a trial-
17 type hearing submitted under subsection (c) shall be
18 determined in a single trial-type hearing to be con-
19 ducted by an Administrative Law Judge within the
20 Office of Administrative Law Judges and Dispute
21 Resolution of the Commission, in accordance with
22 the Commission rules of practice and procedure
23 under part 385 of title 18, Code of Federal Regula-
24 tions (or successor regulations), and within the time-
25 frame established by the Commission for each li-

1 cense proceeding (including a proceeding for a li-
2 cense under section 15) under section 34(d).

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

5 “(A) to undertake discovery; and

6 “(B) to cross-examine witnesses.

7 “(f) STAY.—The Administrative Law Judge may im-
8 pose a stay of a trial-type hearing under this section for
9 a period of not more than 120 days to facilitate settlement
10 negotiations relating to resolving the disputed issues of
11 material fact with respect to the covered measure.

12 “(g) DECISION OF THE ADMINISTRATIVE LAW
13 JUDGE.—

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

16 “(A) findings of fact on all disputed issues
17 of material fact;

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

21 “(C) reasons for the findings and conclu-
22 sions.

23 “(2) LIMITATION.—The decision of the Admin-
24 istrative Law Judge shall not contain conclusions as
25 to whether—

1 “(A) any condition or prescription should
2 be adopted, modified, or rejected; or

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

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

9 “(4) SERVICE.—The Administrative Law Judge
10 shall serve the decision on each party to the hearing
11 and forward the complete record of the hearing to
12 the Commission and the Secretary that proposed the
13 original condition or prescription.

14 “(h) SECRETARIAL DETERMINATION.—

15 “(1) IN GENERAL.—Not later than 60 days
16 after the date on which the Administrative Law
17 Judge issues the decision under subsection (g) and
18 in accordance with the schedule established by the
19 Commission under section 34(d), the Secretary pro-
20 posing a covered measure shall file with the Com-
21 mission a final determination to adopt, modify, or
22 withdraw any condition or prescription that was the
23 subject of a hearing under this section, based on the
24 decision of the Administrative Law Judge.

1 “(2) RECORD OF DETERMINATION.—The final
2 determination of the Secretary filed with the Com-
3 mission shall identify the reasons for the decision
4 and any considerations taken into account that were
5 not part of, or were inconsistent with, the findings
6 of the Administrative Law Judge and shall be in-
7 cluded in the consolidated record maintained under
8 section 34(i).

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

16 “(j) JUDICIAL REVIEW.—The decision of the Admin-
17 istrative Law Judge and the record of determination of
18 the Secretary shall be included in the record of the appli-
19 cable licensing proceeding and subject to judicial review
20 of the final licensing decision of the Commission under
21 section 313(b).

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

23 “(a) IN GENERAL.—To facilitate the timely and effi-
24 cient completion of the license proceedings under this part,
25 the Commission shall, in consultation with applicable Fed-

1 eral and State agencies and interested members of the
2 public—

3 “(1) compile current and accepted best prac-
4 tices in performing studies required in such license
5 proceedings, including methodologies and the design
6 of studies to assess the full range of environmental
7 impacts of a project that reflect the most recent
8 peer-reviewed science;

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

13 “(3) encourage license applicants, agencies, and
14 Indian tribes to develop and use, for the purpose of
15 fostering timely and efficient consideration of license
16 applications, a limited number of open-source meth-
17 odologies and tools applicable across a wide array of
18 projects, including water balance models and
19 streamflow analyses.

20 “(b) USE OF STUDIES.—To the extent practicable,
21 the Commission and other Federal, State, and local gov-
22 ernment agencies and Indian tribes considering an aspect
23 of an application for Federal authorization (as defined in
24 section 34) shall use studies and data based on current,
25 accepted science in support of their actions. Any partici-

1 pant in a proceeding with respect to such a Federal au-
2 thorization shall demonstrate that a study requested by
3 the participant is not duplicative of current, existing stud-
4 ies that are applicable to the project.

5 “(c) **BASIN-WIDE OR REGIONAL REVIEW.**—The
6 Commission shall establish a program to develop com-
7 prehensive plans, at the request of project applicants, on
8 a regional or basin-wide scale, in consultation with the ap-
9 plicants, appropriate Federal agencies, and affected
10 States, local governments, and Indian tribes, in basins or
11 regions with respect to which there are more than one ap-
12 plication for a project. Upon such a request, the Commis-
13 sion, in consultation with the applicants, such Federal
14 agencies, and affected States, local governments, and In-
15 dian tribes, may conduct or commission regional or basin-
16 wide environmental studies, with the participation of at
17 least 2 applicants. Any study conducted under this sub-
18 section shall apply only to a project with respect to which
19 the applicants participate.

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

21 “(a) **QUALIFYING PROJECT UPGRADES.**—

22 “(1) **IN GENERAL.**—As provided in this section,
23 the Commission may approve an application under
24 this section for an amendment to a license issued
25 under this part for a qualifying project upgrade.

1 “(2) APPLICATION.—A licensee filing an appli-
2 cation for an amendment to a project license under
3 this section shall include in such application infor-
4 mation sufficient to demonstrate that the proposed
5 change to the project described in the application is
6 a qualifying project upgrade.

7 “(3) NOTICE AND INITIAL DETERMINATION ON
8 QUALIFICATION.—Not later than 15 days after re-
9 ceipt of an application under paragraph (2), the
10 Commission shall publish in the Federal Register a
11 notice containing—

12 “(A) notice of the application filed under
13 paragraph (2);

14 “(B) an initial determination as to whether
15 the proposed change to the project described in
16 the application for a license amendment is a
17 qualifying project upgrade; and

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

20 “(4) PUBLIC COMMENT AND CONSULTATION.—
21 The Commission shall, for a period of 45 days be-
22 ginning on the date of publication of a notice under
23 paragraph (3)—

24 “(A) accept public comment regarding the
25 application and whether the proposed license

1 amendment is for a qualifying project upgrade;
2 and

3 “(B) consult with each Federal, State, and
4 local government agency and Indian tribe con-
5 sidering an aspect of an application for Federal
6 authorization (as defined in section 34) with re-
7 spect to the proposed license amendment, as
8 well as other interested agencies and Indian
9 tribes.

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

17 “(6) FEDERAL AUTHORIZATIONS.—In estab-
18 lishing the schedule under section 34 for Federal au-
19 thorizations (as defined in such section) for a pro-
20 posed license amendment for a qualifying project up-
21 grade, the Commission shall require final disposition
22 of all such Federal authorizations, other than final
23 action by the Commission, by not later than 120
24 days after the date on which the Commission pub-
25 lishes a final determination under paragraph (5)

1 that the proposed license amendment is for a quali-
2 fying project upgrade.

3 “(7) COMMISSION ACTION.—Not later than 150
4 days after the date on which the Commission pub-
5 lishes a final determination under paragraph (5)
6 that a proposed license amendment is for a quali-
7 fying project upgrade, the Commission shall take
8 final action on the license amendment application.

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

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

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

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

5 “(10) DEFINITIONS.—For purposes of this sub-
6 section:

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

12 “(B) QUALIFYING CRITERIA.—The term
13 ‘qualifying criteria’ means, with respect to a
14 project licensed under this part, a change to the
15 project that—

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

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

3 “(iii) includes only changes to project
4 lands, waters, or operations that, in the
5 judgment of the Commission, would result
6 in only insignificant or minimal cumulative
7 adverse environmental effects;

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

10 “(v) proposes to implement—

11 “(I) capacity increases, efficiency
12 improvements, or other enhancements
13 to hydropower generation at the li-
14 censed project;

15 “(II) environmental protection,
16 mitigation, or enhancement measures
17 to benefit fish and wildlife resources
18 or other natural and cultural re-
19 sources; or

20 “(III) improvements to public
21 recreation at the licensed project.

22 “(b) AMENDMENT APPROVAL PROCESSES.—

23 “(1) RULE.—Not later than 1 year after the
24 date of enactment of this section, the Commission
25 shall, after notice and opportunity for public com-

1 ment, issue a rule establishing new standards and
2 procedures for license amendment applications under
3 this part. In issuing such rule, the Commission shall
4 seek to develop the most efficient and expedient
5 process, consultation, and review requirements, com-
6 mensurate with the scope of different categories of
7 proposed license amendments. Such rule shall ac-
8 count for differences in environmental effects across
9 a wide range of categories of license amendment ap-
10 plications.

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

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

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

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

1 (1) by striking “adequate protection and utili-
2 zation of such reservation” and all that follows
3 through “That no license affecting the navigable ca-
4 pacity” and inserting “adequate protection and utili-
5 zation of such reservation: *Provided further*, That no
6 license affecting the navigable capacity”; and

7 (2) by striking “deem” and inserting “deter-
8 mine”.

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

○