

[DISCUSSION DRAFT]

115TH CONGRESS
1ST SESSION

H. R. _____

To modernize hydropower policy, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

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 resources that would improve environ-
7 mental quality 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 energy produced from solar,
21 wind, biomass, landfill gas, ocean (including tidal,
22 wave, current, and thermal), geothermal, municipal
23 solid waste, or hydropower.”.

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

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

3 (2) by amending subsection (b) to read as fol-
4 lows:

5 “(b) The Commission may—

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

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

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

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

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

3 “(e) LICENSE TERM ON RELICENSING.—

4 “(1) IN GENERAL.—Except”; and

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

6 “(2) CONSIDERATION.—In determining the
7 term of a license under paragraph (1), the Commis-
8 sion shall consider project-related investments by the
9 licensee over the term of the existing license (includ-
10 ing any terms under annual licenses) that resulted
11 in new development, construction, capacity, effi-
12 ciency improvements, or environmental measures,
13 but which did not result in the extension of the term
14 of the license by the Commission.”.

15 (f) ALTERNATIVE CONDITIONS AND PRESCRIP-
16 TIONS.—Section 33 of the Federal Power Act (16 U.S.C.
17 823d) is amended—

18 (1) in subsection (a)—

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

21 (B) in paragraph (2)(B), in the matter
22 preceding clause (i), by inserting “determined
23 to be necessary” before “by the Secretary”;

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

25 (D) by striking paragraph (5);

1 (2) in subsection (b)—

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

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

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

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

8 **SEC. 3. HYDROPOWER LICENSING AND PROCESS IMPROVE-**
9 **MENTS.**

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

14 **“SEC. 34. HYDROPOWER LICENSING AND PROCESS IM-**
15 **PROVEMENTS.**

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

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

22 “(2) includes any permits, special use author-
23 izations, certifications, opinions, or other approvals
24 as may be required under Federal law to approve or

1 implement the license, license amendment, or exemp-
2 tion under this part.

3 “(b) DESIGNATION AS LEAD AGENCY.—

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

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

10 “(A) IN GENERAL.—Each Federal, State,
11 and local government agency and Indian tribe
12 considering an aspect of an application for Fed-
13 eral authorization shall coordinate with the
14 Commission and comply with the deadline es-
15 tablished in the schedule developed for the
16 project in accordance with the rule issued by
17 the Commission under subsection (c).

18 “(B) IDENTIFICATION.—The Commission
19 shall identify, as early as practicable after it is
20 notified by the applicant of a project or facility
21 requiring Commission action under this part,
22 any Federal or State agency, local government,
23 or Indian tribe that may consider an aspect of
24 an application for a Federal authorization.

25 “(C) NOTIFICATION.—

1 “(i) IN GENERAL.—The Commission
2 shall notify any agency and Indian tribe
3 identified under subparagraph (B) of the
4 opportunity to participate in the process of
5 reviewing an aspect of an application for a
6 Federal authorization.

7 “(ii) DEADLINE.—Each agency and
8 Indian tribe receiving a notice under clause
9 (i) shall submit a response acknowledging
10 receipt of the notice to the Commission
11 within 30 days of receipt of such notice
12 and request.

13 “(D) ISSUE IDENTIFICATION AND RESOLU-
14 TION.—

15 “(i) IDENTIFICATION OF ISSUES.—
16 Federal, State, and local government agen-
17 cies and Indian tribes that may consider
18 an aspect of an application for Federal au-
19 thorization shall identify, as early as pos-
20 sible, and share with the Commission and
21 the applicant, any issues of concern identi-
22 fied during the pendency of the Commis-
23 sion’s action under this part relating to
24 any Federal authorization that may delay
25 or prevent the granting of such authoriza-

1 tion, including any issues that may prevent
2 the agency or Indian tribe from meeting
3 the schedule established for the project in
4 accordance with the rule issued by the
5 Commission under subsection (c).

6 “(ii) ISSUE RESOLUTION.—The Com-
7 mission may forward any issue of concern
8 identified under clause (i) to the heads of
9 the relevant State and Federal agencies
10 (including, in the case of scheduling con-
11 cerns identified by a State or local govern-
12 ment agency or Indian tribe, the Federal
13 agency overseeing the delegated authority,
14 or the Secretary of the Interior with re-
15 gard to scheduling concerns identified by
16 an Indian tribe) for resolution. The Com-
17 mission and any relevant agency shall
18 enter into a memorandum of under-
19 standing to facilitate interagency coordina-
20 tion and resolution of such issues of con-
21 cern, as appropriate.

22 “(c) SCHEDULE.—

23 “(1) COMMISSION RULEMAKING TO ESTABLISH
24 PROCESS TO SET SCHEDULE.—Within 180 days of
25 the date of enactment of this section the Commis-

1 sion shall, in consultation with the appropriate Fed-
2 eral agencies, issue a rule, after providing for notice
3 and public comment, establishing a process for set-
4 ting a schedule following the filing of an application
5 under this part for the review and disposition of
6 each Federal authorization.

7 “(2) ELEMENTS OF SCHEDULING RULE.—In
8 issuing a rule under this subsection, the Commission
9 shall ensure that the schedule for each Federal au-
10 thorization—

11 “(A) includes deadlines for actions by—

12 “(i) any Federal or State agency, local
13 government, or Indian tribe that may con-
14 sider an aspect of an application for the
15 Federal authorization;

16 “(ii) the applicant;

17 “(iii) the Commission; and

18 “(iv) other participants in a pro-
19 ceeding;

20 “(B) is developed in consultation with the
21 applicant and any agency and Indian tribe that
22 submits a response under subsection
23 (b)(2)(C)(ii);

24 “(C) provides an opportunity for any Fed-
25 eral or State agency, local government, or In-

1 dian tribe that may consider an aspect of an
2 application for the applicable Federal authoriza-
3 tion to identify and resolve issues of concern, as
4 provided in subsection (b)(2)(D);

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

7 “(E) ensures expeditious completion of all
8 proceedings required under Federal and State
9 law, to the extent practicable; and

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

17 “(d) TRANSMISSION OF FINAL SCHEDULE.—

18 “(1) IN GENERAL.—For each application for a
19 license, license amendment, or exemption under this
20 part, the Commission shall establish a schedule in
21 accordance with the rule issued by the Commission
22 under subsection (c). The Commission shall publicly
23 notice and transmit the final schedule to the appli-
24 cant and each agency and Indian tribe identified
25 under subsection (b)(2)(B).

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

5 “(e) ADHERENCE TO SCHEDULE.—All applicants,
6 other licensing participants, and agencies and tribes con-
7 sidering an aspect of an application for a Federal author-
8 ization shall meet the deadlines set forth in the schedule
9 established pursuant to subsection (d)(1).

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

20 “(g) COMMISSION RECOMMENDATION ON SCOPE OF
21 ENVIRONMENTAL REVIEW.—For the purposes of coordi-
22 nating Federal authorizations for each project, the Com-
23 mission shall consult with and make a recommendation
24 to agencies and Indian tribes receiving a schedule under
25 subsection (d) on the scope of the environmental review

1 for all Federal authorizations for such project. Each Fed-
2 eral and State agency and Indian tribe shall give due con-
3 sideration and may give deference to the Commission's
4 recommendations, to the extent appropriate under Federal
5 law.

6 “(h) EXTENSION OF DEADLINE.—

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

14 “(2) EXTENSION.—The Commission shall only
15 grant an extension under paragraph (1) if the agen-
16 cy or tribe demonstrates, based on the record main-
17 tained under subsection (i), that complying with the
18 schedule established under subsection (d)(1) would
19 prevent the agency or tribe from complying with ap-
20 plicable Federal or State law. If the Commission
21 grants the extension, the Commission shall set a rea-
22 sonable schedule and deadline, that is not later than
23 90 days after the deadline set forth in the schedule
24 established under subsection (d)(1), for the agency

1 or tribe to complete its disposition of the Federal
2 authorization.

3 “(i) CONSOLIDATED RECORD.—The Commission
4 shall, with the cooperation of Federal, State, and local
5 government agencies and Indian tribes, maintain a com-
6 plete consolidated record of all decisions made or actions
7 taken by the Commission or by a Federal administrative
8 agency or officer (or State or local government agency or
9 officer or Indian tribe acting under delegated Federal au-
10 thority) with respect to any Federal authorization. Such
11 record shall constitute the record for judicial review under
12 section 313(b).

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 further condition pursuant to section
23 4(e), 6, or 18.

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

25 The license applicant (including an applicant for a license

1 under section 15) and any party to the proceeding shall
2 be entitled to a determination on the record, after oppor-
3 tunity for a trial-type hearing of not more than 120 days,
4 on any disputed issues of material fact with respect to an
5 applicable covered measure.

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

9 “(1) the Secretary determines the condition
10 necessary under section 4(e) or prescription under
11 section 18; or

12 “(2)(A) the Commission publishes notice of the
13 intention to use the reserved authority of the Com-
14 mission to order a further condition under section 6;
15 or

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

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

21 “(g) DECISION OF THE ADMINISTRATIVE LAW
22 JUDGE.—

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

1 “(A) findings of fact on all disputed issues
2 of material fact;

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

6 “(C) reasons for the findings and conclu-
7 sions.

8 “(2) LIMITATION.—The decision of the Admin-
9 istrative Law Judge shall not contain conclusions as
10 to whether—

11 “(A) any condition or prescription should
12 be adopted, modified, or rejected; or

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

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

19 “(4) SERVICE.—The Administrative Law Judge
20 shall serve the decision on each party to the hearing
21 and forward the complete record of the hearing to
22 the Commission and the Secretary that proposed the
23 original condition or prescription.

24 “(h) SECRETARIAL DETERMINATION.—

1 “(1) IN GENERAL.—Not later than 60 days
2 after the date on which the Administrative Law
3 Judge issues the decision under subsection (g) and
4 in accordance with the schedule established by the
5 Commission under section 34(c), the Secretary pro-
6 posing a condition under section 4(e) or a prescrip-
7 tion under section 18 shall file with the Commission
8 a final determination to adopt, modify, or withdraw
9 any condition or prescription that was the subject of
10 a hearing under this section, based on the decision
11 of the Administrative Law Judge.

12 “(2) RECORD OF DETERMINATION.—The final
13 determination of the Secretary filed with the Com-
14 mission shall identify the reasons for the decision
15 and any considerations taken into account that were
16 not part of, or inconsistent with, the findings of the
17 Administrative Law Judge and shall be included in
18 the consolidated record in section 34(i).

19 “(i) LICENSING DECISION OF THE COMMISSION.—
20 Notwithstanding sections 4(e) and 18, if the Commission
21 finds that the final condition or prescription of the Sec-
22 retary is inconsistent with the purposes of this part or
23 other applicable law, the Commission may seek resolution
24 of the matter under section 34(b)(2)(D).

1 “(j) JUDICIAL REVIEW.—The decision of the Admin-
2 istrative Law Judge and the record of determination of
3 the Secretary shall be included in the record of the appli-
4 cable licensing proceeding and subject to judicial review
5 of the final licensing decision of the Commission under
6 section 313(b).

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

8 “(a) IN GENERAL.—To facilitate the timely and effi-
9 cient completion of the license proceedings under this part,
10 the Commission shall, in consultation with applicable Fed-
11 eral and State agencies and interested members of the
12 public—

13 “(1) compile current and accepted best prac-
14 tices in performing studies required in such license
15 proceedings, including methodologies and the design
16 of studies to assess the full range of environmental
17 impacts of a project that reflect the most recent
18 peer-reviewed science;

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

23 “(3) encourage license applicants, agencies, and
24 Indian tribes to develop and use, for the purpose of
25 fostering timely and efficient consideration of license

1 applications, a limited number of open-source meth-
2 odologies and tools applicable across a wide array of
3 projects, including water balance models and
4 streamflow analyses.

5 “(b) USE OF STUDIES.—To the extent practicable,
6 the Commission and other Federal, State, and local gov-
7 ernment agencies and Indian tribes considering an aspect
8 of an application for Federal authorization (as defined in
9 section 34) shall use current, accepted science toward
10 studies and data in support of their actions. Any partici-
11 pant in a proceeding with respect to a Federal authoriza-
12 tion shall demonstrate a study requested by the party is
13 not duplicative of current, existing studies that are appli-
14 cable to the project.

15 “(c) BASIN-WIDE OR REGIONAL REVIEW.—The Com-
16 mission shall establish a program to develop comprehen-
17 sive plans, at the request of project applicants, on a re-
18 gional or basin-wide scale, in consultation with the appli-
19 cants, appropriate Federal agencies, and affected States,
20 local governments, and Indian tribes, in basins or regions
21 with respect to which there are more than one project or
22 application for a project. Upon such a request, the Com-
23 mission, in consultation with the applicants, such Federal
24 agencies, and affected States, local governments, and In-
25 dian tribes, may conduct or commission regional or basin-

1 wide environmental studies, with the participation of at
2 least 2 applicants. Any study conducted under this sub-
3 section shall apply only to a project with respect to which
4 the applicant participates.

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

6 “(a) QUALIFYING PROJECT UPGRADES.—

7 “(1) IN GENERAL.—As provided in this section,
8 the Commission may approve an application for an
9 amendment to a license issued under this part for a
10 qualifying project upgrade.

11 “(2) APPLICATION.—A licensee filing an appli-
12 cation for an amendment to a project license under
13 this section shall include in such application infor-
14 mation sufficient to demonstrate that the proposed
15 change to the project described in the application is
16 a qualifying project upgrade.

17 “(3) INITIAL DETERMINATION.—Not later than
18 15 days after receipt of an application under para-
19 graph (2), the Commission shall make an initial de-
20 termination as to whether the proposed change to
21 the project described in the application for a license
22 amendment is a qualifying project upgrade. The
23 Commission shall publish its initial determination
24 and issue notice of the application filed under para-

1 graph (2). Such notice shall solicit public comment
2 on the initial determination within 45 days.

3 “(4) PUBLIC COMMENT ON QUALIFYING CRI-
4 TERIA.—The Commission shall accept public com-
5 ment regarding whether a proposed license amend-
6 ment is for a qualifying project upgrade for a period
7 of 45 days beginning on the date of publication of
8 a public notice described in paragraph (3), and
9 shall—

10 “(A) if no entity contests whether the pro-
11 posed license amendment is for a qualifying
12 project upgrade during such comment period,
13 immediately publish a notice stating that the
14 initial determination has not been contested; or

15 “(B) if an entity contests whether the pro-
16 posed license amendment is for a qualifying
17 project upgrade during the comment period,
18 issue a written determination in accordance
19 with paragraph (5).

20 “(5) WRITTEN DETERMINATION.—If an entity
21 contests whether the proposed license amendment is
22 for a qualifying project upgrade during the comment
23 period under paragraph (4), the Commission shall,
24 not later than 30 days after the date of publication
25 of the public notice of the initial determination

1 under paragraph (3), issue a written determination
2 as to whether the proposed license amendment is for
3 a qualifying project upgrade.

4 “(6) PUBLIC COMMENT ON AMENDMENT APPLI-
5 CATION.—If no entity contests whether the proposed
6 license amendment is for a qualifying project up-
7 grade during the comment period under paragraph
8 (4) or the Commission issues a written determina-
9 tion under paragraph (5) that a proposed license
10 amendment is a qualifying project upgrade, the
11 Commission shall—

12 “(A) during the 60-day period beginning
13 on the date of publication of a notice under
14 paragraph (4)(A) or the date on which the
15 Commission issues the written determination
16 under paragraph (5), as applicable, solicit com-
17 ments from each Federal, State, and local gov-
18 ernment agency and Indian tribe considering an
19 aspect of an application for Federal authoriza-
20 tion (as defined in section 34) with respect to
21 the proposed license amendment, as well as
22 other interested agencies, Indian tribes, and
23 members of the public; and

24 “(B) during the 90-day period beginning
25 on the date of publication of a notice under

1 paragraph (4)(A) or the date on which the
2 Commission issues the written determination
3 under paragraph (5), as applicable, consult
4 with—

5 “(i) appropriate Federal agencies and
6 the State agency exercising administrative
7 control over the fish and wildlife resources,
8 and water quality and supply, of the State
9 in which the qualifying project upgrade is
10 located;

11 “(ii) any Federal department super-
12 vising any public lands or reservations oc-
13 cupied by the qualifying project upgrade;
14 and

15 “(iii) any Indian tribe affected by the
16 qualifying project upgrade.

17 “(7) FEDERAL AUTHORIZATIONS.—The sched-
18 ule established by the Commission under section 34
19 for any project upgrade under this subsection shall
20 require final disposition on all necessary Federal au-
21 thorizations (as defined in section 34), other than
22 final action by the Commission, by not later than
23 120 days after the date on which the Commission
24 issues a notice under paragraph (4)(A) or a written
25 determination under paragraph (5), as applicable.

1 “(8) COMMISSION ACTION.—Not later than 150
2 days after the date on which the Commission issues
3 a notice under paragraph (4)(A) or a written deter-
4 mination under paragraph (5), as applicable, the
5 Commission shall take final action on the license
6 amendment application.

7 “(9) LICENSE AMENDMENT CONDITIONS.—Any
8 condition included in or applicable to a license
9 amendment approved under this subsection, includ-
10 ing any condition or other requirement of a Federal
11 authorization, shall be limited to those that 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 “(10) PROPOSED LICENSE AMENDMENTS THAT
23 ARE NOT QUALIFYING PROJECT UPGRADES.—If the
24 Commission determines under paragraph (3) or (5)
25 that a proposed license amendment is not for a

1 qualifying project upgrade, the procedures under
2 paragraphs (6) through (9) shall not apply to the
3 application.

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

8 “(12) DEFINITIONS.—For purposes of this sub-
9 section:

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

15 “(B) QUALIFYING CRITERIA.—The term
16 ‘qualifying criteria’ means, with respect to a
17 project license under this part, a change to the
18 project that—

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

1 Secretary of Commerce, as appropriate, in
2 accordance with section 7 of the Endan-
3 gered Species Act of 1973;

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

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

11 “(iv) would be unlikely to adversely
12 affect water quality and water supply; and

13 “(v) proposes to implement—

14 “(I) capacity increases, efficiency
15 improvements, or other enhancements
16 to hydropower generation at the li-
17 censed project;

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

23 “(III) improvements to public
24 recreation at the licensed project.

25 “(b) AMENDMENT APPROVAL PROCESSES.—

1 “(1) RULE.—Not later than 1 year after the
2 date of enactment of this section, the Commission
3 shall, after notice and opportunity for public com-
4 ment, issue a rule establishing new standards and
5 procedures for license amendment applications under
6 this part. In issuing such rule, the Commission shall
7 seek to develop the most efficient and expedient
8 process, consultation, and review requirements, com-
9 mensurate with the scope of different categories of
10 proposed license amendments. Such rule shall ac-
11 count for differences in environmental effects across
12 a wide range of categories of license amendment ap-
13 plications.

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

20 “(3) PROCESS OPTIONS.—In issuing a rule
21 under this subsection, the Commission shall take
22 into consideration the range of process options avail-
23 able under the Commission’s regulations for new
24 and original license applications and adapt such op-

1 tions to amendment applications, where appro-
2 priate.”.

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

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

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

12 (2) by striking “deem” and inserting “deter-
13 mine”.

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