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.

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

SECTION 1. SHORT TITLE.

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

SEC. 2. HYDROPOWER REGULATORY IMPROVEMENTS.

(a) Sense of Congress on the Use of Hydropower Renewable Resources.—It is the sense of Con-
gress that—
(1) hydropower is a renewable resource for purposes of all Federal programs and is an essential source of energy in the United States; and

(2) the United States should increase substantially the capacity and generation of clean, renewable hydropower resources that would improve environmental quality in the United States.

(b) Modifying the Definition of Renewable Energy to Include Hydropower.—Section 203 of the Energy Policy Act of 2005 (42 U.S.C. 15852) is amended—

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

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

“(2) RENEWABLE ENERGY.—The term ‘renewable energy’ means energy produced from solar, wind, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), geothermal, municipal solid waste, or hydropower.”.

(c) Preliminary Permits.—Section 5 of the Federal Power Act (16 U.S.C. 798) is amended—
(1) in subsection (a), by striking “three” and
inserting “4”; and
(2) by amending subsection (b) to read as fol-

ows:
“(b) The Commission may—
“(1) extend the period of a preliminary permit
once for not more than 4 additional years beyond
the 4 years permitted by subsection (a) if the Com-
mission finds that the permittee has carried out ac-
tivities under such permit in good faith and with
reasonable diligence; and
“(2) if the period of a preliminary permit is ex-
tended under paragraph (1), extend the period of
such preliminary permit once for not more than 4
additional years beyond the extension period granted
under paragraph (1), if the Commission determines
that there are extraordinary circumstances that war-
rant such additional extension.”.
(d) TIME LIMIT FOR CONSTRUCTION OF PROJECT
WORKS.—Section 13 of the Federal Power Act (16 U.S.C.
806) is amended in the second sentence by striking “once
but not longer than two additional years” and inserting
“for not more than 8 additional years,”.
(e) LICENSE TERM.—Section 15(e) of the Federal
Power Act (16 U.S.C. 808(e)) is amended—
(1) by striking “(e) Except” and inserting the following:

“(e) LICENSE TERM ON RELICENSING.—

“(1) IN GENERAL.—Except”; and

(2) by adding at the end the following:

“(2) CONSIDERATION.—In determining the term of a license under paragraph (1), the Commission shall consider project-related investments by the licensee over the term of the existing license (including any terms under annual licenses) that resulted in new development, construction, capacity, efficiency improvements, or environmental measures, but which did not result in the extension of the term of the license by the Commission.”.

(f) ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.—Section 33 of the Federal Power Act (16 U.S.C. 823d) is amended—

(1) in subsection (a)—

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

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

(C) by striking paragraph (4); and

(D) by striking paragraph (5);
(2) in subsection (b)—

(A) by striking paragraph (4); and

(B) by striking paragraph (5); and

(3) by adding at the end the following:

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

SEC. 3. HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS.

(a) HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS.—Part I of the Federal Power Act (16 U.S.C. 792 et seq.) is amended by adding at the end the following:

“SEC. 34. HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS.

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

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

“(2) includes any permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law to approve or
implement the license, license amendment, or exemption under this part.

“(b) DESIGNATION AS LEAD AGENCY.—

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

“(2) OTHER AGENCIES AND INDIAN TRIBES.—

“(A) IN GENERAL.—Each Federal, State, and local government agency and Indian tribe considering an aspect of an application for Federal authorization shall coordinate with the Commission and comply with the deadline established in the schedule developed for the project in accordance with the rule issued by the Commission under subsection (c).

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

“(C) NOTIFICATION.—
“(i) In general.—The Commission shall notify any agency and Indian tribe identified under subparagraph (B) of the opportunity to participate in the process of reviewing an aspect of an application for a Federal authorization.

“(ii) Deadline.—Each agency and Indian tribe receiving a notice under clause (i) shall submit a response acknowledging receipt of the notice to the Commission within 30 days of receipt of such notice and request.

“(D) Issue identification and resolution.—

“(i) Identification of issues.—Federal, State, and local government agencies and Indian tribes that may consider an aspect of an application for Federal authorization shall identify, as early as possible, and share with the Commission and the applicant, any issues of concern identified during the pendency of the Commission’s action under this part relating to any Federal authorization that may delay or prevent the granting of such authoriza-
tion, including any issues that may prevent
the agency or Indian tribe from meeting
the schedule established for the project in
accordance with the rule issued by the
Commission under subsection (c).

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

“(c) SCHEDULE.—

“(1) COMMISSION RULEMAKING TO ESTABLISH
PROCESS TO SET SCHEDULE.—Within 180 days of
the date of enactment of this section the Commis-
sion shall, in consultation with the appropriate Fed-
eral agencies, issue a rule, after providing for notice
and public comment, establishing a process for set-
ting a schedule following the filing of an application
under this part for the review and disposition of
each Federal authorization.

“(2) Elements of scheduling rule.—In
issuing a rule under this subsection, the Commission
shall ensure that the schedule for each Federal au-
thorization—

“(A) includes deadlines for actions by—

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

“(ii) the applicant;

“(iii) the Commission; and

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

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

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

“(D) complies with applicable schedules established under Federal and State law;

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

“(F) facilitates completion of Federal and State agency studies, reviews, and any other procedures required prior to, or concurrent with, the preparation of the Commission’s environmental document required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“(d) TRANSMISSION OF FINAL SCHEDULE.—

“(1) IN GENERAL.—For each application for a license, license amendment, or exemption under this part, the Commission shall establish a schedule in accordance with the rule issued by the Commission under subsection (c). The Commission shall publicly notice and transmit the final schedule to the applicant and each agency and Indian tribe identified under subsection (b)(2)(B).
"(2) Response.—Each agency and Indian tribe receiving a schedule under this subsection shall acknowledge receipt of such schedule in writing to the Commission within 30 days.

"(e) Adherence to Schedule.—All applicants, other licensing participants, and agencies and tribes considering an aspect of an application for a Federal authorization shall meet the deadlines set forth in the schedule established pursuant to subsection (d)(1).

"(f) Application Processing.—The Commission, Federal, State, and local government agencies, and Indian tribes may allow an applicant seeking a Federal authorization to fund a third-party contractor selected by such agency or tribe to assist in reviewing the application. All costs of an agency or tribe incurred pursuant to direct funding by the applicant, including all costs associated with the third party contractor, shall not be considered costs of the United States for the administration of this part under section 10(e).

"(g) Commission Recommendation on Scope of Environmental Review.—For the purposes of coordinating Federal authorizations for each project, the Commission shall consult with and make a recommendation to agencies and Indian tribes receiving a schedule under subsection (d) on the scope of the environmental review
for all Federal authorizations for such project. Each Federal and State agency and Indian tribe shall give due consideration and may give deference to the Commission’s recommendations, to the extent appropriate under Federal law.

“(h) EXTENSION OF DEADLINE.—

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

“(2) EXTENSION.—The Commission shall only grant an extension under paragraph (1) if the agency or tribe demonstrates, based on the record maintained under subsection (i), that complying with the schedule established under subsection (d)(1) would prevent the agency or tribe from complying with applicable Federal or State law. If the Commission grants the extension, the Commission shall set a reasonable schedule and deadline, that is not later than 90 days after the deadline set forth in the schedule established under subsection (d)(1), for the agency
or tribe to complete its disposition of the Federal authorization.

“(i) CONSOLIDATED RECORD.—The Commission shall, with the cooperation of Federal, State, and local government agencies and Indian tribes, maintain a complete consolidated record of all decisions made or actions taken by the Commission or by a Federal administrative agency or officer (or State or local government agency or officer or Indian tribe acting under delegated Federal authority) with respect to any Federal authorization. Such record shall constitute the record for judicial review under section 313(b).

“SEC. 35. TRIAL-TYPE HEARINGS.

“(a) Definition of Covered Measure.—In this section, the term ‘covered measure’ means—

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

“(2) fishways prescribed under section 18, including an alternative prescription proposed under section 33(b); or

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

“(b) Authorization of Trial-Type Hearing.—

The license applicant (including an applicant for a license
under section 15) and any party to the proceeding shall be entitled to a determination on the record, after opportunity for a trial-type hearing of not more than 120 days, on any disputed issues of material fact with respect to an applicable covered measure.

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

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

“(2)(A) the Commission publishes notice of the intention to use the reserved authority of the Commission to order a further condition under section 6; or

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

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

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

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

“(g) Decision of the Administrative Law
Judge.—

“(1) Contents.—The decision of the Adminis-
trative Law Judge shall contain—
“(A) findings of fact on all disputed issues of material fact;

“(B) conclusions of law necessary to make the findings of fact, including rulings on materiality and the admissibility of evidence; and

“(C) reasons for the findings and conclusions.

“(2) LIMITATION.—The decision of the Administrative Law Judge shall not contain conclusions as to whether—

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

“(B) any alternative condition or prescription should be adopted, modified, or rejected.

“(3) FINALITY.—A decision of an Administrative Law Judge under this section with respect to a disputed issue of material fact shall not be subject to further administrative review.

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

“(h) SECRETARIAL DETERMINATION.—
“(1) IN GENERAL.—Not later than 60 days after the date on which the Administrative Law Judge issues the decision under subsection (g) and in accordance with the schedule established by the Commission under section 34(c), the Secretary proposing a condition under section 4(e) or a prescription under section 18 shall file with the Commission a final determination to adopt, modify, or withdraw any condition or prescription that was the subject of a hearing under this section, based on the decision of the Administrative Law Judge.

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

“(i) LICENSING DECISION OF THE COMMISSION.—Notwithstanding sections 4(e) and 18, if the Commission finds that the final condition or prescription of the Secretary is inconsistent with the purposes of this part or other applicable law, the Commission may seek resolution of the matter under section 34(b)(2)(D).
“(j) JUDICIAL REVIEW.—The decision of the Administrative Law Judge and the record of determination of the Secretary shall be included in the record of the applicable licensing proceeding and subject to judicial review of the final licensing decision of the Commission under section 313(b).

“SEC. 36. LICENSING STUDY IMPROVEMENTS.

“(a) IN GENERAL.—To facilitate the timely and efficient completion of the license proceedings under this part, the Commission shall, in consultation with applicable Federal and State agencies and interested members of the public—

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

“(2) compile a comprehensive collection of studies and data accessible to the public that could be used to inform license proceedings under this part; and

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

“(b) USE OF STUDIES.—To the extent practicable, the Commission and other Federal, State, and local government agencies and Indian tribes considering an aspect of an application for Federal authorization (as defined in section 34) shall use current, accepted science toward studies and data in support of their actions. Any participant in a proceeding with respect to a Federal authorization shall demonstrate a study requested by the party is not duplicative of current, existing studies that are applicable to the project.

“(c) BASIN-WIDE OR REGIONAL REVIEW.—The Commission shall establish a program to develop comprehensive plans, at the request of project applicants, on a regional or basin-wide scale, in consultation with the applicants, appropriate Federal agencies, and affected States, local governments, and Indian tribes, in basins or regions with respect to which there are more than one project or application for a project. Upon such a request, the Commission, in consultation with the applicants, such Federal agencies, and affected States, local governments, and Indian tribes, may conduct or commission regional or basin-
wide environmental studies, with the participation of at least 2 applicants. Any study conducted under this subsection shall apply only to a project with respect to which the applicant participates.

“SEC. 37. LICENSE AMENDMENT IMPROVEMENTS.

“(a) QUALIFYING PROJECT UPGRADES.—

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

“(2) APPLICATION.—A licensee filing an application for an amendment to a project license under this section shall include in such application information sufficient to demonstrate that the proposed change to the project described in the application is a qualifying project upgrade.

“(3) INITIAL DETERMINATION.—Not later than 15 days after receipt of an application under paragraph (2), the Commission shall make an initial determination as to whether the proposed change to the project described in the application for a license amendment is a qualifying project upgrade. The Commission shall publish its initial determination and issue notice of the application filed under para-
Such notice shall solicit public comment on the initial determination within 45 days.

“(4) Public comment on qualifying criteria.—The Commission shall accept public comment regarding whether a proposed license amendment is for a qualifying project upgrade for a period of 45 days beginning on the date of publication of a public notice described in paragraph (3), and shall—

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

“(B) if an entity contests whether the proposed license amendment is for a qualifying project upgrade during the comment period, issue a written determination in accordance with paragraph (5).

“(5) Written determination.—If an entity contests whether the proposed license amendment is for a qualifying project upgrade during the comment period under paragraph (4), the Commission shall, not later than 30 days after the date of publication of the public notice of the initial determination
under paragraph (3), issue a written determination as to whether the proposed license amendment is for a qualifying project upgrade.

“(6) Public comment on amendment application.—If no entity contests whether the proposed license amendment is for a qualifying project upgrade during the comment period under paragraph (4) or the Commission issues a written determination under paragraph (5) that a proposed license amendment is a qualifying project upgrade, the Commission shall—

“(A) during the 60-day period beginning on the date of publication of a notice under paragraph (4)(A) or the date on which the Commission issues the written determination under paragraph (5), as applicable, solicit comments from each Federal, State, and local government agency and Indian tribe considering an aspect of an application for Federal authorization (as defined in section 34) with respect to the proposed license amendment, as well as other interested agencies, Indian tribes, and members of the public; and

“(B) during the 90-day period beginning on the date of publication of a notice under
paragraph (4)(A) or the date on which the Commission issues the written determination under paragraph (5), as applicable, consult with—

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

“(ii) any Federal department supervising any public lands or reservations occupied by the qualifying project upgrade; and

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

“(7) Federal Authorizations.—The schedule established by the Commission under section 34 for any project upgrade under this subsection shall require final disposition on all necessary Federal authorizations (as defined in section 34), other than final action by the Commission, by not later than 120 days after the date on which the Commission issues a notice under paragraph (4)(A) or a written determination under paragraph (5), as applicable.
“(8) COMMISSION ACTION.—Not later than 150 days after the date on which the Commission issues a notice under paragraph (4)(A) or a written determination under paragraph (5), as applicable, the Commission shall take final action on the license amendment application.

“(9) LICENSE AMENDMENT CONDITIONS.—Any condition included in or applicable to a license amendment approved under this subsection, including any condition or other requirement of a Federal authorization, shall be limited to those that are—

“(A) necessary to protect public safety; or

“(B) reasonable, economically feasible, and essential to prevent loss of or damage to, or to mitigate adverse effects on, fish and wildlife resources, water supply, and water quality that are directly caused by the construction and operation of the qualifying project upgrade, as compared to the environmental baseline existing at the time the Commission approves the application for the license amendment.

“(10) PROPOSED LICENSE AMENDMENTS THAT ARE NOT QUALIFYING PROJECT UPGRADES.—If the Commission determines under paragraph (3) or (5) that a proposed license amendment is not for a
qualifying project upgrade, the procedures under paragraphs (6) through (9) shall not apply to the application.

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

“(12) DEFINITIONS.—For purposes of this subsection:

“(A) QUALIFYING PROJECT UPGRADE.—The term ‘qualifying project upgrade’ means a change to a project licensed under this part that meets the qualifying criteria, as determined by the Commission.

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

“(i) if carried out, would be unlikely to adversely affect any species listed as threatened or endangered under the Endangered Species Act of 1973 or result in the destruction or adverse modification of critical habitat, as determined in consultation with the Secretary of the Interior or
Secretary of Commerce, as appropriate, in accordance with section 7 of the Endangered Species Act of 1973;

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

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

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

“(v) proposes to implement—

“(I) capacity increases, efficiency improvements, or other enhancements to hydropower generation at the licensed project;

“(II) environmental protection, mitigation, or enhancement measures to benefit fish and wildlife resources or other natural and cultural resources; or

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

“(b) Amendment Approval Processes.—
“(1) RULE.—Not later than 1 year after the date of enactment of this section, the Commission shall, after notice and opportunity for public comment, issue a rule establishing new standards and procedures for license amendment applications under this part. In issuing such rule, the Commission shall seek to develop the most efficient and expedient process, consultation, and review requirements, commensurate with the scope of different categories of proposed license amendments. Such rule shall account for differences in environmental effects across a wide range of categories of license amendment applications.

“(2) CAPACITY.—In issuing a rule under this subsection, the Commission shall take into consideration that a change in generating or hydraulic capacity may indicate the potential environmental effects of a proposed amendment but is not determinative of such effects.

“(3) PROCESS OPTIONS.—In issuing a rule under this subsection, the Commission shall take into consideration the range of process options available under the Commission’s regulations for new and original license applications and adapt such op-
tions to amendment applications, where appro-
priate.”.

SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.

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

(1) by striking “adequate protection and utiliza-
tion of such reservation” and all that follows through “That no license affecting the navigable ca-
pacity” and inserting “adequate protection and utiliza-
tion of such reservation: Provided further, That no license affecting the navigable capacity”; and

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

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