

115TH CONGRESS  
1ST SESSION

# H. R. 3043

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## AN ACT

To modernize hydropower policy, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

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

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

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

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

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

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

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

13          “(b) The Commission may—

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

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

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

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

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

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

12 “(e) LICENSE TERM ON RELICENSING.—

13 “(1) IN GENERAL.—Except”; and

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

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

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

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

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

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

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

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

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

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

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

7 (1) in subsection (a)—

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

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

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

14 (D) by striking paragraph (5);

15 (2) in subsection (b)—

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

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

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

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

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

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

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

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

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

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

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

14 “(b) DESIGNATION AS LEAD AGENCY.—

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

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

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

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

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

12          “(C) NOTIFICATION.—

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

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

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

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

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

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

13       “(c) SCHEDULE.—

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

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

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

3 “(A) includes deadlines for actions by—

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

8 “(ii) the applicant;

9 “(iii) the Commission; and

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

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

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

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

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

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

11          “(d) TRANSMISSION OF FINAL SCHEDULE.—

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

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

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

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

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

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

24       “(h) EXTENSION OF DEADLINE.—

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

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

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

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

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

8 “(1) SUBMISSION OF RECOMMENDATIONS.—

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

14 “(A) the recommendations;

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

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

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

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

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

6 “(B) flood control;

7 “(C) navigation;

8 “(D) water supply; and

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

11 “(3) INFORMATION FROM OTHER AGENCIES.—

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

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

24 “(1) the applicable project; and

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

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

13          **“SEC. 35. TRIAL-TYPE HEARINGS.**

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

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

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

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

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

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

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

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

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

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

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

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

4 “(e) ADMINISTRATIVE LAW JUDGE.—

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

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

20 “(A) to undertake discovery; and

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

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

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

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

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

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

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

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

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

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

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

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

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

6           “(h) SECRETARIAL DETERMINATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

12 “(a) QUALIFYING PROJECT UPGRADES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 “(v) proposes to implement—

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

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

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

18 “(b) AMENDMENT APPROVAL PROCESSES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Passed the House of Representatives November 8,  
2017.

Attest:

*Clerk.*



115<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H. R. 3043**

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**AN ACT**

To modernize hydropower policy, and for other purposes.