

tiation, and the Commission shall within 30 days thereafter issue a final order determining whether or not the State of Alaska's regulatory program for water-power development complies with the requirements of subsection (a).

(3) If the Commission fails to issue a final order in accordance with paragraph (2) the State of Alaska's regulatory program for water-power development shall be deemed to be in compliance with subsection (a).

#### **(j) Fish and wildlife**

If the State of Alaska determines that a recommendation under subsection (a)(3)(C) is inconsistent with paragraphs (1) and (2) of subsection (a), the State of Alaska may decline to adopt all or part of the recommendations in accordance with the procedures established under section 803(j)(2) of this title.

(June 10, 1920, ch. 285, pt. I, § 32, as added Pub. L. 106-469, title V, § 501, Nov. 9, 2000, 114 Stat. 2037; amended Pub. L. 109-58, title II, § 244, Aug. 8, 2005, 119 Stat. 678.)

#### **Editorial Notes**

##### **REFERENCES IN TEXT**

The Endangered Species Act, referred to in subsec. (a)(1), probably means the Endangered Species Act of 1973, Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, which is classified generally to chapter 35 (§1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

The Fish and Wildlife Coordination Act, referred to in subsec. (a)(1), (3)(C), is act Mar. 10, 1934, ch. 55, 48 Stat. 401, which is classified generally to sections 661 to 666c-1 of this title. For complete classification of this Act to the Code, see section 661(a) of this title, Short Title note set out under section 661 of this title, and Tables.

##### **AMENDMENTS**

2005—Subsec. (a)(3)(C). Pub. L. 109-58, § 244(1), inserted “except as provided in subsection (j),” before “conditions”.

Subsec. (j). Pub. L. 109-58, § 244(2), added subsec. (j).

#### **Statutory Notes and Related Subsidiaries**

##### **TRANSFER OF FUNCTIONS**

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

### **§ 823d. Alternative conditions and prescriptions**

#### **(a) Alternative conditions**

(1) Whenever any person applies for a license for any project works within any reservation of the United States, and the Secretary of the department under whose supervision such reservation falls (referred to in this subsection as the “Secretary”) deems a condition to such license to be necessary under the first proviso of section 797(e) of this title, the license applicant or any other party to the license proceeding may propose an alternative condition.

(2) Notwithstanding the first proviso of section 797(e) of this title, the Secretary shall accept the proposed alternative condition referred to in paragraph (1), and the Commission shall include in the license such alternative condition, if the Secretary determines, based on substantial evidence provided by the license applicant, any other party to the proceeding, or otherwise available to the Secretary, that such alternative condition—

(A) provides for the adequate protection and utilization of the reservation; and

(B) will either, as compared to the condition initially by the Secretary—

(i) cost significantly less to implement; or

(ii) result in improved operation of the project works for electricity production.

(3) In making a determination under paragraph (2), the Secretary shall consider evidence provided for the record by any party to a licensing proceeding, or otherwise available to the Secretary, including any evidence provided by the Commission, on the implementation costs or operational impacts for electricity production of a proposed alternative.

(4) The Secretary concerned shall submit into the public record of the Commission proceeding with any condition under section 797(e) of this title or alternative condition it accepts under this section, a written statement explaining the basis for such condition, and reason for not accepting any alternative condition under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the condition adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.

(5) If the Commission finds that the Secretary's final condition would be inconsistent with the purposes of this subchapter, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will not adequately protect the reservation. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.

#### **(b) Alternative prescriptions**

(1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under section 811 of this title, the license applicant or any other party to the license proceeding may propose an alternative to such prescription to construct, maintain, or operate a fishway.

(2) Notwithstanding section 811 of this title, the Secretary of the Interior or the Secretary of Commerce, as appropriate, shall accept and prescribe, and the Commission shall require, the proposed alternative referred to in paragraph (1), if the Secretary of the appropriate department determines, based on substantial evidence provided by the license applicant, any other party to the proceeding, or otherwise available to the Secretary, that such alternative—

(A) will be no less protective than the fishway initially prescribed by the Secretary; and

(B) will either, as compared to the fishway initially prescribed by the Secretary—

(i) cost significantly less to implement; or

(ii) result in improved operation of the project works for electricity production.

(3) In making a determination under paragraph (2), the Secretary shall consider evidence provided for the record by any party to a licensing proceeding, or otherwise available to the Secretary, including any evidence provided by the Commission, on the implementation costs or operational impacts for electricity production of a proposed alternative.

(4) The Secretary concerned shall submit into the public record of the Commission proceeding with any prescription under section 811 of this title or alternative prescription it accepts under this section, a written statement explaining the basis for such prescription, and reason for not accepting any alternative prescription under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the prescription adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.

(5) If the Commission finds that the Secretary's final prescription would be inconsistent with the purposes of this subchapter, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will not adequately protect the fish resources. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.

(June 10, 1920, ch. 285, pt. I, § 33, as added Pub. L. 109-58, title II, § 241(c), Aug. 8, 2005, 119 Stat. 675.)

### **§ 823e. Promoting hydropower development at existing nonpowered dams**

#### **(a) Expedited licensing process for non-Federal hydropower projects at existing nonpowered dams**

##### **(1) In general**

As provided in this section, the Commission may issue and amend licenses, as appropriate, for any facility the Commission determines is a qualifying facility.

##### **(2) Rule**

Not later than 180 days after October 23, 2018, the Commission shall issue a rule establishing an expedited process for issuing and amending licenses for qualifying facilities under this section.

##### **(3) Interagency task force**

(A) In establishing the expedited process under this section, the Commission shall convene an interagency task force, with appropriate Federal and State agencies and Indian tribes represented, to coordinate the regulatory processes associated with the authorizations required to construct and operate a qualifying facility.

(B) The task force shall develop procedures that are consistent with subsection (e)(1)(E) to seek to ensure that, for projects licensed pursuant to this section, the Commission and appropriate Federal and State agencies and Indian tribes shall exercise their authorities in a manner that, to the extent practicable, will not result in any material change to the storage, release, or flow operations of the associated nonpowered dam existing at the time an applicant files its license application.

##### **(4) Length of process**

The Commission shall seek to ensure that the expedited process under this section will result in a final decision on an application for a license by not later than 2 years after receipt of a completed application for the license.

#### **(b) Dam safety**

##### **(1) Assessment**

Before issuing any license for a qualifying facility, the Commission shall assess the safety of existing non-Federal dams and other non-Federal structures related to the qualifying facility (including possible consequences associated with failure of such structures).

##### **(2) Requirements**

In issuing any license for a qualifying facility at a non-Federal dam, the Commission shall ensure that the Commission's dam safety requirements apply to such qualifying facility, and the associated qualifying nonpowered dam, over the term of such license.

#### **(c) Interagency communications**

Interagency cooperation in the preparation of environmental documents under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an application for a license for a qualifying facility under this section,