

[DISCUSSION DRAFT]114TH CONGRESS
1ST SESSION**H. R.** _____

To improve Federal regulation of non-Federal hydropower, promote transparency and accountability in hydropower licensing decisionmaking, reduce redundancy and inefficiencies in non-Federal hydropower administration, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To improve Federal regulation of non-Federal hydropower, promote transparency and accountability in hydropower licensing decisionmaking, reduce redundancy and inefficiencies in non-Federal hydropower administration, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Hydropower Regulatory Modernization Act of 2015”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Administrative efficiency and transparency.

Sec. 4. Promoting new hydropower infrastructure and early implementation of environmental enhancement measures.

Sec. 5. Promoting accountability, requiring balanced and efficient decision-making, and reducing duplicative oversight.

Sec. 6. Promoting efficient and timely decisionmaking.

3 **SEC. 2. FINDINGS.**

4 The Congress finds that—

5 (1) hydropower is an essential component of an
6 “all of the above” energy strategy for the United
7 States because it is a clean, renewable source of
8 electricity that provides flexibility and reliability to
9 the electric grid, and enhances environmental and
10 recreational conditions;

11 (2) hydropower is the largest source of renew-
12 able electricity in the United States and expands the
13 nation’s ability to rely on many other renewable en-
14 ergy resources by stabilizing intermittent resources
15 such as solar and wind power;

16 (3) hydropower resources, including pumped
17 storage facilities, currently provide—

18 (A) over 6 percent of all electricity gen-
19 erated in the United States;

20 (B) nearly 50 percent of all renewable elec-
21 tricity in the United States; and

1 (C) approximately 100,000 megawatts of
2 electric capacity in the United States;

3 (4) tremendous potential exists for new hydro-
4 power development, including facilities at existing in-
5 frastructure such as nonpowered dams, new hydro-
6 power sites, and emerging technologies that improve
7 the capture of energy along irrigation canals, munic-
8 ipal water supply conduits, and other linear infra-
9 structure;

10 (5) the security, economic, environmental, and
11 recreational interests of the United States are
12 strengthened with the preservation and expansion of
13 hydropower;

14 (6) despite the inherent benefits of hydropower,
15 including energy security, stability, and reliability,
16 environmental protection and enhancement, recre-
17 ation, and other benefits, the outdated authorization
18 processes under the Federal Power Act, together
19 with overlapping and duplicative requirements under
20 other Federal laws, disadvantage hydropower as a
21 cost-competitive resource;

22 (7) although centralized decisionmaking and ad-
23 ministration of non-Federal hydropower has been
24 the policy of the Federal Power Act since its enact-

1 ment 95 years ago, dissipation of this core principle
2 over time has—

3 (A) resulted in—

4 (i) increased consumer costs;

5 (ii) reduced availability of renewable
6 energy, capacity, and ancillary services
7 provided by hydropower; and

8 (iii) lost opportunities for new hydro-
9 power development; and

10 (B) undermined the Federal Energy Regu-
11 latory Commission's ability to provide equal
12 consideration to the values of electric genera-
13 tion, energy conservation, environmental protec-
14 tion and enhancement, and recreation, as envi-
15 sioned in the Electric Consumers Protection Act
16 of 1986; and

17 (8) despite the objectives of the Energy Policy
18 Act of 2005 to require better decisionmaking and
19 promote efficiency in the Commission's licensing de-
20 cisions, the Act has not accomplished its full pur-
21 poses due to inefficient implementation and evasion
22 of its requirements by Federal resource agencies.

1 **SEC. 3. ADMINISTRATIVE EFFICIENCY AND TRANS-**
2 **PARENCY.**

3 (a) GENERAL POWERS OF COMMISSION.—Section 4
4 of the Federal Power Act (16 U.S.C. 797) is amended by
5 adding at the end the following new subsections:

6 “(h) ADMINISTRATION OF HYDROPOWER LI-
7 CENSES.—To administer the licenses and exemptions
8 issued under this part. The Commission shall have exclu-
9 sive authority to enforce, amend, approve compliance with,
10 and otherwise administer all terms, conditions, prescrip-
11 tions, certifications, articles, and all other requirements
12 included in any license or exemption issued under this
13 part.

14 “(i) EFFECTIVE USE OF EXISTING INFORMATION.—
15 To use scientific and other technical data, regardless of
16 source, that are available to the Commission at the time
17 a licensing process for a project is commenced, or another
18 action is taken, under this part, and that the Commission
19 determines are accurate, reliable, and relevant for use in
20 each such action. The Commission shall seek to minimize
21 duplicative studies and process costs by requiring the con-
22 duct of studies or other information-gathering activities
23 only when the Commission determines that new data or
24 other information are necessary to support decisionmaking
25 and that the value of such new data or other information
26 outweighs the cost of producing it. Any determination by

1 the Commission to require a study or other information
2 gathering activity shall be accompanied by an explanation,
3 supported by information in the Commission's record, that
4 demonstrates the inadequacy of existing information.

5 “(j) ADMINISTRATION OF PROJECT SHORELINES
6 AND OTHER LANDS.—To administer and manage shore-
7 lines and other lands included in each project, including
8 for recreational and other development unrelated to the
9 project, but only as the Commission determines to be nec-
10 essary to meet a site-specific license requirement, and only
11 to the extent that State or local laws and regulations do
12 not adequately address such license requirement. Except
13 as provided in this subsection and pursuant to section 308,
14 nothing contained in this part shall be construed as affect-
15 ing any State or local law related to the management of
16 project shorelines and other lands. Any determination by
17 the Commission that its administration and management
18 of project lands is necessary to meet a site-specific license
19 requirement shall be accompanied by an explanation, sup-
20 ported by information in the Commission's record, that
21 demonstrates the need for the Commission's management
22 and explains how State or local laws and regulations are
23 inadequate to meet the site-specific license requirement.

24 “(k) INFORMAL MEETINGS WITH COMMISSION
25 STAFF.—To hold informal meetings upon the request of

1 a licensee, applicant, or party to any license proceeding
2 under this part, for purposes of discussing technical or
3 procedural matters in any ongoing license proceeding. The
4 Commission shall not be required to provide public notice
5 in advance of such meetings, but shall provide public no-
6 tice following any such meeting of the subject matter of
7 such meeting.”.

8 (b) ANNUAL CHARGES.—Section 10(e)(1) of the Fed-
9 eral Power Act (16 U.S.C. 803(e)) is amended by—

10 (1) striking “the costs” and inserting “the
11 Commission’s costs”;

12 (2) striking “Part, including” and inserting
13 “Part and”;

14 (3) striking “recompensing it” and inserting
15 “recompensing the United States”; and

16 (4) striking “remain available until expended:”
17 and inserting “remain available until expended: *Pro-*
18 *vided*, That the Commission shall establish, by rule,
19 standards and procedures for fixing all such reason-
20 able annual charges under this subsection, which
21 procedures shall include annual public notice of all
22 charges proposed for inclusion in bills for the annual
23 charges, an opportunity for comment and hearing
24 prior to billing, public access to all documentation
25 supporting such charges, and an explanation sup-

1 porting the Commission’s determination of the rea-
2 sonableness of such charges:”.

3 **SEC. 4. PROMOTING NEW HYDROPOWER INFRASTRUCTURE**
4 **AND EARLY IMPLEMENTATION OF ENVIRON-**
5 **MENTAL ENHANCEMENT MEASURES.**

6 (a) **EXTENSION OF LICENSE TERM.**—Section 6 of
7 the Federal Power Act (16 U.S.C. 799) is amended by—

8 (1) striking “Licenses” and inserting the fol-
9 lowing:

10 “(a) **IN GENERAL.**—Licenses”; and

11 (2) adding at the end the following new sub-
12 section:

13 “(b) **EXTENSION OF LICENSE TERM.**—Upon applica-
14 tion by a licensee, the Commission shall, for any license
15 issued under this part (including any new or annual li-
16 cense issued under section 15), extend the term of the li-
17 cense up to a total term of 70 years to account for any
18 project-related investments by the licensee that—

19 “(1) resulted in new development, construction,
20 capacity, or environmental measures; and

21 “(2) were not considered by the Commission
22 when last establishing the term of the license.”.

23 (b) **HYDROPOWER FACILITIES AT EXISTING NON-**
24 **POWERED DAMS.**—The Federal Power Act (16 U.S.C.

1 791a et seq.) is amended by adding after section 33 the
2 following new section:

3 **“SEC. 34. HYDROPOWER FACILITIES AT EXISTING NONPOW-**
4 **ERED DAMS.**

5 “(a) QUALIFYING FACILITIES OF 5 MEGAWATTS OR
6 LESS.—

7 “(1) NONJURISDICTIONAL.—A qualifying facil-
8 ity with an installed capacity of 5 megawatts or less
9 shall not be required to be licensed under this part.

10 “(2) DETERMINATION.—

11 “(A) NOTICE OF INTENT.—Any person,
12 State, or municipality proposing to construct a
13 qualifying facility described in paragraph (1)
14 shall file with the Commission a notice of intent
15 to construct such facility. The notice shall in-
16 clude sufficient information to demonstrate that
17 the facility meets the qualifying criteria.

18 “(B) COMMISSION NOTICE AND INITIAL
19 DETERMINATION.—Not later than 15 days after
20 receipt of a notice of intent filed under subpara-
21 graph (A), the Commission shall—

22 “(i) make an initial determination as
23 to whether the facility meets the qualifying
24 criteria; and

1 “(ii) if the Commission makes an ini-
2 tial determination, pursuant to clause (i),
3 that the facility meets the qualifying cri-
4 teria, publish public notice of the notice of
5 intent filed under subparagraph (A).

6 “(C) COMMISSION FINAL DETERMINA-
7 TION.—If, not later than 45 days after the date
8 of publication of the public notice described in
9 subparagraph (B)(ii)—

10 “(i) an entity contests whether the fa-
11 cility meets the qualifying criteria, the
12 Commission shall promptly issue a written
13 determination as to whether the facility
14 meets such criteria; or

15 “(ii) no entity contests whether the
16 facility meets the qualifying criteria, the
17 facility shall be deemed to meet such cri-
18 teria.

19 “(b) EXEMPTIONS FOR QUALIFYING FACILITIES OF
20 MORE THAN 5 MEGAWATTS.—

21 “(1) EXEMPTION QUALIFICATIONS.—Subject to
22 the requirements of this subsection, the Commission
23 may grant an exemption in whole or in part from
24 the requirements of this part, including any license
25 requirements contained in this part, to any facility

1 the Commission determines is a qualifying facility
2 with an installed capacity of more than 5
3 megawatts.

4 “(2) CONSULTATION WITH FEDERAL AND
5 STATE AGENCIES.—In granting any exemption under
6 this subsection, the Commission shall consult with
7 the United States Fish and Wildlife Service, the Na-
8 tional Marine Fisheries Service, and the State agen-
9 cy exercising administrative control over the fish and
10 wildlife resources of the State in which the facility
11 will be located, in the manner provided by the Fish
12 and Wildlife Coordination Act.

13 “(3) EXEMPTION CONDITIONS.—

14 “(A) IN GENERAL.—The Commission shall
15 include in any exemption granted under this
16 subsection only such terms and conditions that
17 the Commission determines are—

18 “(i) necessary to protect public safety;

19 and

20 “(ii) reasonable, economically feasible,
21 and essential to prevent loss of or damage
22 to, or to mitigate adverse effects to, fish
23 and wildlife resources directly caused by
24 the construction and operation of the
25 qualifying facility, as compared to the envi-

1 ronmental baseline existing at the time the
2 Commission grants the exemption.

3 “(B) NO CHANGES TO RELEASE RE-
4 GIME.—No Federal authorization required with
5 respect to a qualifying facility described in
6 paragraph (1), including an exemption granted
7 by the Commission under this subsection, may
8 include any condition or other requirement that
9 results in any material change to the storage,
10 control, withdrawal, diversion, release, or flow
11 operations of the associated qualifying nonpow-
12 ered dam.

13 “(4) ENVIRONMENTAL REVIEW.—The Commis-
14 sion’s environmental review of a proposed exemption
15 under this subsection shall consist only of an envi-
16 ronmental assessment, unless the Commission deter-
17 mines, by rule or order, that the Commission’s obli-
18 gations under the National Environmental Policy
19 Act of 1969 for granting exemptions under this sub-
20 section can be met through a categorical exclusion.

21 “(5) VIOLATION OF TERMS OF EXEMPTION.—
22 Any violation of a term or condition of any exemp-
23 tion granted under this subsection shall be treated
24 as a violation of a rule or order of the Commission
25 under this Act.

1 “(6) EFFECT ON JURISDICTION.—The jurisdic-
2 tion of the Commission over any qualifying facility
3 exempted under this subsection shall extend only to
4 the qualifying facility exempted, and shall not extend
5 to any conduit, transmission lines, dam, impound-
6 ment, shoreline or other land, or any project work
7 associated with the qualifying facility exempted
8 under this subsection.

9 “(c) DEFINITIONS.—For purposes of this section:

10 “(1) FEDERAL AUTHORIZATION.—The term
11 ‘Federal authorization’ has the meaning given such
12 term in section 308(a).

13 “(2) QUALIFYING CRITERIA.—The term ‘quali-
14 fying criteria’ means, with respect to a facility—

15 “(A) as of the date of enactment of this
16 section, the facility is not licensed under, or ex-
17 empted from the license requirements contained
18 in, this part;

19 “(B) the facility will be associated with a
20 qualifying nonpowered dam;

21 “(C) the facility will be constructed, oper-
22 ated, and maintained for the generation of elec-
23 tric power;

24 “(D) the facility will use for such genera-
25 tion any withdrawals, diversions, releases, or

1 flows from the associated qualifying nonpow-
2 ered dam, including its associated impoundment
3 or other infrastructure; and

4 “(E) the operation of the facility will not
5 result in any material change to the storage,
6 control, withdrawal, diversion, release, or flow
7 operations of the associated qualifying nonpow-
8 ered dam.

9 “(3) QUALIFYING FACILITY.—The term ‘quali-
10 fying facility’ means a facility that is determined or
11 deemed under this section to meet the qualifying cri-
12 teria.

13 “(4) QUALIFYING NONPOWERED DAM.—The
14 term ‘qualifying nonpowered dam’ means any dam,
15 dike, embankment, or other barrier—

16 “(A) the construction of which was com-
17 pleted on or before the date of enactment of
18 this section;

19 “(B) that is operated for the control, re-
20 lease, or distribution of water for agricultural,
21 municipal, navigational, industrial, commercial,
22 environmental, recreational, aesthetic, or flood
23 control purposes; and

24 “(C) that, as of the date of enactment of
25 this section, is not equipped with hydropower

1 generating works that are licensed under, or ex-
2 empted from the license requirements contained
3 in, this part.”.

4 **SEC. 5. PROMOTING ACCOUNTABILITY, REQUIRING BAL-**
5 **ANCED AND EFFICIENT DECISIONMAKING,**
6 **AND REDUCING DUPLICATIVE OVERSIGHT.**

7 (a) ALTERNATIVE CONDITIONS AND PRESCRIP-
8 TIONS.—Section 33 of the Federal Power Act (16 U.S.C.
9 823d) is amended—

10 (1) in subsection (a)—

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

13 (B) in paragraph (2)—

14 (i) by striking “in paragraph (1),
15 and” and inserting “in paragraph (1), as
16 submitted and without modification, and”;

17 (ii) by striking “if the Secretary de-
18 termines,” and inserting “if the Commis-
19 sion determines,”;

20 (iii) by striking “otherwise available to
21 the Secretary” and inserting “otherwise
22 available to the Commission”;

23 (iv) in subparagraph (A), by striking
24 “provides for the adequate protection and
25 utilization of the reservation” and insert-

1 ing “adequately protects the reservation
2 from project effects”; and

3 (v) in subparagraph (B), by inserting
4 “determined necessary” before “the Sec-
5 retary”;

6 (C) in paragraph (3)—

7 (i) by striking “Secretary” each place
8 it appears and inserting “Commission”;
9 and

10 (ii) by striking “evidence provided by
11 the Commission” and inserting “evidence
12 provided by the Secretary”;

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

14 (E) by striking paragraph (5); and

15 (2) in subsection (b)—

16 (A) in paragraph (2)—

17 (i) by striking “referred to in para-
18 graph (1), if the Secretary of the appro-
19 priate department” and inserting “referred
20 to in paragraph (1), as submitted and
21 without modification, if the Commission”;
22 and

23 (ii) by striking “otherwise available to
24 the Secretary” and inserting “otherwise
25 available to the Commission”;

1 (B) in paragraph (3)—

2 (i) by striking “the Secretary shall
3 consider” and inserting “the Commission
4 shall consider”;

5 (ii) by striking “otherwise available to
6 the Secretary” and inserting “otherwise
7 available to the Commission”; and

8 (iii) by striking “evidence provided by
9 the Commission” and inserting “evidence
10 provided by the Secretary concerned”;

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

12 (D) by striking paragraph (5).

13 (b) COORDINATING SUBMITTAL AND ADOPTION OF
14 CONDITIONS AND PRESCRIPTIONS.—The Federal Power
15 Act (16 U.S.C. 791a et seq.) is amended by adding after
16 section 34 (as added by section 4 of this Act) the following
17 new section:

18 **“SEC. 35. PROCEDURES FOR CERTAIN CONDITIONS AND**
19 **PRESCRIPTIONS.**

20 “(a) SUBMITTAL OF CONDITIONS AND FISHWAY
21 PRESCRIPTIONS.—For any condition determined nec-
22 essary by a Secretary under section 4(e), or fishway pre-
23 scribed by a Secretary under section 18, the Secretary
24 concerned shall submit into the public record of the Com-
25 mission proceeding—

1 “(1) a written statement explaining the basis
2 for the condition or prescription that demonstrates,
3 based on such information as may be available to
4 the Secretary, that the Secretary gave equal consid-
5 eration to the effects of the condition or prescription
6 on—

7 “(A) energy supply, distribution, cost, and
8 use;

9 “(B) flood control;

10 “(C) navigation;

11 “(D) water supply;

12 “(E) air quality; and

13 “(F) the preservation of other aspects of
14 environmental quality; and

15 “(2) all studies, data, and other factual infor-
16 mation available to the Secretary and relevant to the
17 condition or prescription.

18 “(b) PROCEDURES FOR CERTAIN APPLICABLE CON-
19 DITIONS.—

20 “(1) TRIAL-TYPE HEARING.—For any applica-
21 ble condition, the license applicant and any other
22 party to the license proceeding shall be entitled to a
23 determination on the record, after opportunity for a
24 trial-type hearing before the Commission, on any

1 disputed issues of material fact with respect to such
2 applicable condition.

3 “(2) PROCEDURES RELATED TO TRIAL-TYPE
4 HEARINGS.—Not later than 180 days after the date
5 of enactment of this subsection, the Commission
6 shall establish, by rule, procedures related to trial-
7 type hearings under this subsection. Such proce-
8 dures shall—

9 “(A) provide the opportunity for partici-
10 pants in the trial-type hearing to undertake dis-
11 covery and cross-examine witnesses;

12 “(B) establish that the proponent of an ap-
13 plicable condition bears the burden of proof
14 with respect to such applicable condition during
15 the trial-type hearing;

16 “(C) provide for any such trial-type hear-
17 ing to extend for a period of not more than 90
18 days, and also provide for additional reasonable
19 periods—

20 “(i) prior to the trial-type hearing for
21 discovery, motions, and other pre-trial-type
22 hearing activities; and

23 “(ii) following the trial-type hearing
24 for briefing, motions, decisionmaking, and
25 other post-trial-type hearing activities;

1 “(D) ensure the integration of all applica-
2 ble conditions in the trial-type hearing such
3 that the findings of fact resulting from the
4 trial-type hearing are accounted for in any de-
5 termination that is related to—

6 “(i) such an applicable condition; and

7 “(ii) any—

8 “(I) modified condition or modi-
9 fied prescription, submitted pursuant
10 to subparagraph (E)(i); or

11 “(II) alternative to such a modi-
12 fied condition or modified prescrip-
13 tion, submitted pursuant to subpara-
14 graph (E)(ii);

15 “(E) authorize and establish standards and
16 deadlines for—

17 “(i) in accordance with subsection (a),
18 the submittal, by the Secretary concerned,
19 following the trial-type hearing—

20 “(I) in accordance with section
21 4(e), of a modification, as appro-
22 priate, to a condition determined nec-
23 essary by a Secretary previously in
24 the proceeding under such section;
25 and

1 “(II) in accordance with section
2 18, of a modification, as appropriate,
3 to a fishway prescribed by a Secretary
4 previously in the proceeding under
5 such section; and

6 “(ii) the submittal, in accordance with
7 section 33, by the license applicant or any
8 other party to the license proceeding, fol-
9 lowing submittal of a modified condition or
10 modified prescription pursuant to clause
11 (i), of an alternative to such modified con-
12 dition or modified prescription; and

13 “(iii) a determination, by the Commis-
14 sion, in accordance with the standards of
15 section 33, with respect to an alternative
16 to a modified condition or modified pre-
17 scription submitted pursuant to clause (ii);
18 and

19 “(F) with respect to a license proceeding,
20 prohibit a Secretary, following a trial-type hear-
21 ing, from determining any other condition nec-
22 essary under section 4(e) or prescribing any
23 other fishway under section 18 (not including
24 the submittal of a modification to the initial
25 condition or initial prescription pursuant to

1 subparagraph (E)) that addresses any impact
2 or resource related to a fact established with re-
3 spect to the trial-type hearing.

4 “(c) NO REQUIREMENT TO EXHAUST.—By electing
5 not to request a trial-type hearing under subsection (a),
6 a license applicant and any other party to a license pro-
7 ceeding shall not be considered to have waived its right
8 to raise any issue of fact or law on rehearing or judicial
9 review of the Commission’s license decision.

10 “(d) COORDINATION OF FEDERAL AUTHORIZA-
11 TIONS.—

12 “(1) REQUIREMENT TO IMPLEMENT OR COMPLY
13 WITH CERTAIN FEDERAL AUTHORIZATIONS.—Not-
14 withstanding any other provision of Federal law, a
15 licensee shall be required to implement or comply
16 with a condition or other requirement of a Federal
17 authorization that applies to any portion of a res-
18 ervation occupied by a project, or concerns the con-
19 struction, maintenance, or operation of a fishway,
20 only if such condition or other requirement has
21 been—

22 “(A) determined necessary or prescribed by
23 a Secretary under section 4(e) or 18, as appro-
24 priate; and

1 “(B) included in the license issued by the
2 Commission.

3 “(2) COORDINATION.—Federal and State agen-
4 cies issuing Federal authorizations concerning res-
5 ervations and fishways shall coordinate with the Sec-
6 retary concerned, in accordance with the schedule
7 issued by the Commission under section 308(c).

8 “(e) DEFINITIONS.—In this section:

9 “(1) APPLICABLE CONDITION.—The term ‘ap-
10 plicable condition’ means—

11 “(A) a condition determined necessary by
12 a Secretary under section 4(e);

13 “(B) a fishway prescribed by a Secretary
14 under section 18;

15 “(C) an alternative condition proposed by
16 a license applicant or any other party to the li-
17 cense proceeding under section 33(a); and

18 “(D) an alternative prescription proposed
19 by a license applicant or any other party to the
20 license proceeding under section 33(b).

21 “(2) FEDERAL AUTHORIZATION.—The term
22 ‘Federal authorization’ has the meaning given such
23 term in section 308(a).”.

24 (c) CONFORMING AND CLARIFYING AMENDMENTS.—

1 (1) CONDITIONS.—Subsection (e) of section 4
2 of the Federal Power Act (16 U.S.C. 797(e)) is
3 amended to read as follows:

4 “(e) To issue licenses to citizens of the United States,
5 or to any association of such citizens, or to any corpora-
6 tion organized under the laws of the United States or any
7 State thereof, or to any State or municipality for the pur-
8 pose of constructing, operating, and maintaining dams,
9 water conduits, reservoirs, power houses, transmission
10 lines, or other project works necessary or convenient for
11 the development and improvement of navigation and for
12 the development, transmission, and utilization of power
13 across, along, from, or in any of the streams or other bod-
14 ies of water over which Congress has jurisdiction under
15 its authority to regulate commerce with foreign nations
16 and among the several States, or upon any part of the
17 public lands and reservations of the United States (includ-
18 ing the Territories), or for the purpose of utilizing the sur-
19 plus water or water power from any Government dam, ex-
20 cept as herein provided: *Provided*, That licenses shall be
21 issued within any reservation only after a finding by the
22 Commission that the license will not interfere or be incon-
23 sistent with the purpose for which such reservation was
24 created or acquired, and shall be subject to and contain
25 such conditions as the Secretary of the department under

1 whose supervision such reservation falls determines are
2 necessary for the adequate protection and utilization of
3 the portion of such reservation occupied by the project and
4 will mitigate adverse effects of the project, if any, except
5 that no such condition may impose a requirement that im-
6 pairs project operations, management, or utilization of
7 lands or resources outside such portion of the reservation
8 occupied by the project: *Provided further*, That no license
9 affecting the navigable capacity of any navigable waters
10 of the United States shall be issued until the plans of the
11 dam or other structures affecting navigation have been ap-
12 proved by the Chief of Engineers and the Secretary of the
13 Army. Whenever the contemplated improvement is, in the
14 judgment of the Commission, desirable and justified in the
15 public interest for the purpose of improving or developing
16 a waterway or waterways for the use or benefit of inter-
17 state or foreign commerce, a finding to that effect shall
18 be made by the Commission and shall become a part of
19 the records of the Commission: *Provided further*, That in
20 case the Commission shall find that any Government dam
21 may be advantageously used by the United States for pub-
22 lic purposes in addition to navigation, no license therefor
23 shall be issued until two years after it shall have reported
24 to Congress the facts and conditions relating thereto, ex-
25 cept that this provision shall not apply to any Government

1 dam constructed prior to June 10, 1920: *And provided*
2 *further*, That upon the filing of any application for a li-
3 cense which has not been preceded by a preliminary permit
4 under subsection (f) of this section, notice shall be given
5 and published as required by the proviso of said sub-
6 section. In deciding whether to issue any license under this
7 Part for any project, the Commission, in addition to the
8 power and development purposes for which licenses are
9 issued, shall give equal consideration to the purposes of
10 energy conservation, the protection, mitigation of damage
11 to, and enhancement of, fish and wildlife (including re-
12 lated spawning grounds and habitat), the protection of
13 recreational opportunities, and the preservation of other
14 aspects of environmental quality.”.

15 (2) FISHWAYS.—Section 18 of the Federal
16 Power Act (16 U.S.C. 811) is amended to read as
17 follows:

18 “SEC. 18. The Commission shall require the con-
19 struction, maintenance, and operation by a licensee at its
20 own expense of such lights and signals as may be directed
21 by the Secretary of the Department in which the Coast
22 Guard is operating, and such fishways as are necessary
23 to mitigate effects of the project on fish populations as
24 may be prescribed by the Secretary of the Interior or the
25 Secretary of Commerce, as appropriate. The operation of

1 any navigation facilities which may be constructed as a
2 part of or in connection with any dam or diversion struc-
3 ture built under the provisions of this Act, whether at the
4 expense of a licensee hereunder or of the United States,
5 shall at all times be controlled by such reasonable rules
6 and regulations in the interest of navigation, including the
7 control of the level of the pool caused by such dam or di-
8 version structure as may be made from time to time by
9 the Secretary of the Army, and for willful failure to com-
10 ply with any such rule or regulation such licensee shall
11 be deemed guilty of a misdemeanor, and upon conviction
12 thereof shall be punished as provided in section 316 here-
13 of.”.

14 **SEC. 6. PROMOTING EFFICIENT AND TIMELY DECISION-**
15 **MAKING.**

16 (a) PROCESS COORDINATION.—Section 308 of the
17 Federal Power Act (16 U.S.C. 825g) is amended—

18 (1) in the section heading, by striking “**HEAR-**
19 **INGS**” and inserting “**PROCESS COORDINATION;**
20 **HEARINGS**”;

21 (2) by redesignating subsections (a) and (b) as
22 subsections (e) and (f), respectively; and

23 (3) by inserting, before subsection (e), as redес-
24 igned by paragraph (2), the following subsections:

1 “(a) FEDERAL AUTHORIZATION.—In this section, the
2 term ‘Federal authorization’—

3 “(1) means any authorization required under
4 Federal law with respect to a project licensed or ex-
5 empted under part I or section 405(d) of the Public
6 Utility Regulatory Policies Act of 1978; and

7 “(2) includes any permits, special use author-
8 izations, certifications, opinions, consultations, deter-
9 minations, or other approvals as may be required
10 under Federal law with respect to a project licensed
11 or exempted under part I or section 405(d) of the
12 Public Utility Regulatory Policies Act of 1978.

13 “(b) DESIGNATION AS LEAD AGENCY.—

14 “(1) IN GENERAL.—The Commission shall act
15 as the lead agency for the purposes of coordinating
16 all applicable Federal authorizations and for the
17 purposes of complying with the National Environ-
18 mental Policy Act of 1969, and any applicable envi-
19 ronmental review under State law.

20 “(2) OTHER AGENCIES.—Each Federal and
21 State agency considering an aspect of an application
22 for Federal authorization shall cooperate with the
23 Commission and comply with the deadlines estab-
24 lished by the Commission.

25 “(c) SCHEDULE.—

1 “(1) COMMISSION AUTHORITY TO SET SCHED-
2 ULE.—For the proceeding for each project, the Com-
3 mission shall, in consultation with appropriate Fed-
4 eral and State agencies, establish a schedule for all
5 Federal authorizations. In establishing the schedule,
6 the Commission shall—

7 “(A) ensure expeditious completion of all
8 Federal authorizations; and

9 “(B) comply with applicable schedules es-
10 tablished by Federal law.

11 “(2) FAILURE TO MEET SCHEDULE.—

12 “(A) CONDITIONS AND PRESCRIPTIONS
13 FOR LICENSES; TERMS AND CONDITIONS FOR
14 EXEMPTIONS.—If an agency does not comply
15 with the schedule established by the Commis-
16 sion with respect to a condition determined nec-
17 essary under section 4(e), a fishway prescribed
18 under section 18, or a term or condition deter-
19 mined appropriate under section 30(e) of this
20 Act or pursuant to section 405(d) of the Public
21 Utility Regulatory Policies Act of 1978, the
22 Commission may decline to include the condi-
23 tion, fishway, or term or condition in the
24 project license or exemption, as applicable.

1 “(B) AGENCY DELAY.—The failure of an
2 agency to comply with the Commission schedule
3 established pursuant to this section shall be
4 considered inconsistent with Federal law for the
5 purposes of section 313(d)(2).

6 “(d) CONSOLIDATED RECORD.—The Commission
7 shall, with the cooperation of Federal and State agencies,
8 maintain a complete consolidated record of all decisions
9 made or actions taken by the Commission or by a Federal
10 agency (or State agency acting under delegated Federal
11 authority) with respect to any Federal authorization. Such
12 record shall be the record for judicial review under section
13 313(d) of decisions made or actions taken of Federal and
14 State agencies, except that, if the Court determines that
15 the record does not contain sufficient information, the
16 Court may remand the proceeding to the Commission for
17 further development of the consolidated record.”.

18 (b) JUDICIAL REVIEW OF ACTIONS RELATED TO HY-
19 DROPOWER PROJECTS.—Section 313 of the Federal
20 Power Act (16 U.S.C. 8251) is amended by adding at the
21 end the following new subsection:

22 “(d) JUDICIAL REVIEW OF FEDERAL AND STATE
23 AGENCY ACTIONS RELATED TO HYDROPOWER
24 PROJECTS.—

1 “(1) IN GENERAL.—For any project subject to
2 licensing or exemption under part I, the United
3 States Court of Appeals for the District of Columbia
4 Circuit or the United States court of appeals for any
5 circuit wherein the licensee or applicant has its prin-
6 cipal place of business shall have original and exclu-
7 sive jurisdiction over any civil action for the review
8 of—

9 “(A) an order or action of a Federal agen-
10 cy (other than the Commission) or State agency
11 acting pursuant to Federal law to issue, carry
12 out, or deny any Federal authorization (as such
13 term is defined in section 308(a)); and

14 “(B) an alleged failure to act by a Federal
15 agency (other than the Commission) or State
16 agency acting pursuant to Federal law to issue,
17 carry out, or deny any such Federal authoriza-
18 tion.

19 “(2) COURT ACTION.—If the Court finds that
20 an order, action, or failure to act described in para-
21 graph (1) is inconsistent with the Federal law gov-
22 erning such Federal authorization and would prevent
23 the licensing, construction, expansion, or operation
24 of the project subject to licensing or exemption
25 under part I, the Court shall, as appropriate, waive

1 any requirement to obtain the Federal authorization
2 or remand the proceeding to the agency to take ap-
3 propriate action consistent with the order of the
4 Court. If the Court remands the order or action to
5 the Federal or State agency, the Court shall set a
6 reasonable schedule and deadline for the agency to
7 act on remand.

8 “(3) COMMISSION ACTION.—For any civil action
9 described in this subsection, the Commission shall
10 file with the Court the consolidated record of such
11 order or action to which the appeal hereunder re-
12 lates.

13 “(4) EXPEDITED REVIEW.—The Court shall set
14 any action brought under this subsection for expe-
15 dited consideration.”.