

Bipartisan American Affordability and Jobs Act (BAAJA) of 2026: Analysis of Clean Water Act Provisions

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Bipartisan American Affordability and Jobs Act (BAAJA) of 2026: Analysis of Clean Water Act Provisions

The Bipartisan American Affordability and Jobs Act of 2026 (BAAJA; S. 5653) was introduced on September 30, 2026. The bill as introduced contains seven titles within two divisions, which aim to reform certain federal environmental review and permitting processes to expedite a wide range of project types, with an emphasis on energy-related projects.

Some Members have shown sustained interest over several Congresses in amending the nation's permitting laws to increase energy production and expedite a variety of projects (e.g., transportation infrastructure, energy, data center development, ecological restoration, stormwater infrastructure). Some Members have introduced numerous permitting-reform-related bills, some of which have focused on specific environmental statutes with review and/or permitting provisions (e.g., the National Environmental Policy Act, Clean Water Act, Endangered Species Act, National Historic Preservation Act). Others have focused on specific project types (e.g., electricity transmission lines, natural gas pipelines, geothermal energy development), and some have included broader reforms to permitting and reviews across project types.

Areas of debate on previous legislative proposals have included whether reforms should target conventional or renewable forms of energy, whether amending bedrock environmental laws to shorten reviews may weaken environmental protections, and whether certain proposals may narrow the role of states in the review process and/or reduce opportunities for public input and judicial review.

BAAJA is the product of negotiations involving Members of the Senate Committees on Environment and Public Works and Energy and Natural Resources. In a majority press release announcing the introduction of the bill, the Senate Committee on Energy and Natural Resources asserted that the legislation “will strengthen American energy security by accelerating the permitting process for critical energy and mineral projects across the United States.” A majority press release from the Senate Committee on Environment and Public Works stated that the agreement “will deliver cheaper energy, more jobs, and responsible growth across the United States.”

This report analyzes the provisions in BAAJA specific to the Clean Water Act (CWA, Division A, Title II). Section 1201 would formally require the U.S. Environmental Protection Agency (EPA) to issue water quality criteria through notice and comment rulemaking. It would specify the judicial review provision applicable to issuance of water quality criteria and regulations defining the scope of “waters of the United States.” Section 1202 would amend CWA Section 401 to narrow the scope of what certifying authorities (typically states) can consider in their water quality certification reviews and the scope of conditions they could include when granting certifications generally. It would further narrow the scope of certification reviews and conditions for certain projects, including interstate transmission line and natural gas pipeline projects. It would also narrow the bases on which certification may be denied and would amend several aspects of Section 401 certification timelines, processes, and judicial review. Section 1203 would extend the permit term limit for National Pollutant Discharge Elimination System (NPDES) permits from 5 years to 10 years. Section 1204 would limit the period of time during which EPA could issue a Section 404(c) “veto” of a Section 404 permit for the discharge of dredged or fill material into waters of the United States. It would extend the permit term limits for Section 404 general permits from 5 years to 10 years. It would specify that the U.S. Army Corps of Engineers (USACE) consideration of environmental effects for general permits be limited to *water quality requirements*, which is newly defined in the bill, and that any adverse effects of discharges of dredge or fill material into less than 2 acres of waters of the United States are considered minimal. It would require USACE to maintain certain nationwide permits and would raise the threshold of allowable impacts for coverage under these permits. Section 1205 would impose a 150-day statute of limitations for lawsuits challenging Section 404 permits and certain other actions taken pursuant to Section 404. It would limit the availability of judicial review to parties that commented on an issue related to the lawsuit during the public comment period. It would limit the ability of courts to vacate permits or agency actions found to be unlawful and would require courts to set and enforce specific deadlines for agencies to act on remand.

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Overview

The Bipartisan American Affordability and Jobs Act of 2026 (BAAJA; S. 5653) was introduced on September 30, 2026. The bill as introduced contains seven titles within two divisions, which aim to reform certain federal environmental review and permitting processes to expedite a wide range of project types, with an emphasis on energy-related projects.

BAAJA is organized according to two divisions:

1. Division A—Committee on Environment and Public Works—has four titles: the National Environmental Policy Act of 1969 (NEPA), the Clean Water Act (CWA), the Endangered Species Act of 1973 (ESA), and Project Certainty.
2. Division B—Committee on Energy and Natural Resources—has three titles: Electric Transmission, Energy Permitting, and Historic Preservation.

This report examines the sections in BAAJA specific to the CWA (Division A, Title II):

- Section 1201. Water Quality Criteria
- Section 1202. Clean Water Act permitting and State certification
- Section 1203. Permit term for NPDES permits¹
- Section 1205. Judicial review timeline clarity

The report provides background on the permitting and review provisions BAAJA amends, compares each CWA-related provision in BAAJA to existing law and regulations, and provides an analysis of selected changes in the bill.

Clean Water Act Background

To help achieve the CWA's objective and goals, the statute prohibits the discharge of pollutants from any point source (e.g., a discrete conveyance such as a pipe) to waters of the United States (WOTUS) without a permit. The CWA establishes two permitting programs that may be used to authorize certain discharges to WOTUS. These are the Section 402 National Pollutant Discharge Elimination System (NPDES) permitting program and the Section 404 permitting program for dredged or fill material.² Separate from, but related to permitting, CWA Section 401 requires a type of approval, called a *water quality certification*, for any federal permit or license that may result in a discharge to WOTUS.³ Division A, Title II, of BAAJA would make changes to these three programs as well as to the provisions governing judicial review of various actions taken under the CWA.

NPDES permits are issued by 47 states and the U.S. Environmental Protection Agency (EPA) for discharges of pollutants from point sources, such as municipal and industrial sources.⁴ These sources include wastewater treatment facilities, municipal stormwater collection systems, and a

¹ National Pollutant Discharge Elimination System (NPDES).

² 33 U.S.C. §§1342 and 1344. For further information, see CRS Report R49486, *Clean Water Act Permitting: Overview and Policy Issues*, by Laura Gatz.

³ 33 U.S.C. §1341. For further information, see CRS Report R46615, *Clean Water Act Section 401: Overview and Recent Developments*, by Laura Gatz and Kate R. Bowers.

⁴ U.S. Environmental Protection Agency (EPA), "NPDES State Program Authority," <https://www.epa.gov/npdes/npdes-state-program-authority>.

wide variety of industrial dischargers. The CWA limits permit terms for NPDES permits, which can be issued as individual or general permits, to five-year terms.⁵

Section 404 permits are issued primarily by the U.S. Army Corps of Engineers (USACE) and two states (Michigan and New Jersey) for discharges of dredged or fill material.⁶ Activities that may require a Section 404 permit include pipeline projects, water resource projects, mining projects, transmission line projects, or other development projects. Similar to NPDES permits, there are two main types of Section 404 permits: individual permits and general permits.⁷ USACE or states issue individual permits for individual projects or applicants, typically when the project's discharge may cause more than minimal individual or cumulative impacts.⁸ USACE (and authorized states) may issue general permits for proposed activities that are similar in nature and will result in only minimal individual and cumulative adverse environmental effects.⁹ These permits, authorized under CWA Section 404(e), are issued on a nationwide, regional, or state basis for particular categories of activities.¹⁰ The CWA limits general permit terms to no more than five years.¹¹

Nationwide permits (NWP) are general permits that authorize categories of similar activities on a nationwide basis.¹² USACE issues NWPs (along with general conditions and definitions for the NWPs) through rulemaking, typically every five years. In January 2026, USACE reissued 56 existing NWPs (with some modifications) and issued one new NWP.¹³ These NWPs went into effect on March 15, 2026. Examples of activities covered under NWPs, if they meet terms and conditions of the permit, are oil and natural gas pipeline activities, linear transportation projects, utility line activities, residential developments, commercial and institutional developments, agricultural activities, mining activities, and wetland and stream restoration activities.¹⁴

The CWA also establishes distinct responsibilities for EPA in implementing Section 404. In addition, EPA has authority under Section 404(c) to prohibit, deny, restrict, or withdraw the use of a specified area as a disposal site for dredged or fill material whenever the Administrator determines that the discharge will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.¹⁵

⁵ 33 U.S.C. §1342(a)(3) and (b)(1)(B). EPA or states issue individual permits for a single discharger (or in rare cases to multiple co-permittees) to reflect site-specific conditions based on the discharger's operations and unique information provided in the permit application. These individual permits are specifically tailored to an individual facility. EPA or states issue general permits for one or more categories or subcategories of dischargers with similar operations and types of discharges that can provide coverage to multiple dischargers.

⁶ EPA, "Tribal and State 404 Assumption Efforts," <https://www.epa.gov/cwa404g/tribal-and-state-section-404-assumption-efforts>.

⁷ 33 U.S.C. §1344; 33 C.F.R. Part 323.

⁸ 33 C.F.R. §323.2. See also U.S. Army Corps of Engineers (USACE), "Regulatory Request System: Permitting," <https://rrs.usace.army.mil/rrs/home/permitting>.

⁹ 33 U.S.C. §1344(e); 33 C.F.R. §323.2.

¹⁰ 33 U.S.C. §1344(e); 33 C.F.R. §323.2.

¹¹ 33 U.S.C. §1344(e)(2).

¹² 33 C.F.R. Part 330; USACE, "Regulatory Request System: Permitting," <https://rrs.usace.army.mil/rrs/home/permitting>. USACE division engineers can modify, suspend, or revoke nationwide permits (NWPs) in a particular region, or for a specific category of activities or waters. 33 C.F.R. §330.5(c). USACE district engineers can modify, suspend, or revoke activity-specific NWP authorizations in their districts. 33 C.F.R. §330.5(d).

¹³ USACE, "Reissuance and Modification of Nationwide Permits," 91 *Federal Register* 768, January 8, 2026.

¹⁴ USACE, *2026 Nationwide Permits Final Action Summary Chart*, <https://usace.contentdm.oclc.org/utis/getfile/collection/pl6021coll9/id/3211>.

¹⁵ Clean Water Act (CWA) §404(c) (33 U.S.C. §1344(c)).

Separate from, but related to permitting, CWA Section 401 requires a type of approval, called a *water quality certification*, for any federal permit or license that may result in a discharge to WOTUS.¹⁶ A water quality certification, issued by the state (or other certifying authority)¹⁷ in which the discharge originates, attests that the discharge will comply with applicable provisions of certain enumerated sections of the CWA (301, 302, 303, 306, and 307) and may include consideration of other water quality requirements.¹⁸ Examples of activities that may require a CWA Section 401 water quality certification include activities requiring a USACE-issued CWA Section 404 permit, projects requiring USACE Rivers and Harbors Act permits, hydropower projects licensed by the Federal Energy Regulatory Commission (FERC), and certificates of public convenience and necessity issued by FERC. A certifying authority may grant, grant with conditions, deny, or waive certification of proposed federal licenses or permits.¹⁹

Table 1 provides an analysis of the CWA-related provisions in BAAJA (Division A, Title II) compared to current law and regulations (and/or current practice). The first column in the table specifies the relevant section number from BAAJA and, where needed to denote different portions of the bill within longer sections, identifies specific provisions based on the *U.S. Code* citation included in the bill text.

¹⁶ 33 U.S.C. §1341. For more information on CWA Section 401, see CRS Report R46615, *Clean Water Act Section 401: Overview and Recent Developments*, by Laura Gatz and Kate R. Bowers.

¹⁷ Per CWA §518 (33 U.S.C. §1377), EPA is authorized to treat an Indian tribe as a state for certain sections of the CWA including CWA §401 if the tribe meets certain statutory eligibility criteria. EPA acts as the certifying authority on tribal lands where the tribe has not been granted treatment as a state, as well as on federal lands with exclusive federal jurisdiction.

¹⁸ CWA §401 (33 U.S.C. §1341); 40 C.F.R. §§121.1(j) and 121.3.

¹⁹ CWA §401 (33 U.S.C. §1341); 40 C.F.R. §121.7.

Table I. Clean Water Act (CWA) Provisions in the Bipartisan American Affordability and Jobs Act of 2026 (BAAJA) as Introduced (Division A, Title II), Compared with Current Law and Regulations

BAAJA Section and Provision^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
Section 1201. Water Quality Criteria			
Section 1201(a) Administrative Procedure	CWA Section 304(a) requires the U.S. Environmental Protection Agency (EPA) to develop and publish water quality criteria but does not require that they go through notice and comment procedures. (33 U.S.C. §1314(a))	On its own initiative, EPA adopted a process for when it derives new water quality criteria or initiates a major reassessment of existing criteria that includes publishing three separate notices in the <i>Federal Register</i> to (1) announce the assessment to solicit additional information; (2) solicit public comment on the draft water quality criteria; and (3) announce the final water quality criteria. ^b	Would formally require EPA to go through notice and comment rulemaking pursuant to the Administrative Procedure Act (APA; 5 U.S.C. §553) when the agency develops water quality criteria.
Section 1201(b) Judicial Review	CWA Section 509(b)(1), the statute's judicial review provision, applies to enumerated actions taken by EPA under specific sections of the CWA. For covered actions, Section 509(b)(1) provides for direct review in the federal circuit courts of appeals and a 120-day statute of limitations. Challenges to EPA actions falling outside the scope of Section 509(b)(1) are governed by the APA, which provides for judicial review in federal district courts, and are generally subject to a six-year statute of limitations. (33 U.S.C. §1369(b)(1); 5 U.S.C. §704; 28 U.S.C. §2401(a))	CWA regulations do not restate or further specify which actions are subject to Section 509(b)(1).	Would provide that judicial review of water quality criteria and regulations to define the scope of the term <i>waters of the United States</i> are subject to the CWA's judicial review provision.

BAAJA Section and Provision ^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
Section 1202 Clean Water Act Permitting and State Certification			
33 U.S.C. §1341 (e)(1) Effect of Certain Certification Actions	No existing related provision.	No existing related regulation or practice.	Would newly deem <i>water quality requirements</i> (as defined in the bill) satisfied for the purpose of considering the application for the federal license or permit when a certifying authority grants a certification application or waives the certification requirement. When a certifying authority grants a certification application with conditions, water quality requirements would be deemed satisfied for the purpose of considering the federal license or permit application subject to the conditions included in the certification.
33 U.S.C. §1341 (e)(2)(A) Scope of Certification – In General	CWA Section 401(a)(1) requires any applicant for a federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into waters of the United States (WOTUS), to provide a certification from the state in which the discharge originates that any such discharge will comply with specific enumerated sections of the CWA, including Sections 301, 302, 303, 306, and 307. (33 U.S.C. §1341(a)(1))	40 C.F.R. §121.3 specifies that the scope of certification reviews is to evaluate whether the activity will comply with applicable <i>water quality requirements</i>. 40 C.F.R. §121.1(j) defines <i>water quality requirements</i> to mean any limitation, standard, or other requirement under Sections 301, 302, 303, 306, and 307 of the CWA, any federal and state or tribal laws or regulations implementing those sections, and any other water-quality-related requirement of state or tribal law.	- Would specify that the scope of a certification is limited to ensuring compliance with <i>water quality requirements</i>. - The bill would add a new subsection (h) to Section 401 to define <i>water quality requirements</i> to mean (A) the applicable provisions of Sections 301, 302, 303, 306, and 307; and (B) any federal and state or tribal laws (including regulations) implementing Sections 301, 302, 303, 306, and 307 that are applicable to discharges into WOTUS.

BAAJA Section and Provision^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
33 U.S.C. §1341 (e)(2)(B) Scope of Certification – Prohibition	CWA Section 401(a)(1) authorizes certifying authorities to grant, waive, or deny a certification. Section 401(d) authorizes a certifying authority to grant a certification with any conditions necessary to assure that any applicant for a federal license or permit will comply with any applicable effluent limitations, other limitations, and standards under Sections 301, 302, 306, 307, and with any other appropriate requirement of state law set forth in such certification. (33 U.S.C. §1341(a)(1), (d))	• 40 C.F.R. §121.7 establishes requirements for information certifying authorities are required to provide in writing when they grant a certification, grant it with conditions, deny it, or expressly waive it. • All decisions require identification of the decision; identification of the applicable license or permit; and an indication that the certifying authority complied with its public notice procedures under Section 401(a)(1). • A grant of certification with conditions also requires a statement explaining why each of the included conditions is necessary to ensure that the activity will comply with water quality requirements. • A denial also requires a statement explaining why the certifying authority cannot certify that the activity will comply with water quality requirements, including but not limited to a description of any missing water-quality-related information if the denial is based on insufficient information. • State-specific procedures and requirements may also govern the practices of individual states when acting as certifying authorities.	• Would prohibit a certifying authority from denying a certification unless it determines by clear and convincing evidence that no modification to or reasonable condition on the certification would make it possible to grant the certification without violating <i>water quality requirements</i>. • Would prohibit a certifying authority from granting a certification with conditions unless it determines by clear and convincing evidence that the conditions are (1) necessary to ensure compliance with <i>water quality requirements</i>, (2) the least burdensome conditions to ensure compliance with <i>water quality requirements</i>, and (3) consistent with the requirements of the federal license or permit for which the certification application was made.
33 U.S.C. §1341 (e)(2)(C) Scope of Certification – Savings Provision	CWA Section 401(d) authorizes states to establish conditions necessary to ensure that any applicant for a federal license or permit will comply with Sections 301, 302, 306, and 307, and with any other appropriate requirement of state law, and shall become a condition on the federal license or permit. (33 U.S.C. §1341(d))	CWA regulations do not restate or further specify the statutory requirement.	Would specify that nothing proposed in this paragraph in BAAJA would allow the federal licensing or permitting agency to refuse to include conditions from a certifying authority in a license or permit if the conditions are necessary to ensure compliance with water quality requirements.

BAAJA Section and Provision^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
33 U.S.C. §1341 (e)(3)(A) Required Procedures – Notice and Hearings	CWA Section 401(a)(1) requires states or interstate agencies to establish procedures for public notice for all certification applications and, to the extent the state or interstate agency deems appropriate, procedures for public hearings in connection with specific applications. (33 U.S.C. §1341(a)(1))	40 C.F.R. §121.6(d) specifies that when the federal licensing or permitting agency and the certifying authority jointly decide the reasonable period of time in which the certifying authority must act (which is a default of six months if they do not agree), the reasonable period of time may be extended if a longer period of time is necessary to accommodate the certifying authority's public notice procedures or force majeure events. The reasonable period of time in that case shall be extended by the period of time necessitated by public notice procedures or the force majeure event, but shall not cause the reasonable period of time to exceed one year.	Would specify that taking into account state or tribal law, as appropriate, and the review period specified in the bill, each certifying authority shall establish procedures for public notice for all certification applications; to the extent the state or interstate agency deems appropriate, procedures for public hearings in connection with specific applications; and for prefilming meetings.
33 U.S.C. §1341 (e)(3)(B) Required Procedures – Prefiling Meeting	The CWA does not include requirements for a prefilming meeting.	40 C.F.R. §121.4 requires the project proponent to request a prefilming meeting with the certifying authority at least 30 days prior to submitting a request for certification in accordance with the certifying authority's applicable submission procedures, unless the certifying authority waives or shortens the requirement for a prefilming meeting request.	• Would specify that a project proponent may request a prefilming meeting with the certifying authority before submitting a certification application. • In instances where the project proponent requests a prefilming meeting, would require the certifying authority to respond to the request within 30 days and hold the prefilming meeting within 60 days after receiving the request.

33 U.S.C. §1341 (e)(3)(C)(ii) Required Procedures – Certification Applications – Requirements for a Complete Application	CWA Section 401(a)(1) requires the certifying authority to act on a request for certification within a <i>reasonable period of time</i> (not to exceed one year) after receipt of such request, or the certification is waived. (33 U.S.C. §1341(a)(1)) The statute does not establish any requirements for the contents of a certification request.	• 40 C.F.R §121.5 establishes the minimum contents required in a request for certification. For any certifying authority, these include • a copy of the federal license or permit application submitted to the federal agency (for individual permits) or a copy of the draft federal license or permit (for general permits); and • any readily available water-quality-related materials that informed the development of the application. • If EPA is the certifying authority, the regulations establish additional required components. Other certifying authorities (e.g., states, tribes) may identify additional contents of a request that are relevant to the water-quality-related impacts from the activity prior to when the certification request is made. If they do not, those identified for EPA apply: 1. a description of the proposed activity, including the purpose of the proposed activity and the type(s) of discharge(s) that may result from the proposed activity; 2. the specific location of any discharge(s) that may result from the proposed activity; 3. a map or diagram of the proposed activity site, including the proposed activity boundaries in relation to local streets, roads, and highways; 4. a description of current activity site conditions, including but not limited to relevant site data, photographs that represent current site conditions, or other relevant documentation; 5. the date(s) on which the proposed activity is planned to begin and end and, if known, the approximate date(s) when any discharge(s) may commence; 6. a list of all other federal, interstate, tribal, state, territorial, or local agency authorizations required for the proposed activity and the current status of each authorization; and	• Would establish statutory requirements for a complete application to include the following: • Identification of each applicant for the federal license or permit. • A statement that information included is truthful, accurate, and complete to the applicant’s best knowledge. • For certification applications for individual permits or licenses, a complete request would also need to include • identification of the federal license or permit subject to the certification request; • identification of any activity subject to the license or permit; • identification of the location and nature of any discharge that may result from the activity, and the location of the receiving waters; • a description of means that may be used to monitor, control, or manage any such discharge; and • a list of all federal, interstate, tribal, state, or local agency authorizations related to the requirement for a certification and any approval or denial of such an authorization already received. • Any additional materials required by the certifying authority under 33 U.S.C. §1341(e)(3)(C)(iii), subject to the condition that the additional materials
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BAAJA Section and Provision^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
		7. documentation that a prefilng meeting request was submitted to the certifying authority in accordance with applicable submission procedures, unless the prefilng meeting request requirement was waived.	are only required for certification applications submitted after the date on which the certifying authority promulgated regulations as authorized under 33 U.S.C. §1341(e)(3)(C)(iii).
33 U.S.C. §1341 (e)(3)(C)(iii) Required Procedures – Certification Applications – Additional Materials	No comparable requirement.	40 C.F.R. §121.5(c) specifies that where a project proponent is seeking certification from a certifying authority other than EPA, and that certifying authority has identified contents of a request for certification in addition to those identified in 40 C.F.R. §121.5(a) that are relevant to the water-quality-related impacts from the activity, the project proponent shall include in the request for certification those additional contents identified prior to when the request for certification is made.	• Would authorize certifying authorities to promulgate regulations establishing additional materials to be required in completed certification applications that the certifying authority determines are necessary to demonstrate compliance with water quality requirements. • Would specify that a certifying authority shall base the determination of what additional materials are needed only on what can reasonably be expected of an applicant at the time a certification application is submitted. • Would specify that where a certifying authority has not promulgated regulations identifying additional materials to be included in completed certification applications, a certification application to that certifying authority shall be considered complete if it includes all of the items included in 33 U.S.C. §1341(e)(3)(C)(ii)(I) through (III).

BAAJA Section and Provision ^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
33 U.S.C. §1341 (e)(3)(C)(iv)-(v) Required Procedures – Certification Applications – Acknowledgement of Receipt; Notification of Complete Application or Identification of Missing Materials	CWA Section 401(a)(2) requires the certifying authority to act on a request for certification within a reasonable period of time (not to exceed one year) after receipt of such request, or the certification is waived. (33 U.S.C. §1341(a)(2)). The CWA does not establish any more granular timelines related to application-related notifications.	• 40 C.F.R. §121.6 requires the certifying authority to send written confirmation to the project proponent and federal agency of the date the certification request was received. • There are no established federal timelines by which a certifying authority must acknowledge receipt of an application, notify an applicant that its application is complete, or identify additional information that is needed for the application to be considered complete.	• Would require the certifying authority to acknowledge receipt of the certification application in writing within 3 days. • Would require the certifying authority to notify the applicant within 90 days of the written acknowledgement of receipt, either that the application is complete or to identify in writing all specific additional materials or information needed to be considered complete.
33 U.S.C. §1341 (e)(3)(C)(vi) Required Procedures – Certification Applications – Petition to Court	No comparable requirement.	• When a state acts as a certifying authority, state law may govern both the certification process and the availability of judicial review in challenges to the state's adherence to procedural requirements. Questions regarding the state's adherence to requirements imposed by Section 401 itself are generally reviewable in federal court. • When EPA acts as a certifying authority, judicial review of challenges to EPA's adherence to procedural requirements relating to certification is governed by the APA. Review is based on the agency's administrative record. (5 U.S.C. §§704, 706)	• Would authorize the certification applicant to petition for judicial review “in a court of competent jurisdiction” of a certifying authority’s alleged failure to act in accordance with Sections 401(e)(3)(C)(ii) through (v) as added by the bill. Would direct courts reviewing such petitions to consider the administrative record, which shall consist of the materials required to be submitted under Section 401(e)(3)(C)(ii); materials identified by the certifying authority as missing; the information submitted by the applicant to the certifying authority; and any evidence submitted by the applicant that suggests that the certifying authority’s defense to the petition is pretextual. Would direct courts to “provide injunctive relief, as appropriate,” upon a finding that a certifying authority has failed to act in accordance with Sections 401(e)(3)(C)(ii), (iv), or (v).

BAAJA Section and Provision^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
33 U.S.C. §1341 (e)(3)(D) Denials of Certification for Individual License or Permit	CWA Section 401(a)(1) authorizes certifying authorities to deny certifications but does not specify what information must be included with the denial. (33 U.S.C. §1341(a)(1))	40 C.F.R. §121.7(e) establishes requirements for information certifying authorities are required to provide in writing when they deny a certification, including 1. identification of the decision as a denial of certification; 2. identification of the applicable federal license or permit; 3. a statement explaining why the certifying authority cannot certify that the activity will comply with water quality requirements, including but not limited to a description of any missing water-quality-related information if the denial is based on insufficient information; and 4. an indication that the certifying authority complied with its public notice procedures established pursuant to CWA Section 401(a)(1).	Would require the certifying authority, when denying a certification, to provide to the federal licensing or permitting agency and the applicant - the specific water quality requirements that the certifying authority determined will be violated and a statement explaining why they will be violated; and - if the denial is due to insufficient information, a description of the specific water quality data or information, if any, that would be needed to evaluate whether granting certification will comply with water quality requirements.
33 U.S.C. §1341 (e)(4)(A) Review Period – In General	CWA Section 401(a)(1) requires the certifying authority to act within a reasonable period of time, which shall not exceed one year, after the receipt of a certification request; otherwise the certification is waived. (33 U.S.C. §1341(a)(1)) The statute does not specify who should determine the reasonable period of time, nor does it specify how the reasonable period of time should be determined.	40 C.F.R. §121.6(a) specifies that the reasonable period of time begins on the date that the certifying authority receives a request for certification, as defined in §121.5. 40 C.F.R. §121.6(b) specifies that the federal agency and certifying authority may jointly agree in writing to the reasonable period of time, provided the reasonable period of time does not exceed one year from the date that the certification request was received. It also specifies these agreements may establish categorical reasonable periods of time. 40 C.F.R. §121.6(c) establishes a default reasonable period of time of six months if the federal agency and certifying authority do not agree on the reasonable period of time.	- Would specify that the federal licensing or permitting agency, in consultation with the certifying authority, establishes the reasonable period of time, either categorically or on a case-by-case basis. - Would specify that the reasonable period of time (not to exceed one year from the date of receipt of the certification application) shall account for time required under applicable state or tribal law for public notice and comment periods.

BAAJA Section and Provision^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
33 U.S.C. §1341 (e)(4)(B) Review Period – Failure to Act	CWA Section 401(a)(1) specifies that if a certifying authority fails or refuses to act on a request for certification within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements shall be waived. (33 U.S.C. §1341(a)(1)) The statute does not include requirements specific to extensions or withdrawal and resubmission of certification applications.	• 40 C.F.R. §121.9(a) specifies that the certification requirement shall be waived if a certifying authority fails or refuses to act on a request for certification within the reasonable period of time. • 40 C.F.R. §121.7(a) specifies that a certifying authority may act on a request for certification in one of four ways: grant certification, grant certification with conditions, deny certification, or expressly waive certification. • Current regulations do not include requirements specific to withdrawal and resubmission of certification applications.	• Would specify that if a certifying authority fails or refuses to issue a final decision as described under paragraph (e)(6) of the bill by the end of the reasonable period of time and the reasonable period of time has not been extended in accordance with requirements under subparagraph (e)(4)(C) of the bill, the certification shall be waived. • Paragraph (e)(6) of the bill would specify that a certifying authority's final action shall be one of the following: grant of certification, grant of certification with conditions, denial of certification; or waiver of certification (either expressly or if the certifying authority does not act within the reasonable period of time). • Would provide that the reasonable period of time shall restart when the certification application is voluntarily withdrawn by the applicant and the applicant submits a new certification application.
33 U.S.C. §1341 (e)(4)(C) Review Period – Requirement for Extension	CWA Section 401(a)(1) specifies that the reasonable period of time shall not exceed one year. (33 U.S.C. §1341(a)(1)) The statute does not include requirements specific to extensions.	40 C.F.R. §121.6(e) specifies that the federal agency and certifying authority may agree in writing to extend the reasonable period of time for any reason, provided that the extension shall not cause the reasonable period of time to exceed one year from the date that the certification request was received.	Would specify that the reasonable period of time may be extended only if the applicant requests the extension in writing and the certifying authority concurs in writing.

BAAJA Section and Provision^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
33 U.S.C. §1341 (e)(5) Waiver of Certification Requirement	CWA Section 401(a)(1) specifies that if a certifying authority fails or refuses to act on a request for certification within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements shall be waived. (33 U.S.C. §1341(a)(1))	40 C.F.R. §121.7(a) specifies that a certifying authority may act on a request for certification in one of four ways: grant certification, grant certification with conditions, deny certification, or expressly waive certification.	• Would specify that a certifying authority may, at any time during the reasonable period of time, affirmatively (i.e., expressly) waive the requirement for certification. • Would provide that a waiver of the certification requirement shall not be subject to judicial review notwithstanding any other provision of federal law.
33 U.S.C. §1341 (e)(6) Final Action	CWA Section 401(a)(1) specifies that if a certifying authority fails or refuses to act on a request for certification within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements shall be waived. (33 U.S.C. §1341(a)(1)) The statute does not define what it means to act.	• 40 C.F.R. §121.9(a) specifies that the certification requirement shall be waived if a certifying authority fails or refuses to act on a request for certification within the reasonable period of time. • 40 C.F.R. §121.7(a) specifies that a certifying authority may act on a request for certification in one of four ways: grant certification, grant certification with conditions, deny certification, or expressly waive certification.	Would specify that a certifying authority's final action shall be one of the following: grant of certification, grant of certification with conditions, denial of certification; or waiver of certification requirements (either affirmatively or if the certifying authority does not act within the reasonable period of time).

BAAJA Section and Provision^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
33 U.S.C. §1341 (f) Judicial Review	No comparable requirement.	- When a state acts as a certifying authority, state law may govern the burden of proof or standard of review in judicial challenges to actions on certification applications. A state's decision on a certification application is generally reviewable in state court. - When EPA acts as a certifying authority, judicial review of challenges to EPA's actions on certification applications is governed by the APA. (5 U.S.C. §§ 704, 706)	Would provide that in judicial review of denial of certification or certification with conditions, the certifying authority bears the burden to demonstrate by clear and convincing evidence either that, (1) in the case of denial, no reasonable modifications or conditions would make it possible to grant certification without violating water quality requirements; or (2) in the case of certification with conditions, the conditions are necessary to ensure compliance with <i>water quality requirements</i> , the least burdensome conditions to ensure compliance with <i>water quality requirements</i> , and consistent with the requirements of the federal license or permit for which the certification application was made.
33 U.S.C. §1341 (g)(1) Special Rule for Certain Certifications – Definition of Interstate Transmission Line Project	The CWA does not define <i>interstate transmission line project</i> .	CWA regulations do not define <i>interstate transmission line project</i> .	Would newly define, for purposes of CWA Section 401, <i>interstate transmission line project</i> to mean a project for the construction, modification, or upgrade of a transmission facility that is part of the bulk-power system (as defined in Section 215(a) of the Federal Power Act (16 U.S.C. §824o(a))).

BAAJA Section and Provision ^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
33 U.S.C. §1341 (g)(2) Special Rule for Certain Certifications – Limitation of Certification Requirements for Certain Interstate Linear Infrastructure	CWA Section 401(a)(1) requires that any applicant for a federal license or permit to conduct any activity that may result in any discharge into WOTUS, provide the licensing or permitting agency a certification from the state in which the discharge originates that any such discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307. (33 U.S.C. §1341(a)(1)) The statute's requirements are the same for any activity that may result in a discharge to WOTUS and do not treat certain project types differently.	• 40 C.F.R. §121.3 specifies that the scope of certification reviews is to evaluate whether the activity will comply with applicable water quality requirements. • 40 C.F.R. §121.1(j) defines <i>water quality requirements</i> to mean any limitation, standard, or other requirement under Sections 301, 302, 303, 306, and 307 of the CWA, any federal and state or tribal laws or regulations implementing those sections, and any other water-quality-related requirement of state or tribal law. • Current regulations do not include special rules for certain project types.	Would specify that notwithstanding the first sentence of CWA Section 401(a)(1), any applicant for a certificate of public convenience and necessity for a project under Section 7 of the Natural Gas Act (15 U.S.C. §717f) or a federal authorization or permit required to construct, modify, or operate an interstate transmission line project that may result in a direct point source discharge into WOTUS would need to provide to the federal licensing or permitting agency a 401 certification attesting that the direct point source discharge complies with water quality requirements. The bill would add a definition of <i>water quality requirements</i> to be codified at CWA Section 401(h)(3).
33 U.S.C. §1341 (g)(3) Special Rule for Certain Certifications – Certification of No Limitation and Standard	CWA Section 401(a)(1) specifies that in the case of any <i>activity</i> for which there is not an applicable effluent limitation or other limitation under Sections 301(b) and 302, and there is not an applicable standard under Sections 306 and 307, the state shall so certify, except that any such certification shall not be deemed to satisfy CWA Section 511(c). (33 U.S.C. §1341(a)(1)) The statute's requirements are the same for any activity that may result in a discharge to WOTUS and does not treat certain project types differently.	CWA regulations do not restate or further specify the statutory requirement.	Would specify that in the case of any <i>direct point source discharge</i> described in this subsection for which there is not an applicable effluent limitation or other limitation under Sections 301(b) and 302 and for which there is not an applicable standard under Sections 306 and 307, the certifying authority shall so certify, except that such a certification shall not satisfy CWA Section 511(c).

BAAJA Section and Provision^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
33 U.S.C. §1341 (g)(4) Special Rule for Certain Certifications – Review for Compliance	For facilities or activities that may result in <i>any discharge</i> into WOTUS and receive a certification but are not subject to a federal operating license or permit, CWA Section 401(a)(4) requires that the certifying authority have an opportunity to review the planned operations of the facility to assure that applicable effluent limitations, other limitations, or other applicable water quality requirements will not be violated. If the certifying authority provides notice that the operation will violate those applicable limitations or requirements, the federal licensing or permitting agency may suspend the license or permit until it receives reasonable assurance that the facility or activity will not violate applicable provisions of CWA Sections 301, 302, 303, 306, or 307. (33 U.S.C. §1341(a)(4)) The statute's requirements are the same for any activity that may result in a discharge to WOTUS and do not treat certain project types differently.	CWA regulations do not restate or further specify the statutory requirement.	• Would limit the review under CWA Section 401(a)(4) to federally licensed or permitted facilities or activities that may result in a <i>direct point source discharge</i> into WOTUS. • Would limit the consideration of <i>water quality requirements</i> to the bill's new definition at CWA Section 401(h)(3).

BAAJA Section and Provision ^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
33 U.S.C. §1341 (g)(5) Special Rule for Certain Certifications – Limitation and Monitoring Requirements of Certain Linear Infrastructure Certifications	CWA Section 401(d) specifies that any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a federal license or permit will comply with any applicable effluent limitations and other limitations, under CWA Sections 301 or 302, standard of performance under CWA Section 306, or prohibition, effluent standard, or pretreatment standard under CWA Section 307, and with any other appropriate requirement of state law set forth in such certification, and shall become a condition on any federal license or permit subject to the provisions of this section. (33 U.S.C. §1341(d)) The statute's requirements are the same for any activity that may result in a discharge to WOTUS and do not treat certain project types differently.	• 40 C.F.R. §121.3(b) specifies that a certifying authority shall include any conditions in a grant of certification necessary to assure that the activity will comply with applicable <i>water quality requirements</i>. • 40 C.F.R. §121.1(j) defines <i>water quality requirements</i> to mean any limitation, standard, or other requirement under Sections 301, 302, 303, 306, and 307 of the CWA, any federal and state or tribal laws or regulations implementing those sections, and any other water-quality-related requirement of state or tribal law. • Current regulations do not include special rules for certain project types.	Would specify that notwithstanding CWA Section 404(d), (A) any certification provided under this subsection shall set forth any effluent limitations and other limitations and monitoring requirements necessary to assure that any direct point source discharge subject to this subsection will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307; and (B) any limitations and requirements set forth pursuant to subparagraph (A) <i>shall be imposed</i> by the licensing or permitting agency as a condition on any federal license or permit subject to the provisions of this section.

BAAJA Section and Provision^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
33 U.S.C. §1341 (g)(6) Special Rule for Certain Certifications – Reasonable Period of Time.	CWA Section 401(a)(1) requires the certifying authority to act within a reasonable period of time, which <i>shall not exceed one year</i>, after the receipt of a certification request; otherwise the certification is waived. (33 U.S.C. §1341(a)(1)) The statute does not specify who should determine the reasonable period of time, nor does it specify how the reasonable period of time should be determined. The statute's requirements are the same for any activity that may result in a discharge to WOTUS and do not treat certain project types differently.	• 40 C.F.R. §121.6(a) specifies that the reasonable period of time begins on the date that the certifying authority receives a request for certification, as defined in §121.5. • 40 C.F.R. §121.6(b) specifies that the federal agency and certifying authority may jointly agree in writing to the reasonable period of time, provided the reasonable period of time does not exceed one year from the date that the certification request was received. It also specifies these agreements may establish categorical reasonable periods of time. • 40 C.F.R. §121.6(c) establishes a default reasonable period of time of six months if the federal agency and certifying authority do not agree on the reasonable period of time. • Current regulations do not include special rules for certain project types.	Would specify that notwithstanding the periods of time in subsections (a)(1) and (e)(4) of the bill, the federal licensing or permitting agency shall establish the reasonable period of time on a categorical or case-by-case basis, and that the reasonable period of time <i>shall not exceed nine months</i> from the date of receipt of the certification application.

BAAJA Section and Provision ^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
33 U.S.C. §1341 (h) Definitions	The CWA does not define <i>certification application</i>, <i>certifying authority</i>, or <i>water quality requirements</i>.	• Current regulations do not define <i>certification application</i>. • 40 C.F.R. §121.1(b) defines <i>certifying authority</i> as the entity responsible for certifying compliance with applicable water quality requirements in accordance with CWA Section 401. • 40 C.F.R. §121.1(j) defines <i>water quality requirements</i> to mean any limitation, standard, or other requirement under Sections 301, 302, 303, 306, and 307 of the CWA, any federal and state or tribal laws or regulations implementing those sections, and any other water-quality-related requirement of state or tribal law.	Would define (1) <i>certification application</i> to mean a request from an applicant for a certification described in subsection (a) of the bill; (2) <i>certifying authority</i> to mean (A) the state or interstate agency to which the certification application was submitted, including an Indian Tribe that is treated as a State for purposes of this section pursuant to 40 C.F.R. §131.8; or (B) if no state or interstate agency has the authority to provide the certification described in subsection (a), the Administrator; (3) <i>water quality requirements</i> to mean (A) the applicable provisions of Sections 301, 302, 303, 306, and 307; and (B) any federal and state or tribal laws (including regulations) implementing Sections 301, 302, 303, 306, and 307 that are applicable to discharges into WOTUS.
Section 1203. Permit Term for NPDES Permits			
Section 1203	CWA Section 402(b)(1)(B) specifies that National Pollutant Discharge Elimination System (NPDES) permits are issued for fixed terms not exceeding five years. (33 U.S.C. §1342(b)(1)(B))	40 C.F.R. §122.46(a) specifies that NPDES permits shall be effective for a fixed term not to exceed five years.	Would extend the permit term limit for NPDES permits from 5 years to 10 years.

BAAJA Section and Provision ^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
Section 1204. Permits for Dredged or Fill Material			
Section 1204(a) Reducing Permit Uncertainty	CWA Section 404(c) specifies that the EPA Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, <i>whenever he determines</i> , after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. (33 U.S.C. §1344(c))	40 C.F.R. §231.1 specifies that the EPA Administrator is authorized to prohibit or otherwise restrict a site whenever he determines that the discharge of dredged or fill material is having or will have an “unacceptable adverse effect” on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.	• Would limit the time period in which the EPA Administrator may prohibit specification (including the withdrawal of specification) of any defined area as a disposal site, or deny or restrict the use of any defined area for specification (including the withdrawal of specification) to the time period that begins on the date on which an applicant submits a complete application and ends on the date on which the Secretary of the Army, acting through the Chief of Engineers (U.S. Army Corps of Engineers [USACE]), issues the permit. • Would apply to permit applications submitted under CWA Section 404 after the date of enactment.
Section 1204(b) Nationwide Permitting Improvement – Term	CWA Section 404(e)(2) specifies that general permits issued under Section 404 shall be for a period of no more than five years. It also specifies that the Secretary (USACE) may modify or revoke a general permit if, after opportunity for public hearing, the Secretary determines that the activities authorized by the general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits. (33 U.S.C. §1344(e)(2))	• USACE regulations restate the five-year permit term limit for certain general permit types at 33 C.F.R. §325.2(e)(2) and 33 C.F.R. §330.6(b). • 33 C.F.R. §325.7 specifies the procedures USACE must follow in modifying, suspending, or revoking permits.	• Would extend the permit term limit for general permits issued under Section 404 from 5 years to 10 years. • Would specify that the Secretary of the Army, acting through the Chief of Engineers (USACE), may <i>modify</i> a general permit during the term of the general permit or during renewal of the general permit.

BAAJA Section and Provision^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
Section 1204(b) Nationwide Permitting Improvement – Considerations	CWA Section 404(e)(1) authorizes the Secretary (USACE) to issue general permits on a state, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. Any general permit issued under this subsection shall (A) be based on the guidelines described in subsection (b)(1) of this section, and (B) set forth the requirements and standards which shall apply to any activity authorized by such general permit. (33 U.S.C. §1344(e)(1)) CWA Section 404(e)(2) authorizes the Secretary to revoke or modify a general permit if the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits. (33 U.S.C. §1344(e)(2)) The CWA does not establish a single acreage threshold for what is considered a minimal adverse environmental effect.	• In issuing Section 404 general permits, USACE must evaluate the potential individual and cumulative impacts of the category of activities to be regulated under the general permit based upon Section 404(b)(1) guidelines codified at 40 C.F.R. §230. • 40 C.F.R. §230.7 specifies evaluation requirements specific to general permits.	Would specify that the Secretary of the Army, acting through the Chief of Engineers (USACE), in determining the environmental effects of an activity under paragraph (1) or (2): (A) shall only consider the effects on compliance with water quality requirements (as defined above in the bill's amendment to Section 401(h)) of any discharge of dredged or fill material resulting from the activity; and (B) shall consider any effects of a discharge of dredge or fill material into less than 2 acres of WOTUS to be a minimal adverse environmental effect.

BAAJA Section and Provision ^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
Section 1204(b) Nationwide Permitting Improvement – Nationwide Permits for Activities	CWA Section 404(e)(1) authorizes the Secretary (USACE) to issue general permits on a state, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. (33 U.S.C. §1344(e)(1))	• USACE issues nationwide permits (NWP) through notice and comment rulemaking. USACE most recently reissued and modified 56 existing NWPs and issued one new NWP in January 2026.^c • Currently, activities authorized under NWPs 12, 43, 57, and 58 may not cause the loss of greater than ½ acre of WOTUS for each <i>single and complete project</i>. Activities authorized under NWP 14 may not cause greater than ½ acre of nontidal WOTUS or ⅓ acre of tidal WOTUS. Acreage thresholds for other NWPs vary.^c • 33 C.F.R. §330.2 defines <i>single and complete project</i> to mean “the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. For example, if construction of a residential development affects several different areas of a headwater or isolated water, or several different headwaters or isolated waters, the cumulative total of all filled areas should be the basis for deciding whether or not the project will be covered by an NWP. For linear projects, the ‘single and complete project’ (i.e., single and complete crossing) will apply to each crossing of a separate water of the United States (i.e., single waterbody) at that location; except that for linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland or lake, etc., are not separate waterbodies.”	• Would require the Secretary of the Army, acting through the Chief of Engineers (USACE), to maintain five nationwide permits, as they are described in the final rule establishing the 2026 Nationwide Permits (published in the <i>Federal Register</i> in January 2026):^c NWP 12 (Oil or Natural Gas Pipeline Activities), NWP 14 (Linear Transportation Projects), NWP 43 (Stormwater Management Facilities), NWP 57 (Electric Utility Line and Telecommunications Activities), and NWP 58 (Utility Line Activities for Water and Other Substances); and that results in a discharge of dredged or fill material into less than 2 acres of WOTUS for each <i>single and complete project</i> (as defined in 33 C.F.R. §330.2, as in effect on the date of enactment), including a single and complete linear project and a single and complete nonlinear project, as defined in the final rule establishing the 2026 NWPs. • Would specify that nothing in this paragraph prohibits the Secretary of the Army, acting through the Chief of Engineers (USACE), from issuing general permits on a regional or state basis, or individual permits for linear infrastructure projects.

BAAJA Section and Provision ^a	Current CWA Requirement	Current Regulatory Requirement and/or Current Practice	BAAJA (S. 5653)
Section 1204(b) Nationwide Permitting Improvement – Reissuance of Nationwide Permits	CWA Section 404(e)(1) authorizes the Secretary (USACE) to issue general permits on a state, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. (33 U.S.C. §1344(e)(1)) The statute does not prescribe requirements for reissuance. The statute’s requirements are the same for any category of activities that may result in a discharge of dredged or fill material into WOTUS and do not treat certain project types differently.	- USACE regulations for the Nationwide Permit Program specify processes for consultation and environmental review under the National Environmental Policy Act (33 C.F.R. §330.5(b)(3)), Endangered Species Act (33 C.F.R. §330.4(f)), and National Historic Preservation Act (33 C.F.R. §330.4(g)) for activities authorized under NWP. - The final rule for the 2026 NWPs discusses USACE’s actions to comply with NEPA in issuing the 2026 NWPs.^c USACE prepared a decision document for each NWP, and these documents each include an environmental assessment. - The 2026 NWPs include general conditions for endangered species (General Condition 18) and historic properties (General Condition 20).	- Would specify that in determining whether to reissue an NWP under this subsection (i) no consultation with an applicable state pursuant to Section 6(a) of the Endangered Species Act of 1973 (16 U.S.C. §1535(a)) is required; (ii) no consultation with a federal agency pursuant to Section 7(a)(2) of that act (16 U.S.C. §1536(a)(2)) is required; (iii) the requirements of Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. §332(2)(C)) shall be satisfied by preparing a programmatic environmental assessment with respect to the general permit; and (iv) no Section 106 National Historic Preservation Act consultation under 54 U.S.C. §306108 is required. - Would specify that clauses (i)-(iv) would apply only to a general permit being reissued pursuant to that subparagraph if the general permit does not narrow or eliminate preconstruction requirements or raise the threshold for such preconstruction requirements.
Section 1205. Judicial Review Timeline Clarity			

(t) Judicial Review	No comparable provision.	Challenges to federal actions taken pursuant to Section 404 of the CWA are governed by the APA, which provides for judicial review in federal district courts, and are generally subject to a six-year statute of limitations. Currently, the APA as well as the general remedial jurisdiction of the federal courts permit a court to choose from a range of final remedies where a court finds an agency has violated the law. These remedies include court orders that vacate, remand (with or without vacatur), or enjoin agency actions. Currently, courts have the discretion to choose one or multiple of these remedies that best addresses the specific case before it. (5 U.S.C. §704; 28 U.S.C. §2401(a))	• Would impose a 150-day statute of limitations for actions challenging EPA approval of a state 404 permit program, individual or general 404 permits, or verification that an activity is authorized by a general permit, unless a shorter time period is otherwise provided for by law. • Would limit the availability of judicial review to parties that submitted a related comment (where a draft of the challenged action was published in the <i>Federal Register</i> and subject to a public comment period of at least 30 days) that was sufficiently detailed to put EPA, USACE, or the state on notice of the issue on which the party seeks judicial review. • Where a court finds that USACE or a state did not comply with Section 404 or otherwise was arbitrary and capricious in issuing an individual or general permit or verifying that an activity is authorized by a general permit, would require the court to remand the matter for further proceedings. Would prohibit the court from vacating, enjoining, or otherwise limiting the challenged action or discharge unless the court finds that it would present an imminent and substantial danger to human health or the environment for which there is no other equitable remedy available under the law. • Would require that where a court remands a matter, it must set and enforce a reasonable schedule and deadline for further agency action, not to exceed 180 days from remand.
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Source: CRS.

- a. This column specifies the relevant section number from BAAJA and, where needed to denote different portions of the bill within longer sections, identifies where in the *U.S. Code* specific provisions would be codified based on the *U.S. Code* citation included in the bill text. The *U.S. Code* citations, where provided, are denoted in italics.
- b. Environmental Protection Agency (EPA), “National Recommended Water Quality Criteria; Republication,” 63 *Federal Register* 68355, December 10, 1998.
- c. U.S. Army Corps of Engineers (USACE), “Reissuance and Modification of Nationwide Permits,” 91 *Federal Register* 768, January 8, 2026. See USACE “Nationwide Permits,” <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>, for a link to each Nationwide Permit’s (NWP’s) decision document, the NWP general conditions and definitions, and a summary chart of the 2026 NWPs.

Summary of Selected Changes Proposed in BAAJA

As introduced, BAAJA's CWA-related provisions propose numerous changes to CWA permitting and water quality certification requirements. Other provisions in the bill, such as Section 1401, may also affect EPA's and USACE's ability to modify or revoke CWA permits. This section focuses on changes to the Section 401 water quality certification process, NPDES permit term limits, Section 404 permitting, and judicial review.

Section 401 Water Quality Certification Process (BAAJA Section 1201)

Although CWA Section 401 water quality certifications are not permits, federally permitted or licensed projects that are subject to the certification requirement may not proceed unless certification is granted or waived. As a result, the role of water quality certifications in and their effect on issuance of federal permits and licenses have attracted attention in permitting reform debates. Some areas of policy interest have included the scope of states' certification reviews, the scope of conditions states can impose when granting a certification, and time frames for issuing certifications.²⁰

Regarding the scope of certification reviews and conditions, one area of debate is whether a certifying authority's review and conditions can consider the impacts of the "activity" (i.e., the impacts from the permitted activity as a whole, including the point source discharge as well as nonpoint source impacts from the activity) or may only more narrowly consider the impacts from the point source discharge. Other areas of debate include which water quality requirements may be considered and which waters may be considered.

Regarding time frames for issuing certifications, Section 401 requires that certifying authorities act on a certification request within a *reasonable period of time* (which shall not exceed one year) after receipt of such request. If a certifying authority does not act on a certification request within that time frame, the statute provides that the certification requirements are waived, and the certification is not required for the federal licensing or permitting agency to issue the license or permit. Areas of debate have included what constitutes a reasonable period of time and who determines it.

Another area of debate is whether water quality certification should include different procedures and requirements based on the type of project at issue. BAAJA would specify rules that apply generally for Section 401 certifications as well as special rules that apply for certain projects—interstate transmission line projects and interstate natural gas pipeline projects.²¹

Scope of Reviews

BAAJA would specify that generally, the scope of a certification shall be limited to ensuring compliance with *water quality requirements*, which the bill defines to mean (A) the applicable provisions of Sections 301, 302, 303, 306, and 307; and (B) any federal and state or tribal laws (including regulations) implementing Sections 301, 302, 303, 306, and 307 that are applicable to

²⁰ For further discussion of CWA Section 401-related policy issues discussed in this section, see CRS Report R46615, *Clean Water Act Section 401: Overview and Recent Developments*, by Laura Gatz and Kate R. Bowers.

²¹ Bipartisan American Affordability and Jobs Act (BAAJA), S. 5653, §1202.

discharges to WOTUS.²² The first part of this definition does not specify whether the review can consider the impacts of the activity or is limited to the impacts of the discharge. The second half of the definition would limit the scope of what the certifying authority can consider in comparison to current regulations. Under current regulations, certifying authorities can consider any federal and state or tribal laws or regulations implementing the enumerated sections of the CWA and “any other water quality-related requirement of state or tribal law.”²³ BAAJA would limit these considerations to the laws and regulations implementing the enumerated CWA sections that are applicable to *discharges into WOTUS*. Under BAAJA, for example, certifying authorities would not be able to consider water quality impacts to downstream non-WOTUS waters, such as waters that may be subject to state regulation. They also could only consider “any other water quality-related requirement of state or tribal law” where those requirements are implementing the enumerated sections of the CWA and applicable to discharges to WOTUS.

BAAJA’s special rules for interstate transmission line and natural gas pipeline projects would further narrow the scope of certification reviews for those projects. BAAJA would specify that the scope of reviews for these projects is limited to reviewing whether the *direct point source discharge* complies with water quality requirements.²⁴ This limitation in reviewing the direct point source discharge would apply to both aspects of the definition of *water quality requirements*. The extent to which the term *direct point source discharge* further narrows considerations in comparison to *discharges into WOTUS* is unclear. The CWA specifies that the term *discharge*, “when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.”²⁵ The CWA defines the term *discharge of a pollutant* to mean any addition of any pollutant to navigable waters (i.e., WOTUS) from any point source.²⁶

Scope of Conditions

BAAJA would also narrow the scope of what conditions a certifying authority can include when granting a certification with conditions. Under current regulations, certifying authorities shall include any conditions in a grant of certification necessary to assure that the *activity* will comply with applicable *water quality requirements*, which is defined more broadly than it is defined in BAAJA.²⁷ BAAJA would limit the scope of conditions to those the certifying authority determines with clear and convincing evidence are (1) necessary to ensure compliance with *water quality requirements* as that term is more narrowly defined in the bill, (2) the least burdensome conditions to ensure compliance with *water quality requirements*, and (3) consistent with the requirements of the federal license or permit for which the application was made.²⁸ Combined with the bill’s definition of *water quality requirements*, this would narrow the scope of conditions and no longer allow certifying authorities to add conditions to address water-quality-related impacts to downstream non-WOTUS waters, conditions to ensure the *activity* complies with state or tribal requirements, or conditions to address “any other water quality-related requirement of

²² BAAJA, S. 5653, §1202. CWA §§301, 302, and 306 pertain to effluent limitations and standards of performance for new and existing discharge sources, §303 pertains to water quality standards and implementation plans, and §307 pertains to toxic pretreatment effluent standards.

²³ 40 C.F.R. §121.1(j).

²⁴ BAAJA, S. 5653, §1202.

²⁵ 33 U.S.C. §1362(16).

²⁶ The definition provides that the term *discharge of a pollutant* also means “any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.” 33 U.S.C. §1362(12).

²⁷ 40 C.F.R. §§121.3(b) and (j).

²⁸ BAAJA, S. 5653, §1202.

state or tribal law” unless those requirements are implementing the enumerated sections of the CWA and applicable to discharges to WOTUS. In addition, the certifying authorities would have to newly meet the higher threshold of demonstrating with clear and convincing evidence that the conditions are necessary and the least burdensome to comply with water quality requirements.

BAAJA’s special rules for interstate transmission line and natural gas pipeline projects would further narrow the scope of conditions certifying authorities may include. BAAJA specifies that the scope of conditions certifying authorities may add would be limited to assuring that any *direct point source discharge* to WOTUS will comply with CWA Sections 301, 302, 303, 306, and 307.²⁹ This would preclude certifying authorities from adding conditions to address any federal, state, or tribal laws implementing the enumerated CWA sections in addition to the narrowing discussed above. In addition, the same uncertainty discussed above regarding the use of the term *direct point source discharge* applies to the scope of conditions as well.

Certification Time Frames

BAAJA would change the certifying authority’s role in determining the *reasonable period of time*. Section 401(a)(1) of the CWA provides that if a certifying authority fails or refuses to act on a request for certification within a reasonable period of time (not to exceed one year), the certification requirements are deemed waived with respect to the underlying permit or license application.³⁰ Under current regulations, the federal permitting or licensing agency and the certifying authority may jointly agree to the reasonable period of time for the certifying authority to act on a request (provided it does not exceed one year from the date the certification was received) and establishes a default of six months if they cannot agree.³¹ BAAJA specifies that the federal licensing or permitting agency, in *consultation with* the certifying authority, would determine the reasonable period of time (not to exceed one year from the date of receipt of the certification application).³² BAAJA’s special rules for interstate transmission line and natural gas pipeline projects would also shorten the statutory maximum for the reasonable period of time from one year to nine months.³³

Other Potential Changes

In addition to changes addressing scope and timing considerations for Section 401 certifications, BAAJA also proposes changes related to certification denials, waivers, and the effect of certification actions. BAAJA would specify that the only actions to be taken in response to a certification application are to grant the application, grant the application with conditions, deny the application, or waive certification requirements.³⁴

With respect to waiver, BAAJA would provide that a certifying authority may “affirmatively waive” certification requirements at any time during the reasonable period of time. With respect to certification denials, BAAJA would narrow the bases on which certifications could be denied. Similar to the new requirements for conditions, BAAJA would prohibit a certifying authority from denying a certification unless it determines by clear and convincing evidence that no

²⁹ BAAJA, S. 5653, §1202.

³⁰ 33 U.S.C. §1341(a)(1).

³¹ 40 C.F.R. §121.6.

³² BAAJA, S. 5653, §1202.

³³ BAAJA, S. 5653, §1202.

³⁴ BAAJA, S. 5653, §1202.

modification to or reasonable condition on the certification would make it possible to grant the certification without violating water quality requirements.

BAAJA also includes a new provision that would newly deem water quality requirements satisfied for the purpose of a federal license or permit when a certifying authority grants a certification application, waives it, or grants it with conditions. The intent of this provision is unclear, including in how it may relate to a provision in the bill under Section 1204 that aims to limit USACE's consideration of environmental effects of an activity, for purposes of issuing general permits, to water quality requirements.

NPDES Permit Term Limits

BAAJA proposes to extend the permit term limits for NPDES permits from 5 years to 10 years.³⁵ For a discussion of the policy considerations specific to permit terms, see “NPDES Permit Terms” in CRS Report R49486, *Clean Water Act Permitting: Overview and Policy Issues*, by Laura Gatz.

Section 404 Permitting

Section 1204 of BAAJA proposes numerous changes to Section 404 permitting processes and requirements. Section 1204(a) would narrow the timing within which the EPA Administrator could exercise 404(c) authority. The CWA currently authorizes the EPA Administrator to exercise 404(c) authority (often referred to as “veto authority”) *whenever* he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.³⁶ BAAJA would limit the time period in which the EPA Administrator may issue a 404(c) determination to the time period that begins on the date on which an applicant submits a complete application and ends on the date on which the Secretary (USACE) issues the permit.³⁷

BAAJA Section 1204(b) would also make numerous changes to general permits issued under Section 404, including changes to nationwide permits. Similar to NPDES permits, BAAJA would extend the permit term limit for general permits issued under Section 404 from 5 years to 10 years.³⁸ BAAJA also specifies what USACE can consider in determining the environmental effects of an activity for purposes of issuing general permits, requires that USACE maintain certain NWP, and specifies reissuance procedures specific to those NWPs. Collectively, these changes would result in more projects qualifying for coverage under general permits.

³⁵ BAAJA, S. 5653, §1203.

³⁶ 33 U.S.C. §1344(c). See also *Mingo Logan Coal Co. v. EPA*, 714 F.3d 608 (D.C. Cir. 2013) (holding that the CWA authorizes EPA to exercise its 404(c) veto authority after a permit has been issued).

³⁷ Two of EPA's most recent uses of Section 404(c) authority drew attention from stakeholders for the timing of the decisions. In one instance, EPA first initiated the Section 404(c) process for the Pebble Deposit area in Alaska prior to the permittee submitting a Section 404 permit application. In the other instance, EPA issued its 404(c) “veto” years after USACE issued a Section 404 permit for the Spruce No. 1 Mine Project in West Virginia. These EPA actions prompted discussion about the timing of EPA's 404(c) determinations. For more on this issue, see “Timing of EPA's 404(c) ‘Veto’ Authority” in CRS Report R49486, *Clean Water Act Permitting: Overview and Policy Issues*, by Laura Gatz.

³⁸ For more on this issue, see “Section 404 Permit Terms” in CRS Report R49486, *Clean Water Act Permitting: Overview and Policy Issues*, by Laura Gatz.

Determination of Environmental Effects

Under existing law, USACE may issue general permits for proposed activities that are similar in nature and will result in only minimal individual and cumulative adverse environmental effects.³⁹ BAAJA would specify that in determining the environmental effects of an activity, for purposes of determining whether a general permit can be issued, USACE shall consider only the effects on compliance with *water quality requirements*, as defined in the bill (under new Section 401(h)) of any discharge of dredged or fill material resulting from the activity. The implications of the limitation to *water quality requirements* is unclear. While the provision appears to aim to narrow what is considered for Section 404 general permits, it does not strike the current requirement in CWA Section 404(e) to evaluate the activities in accordance with the CWA's Section 404(b)(1) guidelines, which include broader considerations.⁴⁰

BAAJA would also specify that USACE is to consider any effects of a discharge of dredged or fill material into less than 2 acres of WOTUS to be a minimal adverse environmental effect.⁴¹ Under current law and regulations, USACE determines what acreages are considered to be minimal adverse environmental effects.⁴² While there is no current acreage limit that applies to all general permits, acreage limits established under existing NWPs, as discussed in more detail below, range from $\frac{1}{10}$ of an acre to 10 acres, with $\frac{1}{2}$ acre as the most common threshold.⁴³

BAAJA's provision deeming the effects of a discharge of dredged or fill material into less than 2 acres of WOTUS to be a minimal adverse environmental effect may have additional implications for USACE's ability to modify or revoke a general permit, including NWPs. The CWA specifies that general permits may be revoked or modified by the Secretary of the Army, acting through the Chief of Engineers (USACE) if, after opportunity for public hearing, the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.⁴⁴ BAAJA would seemingly prevent the Secretary from revoking or modifying general permits for discharges of dredged or fill material into less than 2 acres of WOTUS based on a finding that they have an adverse impact on the environment. In addition, under current regulations, USACE division engineers can modify, suspend, or revoke NWPs in a particular region, or for a specific category of activities or waters, and USACE district engineers can modify, suspend, or revoke activity-specific NWP authorizations in their districts.⁴⁵ BAAJA would limit a USACE division or district engineer's ability to modify or revoke an NWP issued by USACE headquarters if it is to address adverse impacts from discharges of dredged or fill material into less than 2 acres of WOTUS. BAAJA's provisions addressing project certainty may also limit more generally the ability to modify or revoke permits, including CWA permits.⁴⁶ Specifically, Section 1401 of BAAJA would, with limited exceptions, prohibit a federal agency from revoking, rescinding, withdrawing,

³⁹ 33 U.S.C. §1344(e).

⁴⁰ 33 U.S.C. §1344(b) requires USACE to evaluate permit applications using guidelines developed by EPA, in conjunction with USACE—commonly referred to as *404(b)(1) guidelines*. The guidelines are codified at 40 C.F.R. Part 230.

⁴¹ BAAJA, S. 5653, §1204(b).

⁴² 33 U.S.C. §404(e). 33 C.F.R. Parts 323, 330.

⁴³ See USACE, "2026 Nationwide Permits Final Action Summary Chart," <https://usace.contentdm.oclc.org/utls/getfile/collection/p16021coll9/id/3328>.

⁴⁴ 33 U.S.C. §1344(e)(2).

⁴⁵ 33 U.S.C. §1344(e)(2); 33 C.F.R. §330.5(c)-(d).

⁴⁶ See BAAJA, S. 5653, §1401(b)(1).

terminating, suspending, amending, or altering a federal authorization or permit in effect on or after September 16, 2026, necessary for project construction or “operation at full capacity.”⁴⁷

Additionally, BAAJA would provide that, for reissuance of NWP that meet certain conditions pertaining to preconstruction requirements, consultation under the Endangered Species Act and the National Historic Preservation Act would not be required, and that a programmatic environmental assessment with respect to the general permit would suffice for compliance with the National Environmental Policy Act.⁴⁸

Requirement to Maintain Certain NWPs

BAAJA would specify that notwithstanding any other provision of the section, USACE shall maintain 5 of its 57 existing NWPs as they are described in the final rule establishing the 2026 NWPs.⁴⁹ However, it would increase the acreage limit for allowable impacts to WOTUS for these NWPs to 2 acres for each *single and complete project*. These five NWPs are NWP 12 (Oil or Natural Gas Pipeline Activities), NWP 14 (Linear Transportation Projects), NWP 43 (Stormwater Management Facilities), NWP 57 (Electric Utility Line and Telecommunications Activities), and NWP 58 (Utility Line Activities for Water and Other Substances). Currently, activities authorized under NWPs 12, 43, 57, and 58 may not cause the loss of greater than ½ acre of WOTUS for each single and complete project. Activities authorized under NWP 14 may not cause greater than ½ acre of nontidal WOTUS or ⅓ acre of tidal WOTUS for each single and complete project.

The proposed changes in BAAJA are likely to increase the number of activities that can obtain coverage under NWPs, as well as under other types of USACE general permits. Given that issuance time frames for all general permits, including NWPs, are shorter than time frames for individual permits, this also could result in shorter permitting time frames for more activities.⁵⁰

Judicial Review

BAAJA’s amendments to the CWA would alter various aspects of judicial review of actions taken pursuant to the statute. The CWA’s judicial review provision, Section 509(b), applies to seven enumerated categories of actions and specifies a 120-day statute of limitations and direct review in the federal appellate courts.⁵¹ For actions not covered by that provision, the Administrative Procedure Act’s (APA’s) judicial review framework governs, providing a six-year statute of limitations and review in the federal district courts.⁵² Actions taken by state agencies pursuant to state law (e.g., state permitting requirements or water quality certification procedures) are typically subject to state-specific procedures for judicial review.

Section 1201(b) of BAAJA would amend the CWA’s judicial review provision to extend to development of water quality criteria and regulations defining *WOTUS*, thus streamlining the judicial review process for those actions and subjecting them to a shorter statute of limitations.⁵³

⁴⁷ BAAJA, S. 5653, §1401.

⁴⁸ BAAJA, S. 5653, §1204(b).

⁴⁹ BAAJA, S. 5653, §1204(b).

⁵⁰ For more information on how long, on average, it takes USACE to evaluate the various permit types and issue a decision, see “Table 4. U.S. Army Corps of Engineer Evaluation Times by Permit Type (FY2024)” in CRS Report R49486, *Clean Water Act Permitting: Overview and Policy Issues*, by Laura Gatz.

⁵¹ 33 U.S.C. §1369(b)(1).

⁵² 5 U.S.C. §§704, 706; 28 U.S.C. §2401.

⁵³ In 2018, the Supreme Court held that challenges to regulations defining *WOTUS* were required to be filed in federal (continued...)

Section 1202 of BAAJA would affect various aspects of judicial review of actions related to water quality certification. The CWA's judicial review provision does not cover actions taken under Section 401.⁵⁴ Under current law, the forum and applicable standards for judicial review of certification decisions are not uniform across all such decisions. A state's decision on a certification application or adherence to state-law certification requirements is generally reviewable in state court, while questions regarding the state's adherence to requirements imposed directly by Section 401 are reviewable in federal court.⁵⁵ When a state acts as a certifying authority, state law may govern the burden of proof or standard of review in judicial challenges to actions on certification applications. The judicial review provisions in Section 1202 of BAAJA would impose more uniform procedures and standards of review for some aspects of Section 401 litigation.

Specifically, BAAJA would provide a mechanism for certification applicants to seek review of a certifying authority's alleged failure to follow the bill's newly specified procedural requirements. It would also specify the burden of proof in judicial review of certification denials or certification conditions.⁵⁶ BAAJA would provide that in challenges to certification denials, the certifying authority would bear the burden of demonstrating by clear and convincing evidence that no modification to or reasonable condition on the certification would make it possible to grant the certification without violating water quality requirements.⁵⁷ In challenges to certification conditions, the certifying authority would bear the burden of demonstrating by clear and convincing evidence that the challenged conditions are necessary to ensure compliance with water quality requirements, the least burdensome to ensure compliance with water quality requirements, and consistent with the requirements of the underlying federal license or permit.⁵⁸ In addition, BAAJA would provide that waiver of certification requirements is not subject to judicial review.⁵⁹

Actions taken under Section 404 of the CWA are also not covered by the CWA's judicial review provision and instead are governed by the APA.⁶⁰ Section 1205 of BAAJA would add a new subsection 404(t) to govern judicial review of the approval of state 404 permit programs, issuance of individual or general permits, and verification that an activity involving a discharge of dredged or fill material is authorized by a general permit. BAAJA would impose a shorter, 150-day statute of limitations for those actions, limit the availability of judicial review to parties that meet certain requirements for participating in the public comment process, limit the ability of courts to vacate an action found to be unlawful, and require courts to set and enforce a deadline for agency action on remand (not to exceed 180 days). Section 1205 contains some elements that are similar but not identical to BAAJA's judicial review provisions for NEPA,⁶¹ the Endangered Species Act,⁶² the

district court. *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 583 U.S. 109 (2018). Lawsuits challenging subsequent WOTUS regulations have proceeded simultaneously in district courts around the country. See CRS Report R47408, *Waters of the United States (WOTUS): Frequently Asked Questions About the Scope of the Clean Water Act*, by Kate R. Bowers and Laura Gatz.

⁵⁴ See 33 U.S.C. §1369(b)(1).

⁵⁵ *City of Tacoma v. FERC*, 460 F.3d 53, 67 (D.C. Cir. 2006); *Alcoa Power Gen. Inc. v. FERC*, 643 F.3d 963, 971 (D.C. Cir. 2011).

⁵⁶ BAAJA, S. 5653, §1202 (adding subsection (f) to 33 U.S.C. §1401).

⁵⁷ BAAJA, S. 5653, §1202 (adding subsection (f) to 33 U.S.C. §1401).

⁵⁸ BAAJA, S. 5653, §1202 (adding subsection (f) to 33 U.S.C. §1401).

⁵⁹ BAAJA, S. 5653, §1202 (adding subsection (e)(5) to 33 U.S.C. §1401).

⁶⁰ 5 U.S.C. § 702.

⁶¹ BAAJA, S. 5653, §1110.

⁶² BAAJA, S. 5653, §1305.

National Historic Preservation Act,⁶³ and in Section 2201 (which would establish a framework for accelerating judicial review of certain claims relating to project authorizations). It is not clear what requirements would apply in lawsuits alleging claims under more than one statute.

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⁶³ BAAJA, S. 5653, §2301.