S. 5653: Implications for EXIM, DFC, and Environmental Protections

Key concern: The Bipartisan American Affordability and Jobs Act of 2026 (BAAJA) would exempt NEPA environmental review for projects financed by the Export-Import Bank of the United States (EXIM) and the U.S. International Development Finance Corporation (DFC), accelerate or exempt some endangered species consultations, restrict EXIM and DFC's ability to revisit existing project approvals, and create substantial barriers and financial consequences for revisiting EXIM and DFC-supported projects.

Section 1102: Exempting NEPA Review

What it does: BAAJA revises NEPA's definition of "major Federal action" to exclude most projects where the only federal action is financial support.

Why it matters: EXIM and DFC finance projects in high environmental impact sectors including energy, mining, and infrastructure. The exclusion could remove NEPA review, depending on a project's financing structure and other federal involvement. EXIM determines application of NEPA determinations on pending transactions. Determinations are posted for fossil fuel projects at least 30 days before Board consideration to allow public comment; when further NEPA review is necessary, it proceeds alongside other transaction reviews. Losing that layer of review could reduce environmental analysis, transparency, public input, and judicial remedies. EXIM and DFC maintain separate environmental and social due diligence frameworks, but these safeguards are distinct from NEPA review. Exempting qualifying projects from NEPA could remove a layer of environmental review and accountability.

Sections 1302–1304: Endangered Species Act (ESA) Consultation

What they do: BAAJA shortens several ESA consultation deadlines, links consultation to certain NEPA deadlines, establishes a route to judicial relief for some delays, exempts specified projects in qualifying operational rights-of-way from certain consultation requirements, and allows states to assume some federal consultation responsibilities.

Why it matters: Shorter timelines could limit the time available to assess risks to threatened and endangered species and critical habitat, particularly for complex projects. The targeted exemption could also remove some projects from consultation requirements that would otherwise apply. These changes would affect EXIM- or DFC-supported projects when ESA obligations are triggered, but do not eliminate consultation across the board.

Section 1401: Restricting Changes to Existing Authorizations

What it does: BAAJA generally limits agencies' ability to revoke, suspend, amend, or otherwise alter covered federal authorizations in effect on or after September 16, 2026, or interfere with a project's construction or full-capacity operation. Exceptions apply in limited circumstances. If a non-federal project sponsor or holder of a federal authorization or permit successfully challenges an agency action under this provision, the bill entitles them to remedies that may include reinstatement of the authorization, injunctive relief, attorneys' fees and litigation costs, costs associated with project delays, and an award equal to 25–50% of specified project costs.

Why it matters: Section 1401 could make it significantly more difficult for future administrations to revisit EXIM and DFC project approvals. Although the bill provides extremely narrow exceptions for specified circumstances, there is only a very minor avenue for agencies to account for newly identified environmental risks by proactively reopening or modifying existing permits. It also exposes the government to litigation and potentially substantial financial liability if a project sponsor successfully challenges an agency's action.

Section 1402: Legal Pressure to Approve Covered Projects

What it does: Allows applicants for specified project types, including fossil fuel infrastructure, LNG, and hardrock mining, to bring claims alleging improper denial or unreasonable permitting delays based on disparate treatment. The bill establishes decision deadlines for certain applications and permits successful claimants to seek injunctive relief, attorneys' fees, economic damages, and additional damages equal to 50–100% of expected construction costs.

Why it matters: EXIM supported projects that require federal permits could be affected if they fall within a covered category. This concern is particularly relevant to EXIM's energy and mining portfolios; the application to DFC's overseas projects is less clear. The threat of litigation and substantial damages could pressure EXIM and DFC – even in future administrations to approve financing for dirty projects.

Implications for Congress

Together, these provisions could reduce environmental review and public transparency, accelerate or exempt certain wildlife consultations, constrain changes to existing legal reviews, and increase the legal and financial risks of permitting decisions. Congress should examine how the bill interacts with EXIM's and DFC's financing and environmental safeguards, and whether it preserves agencies' ability to respond to environmental harms and new information.

Friends of the Earth recommends voting against BAAJA in its current form.

Sources: S. 5653 bill text; EXIM environmental procedures; DFC environmental policy.

Potential effects depend on the bill's final language, project circumstances, and legal interpretation. This fact sheet has been updated to reflect the Nov 7, 2026 manager's amendment.