BAAJA: Senate Permitting Bill Threatens Ocean Protections

Introduced on Sept. 30, 2026, the *Bipartisan American Affordability and Jobs Act* (S. 5653, BAAJA) would overhaul how federal agencies review energy, mining, and infrastructure projects. Although the bill includes transmission improvements to help build the clean energy future, other provisions go too far in putting the health and safety of our ocean, our coasts, our fisheries, and the coastal economies that depend on them at risk. The legislative vehicle for BAAJA will be H.R. 2347. ***November 7 managers amendment does not address Oceana's concerns. We ask for a "no" vote unless these harmful provisions are removed.***

Locking in rushed offshore drilling and deep-sea mining projects

Sec. 1401, the bill's "project certainty" provision, would bar future administrations from revoking, suspending, or amending any federal permit in effect on or after Sept. 16, 2026, with only narrow exceptions. That would include any projects approved under the current administration's proposed plan to dramatically expand offshore drilling to new areas including the eastern Gulf, off California's coast, and Alaska's Beaufort Sea. It would also include this administration's rush to approve seabed mining projects. Once issued, these approvals would be nearly impossible to revisit in the future, even if they were expedited, legally flawed, or if new science uncovers serious harm.

Sec. 1402 goes even further. Developers of nearly 50 different types of projects, including offshore oil and gas, could sue if a future administration approves their type of project less often than in the previous ten years (i.e., "disparate treatment"). If they win, they could collect up to the full expected cost of project construction from taxpayers. The ten-year lookback period would mean that this administration's approvals would significantly contribute to the benchmark for future administrations.

Note: While these provisions have been framed as a way to address the Trump administration's attack on clean energy projects, they contain no legally binding language to restart the projects that have already been delayed or cancelled.

Weakening protections for endangered marine wildlife

The Endangered Species Act (ESA) is our most important law for keeping imperiled species from going extinct. Under Section 7, federal agencies must consult with NOAA Fisheries or the U.S. Fish and Wildlife Service (FWS) to make sure the projects they approve do not jeopardize endangered species or destroy their habitat. **Secs. 1301-1304** would weaken the ESA, including consultation requirements, and have grave consequences for some of the country's most beloved species.

- **Science would be limited.** It would redefine "best available science," requiring that data be used without "presumptions" and account for every known source of potential error. For highly endangered species, like the North Atlantic right whale, perfect data is rarely available, putting them at even further risk of extinction.
- **Rushed consultations.** Agencies would have 60 days instead of 90 to complete consultations, with extensions capped at 100 days instead of 150. These new deadlines would squeeze agencies that have already lost significant staff and resources.
- **Consultations shifted to states.** States could take over FWS consultations for projects within their borders, including coastal projects that harm manatees and nesting sea turtles.

OCEANA

Hollowing out environmental reviews under NEPA

The National Environmental Policy Act (NEPA) is our primary tool for ensuring that federal agencies consider public input and major environmental harms before approving a major project or decision. **Secs. 1102-1107** would weaken NEPA reviews substantially, including for offshore drilling projects.

- **Fewer projects would require NEPA at all.** It would narrow the definition of a "major federal action."
- **New science would be ignored.** Agencies would not have to consider research that comes out after a review begins, even for seabed mining or underwater ocean data centers, where the science is rapidly evolving.
- **Fewer project alternatives to consider.** Agencies would be forced to ignore any project alternative (other than "no action") that does not meet the project developer's goals.
- **Older reviews would stay in use longer.** Programmatic reviews, which offshore leasing relies on, could be used for 10 years instead of five, even as ocean conditions change.
- **NEPA reviews could be replaced.** If an agency decides that another federal law, like the Magnuson-Stevens Act, serves a "similar function" to NEPA, it could completely forgo NEPA review even if the other laws do not provide adequate protections.

Shutting coastal communities out of the courts

When agencies cut corners to approve permits, the courts are often communities' last line of defense against projects that could harm them. Multiple sections of BAAJA would limit that check:

- **Less time to sue.** The statute of limitations to challenge permits and approvals, including those for offshore drilling, would be slashed from generally six years to just 150 days.
- **Limits who can bring a challenge.** NEPA challenges would be limited to only those who submitted detailed comments during the comment period and who show "direct harm."
- **No way to stop a project, or its harm.** Courts could no longer pause a project over a NEPA violation, and even if the challenger to the project wins in court, the project could continue moving forward while the agency revisits the permit.
- **Skipping district courts and rerouting cases.** Most NEPA cases would skip federal district courts and go straight to appeals courts. ESA challenges would be routed to the DC Circuit, often far from the coastal communities and ecosystems affected by the decision.
- **New lawsuits for developers only.** Developers could sue agencies that miss permitting deadlines, and courts would have to decide those cases within 120 days.

Opening national marine sanctuaries to development

Sec. 2251 would amend the Outer Continental Shelf Lands Act to allow rights-of-way for transmission lines within national marine sanctuaries. Doing so would set a dangerous precedent for further development in our most protected waters.

Fueling plastic pollution

Nearly all plastic is made from fossil fuels. By speeding up and locking in oil and gas development, BAAJA would help produce more plastic, and more plastic pollution in our ocean.