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## **An Act to Facilitate Testing and Demonstration of Renewable Ocean Energy Technology**

Note -

**Additional key issues to be addressed include provision for:**

- **Larger-scale (4-5 turbines and commensurately-sized submerged utility line) non-profit, public-private, University-led offshore wind energy research and development test facility; and**
- **Testing for wave energy (and possibly other renewable ocean energy) technologies**

### **Part A**

**Sec. 1. 38 MRSA §344-A** is amended to read:

The commissioner may enter into agreements with individuals, partnerships, firms and corporations outside the department, referred throughout this section as "outside reviewers," to review applications or portions of applications submitted to the department. The commissioner has sole authority to determine the applications or portions of applications to be reviewed by outside reviewers and to determine which outside reviewer is to perform the review. When selecting an outside reviewer, all other factors being equal, the commissioner shall give preference to an outside reviewer who is a public or quasi-public entity, such as state agencies, the University of Maine System or the soil and water conservation districts. Except for an agreement for outside review regarding review of an application for a wind energy development as defined in Title 35-A, section 3451, subsection 11, ~~or~~ a certification pursuant to Title 35-A, section 3456, an offshore wind energy demonstration project as defined in section 480-HH, subsection 1, paragraph C, the commissioner may enter into an agreement with an outside reviewer only with the consent of the applicant and only if the applicant agrees in writing to pay all costs associated with the outside review.

**Sec. 2. 38 MRSA §480-HH** is enacted to read:

#### **§480-HH. General Permit for Offshore Wind Energy Demonstration Project**

**1. General permit.** An individual permit is not required for the construction and operation of an offshore wind energy demonstration project provided that the provisions of this section are met.

**2. Definitions.** As used in this section the following terms have the following meanings:

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**A. Generating facilities.** "Generating facilities" means generating facilities as defined by Title 35-A section 3451, subsection 5.

**B. Meteorological tower.** "Meteorological tower" means an elevated, monopole structure with attached equipment, such as an anemometer, wind direction vane, and temperature and pressure sensors and other measurement devices, to assess the wind resource in the project area.

**C. Offshore wind energy demonstration project.** "Offshore wind energy demonstration project" means a wind energy development, as defined by Title 35-A, section 3451, subsection 11, that:

(1) employs no more than two wind energy turbines, each of which utilizes different technology, for the primary purpose of testing and validating a turbine blade design, floating platform or other support structure, mooring or anchoring system, or other emerging offshore wind energy technology designed for use in ocean waters 60 meters or greater in depth;

(2) employs no more than one meteorological tower and one submerged utility line, provided that the submerged utility line is sized to transmit an amount of electricity less than or equal to that produced by the offshore wind energy demonstration project; and

(3) with the exception of the submerged utility line, if any, is located entirely within an offshore wind energy test area for which the department has not previously granted a general permit under this section, unless the term of that general permit has expired as of the date of application.

**D. Net project removal cost.** "Net project removal cost" means the total cost of removal of the project, estimated in accordance with the plan required under subsection 2, paragraph G, minus the net salvage value of the demonstration project equipment.

**E. Offshore wind energy test area.** "Offshore wind energy test area" means a geographic area located on state-owned submerged lands in the coastal area identified as suitable for construction and operation of an offshore wind energy demonstration project pursuant to this Act.

**2. Application requirements.** An applicant must file with the department an application that contains the following:

**A. Written certification that the offshore wind energy demonstration project, other than any submerged utility line, will be located wholly within an offshore wind energy test area;**

**B. A site plan that includes the following elements:**

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(1) A top view drawing of the entire project area that shows, with geographic positioning system references, the proposed location of the generating facilities and all other project elements, including but not limited to any submerged utility cable or meteorological tower;

(2) A narrative description of the proposed offshore wind energy demonstration facility including the power transfer system if applicable;

(3) A drawing that shows the design and proposed location of the proposed mooring or anchoring system, as applicable; and

(4) A drawing showing the location of the submerged utility line, if any, and plans for its construction in compliance with standards in chapter 305, section 9 of the board's rules.

[insert: other submission requirements, if any] [?]

C. A report, based on a field investigation, undertaken following consultation with the Department of Marine Resources, that describes the physical and biological conditions, including benthic communities, of submerged lands on and immediately adjacent to which the applicant proposes to locate (1) any mooring, anchoring system, meteorological tower, or other project element secured to the seabed; or (2) any submerged utility line.

D. Written acknowledgement that, in accordance with this section, the department may require the applicant to take remedial action, at the applicant's expense, pursuant to subsection 11, including but not limited to removal of the generating facilities and submerged utility line and termination of the demonstration project;

E. A fish and wildlife monitoring plan that includes provisions for conducting monitoring, throughout the term of the general permit, of the behavior and interaction of species listed as threatened or endangered in Title 12 section 6975 or section 12803, subsection 3, seabirds, and fish with the in-water project elements, including but not limited to the generating facilities and mooring and anchoring systems employed, and identifying potential adverse effects. The plan, at a minimum, shall include the following:

(1) a detailed description of the methods and equipment that will be used for monitoring behavior and activity in the vicinity of the in-water project elements;

(2) a detailed description of how the monitoring data will be analyzed, with specific criteria by which to evaluate adverse effects;

(3) a detailed implementation schedule, including the frequency and timing of data recovery, maintenance of the monitoring equipment, and periodic reporting to the department;

(4) a detailed monitoring schedule that considers ocean state conditions, seasonal variations in species' presence or absence and other pertinent biological factors;

(5) provision for identifying remedial measures if monitoring identifies any adverse changes in behavior or use of ocean habitats;

(6) a detailed description of the methods and equipment that will be used to test and monitor ambient noise levels, electromagnetic fields, and noise associated with project construction and subsequent operations, and the effectiveness of exclusion or deterrent devices; and

(7) provision for filing an annual report with the department describing the monitoring results and any recommendations for modifying the generating facilities or other project elements, or commencing the approved project removal plan, if necessary to minimize adverse effects on natural resources in the project area identified pursuant to plans under subsections. Thirty days prior to submission of the report to the department, the applicant shall provide the draft plan to the Departments of Marine Resources and Inland Fisheries and Wildlife, and the United States Fish and Wildlife Service and National Marine Fisheries Service, and shall include in the annual report any comments from those agencies and the applicant's responses to them.

F. A navigation safety plan to protect the public and project facilities from such events as: collisions between commercial and recreational vessels and in-water project facilities; entanglement of fishing gear, anchors, dredging equipment, or other underwater devices that may damage or become entangled with project transmission, anchoring, and mooring lines; release of or damage to the project's submerged utility line, anchoring system or other project elements in, on, or over the seabed; and electrocution, that, at a minimum, provides for:

(1) a geo-located navigation and underwater activity exclusion zone boundary around the generating facilities, anchoring system, and submerged utility line, if any, that is necessary and designed to minimize potential conflicts with other activities in the area and is ½ mile or less around the generating facilities;

(2) marking the extreme corners of any exclusion zone with lights, buoys, or other indicators sufficient to warn vessels of the above and underwater project elements and any exclusion zone during both day and night;

(3) marking the generating facilities with fog signals, low-intensity navigation, hazard marking lights, or comparable devices, and painting and lighting generating facilities in a way that considers the aesthetic resources of the project area as well as the safety of the public and project facilities and meets applicable Federal Aviation Administration guidelines;

(4) procedures to ensure the safety of the public near the project area; and

(5) description of monitoring for and actions the applicant will take to prevent and address an emergency that specifies: procedures the applicant will take during an emergency, including but not limited to immediate shutdown; a protocol for coordination with and reporting an emergency to local, state, and federal agencies; contingency measures to modify operations to address reasonably foreseeable emergency conditions; and a schedule for annual testing of emergency equipment, including the project's emergency shutdown system.

G. A project removal plan that the applicant will, at its expense, implement within 60 days of termination of a general permit granted pursuant to this section and that provides for:

(1) removal of all project elements , including but not limited to the generating facilities, meteorological tower, mooring and anchoring structures, and the submerged utility line, from all project lands and waters, except for those project elements regarding which the applicant provides the department substantial evidence of plans for continued beneficial use, including but not limited to an executed lease of state-owned submerged lands, as applicable;

(2) minimization of seabed disturbances and suspended sediments during removal of any underwater facilities;

(3) monitoring of the effects of the removal activities on species listed as threatened or endangered species in Title 12 section 6975 or section 12803, subsection 3;

(4) an implementation schedule that provides for all removal and restoration activities to be completed [within one year] of the expiration date of the general permit;

(5) an estimate of the total project removal cost, without regard to salvage value of the equipment, and the net project removal cost, prepared by a licensed professional engineer; and

(6) written evidence and certification that the applicant has posted and will maintain funds for project removal in an amount equal to the net project removal cost; provided that at no point shall such funds be less than twenty five percent (25%) of the total project removal cost. The applicant shall post and maintain project removal funds with a bonding company or federal or state-chartered lending institution that is authorized to do business in the State and chosen by the applicant and deemed acceptable by the department posting the financial security. Project removal funds may be in the form of a performance bond, surety bond, letter of credit, corporate guarantee, or other form of financial assurance deemed acceptable by the department.

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H. Documentation that, in developing each plan required under paragraphs E - G, the applicant consulted with: the Departments of Marine Resources, Inland Fisheries and Wildlife, and Conservation, and the Land Use Regulation Commission and the State Planning Office; the United States Army Corps of Engineers, National Marine Fisheries Service and United States Fish and Wildlife Service; and any other local, state or federal agency the applicant deems appropriate. This documentation must include copies of these agencies' comments and recommendations on the plan, if any; specific descriptions of how the agencies' comments are accommodated by the plan, including the applicant's reasons, based on project-specific information, for any agency recommendation not adopted. The applicant shall allow a minimum of 60 days for the above-noted agencies to review and make comments and recommendations on each draft plan before it is filed with the department.

I. Documentation, including certificates of insurance, that the applicant has and will maintain a current general liability policy for the project that covers bodily injury, property damages, and environmental damages with limits in an amount deemed reasonable by the department in consideration of the scope, scale, and location of the project.

**3. Review period.** Work may not occur until 60 days after the department has accepted an application for processing. This period may be extended pursuant to section 344-B with the consent of the applicant.

**4. Competing proposals.** If, during the review period provided for by subsection 3, one or more additional applications are filed for the same offshore wind energy test area, the department shall give priority to the qualified project that it determines has the least potential for adverse effects on protected natural resources and existing uses in the project area.

**5. Notification.** Except as otherwise provided by subsection 9, the department shall notify an applicant in writing within 60 days of acceptance for processing if the department determines that the requirements of this section have not been met. Any such notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this subsection within the specified time period, a general permit is deemed to have been granted.

**6. Fees.** The department shall assess a fee for review of applications filed pursuant to this section, including a request for modification under subsection 12. Except as otherwise provided by section 344-A, the fee must be commensurate with the amount assessed to activities requiring an individual permit for coastal wetland alterations.

**7. Violation.** Any action taken by a person receiving a general permit under this section that is not in compliance with the plans submitted under subsection 2 is a violation of the general permit.

**8. General permit term.** Except as otherwise provided in subsections 11 and 12, a permit granted under this section authorizes conduct of the approved offshore wind demonstration project for three years from the date that construction of a permitted structure on submerged lands is initiated or five years from the date of issuance pursuant to subsection 4, whichever first occurs. The applicant must provide the department written notice of the date of initiation of such construction within seven days of its commencement. The department may grant one or more extensions of the general permit term of six months or less each if prior to expiration of the general permit term the applicant has filed completed applications with the department for all requisite approvals for a wind energy development, as defined by Title 35-A, section 3451, subsection 6, located wholly or partly where the demonstration project is located. Except as otherwise provided by this subsection, the department may not extend the term of a general permit granted under this section.

**9. Surrender.** An applicant may surrender to the department a general permit granted pursuant to this section prior to its expiration pursuant to subsection 8. Subject to conditions regarding project removal under subsection 10, the general permit terminates on the date of its surrender pursuant to this subsection.

**10. Project removal.** Within 60 days of termination of the demonstration project pursuant to subsection 8 or 9, the applicant shall initiate implementation of the project removal plan provided for under subsection 2. If the applicant fails to do so within this 60-day period, the department may take such measures as it deems necessary to initiate and fully implement the plan by drawing on the financial surety provided pursuant to the project removal plan. The applicant's acceptance of the general permit shall constitute agreement and consent by the applicant and its heirs, successors, and assigns that the department may take such action as necessary to initiate and fully implement the project removal plan. The holder of the project removal funds shall release the project removal funds when the applicant has demonstrated and the department concurs that the project removal plan has been satisfactorily completed, or upon written authorization by the department in the event the department implements the plan pursuant to this subsection.

**11. Remedial action.** If the department determines, based on information provided in the annual or periodic reports provided pursuant to subsection 2 or other information, that there is substantial evidence that the demonstration project is having a significant adverse effect on a protected natural resource or public health or safety, the department shall order the applicant to take action necessary to address that adverse effect. Remedial action required by the department may include cessation of operation and removal of some or all elements of the demonstration project, including but not limited to the generating facilities and anchoring or mooring system, if there is no practicable alternative to address the adverse effect.

**12. Permit modification.** Following grant of a general permit under this section, the department may authorize an applicant to move the generating facilities to another

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location within the same offshore wind test area, provided that the applicant provides an amended site plan that meets the requirements of subsection 2, paragraphs B and C. The department shall notify the applicant in writing within 30 days of acceptance for processing if the department determines that the requirements of this section have not been met. Any such notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this subsection within the specified time period, a permit modification is deemed to have been granted.

### **13. Relationship to other laws.**

**A. State land use-related laws.** Notwithstanding any other provision of law, an offshore wind energy demonstration project that has been granted a general permit under this section is not subject to review by or required to obtain a development permit, rezoning, or other approval or authorization from the Land Use Regulation Commission, and is not otherwise subject to review or approval by department pursuant to this subchapter.

**B. Local review.** A municipality may not enact or enforce any land use, zoning or other standard, conditions, or other requirement regarding an offshore wind energy demonstration project located within the municipality that is stricter than those of this section. The municipality shall have of the burden of proof regarding the location of the project in relation to its boundaries. Any action by the municipality regarding its authorization to site, construct, or operate an offshore wind energy demonstration project must be taken within 60 days of the grant of a general permit under this section or within 30 days of grant of a permit modification pursuant to subsection 12.

## **Part B**

**Sec. 1. 12 MRSA §1862, sub-§1, ¶F** is enacted to read:

F. Within 30 days of receiving notice and a copy of a permit for an offshore wind energy demonstration project granted pursuant to 38 MRSA §480-HH, the director shall waive the review procedures and standards under this section and issue a submerged lands lease for the permitted activity. The term of the lease and any subsequent amendments shall be consistent with the permit, including any extension thereof approved pursuant to 38 MRSA §480-HH, sub-§8 and the period of time needed to fully implement a project removal plan pursuant to 38 MRSA §480-HH, sub-§10. The director may include lease conditions that the director determines reasonable, provided that the conditions may not impose any requirement more stringent than those in a permit granted under 38 MRSA §480-HH and may not frustrate achievement of the purpose of the project or facility.

### Part C

**Sec. 1. Identification of offshore wind energy test areas.** No later than September 15, 2009, following consultation with the Department of Environmental Protection, the Public Utilities Commission, Department of Inland Fisheries and Wildlife, Land Use Regulation Commission, Department of Marine Resources, the University of Maine System, and the State Planning Office, and opportunity for public comment, the Department of Conservation shall identify and map specific geographic areas on state-owned submerged lands suitable for an offshore wind energy demonstration project constructed and operated in accordance with Title 38, section 480-HH. In identifying such areas, the Department of Conservation must consider existing information regarding pertinent ecological, environmental, and development-related factors, including but not limited to:

(1) Potential adverse effects on a protected natural resource as defined by Title 38 section 480-B, subsection 8, or a scenic resource of state or national significance, as defined by Title 35-A section 3451, subsection 9;

(2) Potential adverse effects on marine mammals, commercial fishing, recreation, navigation, existing public access ways to intertidal and subtidal areas, and other existing uses;

(3) Proximity to deep water port facilities, rail transportation, transmission infrastructure facilities, and existing ocean-based environmental monitoring devices;

(4) Ocean water depth and wave height; and

(5) Geological conditions, including substrate type.

### Part D

**Sec 1. 38 MRSA § 634-A** is enacted to read:

#### **§ 634-A. Administering Agency**

**1. Department.** The department shall administer the permit process for a hydropower project that:

A. is located wholly or partly within an organized municipality; or

B. utilizes tidal or wave action as a source of electrical or mechanical power, regardless of its location.

**2. Land Use Regulation Commission.** The Land Use Regulation Commission shall administer the permit process for a hydropower project that is located wholly within

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the state's unorganized area as defined by 12 MRSA §682, sub-§1 and that does not utilize tidal or wave action as a source of electrical or mechanical power.

**Sec 2. 38 MRSA § 636, sub-§ 5**, is amended to read:

**5. Maine Land Use Regulation Commission.** Within the jurisdiction of the Maine Land Use Regulation Commission, the project is consistent with zoning adopted by the Commission. This criterion shall not apply to any project that utilizes tidal or wave action as a source of electrical or mechanical power.