

An Act to Facilitate Testing of Offshore Wind Energy Technology

Sec. 1. 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:

Insert: [definition of "associated facilities"]

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

B. 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 one wind energy turbine for the primary purpose of testing and validating technology, including a turbine blade, floating platform or other support structure, or other emerging offshore wind energy technology designed for use in ocean waters 60 meters or greater in depth; and

(2) 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.

An offshore wind energy demonstration project may include a 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 the submerged utility line is constructed in compliance with standards in chapter 305, section 9 of the board's rules [note: this references pertinent permit by rule provisions].

Note: Inclusion of a submerged utility line as part of a demonstration project eligible for approval under this general permit has been identified as an issue needing further discussion re: environmental impacts of installation and potential removal and need and suitability as part of a demonstration project.

C. 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.

D. Offshore wind energy test area.

"Offshore wind energy test area" means

OPTION 1: one of the following geographic areas located on state-owned submerged lands in coastal waters:

[Insert specific geo-references to areas identified using natural resources constraints analysis prepared by subcommittee 1 and other pertinent physical and development-related information]

OPTION 2: 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. [See Section 3, below]

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 -OR - including] any submerged utility lines, will be located wholly within an offshore wind energy test area;

B. A site plan that includes the following elements:

(1) A top view drawing of the entire project area that shows, with geographic positioning system references, the proposed location of the generating facilities, any submerged utility line, and any associated facilities;

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

(3) [insert: other submission requirements, if any]

C. A report, based on a field investigation of the project area, that describes existing site conditions regarding benthic habitat, [insert: other baseline site conditions not addressed through test area designations if needed]

D. Written acknowledgement that, in accordance with this section, the department may require the applicant to take remedial action, at the applicant's expense, including potentially removal of the generating facilities and submerged utility line, and termination of the demonstration project;

E. A fish and wildlife monitoring plan, developed in consultation with the department, the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, and, for a project located on submerged lands within three nautical miles of an island, township, plantation or other place in the unorganized area of the State, the Land Use Regulation

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

- (1) a detailed description of the methods and equipment that would be used for monitoring behavior and activity in the vicinity of the in-water facilities;
- (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 would be used to test and monitor ambient noise levels, project electromagnetic fields, 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 environmental 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 plan to each consulting agency identified in this subsection and shall include in the annual report any comments from those agencies and the applicant's responses to them.

F. A navigation safety plan, prepared in consultation with the U.S. Coast Guard, Department of Marine Resources and Department of Transportation, 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; and electrocution, that, at a minimum, provides for:

- (1) a navigation and underwater activity exclusion zone boundary around the generating facilities, anchoring system, and submerged utility line, if any, that is designed to

minimize potential conflicts with other activities in the area, provided that the exclusion zone, if any, around the generating facilities must be ½ mile or less;

(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 facilities and associated exclusion zone during both day and night; and

(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 Federal Aviation Administration guidelines.

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

(1) removal of all project facilities, including but not limited to the generating facilities and any associated facilities, anchoring structures, and submerged utility lines, from all project lands and waters unless the applicant provides the department substantial evidence of plans for continued beneficial use of these aspects of the demonstration project, including an executed lease of any state-owned submerged lands;

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

(3) monitoring of the effects of the removal activities on a 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 by no later than 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. Project removal funds shall be posted and maintained with a bonding company or federal or state-chartered lending institution, chosen by the applicant and deemed acceptable by the department, posting the financial security, provided that the bonding company or lending institution is authorized to conduct such business within the State. 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 as may be reasonably acceptable to the department.

H. A project safety plan, prepared in consultation with the Department of Marine Resources and the U.S. Coast Guard, that describes the procedures the applicant will take during any project emergency that could adversely effect life or property, including but not limited to a vessel and project facility collision, a wave buoy break-away, release of the project's submerged utility line anchoring system from the seabed, or damage to project's submerged utility line. The plan, at a minimum, shall include:

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

(2) description of how the project will be monitored to determine if there is an emergency;

(3) procedures the applicant will take during an emergency (including immediate shutdown, if necessary);

(4) procedures for reporting the emergency to local, state, and federal agencies;

(5) description of contingency measures to modify operations or to implement the project removal plan;

(6) a plan for annual testing of emergency equipment, including the project's emergency shutdown system; and

(7) a plan for annually coordinating with emergency response agencies.

I. Documentation, provided with each plan required under paragraphs E - G, of the applicant's consultation with pertinent agencies, copies of agencies' comments and recommendations on the plan, 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 agencies to comment and make recommendations before filing the plan with the department.

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.

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. Deferrals. The 60-day time limit for processing a completed application under subsection 5 does not apply when winter conditions prevent the department from evaluating a permit application. Under such circumstances, the department may defer action for a reasonable period. The department shall immediately notify the applicant of a deferral under this subsection.

7. Fees. The department shall assess a fee for review of applications filed pursuant to this section, including a request for modification under subsection 12. The fee must be commensurate with the amount assessed to activities requiring an individual permit for coastal wetland alterations.

[Note: Amend 38 MRSA section 344-A to clarify that DEP has the discretion to contract for outside services, at the applicant's expense, that are needed for review of the general permit and monitoring of compliance.]

8. 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.

9. 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 of issuance pursuant to subsection 4. Except as otherwise provided by this subsection, this period may not be extended. The department may grant one or more extensions, of six months or less each, of the general permit term, if the applicant has filed a completed application with the department for a [grid-scale] wind energy development, as defined by Title 35-A, section 3451, subsection [], located wholly or partly where the demonstration project is located, prior to expiration of the general permit term.

10. Project removal. Within 60 days of termination of the demonstration project pursuant to subsection 9, the permittee shall fully implement the project removal plan provided for under subsection 2. If the applicant fails to fully implement the plan within this 60-day period, the department may take such measures as necessary to complete project removal 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 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 implemented, 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 report 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 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 a permit holder to move the generating facilities to another location within the same offshore test area, provided that the permit holder provides an amended site plan that meets the requirements of subsection 2, paragraphs B and C. The department shall notify the permit holder 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. Land use regulation 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.

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.

Note: Consider need for language to clarify that other potentially applicable state approval are not required, e.g., Site Law and Stormwater Management law

Sec. 2. [Submerged lands lease section.]

Concept: On receipt of a general permit for a offshore wind energy demonstration project, the permittee is entitled (no separate review or proceeding) to a submerged lands lease on specified terms, including payment of \$XX [fee amount].

Sec. 3. [See "Offshore test area"/Option 2, above]. **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, Department of Marine Resources, 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 , based on consideration of pertinent ecological, environmental, and development-related criteria, 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) Proximity to deep water port facilities, rail transportation, transmission infrastructure facilities, and existing ocean-based environmental monitoring devices;

(3) Ocean water depth and wave height; and

(4) Geological conditions, including substrate type.

Alternative Public-Private Model

Eligibility for general permit for an "offshore wind energy testing facility" limited to a non-commercial, public entity. Under this model, a non-commercial entity, e.g., university-based research institution, could obtain a general permit and submerged lands lease to operate a test facility, potentially with an appropriately-sized transmission cable to connect test-generated electricity to the grid. Commercial entities, e.g., through response to an RFP and pursuant to a contract with the research institution, could use the test facility to test emerging technologies. The research institution would provide an independent assessment and validation of technologies and would monitor environmental and natural resources related effects. This general permit would authorize multiple (2-3?) turbines to operate at any one time for testing of different technologies.

Potential advantages of this approach may include: economic efficiency, e.g., expensive monitoring equipment is installed and managed at one location; developers do not need to obtain permit or secure lease (site leased and permitted for testing); through information sharing provisions in contracts with companies testing technology, state gains information using in designing efficient and effective regulatory regime for subsequent commercial development; creation of a field laboratory that could attract wind industry participants to Maine; and may afford Maine a competitive advantage in seeking federal funds for wind energy technology testing.