

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

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, or a general permit pursuant to section 480-HH or section 636-A, 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:

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 or other support 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. 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 3, paragraph G, minus the net salvage value of the demonstration project equipment.

D. Ocean sensor package. "Ocean sensor package" means a floating, submerged, or seabed mounted instrument that measures currents over the full range of site depths, wave data, seawater temperature, and seawater salinity, and other measurement devices to assess the wave resources in the project area.

E. 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, as further defined by this paragraph, that may generate electricity for sale or use by a person other than the applicant and that employs no more than:

(1) two wind energy turbines, each of which may utilize 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 offshore wind energy technology that the applicant certifies is designed for use in ocean waters and is not in use in a comparable ocean environment elsewhere for commercial production of electricity;

(2) three meteorological towers per wind energy turbine;

(3) one submerged utility line provided that the department has not previously granted approval under this section to construct a submerged utility line within the pertinent offshore wind energy test area and the line is sized to transmit:

(i) an amount of electricity less than or equal to that produced by the offshore wind energy demonstration project; or

(ii) up to 25 megawatts of electricity if the line is intended to serve one or more wind energy demonstration projects located within an offshore wind energy research and development site; and

(4) a wave energy test project.

F. Offshore wind energy test area. "Offshore wind energy test area" means a specific 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 Title 12 section 1868, including an offshore wind energy research and development test site.

G. Wave energy converter. "Wave energy converter" means a device that uses the motion of ocean surface waves to create electricity.

H. Wave energy test project. "Wave energy test project" means a hydropower project, as defined by Title 12 section 632, subsection 1, as further defined by this paragraph, that utilizes ocean wave action to produce electricity that:

(1) is proposed as part of an offshore wind energy demonstration project and is designed and sited to test production of electricity from wave energy in conjunction with and in a manner that compliments that produced by an offshore wind energy turbine;

(2) employs up to two wave energy converters, each of which may utilize different technology, that the applicant certifies are designed for use in the ocean and are not in use in a comparable ocean environment elsewhere for commercial production, for the primary purpose of testing and validating the overall design of the converter and its related systems, subsystems or components; and

(2) may include one or more of the following additional elements:

(a) a mooring or anchoring system; and

(b) an ocean sensor package.

3. 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:

(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;

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C. A report, based on a field investigation, undertaken following consultation with the Department of Marine Resources, that describes fishing and other existing uses and the physical, environmental, and biological conditions and natural communities, including benthic communities, in the marine waters and on the submerged lands and immediately adjacent areas in, on, or over which the applicant proposes to locate (1) any mooring, anchoring system, meteorological tower, ocean sensor, or other project element secured to the seabed; and(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 13, 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, avian species, including seabirds, migratory passerines, and bats, and marine mammals and other marine resources with the project , 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 project ;

(2) a detailed description of how the monitoring data will be analyzed and provided to the department in electronic format, 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 quarterly 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 and implementing 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

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(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 identified pursuant to plans required under this section. Thirty days prior to submission of the report to the department, the applicant shall provide the draft plan to the Departments of Marine Resources, Inland Fisheries and Wildlife, and Conservation, 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 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, considers the need and provides for as appropriate:

(1) a geo-located navigation and underwater activity exclusion zone boundary around the proposed generating facilities, anchoring system, submerged utility line, and other project elements, if any, provided any such exclusion zone must be designed to minimize potential conflicts with other existing uses in the area and may be no larger than the applicant demonstrates is necessary to achieve the purposes of the project ;

(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;

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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 and marine resources both during and subsequent to completion of removal activities;

(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 pursuant to subsection 9;

(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;

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

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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;

J. Documentation that the applicant has the financial and technical capacity to construct and operate the project as proposed; and

K. For an offshore wind energy demonstration project proposed for location within the offshore wind energy research and development site identified pursuant to Title 12 section 1868, written evidence that the proposed development will be undertaken by or in cooperation with the University of Maine System and on terms and in a manner that the University of Maine System deems consistent with and in furtherance of the research and development purposes of the offshore wind energy research and development test site.

4. 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.

5. Competing proposals. If, during the review period provided for by subsection 4, one or more additional applications are filed for the same offshore wind energy test area, the department shall give priority to the qualified application first received by the department.

6. Notification. Except as otherwise provided by subsection 14, 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.

7. Fees. The department shall assess a fee for review of applications filed pursuant to this section, including a request for modification under subsection 14. 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.

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.

A. Except as otherwise provided in subsections 10 and 13, 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 5, 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. Except as otherwise provided by this subsection, the department may not extend the term of a general permit granted under this section.

B. 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 for all requisite state license and permit approvals for a wind energy development, as defined by Title 35-A, section 3451, subsection 7, located wholly or partly where the demonstration project is located. The department may not grant an extension under this paragraph for a project located in an offshore wind energy research and development test site identified pursuant to Title 12 section 1868.

C. The department may grant one or more extensions not to exceed three years in aggregate of the general permit term for an offshore wind energy demonstration project located in an offshore wind energy research and development site if the applicant demonstrates that the extension is necessary to fulfill the research and development objectives of the project.

10. Demonstrated progress. If the department determines that the applicant has not completed or made substantial and on-going progress to complete construction of all project elements within one year of the date of notice to the department pursuant to subsection 5, the applicant must surrender its general permit, subject to conditions regarding project removal pursuant to subsection 12.

11. Surrender. An applicant may surrender to the department a general permit granted pursuant to this section prior to its expiration pursuant to subsection 9. Subject to conditions regarding project removal under subsection 12, the general permit terminates on the date of its surrender pursuant to this subsection.

12. Project removal. Within 60 days of termination of the demonstration project pursuant to subsection 10, or 11, the applicant shall initiate implementation of the project removal plan provided for under subsection 2. If the applicant fails to begin implementing the plan within this 60-day period, the department may take such measures

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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.

13. 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 other marine resources or public health or safety, the department shall order the applicant to take action that the department deems necessary to address that adverse effect. Remedial action required by the department may include, but is not limited, to:

A. Suspension or modification of project operations; or

B. Cessation of operations and removal of some or all elements of the demonstration project, including but not limited to the generating facilities, if there is no practicable alternative to address the adverse effect.

14. Permit modification. Following grant of a general permit under this section, the department may authorize an applicant to move the generating facilities to another 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, C, E, F, and H. 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.

15. 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.

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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 14.

16. Multiple projects in an offshore wind energy test area. Except as otherwise provided by this subsection, the department may not grant a general permit for an offshore wind energy demonstration project in an offshore wind energy test area in which department has previously granted a general permit under this section, unless the term of that general permit has expired as of the date of application. The department shall grant a general permit for an ocean wind energy demonstration project that meets the requirements of this section if:

A. The project is proposed for location within the offshore wind energy research and development test site identified pursuant to Title 12 section 1868; and

B. There are no more than three general permits in effect for offshore wind energy demonstration projects in the offshore wind energy research and development test site on the date of application.

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 general permit granted pursuant to Title 38 section 480-HH or Title 38 section 636-A, 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 Title 38 section 480-HH, subsection 9 or Title 38 section 636-A, subsection 7, as applicable and the period of time needed to fully implement a project removal plan pursuant to Title 38 section 480-HH, subsection 11 or Title 38 section 636-A, subsection 10, as applicable. 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 Title 38 section 480-HH or Title 38 section 636-A, as applicable, and may not frustrate achievement of the purpose of the project.

Part C

Sec. 1. 12 MRSA §1868 is enacted to read:

§1868. Identification of offshore wind energy test areas and offshore wind research and development site.

1. Site identification process. 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 shall identify and map specific geographic areas on state-owned submerged lands suitable for offshore wind energy demonstration projects constructed and operated in accordance with Title 38, section 480-HH. The department shall identify one of these areas for use as an offshore wind energy research and development site to facilitate achievement of the University of Maine System's offshore wind energy research and development-related objectives, including but not limited to any such objectives to be supported with state bond revenues. In identifying each such area, the department must consider existing information regarding pertinent ecological, environmental, and development-related factors, including but not limited to:

(A) 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;

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

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

(D) Wind and current speeds and ocean water depth and wave height; and

(E) Geological conditions, including substrate type.

2. Modification of identified wind energy test areas. Pursuant to the criteria under subsection 1, the department may, following notice and opportunity for public comment, add to, remove, or otherwise modify the list of offshore wind energy test areas identified pursuant to subsection 1.

Sec. 2. Offshore Wind Energy Research and Development Site. No later than September 15, 2009, the director of the Bureau of Parks and Lands within the Department

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of Conservation shall enter into a memorandum of agreement with the University of Maine System specifying terms and conditions regarding leasing of state submerged lands for offshore wind energy demonstration projects within the offshore wind energy research and development site identified pursuant to Section C-1 of this Act. The Legislature finds that it is in the public interest that this agreement facilitate use of submerged lands and state waters comprising the offshore wind energy research and development site identified pursuant to Section C-1 of this Act in manner that is consistent with and furthers achievement of the University of Maine System's offshore wind energy research and development-related objectives, including but not limited to any such objectives to be supported with state bond revenues.

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 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 the state's unorganized area as defined by Title 12 section 682, subsection 1 and that does not utilize tidal 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 action as a source of electrical or mechanical power.

Sec 3. 38 MRSA § 636-A is enacted to read:

§636-A. General Permit for Tidal Energy Demonstration Project

1. General permit. An individual permit is not required for the construction and operation of a tidal 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:

A. 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 3, paragraph I, minus the net salvage value of the demonstration project equipment; and

B. Tidal energy demonstration project. "Tidal energy demonstration project" means a hydropower project that uses tidal action as a source of electrical power that:

(1) has a total installed generating capacity of five megawatts or less; and

(2) is proposed for the primary purpose of testing tidal energy generation technology, which may include a mooring or anchoring system, and collecting information on the environmental and other effects of the technology.

3. Application requirements. An applicant must file with the department an application that contains the following, which may, to the extent applicable, be provided pursuant to paragraph A, and which shall also serve as an application for water quality certification for the proposed project pursuant to Section 401 of the federal Clean Water Act:

A. Written certification that the applicant has filed an application with the Federal Energy Regulatory Commission for a pilot project license for a proposed tidal energy demonstration project, along with a copy of that application as filed with the Commission;

B. A copy of an Environmental Assessment issued by the Federal Energy Regulatory Commission for the proposed tidal energy demonstration project that includes a finding of "No Significant Environmental Impact" pursuant to the National Environmental Policy Act;

C. A description of the waters of the State in which the proposed project will be located, including the specific location of the proposed project and information on seasonal weather patterns, wave height, current speed, prevailing wave and current direction, proximity to shipping lanes, and visibility of the projects works from the shoreline, as applicable;

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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 9, including but not limited to removal of the generating facilities and submerged utility line and termination of the project;

E. A description of proposed project facilities and operation, including:

(1) maps showing the location of all proposed project facilities and waters within the project boundary;

(2) a device schematic and operation diagram, including the physical composition, dimensions, and general configuration of any anchoring, mooring, transmission lines, or other structures proposed to be included as part of the project or connected directly to it;

(3) the water surface area in the project boundary and, for tidal projects, change in water surface levels between low and high tides using official tidal datum;

(4) the number, type and installed capacity of proposed turbines and generators to be included as part of the project;

(5) an estimate of the annual energy production, in kilowatt hours, of the proposed project; and

(6) a description of the proposed operation of the project;

F. Site-specific information regarding the physical environment in which project is proposed to be located, including:

(1) narrative descriptions and maps of the geology and soils in the project area, including: (a) substrates of submerged and intertidal lands and the geomorphology of the project site and the surrounding area; and (b) a description of any potential geologic hazards related to the project;

(2) a description of the water resources in the project area, including: (a) monthly minimum, mean, and maximum recorded temporal current speeds, wave intensities, and wave amplitudes at the site of the proposed project; and (b) vertical profiles of relevant water quality parameters throughout the water column in the project area;

(3) a description of the fish and other aquatic resources in the project area, including: (a) identification of existing fish and aquatic communities; (b) identification of any essential fish habitat as established under federal law; (c) a description of existing underwater acoustic environments, including estimated decibel levels; and (d) a description of any important spawning or feeding grounds or refugia in the project area;

(4) a description of the wildlife and botanical resources in the project area, including: (a) temporal and spatial distribution of marine mammal communities and availability and quality of feeding, breeding, rearing, and resting habitats, and a description of existing below- and above-water acoustic environments, including estimated decibel levels; and (b) temporal and spatial distribution and seasonal migration patterns of sea bird communities and availability and quality of feeding, breeding, rearing, and resting habitats;

(5) a description of the wetlands and riparian and littoral habitat in the project area, as applicable;

(6) a description of any listed rare, threatened and endangered, candidate, or special status species that may be present in the project area;

(7) a description of the existing recreational, land uses, and ocean uses and opportunities within the project area, including: (a) a description of commercial and recreational fishing grounds in the project area, including information on fishing seasons, gear types, and access routes used; (b) a description of the proximity of the project to marine sanctuaries and government-protected coastal or marine areas; and (c) a description of recreational and non-recreational use and management in the project area, including shipping channels, navigational channels, marine sanctuaries, state aquatic lands, and military use areas;

(8) a description of the visual characteristics of the lands and waters affected by the project;

(9) a description of the known cultural or historical resources in the project area, including the identification of any historic or archaeological site in the project area; and

(10) a general description of socio-economic conditions in the vicinity of the project;

G. 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 marine mammals, and fish and other marine resources with the project, 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 project;

(2) a detailed description of how the monitoring data will be analyzed and provided to the department in electronic format, 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 quarterly 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 and implementing 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 required under this section. Thirty days prior to submission of the report to the department, the applicant shall provide the draft plan to the Departments of Marine Resources, Inland Fisheries and Wildlife, and Conservation, 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;

H. A navigation safety plan to protect the public and project facilities from such events as: collisions between commercial and recreational vessels and 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, considers the need and provides for as appropriate:

(1) a geo-located navigation and underwater activity exclusion zone boundary around the proposed generating facilities, anchoring system, submerged utility line, and other project elements, if any, provided any such exclusion zone must be designed to minimize potential conflicts with other existing uses in the area and may be no larger than the applicant demonstrates is necessary to achieve the purposes of the project;

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(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;

(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;

I. 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, 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 and marine resources both during and subsequent to completion of removal activities;

(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

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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;

J. Documentation that, in developing each plan required under paragraphs G - I, 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;

K. 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; and

L. Documentation that the applicant has the financial and technical capacity to construct and operate the project as proposed.

4. Notification. 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 site 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.

5. Fees. Except as otherwise provided by section 344-A, the department shall assess a fee for review of applications filed pursuant to this section as provided by section 352.

6. 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 3 or as subsequently modified with the approval of the department in consultation with pertinent natural resources agencies is a violation of the general permit.

7. General permit term. Except as otherwise provided in subsection 9, a general permit granted under this section is valid for the term of the pilot project license issued by the Federal Energy Regulatory Commission for the tidal energy demonstration project that is the subject of the general permit. The department may grant one or more extensions of the general permit term to coincide with any approved extension of the term of the pilot project license issued by the Commission.

8. Surrender. A general permit granted pursuant to this section shall be deemed to have been surrendered and shall terminate on the date of approval by the Federal Energy Regulatory Commission of the surrender and termination of the pilot project license for the tidal energy demonstration project that is the subject of the general permit. An applicant may surrender to the department a general permit granted pursuant to this section prior to its expiration pursuant to subsection 7. Subject to conditions regarding project removal under subsection 10, the general permit terminates on the date of its surrender pursuant to this subsection.

9. 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 other marine resources or public health or safety, the department shall order the applicant to take action that the department deems necessary to address that adverse effect. Remedial action required by the department may include, but is not limited, to:

- A. Suspension or modification of project operations; or
- B. Cessation of operations and removal of some or all elements of the demonstration project, including but not limited to the generating facilities, if there is no practicable alternative to address the adverse effect.

10. Project removal. Within 60 days of termination of the demonstration project pursuant to subsection 7, 8, or 9, the applicant shall initiate implementation of the project removal plan provided for under subsection 2. If the applicant fails to begin implementing the plan 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

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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. Local review. A municipality may not enact or enforce any land use, zoning or other standard, conditions, or other requirement regarding a tidal energy demonstration project located within the municipality that is stricter than those of this section. The municipality shall have 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 a tidal energy demonstration project must be taken within 60 days of the granting of a general permit under this section.