

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE FEDERAL ENERGY REGULATORY COMMISSION  
AND  
THE STATE OF MAINE  
BY AND THROUGH ITS GOVERNOR AND DEPARTMENTS OF  
CONSERVATION, ENVIRONMENTAL PROTECTION, INLAND FISHERIES  
AND WILDLIFE, AND MARINE RESOURCES, STATE PLANNING OFFICE,  
AND GOVERNOR'S OFFICE OF ENERGY INDEPENDENCE AND SECURITY**

The State of Maine (Maine) by and through its Governor and Departments of Conservation, Environmental Protection, Inland Fisheries and Wildlife, and Marine Resources, State Planning Office, and Governor's Office of Energy Independence and Security, and the Federal Energy Regulatory Commission (Commission), as Parties to this Memorandum of Understanding (MOU), hereby acknowledge and declare as follows:

A. The Commission issues licenses under Part I of the Federal Power Act, 16 U.S.C. §§ 791a *et seq.* (FPA) for non-federal tidal energy projects also referred to as hydrokinetic technologies. This includes, but is not limited to, tidal energy projects that are or may in the future be proposed to be located in Maine state waters or in federal waters in the Gulf of Maine. The Commission's staff has established several possible means of authorizing tidal energy projects, including procedures for issuing short-term licenses for pilot projects with appropriate environmental safeguards.

B. Maine has authorities with respect to tidal energy projects that are proposed to be located in its state waters, or in federal waters where the projects affect coastal resources or coastal uses in Maine's designated coastal area, including authorities under the following federal laws: the Coastal Zone Management Act, 16 U.S.C. §§ 1451 *et seq.* (CZMA); the Clean Water Act, 33 U.S.C. §§ 1251-1387 (CWA); the National Historic Preservation Act, 16 U.S.C. §§470 *et seq.* (NHPA); as well as the FPA. Maine state law also includes provisions applicable to tidal energy projects that are proposed to be located in its state waters, affecting state waters, and upon state-owned submerged lands, including proprietary authorization, and regulatory authorization to construct and operate a tidal energy project.

C. Maine State waters and federal waters in the Gulf of Maine contain vast, untapped renewable ocean energy resources, including tidal power resources with significant potential to contribute to Maine's renewable energy mix and create related business opportunities while reducing greenhouse gas emissions that contribute to climate change.

D. Maine has enacted legislation (P.L. 2009, ch. 270) to streamline and coordinate state permitting and submerged lands leasing requirements for renewable ocean energy demonstration projects, including tidal energy demonstration projects, so

that Maine can become an international proving ground for testing promising new technologies in state waters in an environmentally responsible manner.

E. The Parties have a mutual interest in the timely processing of applications for regulatory and other approvals required for tidal energy projects using innovative hydrokinetic technologies in Maine State waters, or in federal waters where the projects affect coastal resources or coastal uses in Maine's designated coastal area, to promote clean, renewable sources of energy.

F. The Parties also desire to create a process to make it possible for developers of tidal energy projects using hydrokinetic technologies to establish short-term pilot (demonstration) projects in Maine state waters, or in federal waters where the projects affect coastal resources or coastal uses in Maine's designated coastal area, in order to study, monitor, and evaluate the economic and technical feasibility and environmental, cultural, and other effects of these technologies. The Parties intend that information developed during the pilot project licensing process will assist in the decision-making process if requests for any long-term authorizations for commercial-scale hydrokinetic tidal energy projects in Maine state waters, or in federal waters where the projects affect coastal resources or coastal uses in Maine's designated coastal area, are made.

G. The purpose of this MOU is to coordinate the procedures and schedules for review of tidal energy projects using hydrokinetic technologies in Maine state waters, or in federal waters where the projects affect coastal resources or coastal uses in Maine's designated coastal area, to ensure that there is a coordinated review of proposed hydrokinetic tidal energy projects that is responsive to environmental, economic, and cultural concerns while providing a timely, stable, and predictable means for developers of such projects to seek necessary regulatory and other approvals.

Now, therefore, the Commission and Maine agree that:

1. Maine supports the efforts by Commission staff to establish procedures to allow short-term demonstration hydrokinetic tidal energy projects with environmental safeguards through the pilot project licensing process. These procedures may, in appropriate cases, allow the licensing of hydrokinetic tidal energy projects by the Commission in a significantly shorter period than a full licensing process would require. The Parties agree that the pilot licensing process may be appropriate as a short-term means of allowing hydrokinetic tidal energy projects to proceed on a pilot (demonstration) basis while additional economic, environmental, and technical data concerning the effects and operation of such projects are gathered. The Parties also agree to share and make publicly available in accordance with applicable law and regulations all economic, environmental, and technical data gathered on these pilot projects. The Parties also agree that any shorter licensing approach established must incorporate appropriate safeguards, limitations, and monitoring to ensure that there are no significant adverse environmental, economic, or social impacts.

2. Maine and the Commission recognize that there is currently limited information available on the economic and technical feasibility and environmental, cultural, and other effects of hydrokinetic tidal energy projects, and that considerable economic, technical, and environmental analysis must occur before any proposed commercial-scale project can be approved. However, Maine and the Commission also recognize that, without *in situ* evaluation of pilot (demonstration) hydrokinetic tidal energy projects, the feasibility and effects of these projects cannot be determined. Therefore, Maine and the Commission agree that any required pre- and post-licensing studies for these pilot (demonstration) projects should be reasonable in scope, commensurate with the limited size and duration of the projects, and designed to provide information that will be relevant to the evaluation of the impacts of any proposed commercial-scale projects.

3. When Maine or the Commission becomes aware of a prospective applicant seeking a preliminary permit, pilot project license, or other license from the Commission to study or develop a hydrokinetic tidal energy project in Maine state waters, or in federal waters where the project affects coastal resources or coastal uses in Maine's designated coastal area, the party obtaining the information will promptly notify the other party to enable coordinated review of the project between Maine and the Commission. In such cases, Maine and the Commission will work together to the maximum extent feasible, with the prospective applicant and other participants in the Commission's pre-filing process to identify potential issues, to determine what information is needed, and what studies must be conducted in order to meet the requirements set forth by state and federal laws. Coordination among the Commission, Maine, and the applicant will set expectations and assist with the information needs on a proposal that will greatly assist the review process.

4. Under the Commission's "strict scrutiny" policy for processing preliminary permits for hydrokinetic projects, the Commission will process preliminary permit applications for hydrokinetic energy projects to be located in Maine state waters, or in federal waters where the projects affect coastal resources or coastal uses in Maine's designated coastal area, with a view towards limiting the boundaries of the permits, including in any areas identified by Maine as offshore wind energy test areas pursuant to state legislation (P.L. 2009, ch. 270), to prevent site-banking, and to promote competition.

5. When a prospective applicant seeks to use the pilot project license process or any other licensing process for a hydrokinetic tidal energy project to be located in Maine state waters, or in federal waters where the project affects coastal resources or coastal uses in Maine's designated coastal area, and subject to the Commission's licensing jurisdiction, Maine and the Commission agree to confer, as early in the process as practical, in order to reach agreement on a schedule for processing the application as expeditiously as practicable while ensuring sufficient time for the necessary state and federal reviews. Such a schedule, to be issued by the Commission, will include milestones for the Commission's review of the application and issuance of an environmental document, and the issuance by Maine of any certifications or concurrences

that may be required from it under federal law. To the extent feasible, Maine agrees to complete any actions required of it within the timeframes established in the schedule and, in any case, agrees to complete such actions in accordance with the decision-making schedules provided for by law. Maine and the Commission further agree that they will use their best efforts to encourage other federal agencies and stakeholders that have an interest in a proposed hydrokinetic tidal energy project in Maine state waters, or in federal waters where the project affects coastal resources or coastal uses in Maine's designated coastal area, to help develop and comply with a coordinated schedule for the review of the project. The Commission agrees to encourage the applicant for a proposed hydrokinetic tidal energy project to work with Maine to facilitate Maine's review of the project under applicable state and federal law.

6. With respect to any application to use the pilot project license process for a hydrokinetic tidal energy project to be located in Maine state waters, or in federal waters where the project affects coastal resources or coastal uses in Maine's designated coastal area, and subject to the Commission's licensing jurisdiction, Maine agrees, pursuant to state legislation (P.L. 2009, ch. 270), to take action on an application for a state permit and a request for water quality certification, for a demonstration hydrokinetic tidal project within 60 days of the State's acceptance of an application for processing. To be accepted for processing, an application must include a copy of an environmental assessment issued by the Commission for the project that includes a finding of "no significant environmental impact" pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4231 *et seq.* (NEPA). Maine further agrees, pursuant to recently enacted state legislation (P.L. 2009, ch. 270), within 30 days of the approval of a state permit and water quality certification for a demonstration hydrokinetic tidal energy project, to issue a state submerged lands lease for the project, subject to reasonable lease conditions that may not be more stringent than those contained in the state permit and that may not frustrate achievement of the purpose of the project.

7. Maine and the Commission agree that they will work to coordinate their environmental reviews of any proposed hydrokinetic tidal energy project to be located in Maine state waters, or in federal waters where the project affects coastal resources or coastal uses in Maine's designated coastal area, and subject to the Commission's licensing jurisdiction, so that documents prepared by the Commission for review under NEPA may be used by Maine agencies to satisfy the requirements of Section 401 of the Clean Water Act and the Maine Waterway Development and Conservation Act, the Maine Endangered Species Act, Mandatory Shoreland Zoning Act, and other similar requirements that are enforceable policies of Maine's approved Coastal Zone Management Program under the CZMA, or any other required actions to be taken by Maine. The Parties also agree to consult with stakeholders, including the project developers, concerning the design of studies and environmental measures, including adaptive management measures, for hydrokinetic tidal energy projects in Maine state waters, or in federal waters where the projects affect coastal resources or coastal uses in Maine's designated coastal area.

8. The Commission agrees that it will, in issuing any pilot project license or other license for a hydrokinetic tidal energy project to be located in Maine state waters, or in federal waters where the project affects coastal resources or coastal uses in Maine's designated coastal area, consider the extent to which the proposed project is consistent with pertinent state comprehensive river management plans and any subsequent amendments or addendums thereto. In addition, the Commission will consider any terms and conditions that are recommended by Maine under applicable provisions of the FPA to ensure consistency with those plans.

9. Maine and the Commission recognize that any pilot project license or other license issued by the Commission for a tidal energy project using innovative hydrokinetic technology in Maine state waters, or in federal waters where the project affects coastal resources or coastal uses in Maine's designated coastal area, must, in addition to the power and development purposes for which licenses are issued, give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality for beneficial public purposes. [16 U.S.C. § 797(e); 16 U.S.C. § 803(a)(1).]

10. Maine and the Commission will designate management contacts to work to resolve any procedural issues that arise in the review of a specific tidal energy project in Maine state waters, or in federal waters where the project affects coastal resources or coastal uses in Maine's designated coastal area. However, nothing in this MOU shall compromise or affect the rights of any party to seek relief through any available administrative or judicial process, including rights to intervene in, comment on, and appeal decisions by the Commission.

11. Nothing in this MOU requires any party to take any action that is contrary to applicable federal or state law or regulation.

12. This MOU is neither a fiscal nor a funds obligation document. Any endeavor to transfer anything of value involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Any such endeavors will be outlined in separate documents that shall be made in writing by representatives of the Parties and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority. In addition, this MOU does not establish authority for non-competitive award to the cooperator of any contract or agreement.

13. This MOU is not intended to be a binding contract enforceable in a court of law or in an administrative forum. It is intended only to lay out a process to further cooperation between the governmental entities signing this document.

14. This MOU will take effect when signed by all the parties hereto. This MOU may be modified at any time by the mutual written agreement of the Parties. The Commission or Maine may terminate the MOU upon thirty (30) days written notice to the other. During this period, the Parties shall make good-faith efforts to resolve any disagreement.

/s/ Jon Wellingshoff  
JON WELLINGHOFF  
Chairman  
Federal Energy Regulatory Commission

8/18/09  
Date

/s/ John E. Baldacci  
JOHN E. BALDACCI  
Governor  
State of Maine

8/4/09  
Date

/s/ Patrick K. McGowan  
PATRICK K. MCGOWAN  
Commissioner  
Maine Department of Conservation

8/11/09  
Date

/s/ David P. Littell  
DAVID P. LITTELL  
Commissioner  
Maine Department of Environmental Protection

8/4/09  
Date

/s/ Roland D. Martin  
ROLAND D. MARTIN  
Commissioner  
Maine Department of Inland Fisheries and Wildlife

8/6/09  
Date

/s/ George D. Lapointe  
GEORGE D. LAPOINTE  
Commissioner  
Maine Department of Marine Resources

8/10/09  
Date

/s/ Martha E. Freeman  
MARTHA E. FREEMAN  
Director  
Maine State Planning Office

8/13/09  
Date

/s/ John Kerry  
JOHN KERRY  
Director  
Governor's Office of Energy Independence and Security

8/10/09  
Date