

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1465

S.P. 545

In Senate, April 28, 2009

An Act To Facilitate Testing and Demonstration of Renewable Ocean Energy Technology

Reference to the Committee on Utilities and Energy suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HOBBS of York. (GOVERNOR'S BILL)
Cosponsored by Representative FITTS of Pittsfield and
Senators: GOODALL of Sagadahoc, RAYE of Washington, Representative: ADAMS of
Portland.

1 Be it enacted by the People of the State of Maine as follows:

2 PART A

3 Sec. A-1. 38 MRSA §344-A, first ¶, as amended by PL 2007, c. 661, Pt. B, §6,
4 is further amended to read:

5 The commissioner may enter into agreements with individuals, partnerships, firms
6 and corporations outside the department, referred to throughout this section as "outside
7 reviewers," to review applications or portions of applications submitted to the
8 department. The commissioner has sole authority to determine the applications or
9 portions of applications to be reviewed by outside reviewers and to determine which
10 outside reviewer is to perform the review. When selecting an outside reviewer, all other
11 factors being equal, the commissioner shall give preference to an outside reviewer who is
12 a public or quasi-public entity, such as state agencies, the University of Maine System or
13 the soil and water conservation districts. Except for an agreement for outside review
14 regarding review of an application for a wind energy development as defined in Title
15 35-A, section 3451, subsection 11 e, a certification pursuant to Title 35-A, section 3456,
16 or a general permit pursuant to section 480-HH or section 636-A, the commissioner may
17 enter into an agreement with an outside reviewer only with the consent of the applicant
18 and only if the applicant agrees in writing to pay all costs associated with the outside
19 review.

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

21 §480-HH. General permit for offshore wind energy demonstration project

22 1. Definitions. As used in this section, unless the context otherwise indicates, the
23 following terms have the following meanings.

24 A. "Generating facilities" has the same meaning as in Title 35-A, section 3451,
25 subsection 5.

26 B. "Maine Offshore Wind Energy Research Center" means the offshore wind energy
27 test area designated pursuant to Title 12, section 1868, subsection 2.

28 C. "Meteorological tower" means an elevated structure or other support platform
29 with attached equipment, such as an anemometer, a wind direction vane and
30 temperature and pressure sensors and other measurement devices, to measure and
31 assess the wind resource in the project area.

32 D. "Net project removal cost" means the total cost of removal of an offshore wind
33 energy demonstration project, estimated in accordance with the plan required under
34 subsection 3, paragraph G, minus the net salvage value of the project equipment.

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

1 F. "Offshore wind energy demonstration project" or "project" means a wind energy
2 development that uses a windmill or wind turbine to convert wind energy to electrical
3 energy and that employs no more than 2 wind energy turbines, each of which may
4 use different technology, for the primary purpose of testing and validating a turbine
5 blade design, floating platform or other support structure, mooring or anchoring
6 system or other offshore wind energy technology that the applicant certifies is
7 designed for use in ocean waters and is not in use elsewhere in the Gulf of Maine for
8 commercial production of electricity and that may also include:

9 (1) Up to 3 meteorological towers per wind energy turbine proposed;

10 (2) One submerged utility line that is sized to transmit:

11 (a) An amount of electricity less than or equal to that produced by the
12 offshore wind energy demonstration project; or

13 (b) Up to 25 megawatts of electricity if the line is intended to serve multiple
14 offshore wind energy demonstration projects located within the Maine
15 Offshore Wind Energy Research Center and the department has not
16 previously granted approval for such a submerged utility line pursuant to this
17 section; and

18 (3) A wave energy test project.

19 G. "Offshore wind energy test area" means a specific geographic area located on
20 state-owned submerged lands in the coastal area identified as suitable for construction
21 and operation of an offshore wind energy demonstration project pursuant to Title 12,
22 section 1868, including the Maine Offshore Wind Energy Research Center.

23 H. "Wave energy converter" means a device that uses the motion of ocean surface
24 waves to generate electricity.

25 I. "Wave energy test project" means a hydropower project, as defined by section 632,
26 subsection 3, that uses ocean wave action to produce electricity and that:

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

31 (2) Employs up to 2 wave energy converters, each of which may use different
32 technology, that the applicant certifies are designed for use in the ocean and are
33 not in use elsewhere in the Gulf of Maine for commercial production, for the
34 primary purpose of testing and validating the overall design of the converter and
35 its related systems, subsystems or components; and

36 (3) May include one or more of the following additional elements:

37 (a) A mooring or anchoring system; and

38 (b) An ocean sensor package.

39 2. General permit. A person may apply for a general permit for an offshore wind
40 energy demonstration project in accordance with this section. If a general permit is

1 granted pursuant to this section, an individual permit is not required for the construction
2 and operation of an offshore wind energy demonstration project.

3 **3. Application requirements.** An applicant for a general permit must file with the
4 department an application that contains:

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

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

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

13 (2) A narrative description of the proposed activities and methods for
14 construction, operation and removal of the offshore wind energy demonstration
15 project that addresses on-site management of fuels, lubricants and other materials
16 used for project operations or maintenance;

17 (3) A scale drawing that shows the design and location of the proposed mooring
18 or anchoring system;

19 (4) A drawing showing the location of the submerged utility line, if any, and
20 plans for its construction in compliance with the permit by rule standards
21 regarding construction of a submerged utility line established in rules adopted by
22 the board; and

23 (5) A drawing showing the proposed location of each wind turbine in relation to
24 any other offshore wind energy demonstration project within 10 kilometers of the
25 proposed project and written verification that the project will not interfere with
26 the operation of any such previously approved project.

27 C. A report, prepared following consultation with the Department of Marine
28 Resources, that:

29 (1) Describes existing information regarding commercial fishing and other
30 existing uses in the project area; and

31 (2) Describes, based on a field investigation, the marine resources, including
32 benthic communities, in the marine waters and on the submerged lands and
33 immediately adjacent areas in, on or over which the applicant proposes to locate
34 any mooring, anchoring system, meteorological tower, ocean sensor package,
35 submerged utility line or other project element that is secured to the seabed;

36 D. Written acknowledgement that, in accordance with this section, the department
37 may require the applicant to take remedial action, at the applicant's expense, pursuant
38 to subsection 13, including but not limited to removal of the generating facilities and
39 submerged utility line and termination of the project;

40 E. A fish and wildlife monitoring plan that includes provisions for conducting
41 monitoring, throughout the term of the general permit, of the behavior and interaction

1 of species listed as threatened or endangered in Title 12, section 6975 or Title 12,
2 section 12803, subsection 3; avian species, including seabirds, passerines, raptors,
3 shorebirds, water birds and waterfowl; bats; and marine mammals and other marine
4 resources with the project, including but not limited to the generating facilities and
5 mooring or anchoring systems employed, and identifying potential adverse effects.
6 The plan, at a minimum, must include:

7 (1) A detailed description of the methods and equipment that will be used for
8 monitoring fish and wildlife behavior and activity in the vicinity of the project;

9 (2) A detailed description of how the fish and wildlife monitoring data will be
10 analyzed and provided to the department in electronic format, with specific
11 criteria by which to evaluate adverse effects;

12 (3) A detailed implementation schedule, including the frequency and timing of
13 data recovery, maintenance of the monitoring equipment and quarterly reporting
14 to the department;

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

17 (5) Provisions for identifying and implementing remedial measures if monitoring
18 identifies any adverse changes in fish or wildlife behavior or use of ocean
19 habitats;

20 (6) A detailed description of the methods and equipment that will be used to
21 determine and monitor ambient noise levels, electromagnetic fields and noise
22 associated with project construction and subsequent operations and the
23 effectiveness of any devices that are proposed to avoid and minimize the
24 potential for related foreseeable adverse effects, if any; and

25 (7) Provisions for filing an annual report with the department describing the
26 monitoring results and any recommendations for modifying the generating
27 facilities or other project elements, or commencing the approved project removal
28 plan, if necessary to minimize adverse effects on natural resources identified
29 pursuant to plans required under this section. Thirty days prior to submission of
30 the report to the department, the applicant shall provide a draft of the report to the
31 Department of Marine Resources, the Department of Inland Fisheries and
32 Wildlife, the Department of Conservation, the United States Fish and Wildlife
33 Service and the National Marine Fisheries Service and shall include in the annual
34 report any comments from those agencies and the applicant's responses to them;

35 F. A navigation safety plan to protect the public and project facilities from such
36 events as: collisions between commercial and recreational vessels and project
37 facilities; entanglement of fishing gear, anchors, dredging equipment or other
38 underwater devices that may damage or become entangled with project transmission,
39 anchoring and mooring lines; release of or damage to the project's submerged utility
40 line, anchoring system or other project elements in, on or over the seabed; and
41 electrocution. The plan must, at a minimum, consider the need and provide for as
42 appropriate;

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

7 (2) Marking the extreme corners of the exclusion zone with lights, buoys or
8 other indicators sufficient to warn vessels of the above-water and underwater
9 project elements and the boundaries of the exclusion zone during both day and
10 night;

11 (3) Marking the generating facilities with fog signals, low-intensity navigation
12 lights, hazard marking lights or other aids to navigation and painting and lighting
13 the generating facilities in a way that considers the aesthetic resources of the
14 project area as well as the safety of the public and project facilities and meets
15 applicable Federal Aviation Administration guidelines and United States Coast
16 Guard requirements;

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

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

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

28 (1) Removal of the project in its entirety from all project lands and waters,
29 except for any part of the project regarding which the applicant provides the
30 department substantial evidence of plans for continued beneficial use, including
31 but not limited to an executed lease of state-owned submerged lands, as
32 applicable, or for partial removal or other modification adequate to avoid
33 foreseeable adverse effects on natural resources and existing uses;

34 (2) Minimizing seabed disturbances and suspended sediments during removal of
35 any underwater facilities;

36 (3) Monitoring the effects of the removal activities on species listed as
37 threatened or endangered species in Title 12, section 6975 or Title 12, section
38 12803, subsection 3 and marine resources both during and subsequent to
39 completion of removal activities;

40 (4) An implementation schedule that provides for all removal and restoration
41 activities to be completed within one year of the expiration date of the general
42 permit pursuant to subsection 9;

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

4 (6) Written evidence and certification that the applicant has posted and will
5 maintain funds for project removal in an amount equal to the net project removal
6 cost, except that at no point may such funds be less than 25% of the total project
7 removal cost. The applicant shall post and maintain project removal funds with a
8 bonding company or federal-chartered or state-chartered lending institution that
9 is authorized to do business in the State and chosen by the applicant and
10 considered acceptable by the department posting the financial security. Project
11 removal funds may be in the form of a performance bond, surety bond, letter of
12 credit, corporate guarantee or other form of financial assurance that the
13 department considers adequate to ensure funds posted pursuant to this paragraph
14 will remain inviolate and available for project removal if the applicant ceases to
15 exist, declares bankruptcy or becomes insolvent or otherwise unable to finance
16 the project removal plan required under this paragraph;

17 H. Documentation that, in developing each plan required under paragraphs E to G,
18 the applicant consulted with: the Department of Marine Resources, the Department of
19 Inland Fisheries and Wildlife and the Department of Conservation; the Maine Land
20 Use Regulation Commission and the Executive Department, State Planning Office;
21 the United States Army Corps of Engineers, the United States Coast Guard, the
22 National Marine Fisheries Service, the National Park Service and the United States
23 Fish and Wildlife Service; each municipality in which or adjacent to which the
24 project is proposed; and any other local, state or federal agency the applicant
25 considers appropriate. This documentation must include copies of these agencies'
26 comments and recommendations on the plan, if any, and specific descriptions of how
27 the agencies' comments are accommodated by the plan, including the applicant's
28 reasons, based on project-specific information, for any agency recommendation not
29 adopted. The applicant shall allow a minimum of 60 days for the agencies to review
30 and make comments and recommendations on each draft plan before it is filed with
31 the department. No more than 30 days prior to its initiation, the applicant shall notify
32 each municipality within or adjacent to which it intends to site and operate an
33 offshore wind energy demonstration project and invite its participation in the
34 consultation required under this paragraph;

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

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

41 K. Certification that neither the applicant nor any corporation, partnership, person or
42 other legal entity with an ownership, leasehold or other direct financial interest in the
43 proposed project holds or has an application pending for approval of a general permit
44 under this section for any other offshore wind energy demonstration project located
45 in the offshore wind energy test area in which the project is proposed; and

1 L. For an offshore wind energy demonstration project proposed for location within
2 the Maine Offshore Wind Energy Research Center, written evidence that the
3 proposed development will be undertaken by or in cooperation with the University of
4 Maine System and on terms and in a manner that the University of Maine System
5 determines consistent with and in furtherance of its offshore wind energy research
6 and development-related objectives, including but not limited to any such objectives
7 to be supported with state bond revenues.

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

11 5. Notification. Except as otherwise provided by subsection 13, the department
12 shall notify an applicant in writing within 60 days of its acceptance of the application for
13 processing if the department determines that the requirements of this section have not
14 been met. The notification must specifically cite the requirements of this section that
15 have not been met. If the department has not notified the applicant under this subsection
16 within the specified time period, a general permit is deemed to have been granted.

17 6. Fees. The department shall assess a fee for review of applications filed pursuant to
18 this section, including a request for modification under subsection 13. Except as
19 otherwise provided by section 344-A, the fee must be commensurate with the amount
20 assessed to activities requiring an individual permit for coastal wetland alterations.

21 7. Violation. Any action taken by a person receiving a general permit under this
22 section that is not in compliance with the plans submitted under subsection 3 or as
23 subsequently modified with the approval of the department in consultation with agencies
24 and other entities with whom the applicant consulted in accordance with subsection 3 is a
25 violation of the general permit.

26 8. General permit term; extensions. Except as otherwise provided in subsections 9
27 to 12, a permit granted under this section authorizes conduct of the approved offshore
28 wind energy demonstration project for 3 years from the date that construction of a
29 permitted structure on submerged lands is initiated or 5 years from the date of issuance
30 pursuant to subsection 5, whichever first occurs. The applicant must provide the
31 department written notice of the date of initiation of such construction within 7 days of its
32 commencement. Except as otherwise provided by this subsection, the department may
33 not extend the term of a general permit granted under this section.

34 A. The department may grant one or more extensions of the general permit term,
35 each for a period of 6 months or less, if, prior to expiration of the general permit
36 term, the applicant has filed completed applications for all requisite state license and
37 permit approvals for a wind energy development, as defined by Title 35-A, section
38 3451, subsection 11, located wholly or partly where the project is located. The
39 department may not grant an extension under this paragraph for a project located in
40 the Maine Offshore Wind Energy Research Center.

41 B. The department may grant one or more extensions, not to exceed 3 years in
42 aggregate, of the general permit term for an offshore wind energy demonstration
43 project located in the Maine Offshore Wind Energy Research Center if the applicant

1 provides written evidence that the University of Maine System considers the
2 extension necessary to fulfill the research and development objectives of the project.

3 **9. Demonstrated progress.** If the department determines that the applicant has not
4 completed or made substantial and ongoing progress to complete construction of all
5 project elements within one year of the date of notice to the department pursuant to
6 subsection 5, the applicant must surrender its general permit, subject to conditions
7 regarding project removal pursuant to subsection 11.

8 **10. Surrender.** An applicant may surrender to the department a general permit
9 granted pursuant to this section prior to its expiration pursuant to subsection 8. Subject to
10 conditions regarding project removal under subsection 11, the general permit terminates
11 on the date of its surrender pursuant to this subsection.

12 **11. Project removal.** Within 60 days of termination of the project pursuant to
13 subsection 8, 9 or 10, the applicant shall initiate implementation of the project removal
14 plan provided for under subsection 3, paragraph G. If the applicant fails to begin
15 implementing the plan within this 60-day period, the department may take such measures
16 as it considers necessary to initiate and fully implement the plan by drawing on the
17 financial surety provided pursuant to the project removal plan. The applicant's
18 acceptance of the general permit constitutes agreement and consent by the applicant and
19 its heirs, successors and assigns that the department may take such action as necessary to
20 initiate and fully implement the project removal plan. The holder of the project removal
21 funds shall release the project removal funds when the applicant has demonstrated and
22 the department concurs that the project removal plan has been satisfactorily completed or
23 upon written authorization by the department in the event the department implements the
24 plan pursuant to this subsection.

25 **12. Remedial action.** If the department determines, based on information provided
26 in annual or periodic reports provided pursuant to subsection 3 or other information, that
27 there is substantial evidence that the project is having a significant adverse effect on a
28 protected natural resource, wildlife, including avian wildlife, bat species, marine
29 mammals, fish or other marine resources or public health or safety, the department shall
30 order the applicant to take action that the department considers necessary to address that
31 adverse effect. Remedial action required by the department may include, but is not
32 limited to:

33 A. Suspension or modification of project operations; or

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

37 **13. Permit modification; relocation.** Following the granting of a general permit
38 under this section, the department may authorize an applicant to move the generating
39 facilities to another location within the same offshore wind energy test area, as long as the
40 applicant provides an amended site plan that meets the requirements of subsection 3,
41 paragraphs B, C, E, F and H. The department shall notify the applicant in writing within
42 30 days of acceptance for processing if the department determines that the requirements
43 of this section have not been met. Any such notification must specifically cite the

1 requirements of this section that have not been met. If the department has not notified the
2 applicant under this subsection within the specified time period, a permit modification is
3 deemed to have been granted.

4 **14. Relationship to other laws.** Notwithstanding any other provision of law to the
5 contrary, an offshore wind energy demonstration project that has been granted a general
6 permit under this section is not subject to review by or required to obtain a development
7 permit, rezoning authorization or other approval or authorization from the Maine Land
8 Use Regulation Commission and is not otherwise subject to review or approval by the
9 department pursuant to this subchapter.

10 A municipality may not enact or enforce any land use, zoning or other standard,
11 conditions or requirement regarding an offshore wind energy demonstration project
12 located within the municipality that is stricter than standards, conditions or requirements
13 of this section. The municipality has the burden of proof regarding the location of the
14 project in relation to its boundaries. Any action by the municipality regarding its
15 authorization to site, construct or operate an offshore wind energy demonstration project
16 must be taken within 60 days of the grant of a general permit under this section or within
17 30 days of the granting of a permit modification pursuant to subsection 13.

18 **PART B**

19 **Sec. B-1. 12 MRSA §1862, sub-§2, ¶F** is enacted to read:

20 F. Within 15 days of receipt of a copy of an application submitted to the Department
21 of Environmental Protection for a general permit under Title 38, section 480-HH or
22 Title 38, section 636-A, the director shall, if requested by the applicant, provide the
23 applicant a lease option, to be effective on the date of receipt of the application, for
24 use of state-owned submerged lands that are necessary to fulfill the project purposes
25 as identified in the application. Within 30 days of receiving notice and a copy of a
26 general permit granted pursuant to Title 38, section 480-HH or Title 38, section
27 636-A, the director shall waive the review procedures and standards under this
28 section and issue a submerged lands lease for the permitted activity. The term of the
29 lease must be consistent with that of the permit, including any extension of the
30 permit, and the period of time needed to fully implement the project removal plan
31 approved pursuant to Title 38, section 480-HH or Title 38, section 636-A, as
32 applicable. The director may include lease conditions that the director determines
33 reasonable, except that the conditions may not impose any requirement more
34 stringent than those in a permit granted under Title 38, section 480-HH or Title 38,
35 section 636-A, as applicable, and may not frustrate achievement of the purpose of the
36 project.

37 **PART C**

38 **Sec. C-1. 12 MRSA §1868** is enacted to read:

39 **§1868. Identification of offshore wind energy test areas**

40 **1. Site identification process.** No later than December 15, 2009, following
41 consultation with the Department of Environmental Protection, the Public Utilities

1 Commission, the Department of Inland Fisheries and Wildlife, the Maine Land Use
2 Regulation Commission, the Department of Marine Resources, the Maine Historic
3 Preservation Commission and the University of Maine System and opportunity for public
4 comment, the department, in conjunction with the Executive Department, State Planning
5 Office, shall identify and map up to 5 specific geographic areas on state-owned
6 submerged lands suitable for offshore wind energy demonstration projects constructed
7 and operated in accordance with Title 38, section 480-HH. In identifying each such area,
8 the department must consider existing information regarding pertinent ecological,
9 environmental and development-related factors, including but not limited to:

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

13 B. Potential adverse effects on species listed as threatened or endangered under
14 section 6975 or section 12803, subsection 3; avian species, including seabirds,
15 passerines, raptors, shorebirds, water birds, waterfowl; bats; and marine mammals
16 and on commercial fishing, recreation, navigation, existing public access ways to
17 intertidal and subtidal areas and other existing uses;

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

20 D. Data regarding wind speed, ocean wave height and period, ocean currents and
21 water depth;

22 E. Geology, including substrate type and other seafloor characteristics;

23 F. Public support in pertinent coastal communities; and

24 G. Historic sites and archaeological resources of state or national significance.

25 **2. Maine Offshore Wind Energy Research Center.** The department shall
26 designate one of the areas identified under subsection 1 as the Maine Offshore Wind
27 Energy Research Center for use by offshore wind energy demonstration projects
28 conducted by or in cooperation with the University of Maine System and on terms and in
29 a manner that the University of Maine System considers consistent with and in
30 furtherance of its offshore wind energy research and development-related objectives,
31 including but not limited to any such objectives to be supported with state bond revenues.

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

36 **PART D**

37 **Sec. D-1. 12 MRSA §685-B, sub-§1-A, ¶B,** as amended by PL 2001, c. 402, §4,
38 is further amended to read:

39 **B.** A permit is not required for those aspects of a project approved by the
40 Department of Environmental Protection under Title 38 if the commission determines

1 that the project is an allowed use within the subdistrict or subdistricts for which it is
2 proposed. Notice of the intent to develop and a map indicating the location of the
3 proposed development must be filed with the commission prior to or concurrently
4 with submission of a development application to the Department of Environmental
5 Protection; and

6 **Sec. D-2. 12 MRSA §685-B, sub-§1-A, ¶C**, as enacted by PL 2001, c. 402, §5,
7 is amended to read:

8 C. A permit is not required for a campsite in a management district;

9 **Sec. D-3. 12 MRSA §685-B, sub-§1-A, ¶D** is enacted to read:

10 D. A permit is not required for an offshore wind energy demonstration project
11 approved by the Department of Environmental Protection pursuant to Title 38,
12 section 480-HH. Notice of the intent to develop and a map indicating the location of
13 the proposed development must be filed with the commission prior to or concurrently
14 with submission of an application to the Department of Environmental Protection
15 pursuant to Title 38, section 480-HH; and

16 **Sec. D-4. 12 MRSA §685-B, sub-§1-A, ¶E** is enacted to read:

17 E. A hydropower project that uses tidal action as a source of electrical or mechanical
18 power or is located partly within an organized municipality and partly within an
19 unorganized territory is not subject to review and approval by the commission.

20 **Sec. D-5. 38 MRSA §634-A** is enacted to read:

21 **§634-A. Administering agency**

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

24 A. Is located wholly or partly within an organized municipality; or

25 B. Uses tidal action as a source of electrical or mechanical power, regardless of the
26 hydropower project's location.

27 **2. Maine Land Use Regulation Commission.** The Maine Land Use Regulation
28 Commission shall administer the permit process for a hydropower project that is located
29 wholly within the State's unorganized and deorganized areas as defined by Title 12,
30 section 682, subsection 1 and that does not use tidal action as a source of electrical or
31 mechanical power.

32 **Sec. D-6. 38 MRSA §635-B**, as amended by PL 1989, c. 890, Pt. A, §40 and Pt.
33 B, §186, is further amended to read:

34 **§635-B. Procedures for water quality certification**

35 Issuance of a water quality certificate required under the United States Federal Water
36 Pollution Control Act, Section 401, is coordinated for the applicant under this subarticle
37 by the Commissioner of Environmental Protection. The issuance of a water quality

1 certificate is mandatory in every case where the department approves an application for a
2 permit or general permit under this subarticle. An application for a tidal energy
3 demonstration project under section 636-A that is accepted as complete by the department
4 serves as an application for water quality certification for the proposed project pursuant to
5 the Federal Water Pollution Control Act, Section 401, 33 United States Code, Section
6 1341. The department shall issue or deny certification at the same time it approves or
7 disapproves the proposed project. If issued, the certification must state that there is a
8 reasonable assurance that the project will not violate applicable water quality standards.
9 The coordination function of the department with respect to water quality certification
10 does not include any proceedings or substantive criteria in addition to those otherwise
11 required by this subarticle.

12 **Sec. D-7. 38 MRSA §636, sub-§5,** as enacted by PL 1983, c. 458, §18, is
13 amended to read:

14 **5. Maine Land Use Regulation Commission.** Within the jurisdiction of the Maine
15 Land Use Regulation Commission, the project is consistent with zoning adopted by the
16 commission. This criterion does not apply to any project that uses tidal action as a source
17 of electrical or mechanical power.

18 **Sec. D-8. 38 MRSA §636-A** is enacted to read:

19 **§636-A. General permit for tidal energy demonstration project**

20 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
21 following terms have the following meanings.

22 **A. "Tidal energy demonstration project" or "project" means a hydropower project**
23 **that uses tidal action as a source of electrical power and that:**

24 **(1) Has a total installed generating capacity of 5 megawatts or less; and**

25 **(2) Is proposed for the primary purpose of testing tidal energy generation**
26 **technology, which may include a mooring or anchoring system and transmission**
27 **line, and collecting and assessing information on the environmental and other**
28 **effects of the technology.**

29 **2. General permit.** A person may apply for a general permit for a tidal energy
30 demonstration project in accordance with this section. If a general permit is granted
31 pursuant to this section, an individual permit under section 633 is not required for the
32 construction and operation of a tidal energy demonstration project.

33 **3. Application requirements.** An applicant for a general permit must file with the
34 department an application that contains the following:

35 **A. Written certification that the applicant has filed an application with the Federal**
36 **Energy Regulatory Commission for a pilot project license for a proposed tidal energy**
37 **demonstration project, along with a copy of that application as filed with the**
38 **commission. The application must contain such information as is required by the**
39 **Federal Energy Regulatory Commission, including, but not limited to:**

1 (1) A description of the waters of the State in which the proposed project will be
2 located;

3 (2) A description of proposed project facilities and operation;

4 (3) Site-specific information regarding the physical environment in which the
5 project is proposed to be located and the anticipated environmental effects of the
6 proposed project;

7 (4) A plan for monitoring the environmental effects of the project through the
8 term of the general permit;

9 (5) A plan for safeguarding the public and environmental resources through the
10 term of the general permit;

11 (6) A plan for removing the project after the termination of the general permit
12 unless the applicant is pursuing a license for a commercial tidal power project at
13 the site; and

14 (7) Documentation that, in developing the application, the applicant has
15 consulted with the appropriate local, state and federal resource agencies, as well
16 as local governments, Indian tribes, nongovernmental organizations and members
17 of the public likely to be interested in the project;

18 B. Documentation, including certificates of insurance, that the applicant has and will
19 maintain a current general liability policy for the project that covers bodily injury,
20 property damages and environmental damages in an amount considered reasonable
21 by the department in consideration of the scope, scale and location of the project;

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

24 D. A copy of an environmental assessment issued by the Federal Energy Regulatory
25 Commission for the proposed tidal energy demonstration project that includes a
26 finding of "no significant environmental impact" pursuant to the National
27 Environmental Policy Act of 1969, Public Law 91-190, 42 United States Code,
28 Chapter 55; and

29 E. Written acknowledgement that, in accordance with this section, the department
30 may require the applicant to take remedial action, at the applicant's expense, pursuant
31 to subsection 9, including but not limited to removal of the generating facilities and
32 submerged utility line and termination of the project.

33 4. Notification. The department shall notify an applicant in writing within 60 days
34 of its acceptance of the application for processing if the department determines that the
35 requirements of this section have not been met. The notification must specifically cite the
36 requirements of this section that have not been met. If the department has not notified the
37 applicant under this subsection within the specified time period, a general permit is
38 deemed to have been granted.

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

1 **6. Violation.** Any action taken by a person receiving a general permit under this
2 section that is not in compliance with the plans submitted under subsection 3 or as
3 subsequently modified with the approval of the department in consultation with agencies
4 and other entities with whom the applicant consulted in accordance with subsection 3,
5 paragraph A, subparagraph (7) is a violation of the general permit.

6 **7. General permit term.** Except as otherwise provided in subsections 8 and 9, a
7 general permit granted under this section is valid for the term of the pilot project license,
8 including any related annual license, issued by the Federal Energy Regulatory
9 Commission for the tidal energy demonstration project that is the subject of the general
10 permit. The department may grant one or more extensions of the general permit term to
11 coincide with any approved extension of the term of the pilot project license or any
12 related annual license issued by the Federal Energy Regulatory Commission.

13 **8. Surrender.** A general permit granted pursuant to this section is deemed to have
14 been surrendered and terminates on the date of approval by the Federal Energy
15 Regulatory Commission of the surrender and termination of the pilot project license or
16 any related annual license for the tidal energy demonstration project that is the subject of
17 the general permit. An applicant may surrender to the department a general permit
18 granted pursuant to this section prior to its expiration pursuant to subsection 7. Subject to
19 conditions regarding project removal under subsection 10, the general permit terminates
20 on the date of its surrender pursuant to this subsection.

21 **9. Remedial action.** If the department determines, based on the results of monitoring
22 conducted by the applicant or other information, that there is substantial evidence that the
23 project is having a significant adverse effect on a protected natural resource as defined by
24 section 480-B, subsection 8, wildlife, including avian wildlife, bat species, marine
25 mammals, fish or other marine resources or public health or safety, the department shall
26 order the applicant to take action that the department considers necessary to address that
27 adverse effect. Remedial action required by the department may include, but is not
28 limited to:

29 A. Suspension or modification of project operations; or

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

33 **10. Project removal.** Within 60 days of termination of the project pursuant to
34 subsection 7 or 8, unless the applicant is pursuing a license for a commercial tidal power
35 project at the site, and within 60 days of termination of the project pursuant to subsection
36 9, the applicant shall initiate implementation of the project removal plan provided for
37 under subsection 3, paragraph A, subparagraph (6). If the applicant fails to begin
38 implementing the plan within this 60-day period, the department may take such measures
39 as it considers necessary to initiate and fully implement the plan by drawing on the
40 financial surety provided pursuant to the project removal plan. The applicant's
41 acceptance of the general permit constitutes agreement and consent by the applicant and
42 its heirs, successors and assigns that the department may take such action as necessary to
43 initiate and fully implement the project removal plan. The holder of the project removal

1 funds shall release the project removal funds when the applicant has demonstrated and
2 the department concurs that the project removal plan has been satisfactorily completed or
3 upon written authorization by the department in the event the department implements the
4 plan pursuant to this subsection.

5 **11. Local review.** A municipality may not enact or enforce any land use, zoning or
6 other standard, conditions or requirement regarding a tidal energy demonstration project
7 located within the municipality that is stricter than the standards, conditions or
8 requirements of this section. The municipality has the burden of proof regarding the
9 location of the project in relation to its boundaries. Any action by the municipality
10 regarding its authorization to site, construct or operate a tidal energy demonstration
11 project must be taken within 60 days of the granting of a general permit under this
12 section.

13 SUMMARY

14 This bill contains several provisions to facilitate research and development and
15 demonstration of renewable ocean energy technologies.

16 Part A streamlines state permitting of offshore wind energy demonstration projects by
17 creating a general permit administered by the Department of Environmental Protection
18 for qualified projects located in specific offshore areas identified under Part C of the bill.

19 Part B streamlines the process for issuance of a state submerged lands lease for an
20 offshore wind energy demonstration project granted a general permit in accordance with
21 Part A of the bill or a tidal energy demonstration project granted a general permit under
22 Part D of the bill.

23 Part C calls for a public process to identify up to 5 specific offshore areas in which an
24 offshore wind energy demonstration project may be granted a general permit as provided
25 in Part A of the bill based on consideration of potential effects on natural resources and
26 existing uses, community support and other factors. Part C further provides for
27 designation of one of these areas as the Maine Offshore Wind Energy Research Center to
28 facilitate offshore wind energy-related research and development conducted by or in
29 cooperation with the University of Maine System.

30 Part D streamlines state permitting of tidal energy demonstration projects by creating
31 a general permit administered by the Department of Environmental Protection for
32 projects eligible for a pilot project license from the Federal Energy Regulatory
33 Commission.