

Maine Revised Statutes

Title 38: WATERS AND NAVIGATION

Chapter 3: PROTECTION AND IMPROVEMENT OF WATERS

§480-HH. GENERAL PERMIT FOR OFFSHORE WIND ENERGY DEMONSTRATION PROJECT

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

A. "Coastal area" has the same meaning as in section 1802, subsection 1. [2009, c. 270, Pt. A, §2 (NEW).]

B. "Generating facilities" has the same meaning as in Title 35-A, section 3451, subsection 5. [2009, c. 270, Pt. A, §2 (NEW).]

C. "Maine Offshore Wind Energy Research Center" means the offshore wind energy test area designated pursuant to Title 12, section 1868, subsection 2. [2009, c. 270, Pt. A, §2 (NEW).]

D. "Meteorological tower" means an elevated structure or other support platform with attached equipment, such as an anemometer, a wind direction vane and temperature and pressure sensors and other measurement devices, to measure and assess the wind resource in the project area. [2009, c. 270, Pt. A, §2 (NEW).]

E. "Net project removal cost" means the total cost of removal of an offshore wind energy demonstration project, estimated in accordance with the plan required under subsection 3, paragraph G, minus the net salvage value of the project equipment. [2009, c. 270, Pt. A, §2 (NEW).]

F. "Ocean energy generating unit" means a wind turbine that converts wind energy to electrical energy that may be employed pursuant to a general permit under this section, a wave energy converter that may be employed pursuant to a general permit issued under this section or a tidal energy demonstration project that may be employed pursuant to a permit issued under section 636-A. [2009, c. 270, Pt. A, §2 (NEW).]

G. "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. [2009, c. 270, Pt. A, §2 (NEW).]

H. "Offshore wind energy demonstration project" or "project" means a wind energy development that uses a wind turbine to convert wind energy to electrical energy and that employs no more than 2 wind energy turbines, each of which may use 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 elsewhere in the Gulf of Maine for commercial production of electricity and that may also include:

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

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

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

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

(3) A wave energy test project. [2009, c. 270, Pt. A, §2 (NEW).]

I. "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 the Maine Offshore Wind Energy Research Center. [2009, c. 270, Pt. A, §2 (NEW).]

J. "Wave energy converter" means a device that uses the motion of ocean surface waves to generate electricity. [2009, c. 270, Pt. A, §2 (NEW).]

K. "Wave energy test project" means a hydropower project, as defined by section 632, subsection 3, that uses ocean wave action to produce electricity and 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 complements electricity produced by an offshore wind energy turbine;

(2) Employs up to 2 wave energy converters, each of which may use different technology, that the applicant certifies are designed for use in the ocean and are not in use elsewhere in the Gulf of Maine 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

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

(a) A mooring or anchoring system; and

(b) An ocean sensor package. [2009, c. 270, Pt. A, §2 (NEW).]

[2009, c. 270, Pt. A, §2 (NEW) .]

2. General permit. A person may apply for a general permit for an offshore wind energy demonstration project in accordance with this section. If a general permit is granted pursuant to this section, a permit is not required under section 480-C for the construction and operation of an offshore wind energy demonstration project.

[2009, c. 270, Pt. A, §2 (NEW) .]

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

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; [2009, c. 270, Pt. A, §2 (NEW).]

B. A site plan that includes the following elements:

(1) A plan 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 line or meteorological tower;

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

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

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

(5) A drawing showing the proposed location of each wind turbine in relation to any other offshore wind energy demonstration project within 10 kilometers of the proposed project and written verification that the project will not interfere with the operation of any such previously approved project. [2009 , c. 270 , Pt. A , §2 (NEW) .]

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

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

(2) Describes, based on a field investigation, the marine resources, 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 any mooring, anchoring system, meteorological tower, ocean sensor package, submerged utility line or other project element that is secured to the seabed; [2009 , c. 270 , Pt. A , §2 (NEW) .]

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 project; [2009 , c. 270 , Pt. A , §2 (NEW) .]

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

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

(2) A detailed description of how the fish and wildlife 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 conditions, seasonal variations in species' presence or absence and other pertinent biological factors;

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

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

(7) Provisions 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 a draft of the report to the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, the Department of Agriculture, Conservation and Forestry, the United States Fish and Wildlife Service and the National Marine Fisheries Service and shall include in the annual report any comments from those agencies and the applicant's responses to them; [2009 , c. 270 , Pt. A , §2 (NEW) ; 2011 , c. 657 , Pt. W , §5 (REV) .]

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. The plan must, at a minimum, consider the need and provide for as appropriate:

- (1) A boundary defining an exclusion zone around the proposed generating facilities, anchoring system, submerged utility line and other project elements, if any, in which specified types of navigation and underwater activities incompatible with project operations may not be conducted. Any such exclusion zone must be specified with global positioning system coordinates and 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 offshore wind energy demonstration project;
- (2) Marking the extreme corners of the exclusion zone, specified pursuant to subparagraph (1), with lights, buoys or other indicators sufficient to warn vessels of the above-water and underwater project elements and the boundaries of the exclusion zone during both day and night;
- (3) Marking the generating facilities with fog signals, low-intensity navigation lights, hazard marking lights or other aids to navigation and painting and lighting the 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 and United States Coast Guard requirements;
- (4) Procedures to ensure the safety of the public near the project area; and
- (5) A 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; [2009 , c. 270 , Pt. A , § 2 (NEW) .]

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

- (1) Removal of the project in its entirety from all project lands and waters, except for any part of the project 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, or for partial removal or other modification adequate to avoid foreseeable adverse effects on natural resources and existing uses;
- (2) Minimizing seabed disturbances and suspended sediments during removal of any underwater facilities;
- (3) Monitoring the effects of the removal activities on species listed as threatened or endangered species in Title 12, section 6975 or Title 12, 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, except that at no point may such funds be less than 25% of the total project removal cost. The applicant shall post and maintain project removal funds with a bonding company or federal-chartered or state-chartered lending

institution that is authorized to do business in the State and chosen by the applicant and considered 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 that the department considers adequate to ensure funds posted pursuant to this paragraph will remain inviolate and available for project removal if the applicant ceases to exist, declares bankruptcy or becomes insolvent or otherwise unable to finance the project removal plan required under this paragraph; [2009, c. 270, Pt. A, §2 (NEW).]

H. Documentation that, in developing each plan required under paragraphs E to G, the applicant consulted with: the Department of Marine Resources, the Department of Inland Fisheries and Wildlife and the Department of Agriculture, Conservation and Forestry; the Maine Land Use Planning Commission and the Governor's Energy Office; the United States Army Corps of Engineers, the United States Coast Guard, the National Marine Fisheries Service, the National Park Service and the United States Fish and Wildlife Service; the lobster management policy council established under Title 12, section 6447 for the lobster management zone in which the offshore wind energy demonstration project is proposed; each municipality in which or adjacent to which the project is proposed; and any other local, state or federal agency the applicant considers appropriate. This documentation must include copies of these agencies' comments and recommendations on the plan, if any, and specific descriptions of how the agencies' comments are accommodated by the plan, including the applicant's reasons, based on project-specific information, for any agency recommendation not adopted. The applicant shall allow a minimum of 60 days for the agencies to review and make comments and recommendations on each draft plan before it is filed with the department. No more than 30 days prior to its initiation, the applicant shall notify each municipality within or adjacent to which it intends to site and operate an offshore wind energy demonstration project and invite its participation in the consultation required under this paragraph; [2011, c. 655, Pt. MM, §20 (AMD); 2011, c. 655, Pt. MM, §26 (AFF); 2011, c. 657, Pt. W, §5 (REV); 2011, c. 682, §38 (REV).]

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 in an amount considered reasonable by the department in consideration of the scope, scale and location of the project; [2009, c. 270, Pt. A, §2 (NEW).]

J. Documentation that the applicant has the financial and technical capacity to construct and operate the project as proposed; [2009, c. 270, Pt. A, §2 (NEW).]

K. Certification that neither the applicant nor any corporation, partnership, person or other legal entity with an ownership, leasehold or other direct financial interest in the proposed project holds or has an application pending for approval of a general permit under this section for any other offshore wind energy demonstration project located in the offshore wind energy test area in which the project is proposed. This paragraph does not apply to an application by the University of Maine System for a project, funded in whole or part with state or federal funds and proposed for location in the Maine Offshore Wind Energy Research Center, that employs offshore wind energy technology for which the department has not previously granted a general permit under this section; and [2009, c. 270, Pt. A, §2 (NEW).]

L. For an offshore wind energy demonstration project proposed for location within the Maine Offshore Wind Energy Research Center, 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 determines consistent with and in furtherance of its offshore wind energy research and development-related objectives, including but not limited to any such objectives to be supported with state bond revenues. [2009, c. 270, Pt. A, §2 (NEW).]

[2011, c. 655, Pt. MM, §20 (AMD); 2011, c. 655, Pt. MM, §26 (AFF); 2011, c. 657, Pt. W, §5 (REV); 2011, c. 682, §38 (REV).]

4. Review period. There is a 60-day review period for applications for a general permit for an offshore wind energy demonstration project under this section. The review period begins on the date that the department has accepted an application for processing. This review period may be extended pursuant to section 344-B with the consent of the applicant.

[2009, c. 270, Pt. A, §2 (NEW) .]

5. Notification. Except as otherwise provided by subsection 13, the department shall notify an applicant in writing within the review period pursuant to subsection 4 if the department determines that the requirements of this section have not been met. The 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 review period, a general permit is deemed to have been granted as of the date immediately following the final day of the review period specified in subsection 4.

[2009, c. 270, Pt. A, §2 (NEW) .]

6. Fees. The department shall assess a fee for review of applications filed pursuant to this section, including a request for modification under subsection 13. Except as otherwise provided by section 344-A, the fee must be commensurate with the amount assessed, pursuant to section 352, to activities requiring an individual permit for coastal wetland alterations.

[2009, c. 270, Pt. A, §2 (NEW) .]

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

[2009, c. 270, Pt. A, §2 (NEW) .]

8. General permit term. Except as otherwise provided in subsections 9 to 12, a general permit granted under this section authorizes conduct of the approved offshore wind energy demonstration project in accordance with this subsection:

A. If the offshore wind energy demonstration project is not located in the Maine Offshore Wind Energy Research Center, conduct of the project is authorized for 3 years from the date that construction of a permitted structure on submerged lands is initiated or 5 years from the date on which the general permit has been granted pursuant to subsection 5, whichever first occurs; or [2009, c. 270, Pt. A, §2 (NEW) .]

B. If the offshore wind energy demonstration project is located in the Maine Offshore Wind Energy Research Center, conduct of the project is authorized for 5 years from the date that construction of a permitted structure on submerged lands is initiated or 7 years from the date on which the permit has been granted pursuant to subsection 5, whichever first occurs. [2009, c. 270, Pt. A, §2 (NEW) .]

The applicant must provide the department written notice of the date of initiation of construction within 7 days of its commencement. Except as otherwise provided by subsection 9, the department may not extend the term of a general permit granted under this section.

[2009, c. 270, Pt. A, §2 (NEW) .]

9. Extensions to permit term. The department may grant one or more extensions of the general permit term in accordance with this subsection.

A. The department may grant one or more extensions of the general permit term, each for a period of 6 months or less, 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 11, located wholly or partly where the offshore wind energy demonstration project is located. The department may not grant an extension under this paragraph for a project located in the Maine Offshore Wind Energy Research Center. [2009 , c. 270 , Pt. A , §2 (NEW) .]

B. The department shall grant one or more extensions, each of which may not exceed 3 years, of the general permit term for an offshore wind energy demonstration project that is funded in whole or in part with state or federal funds and is located in the Maine Offshore Wind Energy Research Center if the applicant provides written evidence that the University of Maine System has determined that the extension is necessary to fulfill the research and development objectives of the project. [2009 , c. 270 , Pt. A , §2 (NEW) .]

[2009 , c. 270 , Pt. A , §2 (NEW) .]

10. Surrender; demonstrated progress required. If the department determines that the applicant has not completed or made substantial and ongoing progress to complete construction of all project elements within one year of the date on which the general permit has been granted pursuant to subsection 5, the applicant must surrender its general permit, subject to conditions regarding project removal pursuant to subsection 11. An applicant may surrender to the department a general permit granted pursuant to this section prior to its expiration pursuant to subsection 8 or 9. Subject to conditions regarding project removal under subsection 11, the general permit terminates on the date of its surrender pursuant to this subsection.

[2009 , c. 270 , Pt. A , §2 (NEW) .]

11. Project removal. Within 60 days of expiration or termination of a general permit pursuant to subsection 8, 9, 10 or 12, the applicant shall initiate implementation of the project removal plan provided for under subsection 3, paragraph G. If the applicant fails to begin implementing the plan within this 60-day period, the department may take such measures as it considers 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 constitutes 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.

[2009 , c. 270 , Pt. A , §2 (NEW) .]

12. Remedial action. If the department determines, based on information provided in annual or periodic reports provided pursuant to subsection 3 or other information, that there is substantial evidence that the project is having a significant adverse effect on a protected natural resource, wildlife, including avian wildlife, bat species, marine mammals, fish or other marine resources or public health or safety, the department shall order the applicant to take action that the department considers 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 [2009 , c. 270 , Pt. A , §2 (NEW) .]

B. Cessation of operations and removal of some or all elements of the project, including but not limited to the generating facilities, if there is no practicable alternative to address the adverse effect. [2009 , c. 270 , Pt. A , §2 (NEW) .]

[2009 , c. 270 , Pt. A , §2 (NEW) .]

13. Permit modification; relocation. Following the granting 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 energy test area, as long as the applicant provides an amended site plan that meets the requirements of subsection 3, 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.

[2009, c. 270, Pt. A, §2 (NEW) .]

14. Relationship to other laws. Notwithstanding any other provision of law to the contrary, 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 authorization or other approval or authorization from the Maine Land Use Planning Commission and is not otherwise subject to review or approval by the department pursuant to this subchapter.

A municipality may not enact or enforce any land use, zoning or other standard, conditions or requirement regarding an offshore wind energy demonstration project located within the municipality that is stricter than standards, conditions or requirements of this section. The municipality has 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 the granting of a permit modification pursuant to subsection 13.

[2009, c. 270, Pt. A, §2 (NEW); 2011, c. 682, §38 (REV) .]

15. Number of projects in the Maine Offshore Wind Energy Research Center. Notwithstanding any provision of law to the contrary, a general permit may not be granted under this section for an offshore wind energy demonstration project that is proposed for location within the Maine Offshore Wind Energy Research Center if grant of that general permit would authorize more than 6 ocean energy generating units to be sited and in operation at any one time within the Maine Offshore Wind Energy Research Center.

[2009, c. 270, Pt. A, §2 (NEW) .]

SECTION HISTORY

2009, c. 270, Pt. A, §2 (NEW). 2011, c. 655, Pt. MM, §20 (AMD). 2011, c. 655, Pt. MM, §26 (AFF). 2011, c. 657, Pt. W, §5 (REV). 2011, c. 682, §38 (REV).

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