

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by inserting after the title and before the enacting clause the following:

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Gulf of Maine contains vast, untapped renewable ocean energy resources, including a globally significant offshore wind energy resource estimated at over 100 gigawatts, and tidal and wave power resources with significant potential to contribute to the State's renewable energy mix and create related business opportunities; and

Whereas, promising technologies exist and others are being developed to harness these renewable ocean energy resources for transportation and home heating needs; and

Whereas, these significant renewable ocean energy resources will help address the economic and environmental challenges we face as a result of over-reliance on oil and natural gas to meet energy needs; and

Whereas, Governor John E. Baldacci created the Ocean Energy Task Force to develop strategies to promote the State's renewable ocean energy resources, including research and testing of new technologies to harness those resources; and

Whereas, the Ocean Energy Task Force has identified the need to streamline and coordinate state permitting and submerged lands leasing requirements for renewable ocean energy demonstration projects so that the State can become an international proving ground for testing promising new technologies in state waters in specific locations along the coast in an environmentally responsible manner; and

Whereas, the Legislature finds that it is in the public interest to use state-owned submerged lands for temporary demonstration projects to test offshore wind energy and other renewable ocean energy technologies; and

Whereas, designation of one of the offshore testing areas as the Maine Offshore Wind Energy Research Center will support the significant research and development initiatives of the University of Maine System and make the State more competitive for federal and private sector investments needed to jump-start the State's renewable ocean energy industry; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,'

Amend the bill in Part A in section 2 in §480-HH in subsection 1 by inserting before paragraph A the following:

'A. "Coastal area" has the same meaning as in section 1802, subsection 1.'

Amend the bill in Part A in section 2 in §480-HH in subsection 1 by inserting after paragraph D the following:

'E. "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.'

Amend the bill in Part A in section 2 in §480-HH in subsection 1 in paragraph F in the 2nd line (page 2, line 2 in L.D.) by striking out the following: "windmill or"

Amend the bill in Part A in section 2 in §480-HH in subsection 1 by relettering the paragraphs to read consecutively.

Amend the bill in Part A in section 2 in §480-HH in subsection 2 in the 3rd line (page 3, line 1 in L.D.) by striking out the following: "an individual permit is not required" and inserting the following: 'a permit is not required under section 480-C'

Amend the bill in Part A in section 2 in §480-HH in subsection 3 in paragraph F by striking out all of subparagraph (1) (page 5, lines 1 to 6 in L.D.) and inserting the following:

(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;

Amend the bill in Part A in section 2 in §480-HH in subsection 3 in paragraph F in subparagraph (2) in the first line (page 5, line 7 in L.D.) by inserting after the following: "zone" the following: ', specified pursuant to subparagraph (1).'

Amend the bill in Part A in section 2 in §480-HH in subsection 3 in paragraph G in the 2nd line (page 5, line 26 in L.D.) by inserting after the following: "days of" the following: 'expiration or'

Amend the bill in Part A in section 2 in §480-HH in subsection 3 in paragraph H in the 7th line (page 6, line 23 in L.D.) by inserting after the following: "Service;" the following: '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;'

Amend the bill in Part A in section 2 in §480-HH in subsection 3 in paragraph K in the last line (page 6, line 45 in L.D.) by striking out the following: "proposed; and" and inserting the following: '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

Amend the bill in Part A in section 2 in §480-HH in subsection 4 in the first line (page 7, line 8 in L.D.) by striking out the following: "Work may not occur until 60 days after" and inserting the following: "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 "

Amend the bill in Part A in section 2 in §480-HH by striking out all of subsection 5 (page 7, lines 11 to 16 in L.D.) and inserting the following:

‘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.’

Amend the bill in Part A in section 2 in §480-HH in subsection 6 in the 4th line (page 7, line 20 in L.D.) by inserting after the following: "assessed" the following: ", pursuant to section 352."

Amend the bill in Part A in section 2 in §480-HH by striking out all of subsections 8, 9 and 10 and inserting the following:

‘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

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.

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.

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.

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.

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.'

Amend the bill in Part A in section 2 in §480-HH in subsection 11 in the first line (page 8, line 12 in L.D.) by striking out the following: "termination of the project" and inserting the following: 'expiration or termination of a general permit'

Amend the bill in Part A in section 2 in §480-HH in subsection 11 in the 2nd line (page 8, line 13 in L.D.) by striking out the following: "or 10" and inserting the following: ', 10 or 12'

Amend the bill in Part A in section 2 in §480-HH by inserting after subsection 14 the following:

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.'

Amend the bill in Part C in section 1 in §1868 by striking out all of subsection 1 and inserting the following:

1. Site identification process. No later than December 15, 2009, following consultation with the Department of Environmental Protection, the Public Utilities Commission, the Department of Inland Fisheries and Wildlife, the Maine Land Use Regulation Commission, the Department of Marine Resources, the Maine Historic Preservation Commission and the University of Maine System and opportunity for public comment, the department, in conjunction with the Executive Department,

State Planning Office, shall identify and map up to 5 specific offshore wind energy test areas. An offshore wind energy test area identified under this subsection must be a geographic area on state-owned submerged lands suitable for offshore wind energy demonstration projects constructed and operated in accordance with Title 38, section 480-HH. In identifying each such area, the department must consider existing information regarding pertinent ecological, environmental, social and development-related factors, including but not limited to:

- A. Potential adverse effects on a protected natural resource, as defined by Title 38, section 480-B, subsection 8, or a scenic resource of state or national significance, as defined by Title 35-A, section 3451, subsection 9;
- B. Potential adverse effects on species listed as threatened or endangered under section 6975 or section 12803, subsection 3; avian species, including seabirds, passerines, raptors, shorebirds, water birds and waterfowl; bats; and marine mammals;
- C. Potential adverse effects on commercial fishing, recreation, navigation, existing public access ways to intertidal and subtidal areas and other existing uses;
- D. Proximity to deep water port facilities, rail transportation, transmission infrastructure facilities and existing ocean-based environmental monitoring devices;
- E. Data regarding wind speed, ocean wave height and period, ocean currents and water depth;
- F. Geology, including substrate type and other seafloor characteristics;
- G. Public support in pertinent coastal communities; and
- H. Historic sites and archaeological resources of state or national significance.'

Amend the bill in Part C in section 1 in §1868 by striking out all of subsection 3 and inserting the following:

3. Modification of identified offshore wind energy test areas. Following the identification of offshore wind energy test areas under subsection 1, the department may, following notice and opportunity for public comment, add to, remove or otherwise modify the list of offshore wind energy test areas identified under subsection 1. In making modifications under this subsection, the department is subject to the site identification criteria under subsection 1, except that modifications under this subsection may result in more than 5 identified areas.

4. Judicial review. The identification of an offshore wind energy test area or areas under subsection 1 or subsection 3 constitutes final agency action.'

Amend the bill in Part D in section 4 in paragraph E in the first line (page 11, line 17 in L.D.) by inserting after the following: "A" the following: 'permit or other approval by the commission is not required for a'

Amend the bill in Part D in section 4 in paragraph E in the last line (page 11, line 19 in L.D.) by striking out the following: "is not subject to review and approval by the commission"

Amend the bill by inserting at the end before the summary the following:

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

The amendment makes the following changes to the bill:

1. It clarifies the language in the bill regarding the specification of an exclusion zone around an offshore wind energy demonstration project;

2. It adds the lobster management policy council for the lobster management zone in which an offshore wind energy project is proposed to the list of required entities with whom an applicant for a general permit for an offshore wind energy demonstration project must consult in the development of plans required as part of the general permit application;

3. It adds a provision to allow the University of Maine System to hold more than one general permit for an offshore wind energy project in the Maine Offshore Wind Energy Research Center as long as the projects employ differing wind energy technologies;

4. It clarifies the provisions in the bill regarding the application review period, the term of a general permit, permit extensions and the termination of offshore wind energy developments and adds language to provide an initial 5-year project period for projects in the Maine Offshore Wind Energy Research Center, as compared with the initial 3-year project period for projects located elsewhere;

5. It adds language to limit the number of ocean energy generating units in the Maine Offshore Wind Energy Research Center to 6 units in operation at any one time in that area and it provides a definition of ocean energy generating units;

6. It clarifies the language in the bill regarding the initial identification of offshore wind energy test areas by the Department of Environmental Protection and subsequent modification of the initial list of identified areas;

7. It adds language to provide that identification of an offshore wind energy test area or areas constitutes final agency action of the Department of Conservation; and

8. It adds an emergency preamble and emergency clause.