10.5 APPENDIX E – MAINE PUBLIC UTILITIES COMMISSION RFP DOCUMENTS

10.5.1 Appendix E.1 – An Act To Implement the Recommendations of the Governor's Ocean Energy Task Force (LD1810)

Public Law

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An Act To Implement the Recommendations of the Governor's Ocean Energy Task Force

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

Whereas, in 2008, crude oil prices reached $147 per barrel, and gasoline and heating oil prices reached over $4 per gallon, highlighting our State's long over-reliance on oil for home-heating and fuel for our vehicles and on natural gas and other fossil fuels to produce electricity; and

Whereas, along with the foreseeable prospect of prolonged high or higher fossil fuel prices, the implications of climate change, driven by greenhouse gas emissions from combustion of fossil fuels, and its attendant threats to the environment, economy, social fabric and human health underscore the urgent need to significantly reduce and minimize our State's dependence on oil and gas; and

Whereas, renewable ocean energy holds enormous promise to address our state and regional energy goals, including energy independence and security and limiting exposure to fossil fuels' price and supply volatility; to ensure attainment of our greenhouse gas emissions reduction goals; and to provide significant economic opportunities for our citizens; and

Whereas, state and adjoining federal waters feature significant offshore wind, tidal and wave power energy resources, including world-class and untapped deep-water wind resources with the potential to make a significant contribution to the State's energy sources to meet the State's changing needs for renewable sources of light and power, heat and transportation fuel; to meet the State's ambitious renewable energy portfolio standards; and to position the State to be an exporter of clean, renewable indigenous energy; and

Whereas, the Governor's Ocean Energy Task Force identified and made recommendations to overcome economic, technical and regulatory obstacles and to provide economic incentives for vigorous and efficient development of these promising indigenous, renewable ocean energy resources in ways that recognize the concurrent need to sustain the ongoing biological integrity of the State's waters, the vitality and productivity of ocean harvests and the differing needs and uses of the seas and other natural resources and to ensure the provision of these benefits to the people of the State by careful use of such public resources for renewable ocean energy production; and

Whereas, although additional research and related technological advances are needed for efficient commercialization of deep-water offshore wind power, varied and significant potential public benefits attributable to development and transition over time to optimal use of this resource and the State's other renewable ocean energy resources necessitates timely action to position the State to capture these benefits for the people of the State; 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,

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

PART A

Sec. A-1. 35-A MRSA §3132, sub-§6, as amended by PL 2009, c. 309, §3, is further amended to read:

6. Commission order; certificate of public convenience and necessity. In its order, the commission shall make specific findings with regard to the public need for the proposed transmission line. If the commission finds that a public need exists, it shall issue a certificate of public convenience and necessity for the transmission line. In determining public need, the commission shall, at a minimum, take into account economics, reliability, public health and safety, scenic, historic and recreational values, state renewable energy generation goals, the proximity of the proposed transmission line to inhabited dwellings and alternatives to construction of the transmission line, including energy conservation, distributed generation or load management. If the commission orders or allows the erection of the transmission line, the order is subject to all other provisions of law and the right of any other agency to approve the transmission line. The commission shall, as necessary and in accordance with subsections 7 and 8, consider the findings of the Department of Environmental Protection under Title 38, chapter 3, subchapter 1, article 6, with respect to the proposed transmission line and any modifications ordered by the Department of Environmental Protection to lessen the impact of the proposed transmission line on the environment. A person may submit a petition for and obtain approval of a proposed transmission line under this section before applying for approval under municipal ordinances adopted pursuant to Title 30A, Part 2, Subpart 6A; and Title 38, section 438A and, except as provided in subsection 4, before identifying a specific route or route options for the proposed transmission line. Except as provided in subsection 4, the commission may not consider the petition insufficient for failure to provide identification of a route or route options for the proposed transmission line. The issuance of a certificate of public convenience and necessity establishes that, as of the date of issuance of the certificate, the decision by the person to erect or construct was prudent. At the time of its issuance of a certificate of public convenience and necessity, the commission shall send to each municipality through which a proposed corridor or corridors for a transmission line extends a separate notice that the issuance of the certificate does not override, supersede or otherwise affect municipal authority to regulate the siting of the proposed transmission line. The commission may deny a certificate of public convenience and necessity for a transmission line upon a finding that the transmission line is reasonably likely to adversely affect any transmission and distribution utility or its customers.

Sec. A-2. 35-A MRSA §3402, sub-§1, as enacted by PL 2007, c. 661, Pt. A, §4, is amended to read:

1. Contribution of wind energy development. The Legislature finds and declares that the wind energy resources of the State constitute a valuable indigenous and renewable energy resource and that wind energy development, which is unique in its benefits to and impacts on the natural environment, makes a significant contribution to the general welfare of the citizens of the State for the following reasons:

A. Wind energy is an economically feasible, large-scale energy resource that does not rely on fossil fuel combustion or nuclear fission, thereby displacing electrical energy provided by these

other sources and avoiding air pollution, waste disposal problems and hazards to human health from emissions, waste and by-products; consequently, wind energy development may address energy needs while making a significant contribution to achievement of the State's renewable energy and greenhouse gas reduction objectives, including those in Title 38, section 576; ~~and~~

B. At present and increasingly in the future with anticipated technological advances that promise to increase the number of places in the State where grid-scale wind energy development is economically viable, and changes in the electrical power market that favor clean power sources, wind energy may be used to displace electrical power that is generated from fossil fuel combustion and thus reduce our citizens' dependence on imported oil and natural gas and improve environmental quality and state and regional energy security~~.~~ ; and

C. Renewable energy resources within the State and in the Gulf of Maine have the potential, over time, to provide enough energy for the State's homeowners and businesses to reduce their use of oil and liquid petroleum-fueled heating systems by transition to alternative, renewable energy-based heating systems and to reduce their use of petroleum-fueled motor vehicles by transition to electric-powered motor vehicles. Electrification of heating and transportation has potential to increase the State's energy independence, to help stabilize total residential and commercial energy bills and to reduce greenhouse gas emissions.

Sec. A-3. 35-A MRSA §3404, sub-§1, as enacted by PL 2007, c. 661, Pt. A, §6, is amended to read:

1. Encouragement of wind energy-related development. It is the policy of the State ~~that,~~ in furtherance of the goals established in subsection 2, ~~its political subdivisions, agencies and public officials take every reasonable action~~ to encourage the attraction of appropriately sited development related to wind energy, including any additional transmission and other energy infrastructure needed to transport additional offshore wind energy to market, consistent with all state environmental standards; the permitting and financing of wind energy projects; and the siting, permitting, financing and construction of wind energy research and manufacturing facilities.

Sec. A-4. 35-A MRSA §3404, sub-§2, as enacted by PL 2007, c. 661, Pt. A, §6, is amended to read:

2. State wind energy generation goals. The goals for wind energy development in the State are that there be:

A. At least 2,000 megawatts of installed capacity by 2015; ~~and~~

B. At least 3,000 megawatts of installed capacity by 2020, ~~of which there is a potential to produce~~ including 300 megawatts or more from generation facilities located in coastal waters, as defined by Title 12, section 6001, subsection 6, or in proximate federal waters~~.~~ ; and

C. At least 8,000 megawatts of installed capacity by 2030, including 5,000 megawatts from generation facilities located in coastal waters, as defined by Title 12, section 6001, subsection 6, or in proximate federal waters.

Sec. A-5. 38 MRSA §631, sub-§3 is enacted to read:

3. Encouragement of tidal and wave power development. It is the policy of the State to encourage the attraction of appropriately sited development related to tidal and wave energy, including any additional transmission and other energy infrastructure needed to transport such energy to market, consistent with all state environmental standards; the permitting and siting of tidal and wave energy

projects; and the siting, permitting, financing and construction of tidal and wave energy research and manufacturing facilities.

Sec. A-6. Competitive solicitation; long-term contracts; deep-water offshore wind energy pilot projects and tidal energy demonstration projects. By September 1, 2010, in accordance with the Maine Revised Statutes, Title 35-A, section 3210-C, except as otherwise provided by this section, the Public Utilities Commission shall conduct a competitive solicitation for proposals for long-term contracts to supply installed capacity and associated renewable energy and renewable energy credits from one or more deep-water offshore wind energy pilot projects or tidal energy demonstration projects.

The commission shall consult with the University of Maine, Department of Industrial Cooperation, Office of Research and Economic Development and the Department of Economic and Community Development in developing the request for proposals under this section and in its review of proposals submitted in response to the request.

Subject to the requirements of this section, the commission may direct one or more transmission and distribution utilities, as appropriate, to enter into a long-term contract of up to 20 years for the installed capacity and associated renewable energy and renewable energy credits of one or more deep-water offshore wind energy pilot projects or tidal energy demonstration projects.

For purposes of this section, "deep-water offshore wind energy pilot project" means a wind energy development, as defined by Title 35-A, section 3451, subsection 11, that is connected to the electrical transmission system located in the State and employs one or more floating wind energy turbines in the Gulf of Maine at a location 300 feet or greater in depth no less than 10 nautical miles from any land area of the State other than coastal wetlands, as defined by Title 38, section 480B, subsection 2, or an uninhabited island. "Tidal energy demonstration project" has the same meaning as in Title 38, section 636A, subsection 1, paragraph A.

1. Following review of proposals submitted in response to the competitive solicitation, the commission may negotiate with one or more potential suppliers to supply an aggregate total of no more than 30 megawatts of installed capacity and associated renewable energy and renewable energy credits from deep-water offshore wind energy pilot projects or tidal energy demonstration projects as long as no more than 5 megawatts of the total is supplied by tidal energy demonstration projects. Consistent with such negotiations, the commission may direct one or more transmission and distribution utilities, as appropriate, to enter into a long-term contract under this section only if the commission determines that the potential supplier:

A. Proposes sale of renewable energy produced by a deep-water offshore wind energy pilot project or a tidal energy demonstration project, referred to in this section as "the project;"

B. Has the technical and financial capacity to develop, construct, operate and, to the extent consistent with applicable federal law, decommission and remove the project in the manner provided by Title 38, section 480HH, subsection 3, paragraph G;

C. Has quantified the tangible economic benefits of the project to the State, including those regarding goods and services to be purchased and use of local suppliers, contractors and other professionals, during the proposed term of the contract;

D. Has experience relevant to tidal power or the offshore wind energy industry, as applicable,

including, in the case of a deep-water offshore wind energy pilot project proposal, experience relevant to the construction and operation of floating wind turbines, and has the potential to construct a deep-water offshore wind energy project 100 megawatts or greater in capacity in the future to provide electric consumers in the State with project-generated power at reduced rates;

E. Has demonstrated a commitment to invest in manufacturing facilities in the State that are related to deep-water offshore wind energy or tidal energy, as applicable, including, but not limited to, component, turbine, blade, foundation or maintenance facilities; and

F. Has taken advantage of all federal support for the project, including subsidies, tax incentives and grants, and incorporated those resources into its bid price.

2. To mitigate any impacts of a long-term contract entered into under this section on electric rates, the commission shall:

A. Require the supplier, as part of the long-term contract, to take advantage of future federal support that may become available to the project over the contract term to mitigate impacts of the contract on electric rates;

B. Use the following funds to the full extent that such funds are available to mitigate impacts of the long-term contract on electric rates over the contract term:

(1) A portion of federal revenues from leasing areas of the Outer Continental Shelf for the project that is received by the State;

(2) A portion of the rent received by the State for leasing state submerged lands;

(3) A portion of the funds collected in the energy independence fund under Title 5, section 282, subsection 9; and

(4) Any other sources of revenue or funds accessible to the commission to mitigate impacts on ratepayers;

C. Develop and market an ocean wind green power offer, in accordance with provisions governing green power offers under Title 35-A, section 3212A, that is composed of electricity or renewable energy credits for electricity generated from deep-water offshore wind energy pilot projects to coincide with the start-up date of any deep-water offshore wind energy pilot project that secures a long-term contract under this section. In its annual report under Title 35-A, section 120, subsection 7, the commission shall report on the development, marketing and purchase of the ocean wind green power offer.

The commission may not approve any long-term contract under this section that would result in an increase in electric rates in any customer class that is greater than the amount of the assessment charged under Title 35-A, section 10110, subsection 4 at the time that the contract is entered.

Any contract entered into pursuant to this section must require that the deep-water offshore wind energy pilot project or tidal energy demonstration project, as appropriate, be constructed and operating

within 5 years of the date the contract is finalized, unless the commission and project developer mutually agree to a longer time period.

In purchasing electricity for state-owned buildings pursuant to Title 5, section 1766A, the State shall consider the ocean wind green power offer. In purchasing electricity for the university system, the University of Maine System shall consider the ocean wind green power offer.

Sec. A-7. Review of terms and conditions for long-term contracts for renewable ocean energy. No later than January 15, 2012, the Executive Department, Governor's Office of Energy Independence and Security shall make a recommendation to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters regarding terms and conditions for long-term contracts for installed capacity and associated renewable energy and renewable energy credits produced by renewable ocean energy projects, except for those addressed in section 8. For the purposes of this section, "renewable ocean energy project" has the same meaning as in the Maine Revised Statutes, Title 12, section 1862, subsection 1, paragraph F1. In making a recommendation under this section, the office shall, at a minimum, consider the following issues:

1. Risks to ratepayers associated with fossil fuel price volatility over the next 20 years;

2. State goals for the reduction of greenhouse gas emissions established in Title 38, section 576;

3. State wind energy generation goals under Title 35-A, section 3404, subsection 2; and

4. Other potential benefits attributable to the development of offshore wind, tidal and wave energy projects, including but not limited to public health, job creation and other economic benefits and energy security.

Sec. A-8. State energy plan amendment. No later than September 15, 2010, the Executive Department, Governor's Office of Energy Independence and Security shall amend the state energy plan under Title 2, section 9 to acknowledge the need for new transmission capacity to support attainment of state offshore wind energy generation goals established in the Maine Revised Statutes, Title 35-A, section 3404, subsection 2.

Sec. A-9. Assess the need for port-side land acquisition. No later than January 15, 2011, the Maine Port Authority shall assess existing port facilities in the State and make a recommendation to the joint standing committees of the Legislature having jurisdiction over transportation matters and utilities and energy matters regarding acquisition of real estate needed to facilitate renewable ocean energy development opportunities.

PART B

Sec. B-1. 12 MRSA §1862, as amended by PL 2009, c. 270, Pt. B, §1 and c. 316, §§1 to 6 and affected by §7, is further amended to read:

§ 1862. Submerged and intertidal lands owned by State

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

A. "Commercial fishing activity" means any activity involving the landing or processing of shellfish, finfish or other natural products of the sea or other activities directly related to landing or processing shellfish, finfish or natural sea products. "Commercial fishing activity" includes loading or selling those products and fueling.

B. "Dockominium" means slip space that is sold or leased by a lessee of submerged lands to a boat or vessel owner for more than one year.

C. "Fair market rental value," for all uses of submerged lands except slip space rented or otherwise made available for private use for a fee, means the municipally assessed value per square foot for the adjacent upland multiplied by a reduction factor plus a base rate based on the use of the leased submerged land as specified in this section. This value is then multiplied by the square foot area of the proposed lease area to determine the annual rental rate. For slip space rented or otherwise made available for private use for a fee, the fair market rental value is the gross income from that space multiplied by a reduction factor as specified in this section based on the use of the leased submerged land.

D. "Gross income" means the total annual income received by a lessee from seasonal or transient rental to the general public of slip space over submerged land. For dockominiums, slips that are part of a residential condominium, boat clubs and other facilities with slip space that is not rented or leased to the general public, the director shall determine gross income by calculating a regional average slip space rental fee and applying that to the portion of total linear length of slip space made available to private users for any portion of that year.

E. "Occupying," in terms of a structure or alteration, means covering the total area of the structure or alteration itself to the extent that the area within its boundaries is directly on or over the state-owned lands.

E-1. "Offshore project" means a project that extends beyond localized development adjacent to a single facility or property. "Offshore project" includes, but is not limited to, tanker ports, ship berthing platforms requiring secondary transport to shore, an interstate or international pipeline or cable and similar projects. "Offshore project" does not include a shore-based pier, marina or boatyard or utility cable and pipelines serving neighboring communities or islands. "Offshore project" does not include a wind ~~farms~~, tidal ~~and~~ , wave ~~energy facilities~~ or other ~~offshore~~ renewable ocean energy ~~projects~~ project.

F. "Permanent" means occupying submerged and intertidal lands owned by the State during 7 or more months during any one calendar year.

F-1. "Renewable ocean energy project" means one or more of the following located in coastal wetlands, as defined by Title 38, section 480-B, subsection 2:

(1) An offshore wind power project, as defined by Title 38, section 480-B, subsection 6-A or by Title 38, section 482, subsection 8, and with an aggregate generating capacity of 3 megawatts or more;

(2) A community-based offshore wind energy project, as defined by section 682, subsection 19;

(3) A hydropower project, as defined by Title 38, section 632, subsection 3, that uses tidal or wave action as a source of electrical or mechanical power; or

(4) Other development activity that produces electric or mechanical power solely through use of wind, waves, tides, currents, ocean temperature clines, marine biomass or other renewable sources in, on or over the State's coastal waters, as defined by section 6001, subsection 6, to the 3-mile limit of state ownership recognized under the federal Outer Continental Shelf Lands Act, 43 United States Code, Chapter 29, Subchapter III (2009), and that includes both "generating facilities," as defined by Title 35-A, section 3451, subsection 5 and "associated facilities," as defined by Title 35-A, section 3451, subsection 1.

G. "Slip space" means the area adjacent to a pier or float that is used for berthing a boat.

2. Submerged lands leasing program. The director may conduct a submerged lands leasing ~~progam~~ program under which, except as otherwise provided by subsection 13, the director may lease, for a term of years not exceeding 30 and with conditions the director considers reasonable, the right to dredge, fill or erect permanent causeways, bridges, marinas, wharves, docks, pilings, moorings or other permanent structures on submerged and intertidal land owned by the State. The director may refuse to lease submerged lands if the director determines that the lease will unreasonably interfere with customary or traditional public access ways to or public trust rights in, on or over the intertidal or submerged lands and the waters above those lands.

A. For fill, permanent causeways, bridges, marinas, wharves, docks, pilings, moorings or other permanent structures and for nonpermanent structures occupying a total of 500 square feet or more of submerged land or occupying a total of 2,000 square feet or more of submerged land if used exclusively for commercial fishing activities:

(1) ~~The~~ Except as otherwise provided by subsection 13, the director shall charge the lessee a rent that practically approximates the fair market rental value of the submerged land. The reduction factors and base rate for use categories are as follows:

(a) A reduction factor of 0% with no base rate or rental fee for nonprofit organizations or publicly owned facilities that offer free public use or public use with nominal user fees. Public uses include, but are not limited to, municipal utilities and facilities that provide public access to the water, town wharves, walkways, fishing piers, boat launches, parks, nature reserves, swimming or skating areas and other projects designed to allow or enhance public recreation, fishing, fowling and navigation and for which user fees are used exclusively for the maintenance of the facility;

(b) A reduction factor of 0.1% plus a base rate of $0.025 per square foot for commercial fishing uses of renewable aquatic resources. Commercial uses of renewable aquatic resources include, but are not limited to, facilities that are directly involved in commercial fishing activities. Such facilities include, but are not limited to, fish piers, lobster impoundments, fish processing facilities and floats or piers for the storage of gear;

(c) A reduction factor of 2% for any slip space rented or otherwise made available for private use by commercial fishing boats for a fee;

(d) A reduction factor of 0.2% plus a base rate of $0.05 per square foot for water-dependent commerce, industry and private uses. Water-dependent commerce, industry and private uses other than commercial uses of renewable aquatic resources include, but are not limited to, all facilities that are functionally dependent upon a waterfront location, can not reasonably be located or operated on an upland site or are essential to the operation of the marine industry. Such facilities include, but are not limited to, privately owned piers and docks, cargo ports, private boat ramps, shipping and ferry terminals, tug and barge facilities, businesses that are engaged in watercraft construction, maintenance or repair, aquariums and the area within marinas occupied by service facilities, gas docks, breakwaters and other structures not used for slip space;

(e) A reduction factor of 4% for any slip space rented or otherwise made available for private use for recreational boats for a fee; and

(f) A reduction factor of 0.2% for upland uses and fill located on submerged lands prior to July 1, 2009 and 0.4% for new upland uses and fill after July 1, 2009 plus a base rate of $0.05 per square foot. Upland uses include, but are not limited to, all uses that can operate in a location other than on the waterfront or that are not essential to the operation of the marine industry. These facilities include, but are not limited to, residences, offices, restaurants and parking lots. Fill must include the placement of solid material other than pilings or other open support structures upon submerged lands.

If the director determines that the municipally assessed value of the adjacent upland is not an accurate indicator of the value of submerged land, the director may make adjustments in the municipally assessed value so that it more closely reflects the value of comparable waterfront properties in the vicinity or require the applicant to provide an appraisal of the submerged land. The appraisal must be approved by the director.

For offshore projects where municipally assessed value for the adjacent upland or submerged lands appraisals are unavailable or the director determines that such assessment or appraisals do not accurately indicate the value of the submerged land, the director may establish the submerged lands annual rental rate and other public compensation as appropriate by negotiation between the bureau and the applicant. In such cases the annual rent and other public compensation must take into account the proposed use of the submerged lands, the extent to which traditional and customary public uses may be diminished, the public benefit of the project, the economic value of the project and the avoided cost to the applicant. If the State's ability to determine the values listed in this paragraph or to carry out negotiations requires expertise beyond the program's capability, the applicant must pay for the costs of contracting for such expertise;

(2) After October 1, 1990, the director may revalue all existing rents to full fair market rental value. Rents for all uses except slip space may be adjusted annually as needed over a period not to exceed 5 years until the full fair market rental value is reached. After the full fair market rental value is reached, the director may revalue rents for all uses except slip space every 5 years based on changes in municipally assessed value and programmatic cost

adjustments to the base rate. Adjustments to the base rate may not exceed 4% per year. Rents for slip space may fluctuate annually depending on the gross income of the facility;

(3) ~~The~~ Except as otherwise provided by subsection 13, the director may also lease a buffer zone of not more than 30 feet in width around a permanent structure located on submerged or intertidal land, ~~provided that~~ as long as the lease is necessary to preserve the integrity and safety of the structure and that the Commissioner of Marine Resources consents to that lease;

(4) Any existing or proposed lease may be subleased for the period of the original lease for the purpose of providing berthing space for any boat or vessel;

(5) No portion of an existing or proposed lease may be transferred from a person subleasing that portion to provide berthing space for any boat or vessel except for a transfer to heirs upon death of the sublessee holder or a transfer to the original leaseholder subject to terms agreed to by the lessor and sublessee at the time of the sublease. This subparagraph does not apply to any subleasing arrangements entered into before June 15, 1989; and

(6) The director may grant the proposed lease if the director finds that, in addition to any other findings that the director may require, the proposed lease:

(a) Will not unreasonably interfere with navigation;

(b) Will not unreasonably interfere with fishing or other existing marine uses of the area;

(c) Will not unreasonably diminish the availability of services and facilities necessary for commercial marine activities; and

(d) Will not unreasonably interfere with ingress and egress of riparian owners.

~~The bureau shall adopt rules pertaining to this subparagraph by March 15, 1990.~~

B. For dredging, impounded areas and underwater cables and pipelines, the director shall develop terms and conditions the director considers reasonable.

C. The director shall charge an administrative fee of $100 for each lease in addition to any rent. A fee of $200 must be charged for a lease application that is received after work has begun for the proposed project.

D. ~~The~~ Except as otherwise provided by subsection 13, the minimum rent to which any lease is subject is $150 per year.

F. Within 15 days of receipt of a copy of an application submitted to the Department of

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

In making findings pursuant to this subsection regarding a renewable ocean energy project, the director shall adopt all pertinent findings and conclusions in a permit issued for the project pursuant to chapter 206-A or pursuant to Title 38, chapter 3, subchapter 1, article 5-A or 6 or Title 38, chapter 5, subchapter 1, article 1, subarticle 1-B, as applicable, and may condition issuance of a lease for such a project on receipt of all pertinent approvals by the Department of Environmental Protection or the Maine Land Use Regulation Commission, as applicable, and other conditions the director considers reasonable.

2-A. Lease renewal. A lessee who is in compliance with all terms of that person's lease may apply at any time to renew the lease. The director shall approve the lease renewal if the existing lease complies with or can be amended to comply with all applicable laws, rules and public trust principles in effect at the time of the renewal application. This subsection applies to all leases in effect on the effective date of this subsection and to all leases executed on or subsequent to the effective date of this subsection.

3. Easements. The director may grant, upon terms and conditions the director considers reasonable, assignable easements for a term not to exceed 30 years for the use of submerged and intertidal lands for the purposes permitted in subsection 2. The grantee shall pay an administrative fee of $100 for each easement at the time of processing and a registration fee of $50 due every 5 years. An administrative fee of $200 must be charged for an easement application that is received after work has begun for the proposed project. The director may refuse to grant an easement for the use of submerged and intertidal lands if the director determines that the easement will unreasonably interfere with customary or traditional public access ways to or public trust rights in, on or over the intertidal or submerged lands and the waters above those lands. The director may grant an easement for submerged and intertidal lands if a structure:

A. Is for the exclusive benefit of the abutting upland owner for charitable purposes as defined in the United States Internal Revenue Code, Section 501, (c) (3);

B. Occupies a total of not more than 500 square feet of submerged and intertidal land for any lawful purpose and is permanent; or

C. Occupies a total of not more than 2,000 square feet of submerged and intertidal land for the exclusive purpose of commercial fishing activities and is permanent.

4. Adjustment of terms. The director may adjust from time to time, consistent with the provisions of this section, conditions applicable to any leasehold or easement entered into under this

section in any parcel of state-owned submerged or intertidal land. Rent may not be charged for leases entered into before July 1, 1984 if the actual use of the leased land is eligible for an easement under subsection 3.

5. Review of uses. In the case of easements, the director shall review from time to time the purposes for which the land conveyed has actually been used, and, in the event any such purpose is found to be inconsistent with the criteria set forth in subsection 3 for eligibility for an easement, the easement must terminate and the director may enter into a leasehold agreement with the holder of the easement in accordance with subsection 2.

6. Constructive easements. The owner of any structure actually upon submerged and intertidal lands on October 1, 1975 is deemed to have been granted a constructive easement for a term of 30 years on the submerged land directly underlying the structure. Beginning on January 1, 1991, the bureau shall undertake a registration program for all structures granted constructive easements. Constructive easements are subject to administrative and registration fees for easements pursuant to subsection 3. The director shall develop procedures, rules and registration forms necessary to accomplish the purposes of this subsection. The bureau shall complete the registration of constructive easements on or before December 31, 1996.

7. Consultation. The director shall consult with the commissioner, the Commissioner of Marine Resources, the Commissioner of Inland Fisheries and Wildlife and any other agencies or organizations the director considers appropriate in developing and implementing terms, conditions and consideration for conveyances under this section. When rental terms under subsection 13 for a renewable ocean energy project are at issue, the director also shall consult with the Public Utilities Commission. The director may determine to make proprietary conveyances under this section solely on the basis of the issuance of environmental or regulatory permits by other appropriate state agencies.

9. Public compensation. ~~With~~ Except as otherwise provided by subsection 13, with respect to any lease, including, but not limited to, leases for offshore projects, when the director determines that the public should be compensated for the loss or diminution of traditional and customary public uses resulting from the activities proposed by the lessee, the director may negotiate with the lessee to provide public access improvements such as walkways, boat launching ramps, parking space or other facilities or negotiate a fee in lieu of such improvements as a condition of the lease. The determination of loss or diminution of traditional and customary public uses and appropriate public compensation must be made in consultation with local municipal officials.

10. Aquaculture exemption. A lease for the use of lands under this section is not required for the development and operation of any aquaculture facility if the owner or operator of the facility has obtained a lease from the Commissioner of Marine Resources under section 6072. Ancillary equipment and facilities permanently occupying submerged lands on the lease site and not explicitly included in the lease granted by the Commissioner of Marine Resources are not exempt from the requirements of this section.

11. Revenues. ~~All~~ Except as otherwise provided by subsection 13, all revenues from the bureau's activities under this section accrue to the Submerged Lands Fund established in section 1861.

12. Annual report dealing with submerged lands. The bureau shall prepare and submit a written report on or before March 1st of each year to the joint standing committee of the Legislature having jurisdiction over submerged lands matters. The report must include the following information:

A. A complete account of the income and expenditures pertaining to submerged lands during the preceding calendar year;

B. A summary of the bureau's management activities during the preceding calendar year regarding leases, easements and other appropriate subjects;

C. A summary of any Shore and Harbor Management Fund grants made under section 1863; and

D. A description of the proposed budget, including allocations for the bureau's dedicated funds and any revenues of the bureau from leases and easements for the following fiscal year.

The joint standing committee of the Legislature having jurisdiction over submerged lands matters shall review the report and submit a written recommendation regarding the bureau's proposed budget to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs on or before March 15th of each year.

13. Special provisions regarding renewable ocean energy projects. The provisions in this subsection govern renewable ocean energy projects.

A. The Legislature finds that:

(1) The State's coastal waters and submerged lands provide unique and valuable opportunities for development of wind and tidal power and, potentially, other indigenous, renewable ocean energy resources, such as wave power;

(2) Climate change and related degradation or loss of marine resources and related human uses make development of and transition to use of renewable ocean energy resources consistent with sound stewardship of the State's public trust resources;

(3) Proper and efficient functioning of certain generation and associated facilities that use the energy potential of the State's indigenous, renewable ocean energy resources depends upon their deployment in a marine environment and, accordingly, such facilities may to the extent necessary be located in, on or over state-owned submerged lands; and

(4) With appropriate provision for avoidance and minimization of and compensation for harm to existing public trust-related uses and resources, such as fishing and navigation; consideration of potential adverse effects on existing uses of the marine environment; restoration of affected lands upon completion of authorized uses pursuant to permitting criteria; and adequate compensation to the public for use of its trust resources pursuant to state submerged lands leasing criteria, development of these renewable ocean energy resources in appropriate locations promises significant public trust-related benefits to the people of this State for whom the State holds and manages submerged lands and their resources.

B. In accordance with the findings in paragraph A, the following provisions apply to an application for a lease or easement for a renewable ocean energy project.

(1) No more than 30 days prior to filing applications in accordance with this paragraph, an applicant for a lease or easement for a renewable ocean energy project shall participate in a

joint interagency preapplication meeting that includes the Department of Marine Resources and is in accordance with permitting procedures of the Department of Environmental Protection or the Maine Land Use Regulation Commission, as applicable.

(2) An applicant for a lease or easement for a renewable ocean energy project must file and certify to the director that it has filed completed applications for requisite state permits under chapter 206-A or Title 38, chapter 3, subchapter 1, article 5-A or 6 or Title 38, chapter 5, subchapter 1, article 1, subarticle 1-B, as applicable, prior to or concurrently with submission of its submerged lands lease application under this section and shall provide a copy of any such applications to the director upon request.

(3) The director shall provide notice to the Marine Resources Advisory Council under section 6024 and any lobster management policy council established pursuant to section 6447 in whose or within 3 miles of whose designated lobster management zone created pursuant to section 6446 the proposed development is located. The Marine Resources Advisory Council and any lobster management policy council notified pursuant to this subparagraph may provide comments within a reasonable period established by the director, and the director shall consider the comments in making findings pursuant to subsection 2, paragraph A, subparagraph (6).

(4) The director may issue a lease or easement for a hydropower project, as defined in Title 38, section 632, subsection 3, that uses tidal or wave action as a source of electrical or mechanical power, for a term not to exceed 50 years, as long as the lease term is less than or equal to the term of the license for the project issued by the Federal Energy Regulatory Commission.

(5) If requested by an applicant, and with provision for public notice and comment, the director may issue one or more of the following for a renewable ocean energy project prior to issuance of a 30-year lease for the project:

(a) A lease option, for a term not to exceed 2 years, that establishes that the leaseholder, for purposes of consideration of its application for state permit approvals under chapter 206-A or Title 38, chapter 3, subchapter 1, article 5A or 6 or Title 38, chapter 5, subchapter 1, article 1, subarticle 1-B, as applicable, has title, right or interest in a specific area of state submerged lands needed to achieve the purposes of the project as described in conceptual plans in the lease application;

(b) A submerged lands lease, for a term not to exceed 3 years, that authorizes the leaseholder to undertake feasibility testing and predevelopment monitoring for ecological and human use impacts as described in conceptual plans in the lease application and conditioned on receipt of requisite federal, state and local approvals; and

(c) A submerged lands lease, for a term not to exceed 5 years, that authorizes the leaseholder to secure requisite federal, state and local approvals and complete preoperation construction, as long as the applicant provides detailed development plans describing all operational conditions and restrictions.

(6) Except as otherwise provided in this paragraph, the annual rent for a wind energy demonstration project for which a general permit has been issued under Title 38, section

480HH is $10,000 per year for the term of the general permit. The annual rent for a tidal energy demonstration project for which a general permit has been issued under Title 38, section 636A is $100 per acre of submerged lands occupied by the project for the term of the general project, except that the annual rent may not exceed $10,000. As used in this paragraph, "submerged lands occupied" includes the sum of the area on which turbines, testing and monitoring equipment, anchoring or mooring lines, submerged transmission cables or other structures are placed and any additional area from which the director finds it necessary to exclude transient public trust uses to avoid unreasonable interference with the project's purposes. An annual rent is not required for an offshore wind energy demonstration project located in the Maine Offshore Wind Energy Research Center, as designated by the department under section 1868, subsection 2.

(7) The director shall charge a lessee an annual rent in accordance with a fee schedule, established by the bureau by rule, that balances state goals of assurance of fair compensation for use and mitigation of potential adverse effects on or conflict with existing uses of state-owned submerged lands that are held in trust for the people of the State with state renewable ocean energy-related goals, including state wind energy generation goals established in Title 35-A, section 3404, subsection 2. Rules adopted pursuant to this subparagraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

(8) The director may not require additional public compensation pursuant to subsection 9.

(9) The director may issue a lease for a buffer zone comprising a land or water area around permanent structures located on submerged or intertidal land if:

(a) The director determines such a buffer zone is necessary to preserve the integrity or safety of the structure or fulfill the purposes of the project; and

(b) The director consults with the Commissioner of Marine Resources regarding the need for such a buffer, its location and size and options to minimize its potential effects on existing uses.

Sec. B-2. 12 MRSA §1863, sub-§3, as repealed and replaced by PL 1999, c. 401, Pt. I, §1, is amended to read:

3. Fund sources. Annual revenues, less funds deposited in the Renewable Ocean Energy Trust pursuant to section 1863-A and operating expenses from the submerged and intertidal lands program and the abandoned watercraft program and conveyances of submerged and intertidal lands by the Legislature, must be deposited in the fund.

Sec. B-3. 12 MRSA §1863-A is enacted to read:

§ 1863-A. Renewable Ocean Energy Trust

1. Trust established. The Renewable Ocean Energy Trust, referred to in this section as "the trust," is established as a nonlapsing, dedicated fund to be used to protect and enhance the integrity of public trust-related resources and related human uses of the State's submerged lands.

2. Administration. The Treasurer of State shall administer the trust as provided in this section.

3. Sources of funds. The following funds must be transferred on receipt to the Treasurer of State for deposit in the trust:

A. Eighty percent of the submerged lands leasing rental payments for renewable ocean energy projects under section 1862, subsection 13 and offshore wind energy demonstration projects and tidal energy demonstration projects for which a general permit has been issued under Title 38, section 480HH or Title 38, section 636A, respectively; and

B. The State's share, pursuant to 43 United States Code, Section 1337(p)(2)(B), of federal revenues from alternative energy leasing.

4. Disbursement of funds; required uses. The Treasurer of State shall annually disburse the funds in the trust for credit to the Ocean Energy Fund established within the Department of Marine Resources, in consultation with the Marine Resources Advisory Council established under section 6024, for use as follows:

A. Fifty percent to fund research, monitoring and other efforts to avoid, minimize and compensate for potential adverse effects of renewable ocean energy projects, as defined in section 1862, subsection 1, paragraph F-1, on noncommercial fisheries, seabirds, marine mammals, shorebirds, migratory birds and other coastal and marine natural resources, including but not limited to development, enhancement and maintenance of map-based information resources developed to guide public and private decision making on siting issues and field research to provide baseline or other data to address siting issues presented by renewable ocean energy projects. The department shall consult with the Department of Inland Fisheries and Wildlife and the Executive Department, State Planning Office in allocating funds it receives pursuant to this paragraph; and

B. Fifty percent to fund resource enhancement, research on fish behavior and species abundance and distribution and other issues and other efforts to avoid, minimize and compensate for potential adverse effects of renewable ocean energy projects, as defined in section 1862, subsection 1, paragraph F-1, on commercial fishing and related activities.

Sec. B-4. Establishment of fee schedule for renewable ocean energy development projects. No later than one year from the effective date of this section and in accordance with the Maine Revised Statutes, Title 12, section 1862, subsection 13, paragraph B, subparagraph (6), the Department of Conservation, Bureau of Parks and Lands shall amend its submerged lands leasing rules to establish a fee schedule for leasing submerged lands for a renewable ocean energy project as defined in Title 12, section 1862, subsection 1, paragraph F-1 that balances state goals of assurance of fair compensation for use and mitigation of potential adverse effects on or conflict with existing uses of state-owned submerged lands that are held in trust for the people of the State with state renewable ocean energy-related goals, including state wind energy generation goals established in Title 35-A, section 3404, subsection 2. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Prior to adoption of such a fee schedule, the Director of the Bureau of Parks and Lands shall determine the rent on a case-by-case basis. In developing rules pursuant to this section, the bureau shall:

1. Establish fees that are commercially reasonable and comparable to pertinent lease fees in other jurisdictions both in terms of the fee amounts and provision for a graduated fee schedule that reflects consideration of energy production levels and debt service obligations in the initial years of a renewable ocean energy project;

2. Consider renewable ocean energy-related submerged lands leasing fees in other states; fees provided for by the United States Department of Interior, Minerals Management Service's Renewable Energy Program; current market practices in the wind power industry regarding lease arrangements; and other

pertinent information;

3. Include in the fee schedule an amount adequate to cover the bureau's pertinent administrative costs;

4. Allow the developer of a renewable ocean energy project to enter into a contract for sale or use of project-generated power that, through reduced rates or otherwise, provides the State or electric consumers in this State a portion of the dollar value of the pertinent rental fee for use of state submerged lands and obligates the developer to provide monetary payment to the State for the remaining portion of the rental fee as provided in this Act;

5. Consult with and consider the recommendations of the Public Utilities Commission regarding provisions in the rules regarding subsection 4 and related permit terms and conditions for a lease for a renewable ocean energy project;

6. Clarify that potential adverse effects on existing uses, such as fishing, are addressed through the fee schedule and that the bureau may not require case-by-case payment of an amount in addition to rent as compensation for such project-specific effects;

7. Incorporate the annual rent and exemption established in Title 12, section 1862, subsection 13, paragraph B, subparagraph (5); and

8. Otherwise amend its rules for consistency with the provisions of this Act.

PART C

Sec. C-1. Personal property-related taxation; renewable ocean energy development. No later than November 1, 2010, the Department of Administrative and Financial Regulation, Bureau of Revenue Services shall develop and provide to the joint standing committees of the Legislature having jurisdiction over taxation matters and utilities and energy matters an analysis of whether and under what circumstances renewable ocean energy-generating machinery, equipment and related components, including but not limited to turbines, support structures, transmission cables and their component parts, that are in transit to be located in, on or above state submerged lands as defined in the Maine Revised Statutes, Title 12, section 1801, subsection 9 and that are in the State on the first day of April on the applicable tax year are exempt from taxation under Title 36, section 655, subsection 1, paragraph A, B, G or H.

PART D

Sec. D-1. 12 MRSA §682, sub-§1, as amended by PL 1999, c. 333, §1, is further amended to read:

1. Unorganized and deorganized areas. "Unorganized and deorganized areas" includes all unorganized and deorganized townships, plantations that have not received commission approval under section 685-A, subsection 4 to implement their own land use controls, municipalities that have organized since 1971 but have not received commission approval under section 685-A, subsection 4 to implement their own land use controls and all other areas of the State that are not part of an organized municipality except Indian reservations. <u>For the purposes of permitting a community-based offshore</u>

wind energy project and structures associated with resource analysis activities necessary for such an intended project, the area of submerged land to be occupied for such a project and resource analysis structures is considered to be in the unorganized or deorganized areas.

Sec. D-2. 12 MRSA §682, sub-§19 is enacted to read:

19. Community-based offshore wind energy project. "Community-based offshore wind energy project" means a wind energy development, as defined by Title 35-A, section 3451, subsection 11, with an aggregate generating capacity of less than 3 megawatts that meets the following criteria: the generating facilities are wholly or partially located on or above the coastal submerged lands of the State; the generating facilities are located within one nautical mile of one or more islands that are within the unorganized and deorganized areas of the State and the project will offset part or all of the electricity requirements of those island communities; and the development meets the definition of "community-based renewable energy project" as defined by Title 35-A, section 3602, subsection 1.

Sec. D-3. 12 MRSA §685-B, sub-§2-C, as repealed and replaced by PL 2009, c. 492, §1, is amended to read:

2-C. Wind energy development; community-based offshore wind energy projects; determination deadline. The following provisions govern wind energy development.

A. The commission shall consider any wind energy development in the expedited permitting area under Title 35A, chapter 34A with a generating capacity of 100 kilowatts or greater or a community-based offshore wind energy project a use requiring a permit, but not a special exception, within the affected districts or subdistricts. For an offshore wind energy project that is proposed within one nautical mile of an island within the unorganized or deorganized areas, the commission shall review the proposed project to determine whether the project qualifies as a community-based offshore wind energy project and therefore is within the jurisdiction of the commission. The commission may require an applicant to provide a timely notice of filing prior to filing an application for, and may require the applicant to attend a public meeting during the review of, a wind energy development or a community-based offshore wind energy project. The commission shall render its determination on an application for such a development or project within 185 days after the commission determines that the application is complete, except that the commission shall render such a decision within 270 days if it holds a hearing on the application. The chair of the Public Utilities Commission or the chair's designee shall serve as a nonvoting member of the commission and may participate fully but is not required to attend hearings when the commission considers an application for an expedited wind energy development or a community-based offshore wind energy project. The chair's participation on the commission pursuant to this subsection does not affect the ability of the Public Utilities Commission to submit information into the record of the commission's proceedings. For purposes of this subsection, "expedited permitting area," "expedited wind energy development" and "wind energy development" have the same meanings as in Title 35-A, section 3451.

B. At the request of an applicant, the commission may stop the processing time for a period of time agreeable to the commission and the applicant. The expedited review period specified in paragraph A does not apply to the associated facilities, as defined in Title 35-A, section 3451, subsection 1, of the wind energy development or community-based offshore wind energy project if the commission determines that an expedited review time is unreasonable due to the size, location, potential impacts, multiple agency jurisdiction or complexity of that portion of the development or project.

Sec. D-4. 12 MRSA §685-B, sub-§4, as amended by PL 2009, c. 492, §2, is further amended

to read:

4. Criteria for approval. In approving applications submitted to it pursuant to this section, the commission may impose such reasonable terms and conditions as the commission may consider appropriate. In making a decision under this subsection regarding an application for a community-based offshore wind energy project, the commission may not consider whether the project meets the specific criteria designated in section 1862, subsection 2, paragraph A, subparagraph (6), divisions (a) to (d). This limitation is not intended to restrict the commission's review of related potential impacts of the project as determined by the commission.

The commission may not approve an application, unless:

A. Adequate technical and financial provision has been made for complying with the requirements of the State's air and water pollution control and other environmental laws, and those standards and regulations adopted with respect thereto, including without limitation the minimum lot size laws, sections 4807 to 4807G, the site location of development laws, Title 38, sections 481 to 490, and the natural resource protection laws, Title 38, sections 480A to 480Z, and adequate provision has been made for solid waste and sewage disposal, for controlling of offensive odors and for the securing and maintenance of sufficient healthful water supplies;

B. Adequate provision has been made for loading, parking and circulation of land, air and water traffic, in, on and from the site, and for assurance that the proposal will not cause congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods;

C. Adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to ensure there will be no undue adverse effect on existing uses, scenic character and natural and historic resources in the area likely to be affected by the proposal. In making a determination under this paragraph regarding development to facilitate withdrawal of groundwater, the commission shall consider the effects of the proposed withdrawal on waters of the State, as defined by Title 38, section 361A, subsection 7; water-related natural resources; and existing uses, including, but not limited to, public or private wells, within the anticipated zone of contribution to the withdrawal. In making findings under this paragraph, the commission shall consider both the direct effects of the proposed withdrawal and its effects in combination with existing water withdrawals.

In making a determination under this paragraph regarding an expedited wind energy development, as defined in Title 35A, section 3451, subsection 4, or a community-based offshore wind energy project, the commission shall consider the development's or project's effects on scenic character and existing uses related to scenic character in accordance with Title 35A, section 3452.

In making a determination under this paragraph regarding a wind energy development, as defined in Title 35A, section 3451, subsection 11, that is not a grid-scale wind energy development, that has a generating capacity of 100 kilowatts or greater and that is proposed for location within the expedited permitting area, the commission shall consider the development's or project's effects on scenic character and existing uses relating to scenic character in the manner provided for in Title 35A, section 3452;

D. The proposal will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water and suitable soils are available for a sewage disposal system if sewage is to

be disposed on-site;

E. The proposal is otherwise in conformance with this chapter and the regulations, standards and plans adopted pursuant thereto; and

F. In the case of an application for a structure upon any lot in a subdivision, that the subdivision has received the approval of the commission.

The burden is upon the applicant to demonstrate by substantial evidence that the criteria for approval are satisfied, and that the public's health, safety and general welfare will be adequately protected. Except as otherwise provided in Title 35A, section 3454, the commission shall permit the applicant and other parties to provide evidence on the economic benefits of the proposal as well as the impact of the proposal on energy resources.

Sec. D-5. 12 MRSA §685-B, sub-§4-B, as enacted by PL 2007, c. 661, Pt. C, §4, is amended to read:

4-B. Special provisions; wind energy development or project. In the case of a wind energy development, as defined in Title 35-A, section 3451, subsection 11, with a generating capacity greater than 100 kilowatts, or a community-based offshore wind energy project, the developer must demonstrate, in addition to requirements under subsection 4, that the proposed generating facilities, as defined in Title 35-A, section 3451, subsection 5:

A. Will meet the requirements of the Board of Environmental Protection's noise control rules adopted pursuant to Title 38, chapter 3, subchapter 1, article 6;

B. Will be designed and sited to avoid undue adverse shadow flicker effects;

C. Will be constructed with setbacks adequate to protect public safety, as provided in Title 35-A, section 3455. In making findings pursuant to this paragraph, the commission shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities; and

D. Will provide significant tangible benefits, as defined in Title 35-A, section 3451, subsection 10, within the State, as provided in Title 35-A, section 3454, if the development is an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4.

Sec. D-6. Maine Land Use Regulation Commission to adopt rule. No later than December 1, 2010, the Maine Land Use Regulation Commission shall adopt a rule amending its land use districts and standards to provide that offshore wind power projects, as defined in the Maine Revised Statutes, Title 38, section 480-B, subsection 6A, and community-based offshore wind energy projects, as defined in Title 12, section 682, subsection 19, are uses requiring a permit, but not a special exception, in all subdistricts. Prior to the commission's adoption of a rule in accordance with this section, an offshore wind power project or a community-based offshore wind energy project is considered a use requiring a permit, but not a special exception, in all subdistricts.

Rules adopted by the Maine Land Use Regulation Commission pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

PART E

Sec. E-1. 38 MRSA §341-D, sub-§2, as amended by PL 2007, c. 661, Pt. B, §1, is further amended to read:

2. Permit and license applications. Except as otherwise provided in this subsection, the board shall decide each application for approval of permits and licenses that in its judgment:

A. Involves a policy, rule or law that the board has not previously interpreted;

B. Involves important policy questions that the board has not resolved;

C. Involves important policy questions or interpretations of a rule or law that require reexamination; or

D. Has generated substantial public interest.

The board shall assume jurisdiction over applications referred to it under section 344, subsection 2-A, when it finds that the criteria of this subsection have been met.

The board may vote to assume jurisdiction of an application if it finds that one or more of the criteria in this subsection have been met.

Any interested party may request the board to assume jurisdiction of an application.

The board may not assume jurisdiction over an application for an expedited wind energy development as defined in Title 35A, section 3451, subsection 4 ~~or~~ , for a certification pursuant to Title 35A, section 3456 or for a general permit pursuant to section 480HH or section 636A.

Sec. E-2. 38 MRSA §341-D, sub-§4, ¶D, as enacted by PL 2007, c. 661, Pt. B, §4, is amended to read:

D. License or permit decisions regarding an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4 or a general permit pursuant to section 480HH or section 636A. In reviewing an appeal of a license or permit decision by the commissioner ~~on an application for an expedited wind energy development~~ under this paragraph, the board shall base its decision on the administrative record of the department, including the record of any adjudicatory hearing held by the department, and any supplemental information allowed by the board using the standards contained in subsection 5 for supplementation of the record. The board may remand the decision to the department for further proceedings if appropriate. The chair of the Public Utilities Commission or the chair's designee ~~shall serve~~ serves as a nonvoting member of the board and is entitled to fully participate but is not required to attend hearings when the board considers an appeal pursuant to this paragraph. The chair's participation on the board pursuant to this paragraph does not affect the ability of the Public Utilities Commission to submit information to the department for inclusion in the record of any proceeding before the department.

Sec. E-3. 38 MRSA §344, sub-§2-A, ¶A, as amended by PL 2007, c. 661, Pt. B, §5, is further amended to read:

A. Except as otherwise provided in this paragraph, the commissioner shall decide as expeditiously as possible if an application meets one or more of the criteria set forth in section 341-D, subsection 2 and shall request that the board assume jurisdiction of that application. If at any

subsequent time during the review of an application the commissioner decides that the application falls under section 341-D, subsection 2, the commissioner shall request that the board assume jurisdiction of the application.

(1) The commissioner may not request the board to assume jurisdiction of an application for any permit or other approval required for an expedited wind energy development, as defined in Title 35A, section 3451, subsection 4, ~~or~~ a certification pursuant to Title 35A, section 3456 or a general permit pursuant to section 480HH or section 636A. Except as provided in subparagraph (2), the commissioner shall issue a decision on an application for an expedited wind energy development, an offshore wind power project or a hydropower project, as defined in section 632, subsection 3, that uses tidal action as a source of electrical or mechanical power within 185 days of the date on which the department accepts the application as complete pursuant to this section or within 270 days of the department's acceptance of the application if the commissioner holds a hearing on the application pursuant to section 345A, subsection 1A.

(2) The expedited review periods of 185 days and 270 days specified in subparagraph (1) do not apply to the associated facilities, as defined in Title 35A, section 3451, subsection 1, of the development if the commissioner determines that an expedited review time is unreasonable due to the size, location, potential impacts, multiple agency jurisdiction or complexity of that portion of the development. If an expedited review period does not apply, a review period specified pursuant to section 344-B applies.

The commissioner may stop the processing time with the consent of the applicant for a period of time agreeable to the commissioner and the applicant.

Sec. E-4. 38 MRSA §344-A, first ¶, as amended by PL 2009, c. 270, Pt. A, §1, is further amended to read:

The commissioner may enter into agreements with individuals, partnerships, firms and corporations outside the department, referred to throughout this section as "outside reviewers," to review applications or portions of applications submitted to the department. The commissioner has sole authority to determine the applications or portions of applications to be reviewed by outside reviewers and to determine which outside reviewer is to perform the review. When selecting an outside reviewer, all other factors being equal, the commissioner shall give preference to an outside reviewer who is a public or quasi-public entity, such as state agencies, the University of Maine System or the soil and water conservation districts. Except for an agreement for outside review regarding review of an application for a wind energy development as defined in Title 35A, section 3451, subsection 11, a certification pursuant to Title 35-A, section 3456, an application for an offshore wind power project as defined in section 480-B, subsection 6A or a general permit pursuant to section 480-HH or section 636-A or an application for a hydropower project, as defined in section 632, subsection 3, that uses tidal action as a source of electrical or mechanical power, the commissioner may enter into an agreement with an outside reviewer only with the consent of the applicant and only if the applicant agrees in writing to pay all costs associated with the outside review.

Sec. E-5. 38 MRSA §346, sub-§4, as enacted by PL 2007, c. 661, Pt. B, §8, is amended to

read:

4. Appeal of decision. A person aggrieved by an order or decision of the board or commissioner regarding an application for an expedited wind energy development, as defined in Title 35A, section 3451, subsection 4, or a general permit pursuant to section 480HH or section 636A may appeal to the Supreme Judicial Court sitting as the law court. These appeals to the law court must be taken in the manner provided in Title 5, chapter 375, subchapter 7.

Sec. E-6. 38 MRSA §480-B, sub-§6-A is enacted to read:

6-A. Offshore wind power project. "Offshore wind power project" means a project that uses a windmill or wind turbine to convert wind energy to electrical energy and is located in whole or in part within coastal wetlands. "Offshore wind power project" includes both generating facilities as defined by Title 35-A, section 3451, subsection 5 and associated facilities as defined by Title 35-A, section 3451, subsection 1, without regard to whether the electrical energy is for sale or use by a person other than the generator.

Sec. E-7. 38 MRSA §480-D, first paragraph, as amended by PL 2007, c. 353, §9, is further amended to read:

The department shall grant a permit upon proper application and upon such terms as it considers necessary to fulfill the purposes of this article. The department shall grant a permit when it finds that the applicant has demonstrated that the proposed activity meets the standards set forth in subsections 1 to ~~9~~ 11, except that when an activity requires a permit only because it is located in, on or over a community public water system primary protection area the department shall issue a permit when it finds that the applicant has demonstrated that the proposed activity meets the standards set forth in subsections 2 and 5.

Sec. E-8. 38 MRSA §480-D, sub-§1, as amended by PL 2007, c. 661, Pt. B, §10, is further amended to read:

1. Existing uses. The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.

In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35A, section 3451, subsection 4, or an offshore wind power project, the department shall consider the development's or project's effects on scenic character and existing uses related to scenic character in accordance with Title 35A, section 3452. In making a decision under this subsection regarding an application for an offshore wind power project, the department may not consider whether the project meets the specific criteria designated in Title 12, section 1862, subsection 2, paragraph A, subparagraph (6), divisions (a) to (d). This limitation is not intended to restrict the department's review of related potential impacts of the project as determined by the department.

Sec. E-9. 38 MRSA §480-D, sub-§11 is enacted to read:

11. Offshore wind power project. This subsection applies to an offshore wind power project.

A. If an offshore wind power project does not require a permit from the department pursuant to article 6, the applicant must demonstrate that the generating facilities:

(1) Will meet the requirements of the noise control rules adopted by the board pursuant to article 6;

(2) Will be designed and sited to avoid unreasonable adverse shadow flicker effects; and

(3) Will be constructed with setbacks adequate to protect public safety, while maintaining existing uses to the extent practicable. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities.

B. If an offshore wind power project does not require a permit from the department pursuant to article 6, the applicant must demonstrate adequate financial capacity to decommission the offshore wind power project.

C. An applicant for an offshore wind power project is not required to demonstrate compliance with requirements of this article that the department determines are addressed by criteria specified in Title 12, section 1862, subsection 2, paragraph A, subparagraph (6).

Sec. E-10. 38 MRSA §480-E, sub-§1, as enacted by PL 1989, c. 656, §4 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §73, is repealed and the following enacted in its place:

1. Municipal and other notification. The department shall provide notice according to this subsection.

A. Except as otherwise provided in paragraph B, the department may not review a permit without notifying the municipality in which the proposed activity is to occur. The municipality may provide comments within a reasonable period established by the commissioner and the commissioner shall consider any such comments.

B. The department may not review an application for an offshore wind power project without providing:

(1) Notice to the Maine Land Use Regulation Commission when the proposed development is located within 3 miles of an area of land within the jurisdiction of the Maine Land Use Regulation Commission; and

(2) Notice to any municipality with land located within 3 miles of the proposed development and any municipality in which development of associated facilities is proposed.

The Maine Land Use Regulation Commission and any municipality notified pursuant to this paragraph may provide comments within a reasonable period established by the commissioner and the commissioner shall consider such comments.

Sec. E-11. 38 MRSA §480-E-1, first ¶, as repealed and replaced by PL 2005, c. 330, §14, is amended to read:

The Maine Land Use Regulation Commission shall issue all permits under this article for activities that are located wholly within its jurisdiction and are not subject to review and approval by the department under any other article of this chapter, except as provided in subsection 3.

Sec. E-12. 38 MRSA §480-E-1, sub-§3 is enacted to read:

3. Offshore wind power project. The department shall issue all permits under this article for offshore wind power projects except for community-based offshore wind energy projects as defined in Title 12, section 682, subsection 19.

Sec. E-13. 38 MRSA §482, sub-§2, ¶D, as amended by PL 1999, c. 468, §6, is further amended to read:

D. Is a subdivision as defined in this section; ~~or~~

Sec. E-14. 38 MRSA §482, sub-§2, ¶F, as enacted by PL 1997, c. 502, §5, is amended to read:

F. Is an oil terminal facility as defined in this section~~.~~ ; or

Sec. E-15. 38 MRSA §482, sub-§2, ¶J is enacted to read:

J. Is an offshore wind power project with an aggregate generating capacity of 3 megawatts or more.

Sec. E-16. 38 MRSA §482, sub-§8 is enacted to read:

8. Offshore wind power project. "Offshore wind power project" means a project that uses a windmill or wind turbine to convert wind energy to electrical energy and is located in whole or in part within coastal wetlands as defined in section 480-B, subsection 2. "Offshore wind power project" includes both generating facilities as defined by Title 35-A, section 3451, subsection 5 and associated facilities as defined by Title 35-A, section 3451, subsection 1, without regard to whether the electrical energy is for sale or use by a person other than the generator.

Sec. E-17. 38 MRSA §484, sub-§3, ¶G, as enacted by PL 2007, c. 661, Pt. B, §11, is amended to read:

G. In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, or an offshore wind power project with an aggregate generating capacity of 3 megawatts or more, the department shall consider the development's or project's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.

Sec. E-18. 38 MRSA §484, sub-§10, as enacted by PL 2007, c. 661, Pt. B, §12, is amended to read:

10. Special provisions; wind energy development or offshore wind power project. In the case of a grid-scale wind energy development, or an offshore wind power project with an aggregate generating capacity of 3 megawatts or more, the proposed generating facilities, as defined in Title 35-A, section 3451, subsection 5:

A. Will be designed and sited to avoid unreasonable adverse shadow flicker effects;

B. Will be constructed with setbacks adequate to protect public safety. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities; and

C. Will provide significant tangible benefits as determined pursuant to Title 35-A, section 3454, if the development is an expedited wind energy development.

The Department of Labor, the Executive Department, State Planning Office and the Public Utilities Commission shall provide review comments if requested by the primary siting authority.

For purposes of this subsection, "grid-scale wind energy development," "primary siting authority,"

"significant tangible benefits" and "expedited wind energy development" have the same meanings as in Title 35-A, section 3451.

Sec. E-19. 38 MRSA §488, sub-§9, as repealed and replaced by PL 2005, c. 330, §19, is amended to read:

9. Development within unorganized areas. A development located entirely within an area subject to the jurisdiction of the Maine Land Use Regulation Commission, other than a metallic mineral mining or advanced exploration activity ~~or~~ , an oil terminal facility or an offshore wind power project with an aggregate generating capacity of 3 megawatts or more that is not a community-based offshore wind energy project as defined in Title 12, section 682, subsection 19, is exempt from the requirements of this article.

A. If a development is located in part within an organized area and in part within an area subject to the jurisdiction of the Maine Land Use Regulation Commission, that portion of the development within the organized area is subject to review under this article if that portion is a development pursuant to this article. That portion of the development within the jurisdiction of the commission is exempt from the requirements of this article except as provided in paragraph B.

B. If a development is located as described in paragraph A, the department may review those aspects of a development within the jurisdiction of the Maine Land Use Regulation Commission if the commission determines that the development is an allowed use within the subdistrict or subdistricts for which it is proposed pursuant to Title 12, section 685-B. A permit from the Maine Land Use Regulation Commission is not required for those aspects of a development approved by the department under this paragraph.

Review by the department of subsequent modifications to a development approved by the department is required. For a development or part of a development within the jurisdiction of the Maine Land Use Regulation Commission, the director of the commission may request and obtain technical assistance and recommendations from the department. The commissioner shall respond to the requests in a timely manner. The recommendations of the department must be considered by the Maine Land Use Regulation Commission in acting upon a development application.

Sec. E-20. 38 MRSA §488, sub-§25 is enacted to read:

25. Offshore wind power project and certain standards. An offshore wind power project with an aggregate generation capacity of 3 megawatts or more is exempt from review under the existing use standard in section 484, subsection 3, insofar as the department determines that review is required under criteria specified in Title 12, section 1862, subsection 2, paragraph A, subparagraph (6).

Sec. E-21. Rulemaking. No later than June 1, 2011, the Department of Environmental Protection shall adopt rules pursuant to the Maine Revised Statutes, Title 38, chapter 3, subchapter 1, article 5-A and Title 38, section 344, subsection 7 to provide permit by rule standards for meteorological towers in coastal wetlands that are associated with resource analysis activities in anticipation of an offshore wind power project as defined by Title 38, section 480-B, subsection 6-A. The rules must specify the class of eligible activities and may establish standards of location, design, construction or use that the department considers necessary to avoid adverse environmental impacts. These rules are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

PART F

Sec. F-1. 12 MRSA §685-B, sub-§1-A, ¶E, as enacted by PL 2009, c. 270, Pt. D, §4, is amended to read:

E. A permit or other approval by the commission is not required for a hydropower project that uses tidal or wave action as a source of electrical or mechanical power or is located partly within an organized municipality and partly within an unorganized territory.

Sec. F-2. 38 MRSA §634-A, sub-§1, ¶B, as enacted by PL 2009, c. 270, Pt. D, §5, is amended to read:

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

Sec. F-3. 38 MRSA §634-A, sub-§2, as enacted by PL 2009, c. 270, Pt. D, §5, is amended to read:

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

Sec. F-4. 38 MRSA §636, sub-§5, as amended by PL 2009, c. 270, Pt. D, §7, is further amended to read:

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

PART G

Sec. G-1. 30-A MRSA §4352, sub-§4, as amended by PL 2007, c. 656, Pt. A, §2, is further amended to read:

4. Exemptions. Real estate used or to be used by a public utility, as defined in Title 35-A, section 102, subsection 13, ~~or~~ by a person who is issued a certificate by the Public Utilities Commission under Title 35-A, section 122 or by a renewable ocean energy project as defined in Title 12, section 1862, subsection 1, paragraph F-1 is wholly or partially exempt from an ordinance only when on petition, notice and public hearing the Public Utilities Commission determines that the exemption is reasonably necessary for public welfare and convenience. The Public Utilities Commission shall adopt by rule procedures to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. G-2. 30-A MRSA §4361 is enacted to read:

§ 4361. Coordination of state and municipal decision making; renewable ocean energy projects

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 Title 38, section 1802, subsection 1.

B. "Renewable ocean energy project" has the same meaning as in Title 12, section 1862, subsection 1, paragraph F-1.

C. "Submerged lands" has the same meaning as in Title 12, section 1801, subsection 9.

2. Location of renewable ocean energy projects. A municipality may not enact or enforce a land use ordinance that prohibits siting of renewable ocean energy projects, including but not limited to their associated facilities, within the municipality. Nothing in this section is intended to authorize a municipality to enact or enforce a land use ordinance as applied to submerged lands.

3. Boundaries; rebuttable presumption. A municipality may not enact or enforce any land use standard or other requirement regarding a renewable ocean energy project unless the project or part of the project over which the municipality asserts approval authority is located within its boundaries, as established in its legislative charter, prior to the effective date of this subsection. In any proceeding regarding the location of a municipality's boundaries for purposes of this section, there is a rebuttable presumption that the boundaries of a municipality in the coastal area do not extend below the mean low-water line on waters subject to tidal influence.

PART H

Sec. H-1. Appropriations and allocations. The following appropriations and allocations are made.

MARINE RESOURCES, DEPARTMENT OF

Bureau of Resource Management 0027

Initiative: Establishes the Ocean Energy Fund with a base allocation.

OTHER SPECIAL REVENUE FUNDS	**2009-10**	**2010-11**
All Other	$500	$500
OTHER SPECIAL REVENUE FUNDS TOTAL	$500	$500

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

Effective April 7, 2010.