



STATE OF MAINE
DEPARTMENT OF CONSERVATION
22 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0022

Paul R. LePage
GOVERNOR

William H. Beardsley
COMMISSIONER

SUBMERGED LANDS – FINAL FINDINGS AND DECISION

APPLICANT: Ocean Renewable Power Company Maine, LLC

PROJECT LOCATION: Lubec and Eastport

APPLICATION: Submerged Lands Lease Application #1684.

PROJECT DESCRIPTION: The applicant proposes to develop a hydrokinetic energy pilot project in Cobscook Bay in Washington County. The applicant has received a Maine Waterway Development and Conservation Act General Permit and Water Quality Certification #L-25468-35-A-N, dated January 31, 2012 from the Maine Department of Environmental Protection. The applicant is also seeking project approval from the Federal Energy Regulatory Commission (FERC) which has issued an environmental assessment finding of no significant environmental impact in relation to the project. The pilot project is proposed for eight years but may be extended. The DEP General Permit is valid for the term of the FERC pilot project license.

The project involves the construction of an array of five turbine generator units (TGU), submerged cables for generated power and data collection to a shore station located in Lubec. Phase 1 of the project will deploy a single TGU and Phase 2 will deploy the remaining four units. The TGUs are approximately 98 feet long by 17 feet wide and 17 feet high, and are to be mounted approximately 15 feet off the sea floor with steel piles driven into the bottom. As proposed, the TGUs will be approximately 50 feet below the water surface at mean lower low tide.

Each TGU has a rated generating capacity of 60 kilowatts. The power and data cables will be buried below the seafloor. The TGU array, submerged cables, and proposed safety zone around the project encompasses an area of approximately 61 acres. The area will be marked with Aid to Navigation buoys notifying mariners that anchoring and other commercial fishing gear is prohibited within the area. Otherwise, there are no proposed restrictions on watercraft transiting through the project area.

REVIEW COMMENTS: In accordance with Title 12 M.R.S.A. Section 1862 and pertinent regulations, upon issuance of the General Permit by the Department of Environmental Protection, the Bureau of Parks and Lands (Bureau) has waived its standard review procedures. The Bureau staff has consulted with the Department of Marine Resources regarding the proposed safety area and agrees that it is appropriate to include the safety zone, as proposed, within the submerged lands lease area.

FINDINGS: Based upon its review of all information in the administrative record, the Bureau of Parks and Lands makes the following findings in accordance with Title 12 M.R.S.A. Sections 1801 & 1862 and pertinent regulations.

PUBLIC ACCESS WAYS:

The project will be associated with the applicant's property and not on or adjacent to a public access point to the shore. As such, the Bureau finds that the project will not unreasonably interfere with public access ways to submerged lands.

PUBLIC TRUST RIGHTS:

The project will not unreasonably interfere with fishing, fowling, navigation, or other existing marine uses of the area.

RECREATION:

The project will not unreasonably interfere with recreation.

SERVICES AND FACILITIES NECESSARY FOR COMMERCIAL MARINE ACTIVITIES:

The project will not unreasonably diminish the availability of services and facilities necessary for commercial marine activities.

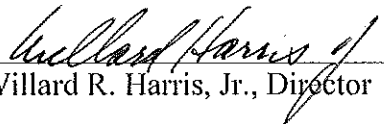
INGRESS AND EGRESS OF RIPARIAN OWNERS:

The project will not unreasonably interfere with ingress and egress of riparian owners.

DECISION: In accordance with Title 12 M.R.S.A. Sections 1801 & 1862, the Director of the Bureau of Parks and Lands has determined that Submerged Lands Lease 1438-L-20 will be granted to Ocean Renewable Power Company, L.L.C.

APPEAL RIGHTS: In accordance with 5 M.R.S.A. section 11002 and Maine Rules of Civil Procedure 80C, this decision may be appealed to Superior Court within 30 days after receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person.

Signed:


Willard R. Harris, Jr., Director

Date: February 29, 2012

STATE OF MAINE

SUBMERGED LANDS LEASE

No. 1438-L-20

This SUBMERGED LANDS LEASE (hereinafter Lease) conveys certain limited rights in the submerged lands held by the State of Maine in trust for the public. It is not an environmental permit for the use of these lands.

This Lease is entered into by the Bureau of Parks and Lands (hereinafter Lessor), an agency of the State of Maine Department of Conservation, by its Director acting pursuant to the provisions of Title 12 M.R.S.A. Sections 1801 & 1862, and **OCEAN RENEWABLE POWER COMPANY MAINE, LLC, 120 EXCHANGE STREET, SUITE 508, PORTLAND, ME 04101** (hereinafter Lessee). Lessor hereby leases to Lessee, on the terms and conditions hereinafter set forth, the following described submerged land (hereinafter leased premises) situated in Lubec and Eastport, Washington County, Maine, to wit:

A certain parcel of public submerged land located in Lubec and Eastport, Maine, totaling 61 acres +/-, abutting adjacent upland now owned by Cooke Aquaculture USA, Inc., as further described in Attachments A, B and C which are hereby incorporated into this Lease.

1. **TERM.** This lease shall commence on March 1, 2012 and continue to December 31, 2020.
2. **USE.** Lessee is hereby authorized to use leased premises for the purposes of developing a hydrokinetic energy pilot project including up to five turbine generator units mounted on the sea floor, submerged power and data cables, and a buoy-marked safety zone around the facility totaling approximately 61 acres as described in Application Number SL-1684 and for no other purposes. The safety zone is necessary to protect the lessee's equipment and the safety of commercial fishermen and the boating public transiting the area by excluding anchors and fishing gear in the water within the project area.
3. **OTHER USES.** Except as noted above, Lessor reserves the rights of the general public to transitory recreation, navigation, and other traditional uses of leased premises, and the right of Lessor to make such other uses of leased premises without limitation, including the right to permit other uses as shall not unreasonably interfere with Lessee's use and enjoyment of leased premises for the purposes stated in Paragraph 2 above.
4. **REGULATORY PERMITS.** Lessee shall be responsible for obtaining any and all permits required by any agency of the United States, the State of Maine, or any political subdivision thereof, having jurisdiction over the activities on the submerged lands contemplated by this Lease. Lessee's compliance with such permits and conditions thereof shall be a requirement of this Lease for all purposes including, without limitation, for purposes of defining the extent and purpose of any alteration or use of in, on, under, or over leased premises. Unless all required permits authorizing the uses contemplated hereby are issued prior to the expiration of the calendar year next following the creation of this leasehold, this Lease shall be void. In the event that any agency of the United States, the State of Maine, or any political subdivision thereof, denies or disapproves any portion of any application by Lessee for the use of leased premises or any portion thereof, this Lease shall be void as to the denied or disapproved use as of the date of such denial or disapproval. Rental payments made by Lessee for such denied or disapproved use may, upon proper request, be refunded or equitably adjusted, subject to a service charge. Failure by Lessee to abide by, or conform to, the terms and conditions of any such permit shall be an event of default hereunder.
5. **ASSIGNMENT OR SUBLEASING.** All rights leased herein by Lessor may be assigned or sublet by Lessee with the prior written consent of Lessor. Such assignment shall not be unreasonably withheld under then

applicable laws, regulations, and public trust principles. Notwithstanding any such assignment or sublease, Lessee shall be and remain liable for compliance with the terms and conditions of this lease unless released by Lessor in writing.

6. **RENTAL.** Annual rental shall be payable hereunder throughout the term hereof as follows, except that rental shall be no less than the minimum amount established by law:

\$6,100 per year.

Rental is payable on or before the first day of February each year throughout the term hereof, except as may be adjusted from time to time in accordance with Paragraph 7 below. Payment is to be made to the Bureau of Parks and Lands, 22 State House Station, Augusta, Maine 04333. Checks are to be made payable to the Treasurer, State of Maine.

7. **RENTAL ADJUSTMENT.** Lessor may adjust the rental from time to time as necessary to conform with its regulations and laws as they may be amended, but Lessor may not adjust rental for five years from the commencement date of this Lease. Subsequent adjustments may not be made more frequently than once every five years. Lessor shall give Lessee at least 120 days notice of such adjustment. In the event Lessee is unwilling to accept such adjustment, Lessee may terminate the Lease and vacate the premises within 120 days of Lessor's notice of adjustment.

8. **TAXES.** Lessee shall pay when due all taxes, charges, assessments and other impositions levied by any governmental entity upon the structures and improvements on leased premises or any operations or activities thereon.

9. **INDEMNITY.** Lessee shall defend, or cause to be defended, and indemnify and hold Lessor, its employees and agents, harmless from and against any and all manner of claims, suits, expenses, damages or causes of action arising out of, in whole or in part, the use or occupancy of leased premises by Lessee, its agents, contractors, employees, guests, invitees, permittees and sublessees.

10. **MAINTENANCE.** Lessee, at Lessee's expense, shall keep leased premises free of garbage, refuse, and other discarded material and shall maintain all improvements upon leased premises in good condition and repair.

11. **GENERAL RESTRICTIONS.** No nuisance shall be permitted on leased premises. No minerals, including, without limitation, sand and gravel, shall be removed from leased premises, and no rock, earth, ballast or other material shall be deposited upon leased premises, without the prior written consent of Lessor.

12. **CASUALTY REPLACEMENT.** In the event that the improvements and structures placed on leased premises are substantially destroyed by fire or other casualty, and Lessee does not, within two years following such casualty, rebuild or replace the affected improvements and structures, Lessor may cancel this Lease upon thirty (30) days notice to Lessee. Such rebuilding or replacement shall not be undertaken by Lessee without the prior written approval of Lessor.

13. **DEFAULT.** The following shall be deemed to be events of default hereunder:

A. Failure of Lessee to pay when due any rent payable hereunder;

B. Failure of Lessee to comply with any other provision of this Lease. When Lessee's failure is caused by circumstances beyond Lessee's control, Lessee shall bring about compliance within thirty (30) days of written notice of such failure, or, if such failure of compliance beyond Lessee's control cannot be cured within thirty (30) days, Lessee shall promptly and diligently undertake to cure such failure of compliance and cause the same to be cured as soon as the nature of the failure of compliance permits;

- C. A transfer by Lessee in fraud of creditors, or petition initiated by Lessee or adjudgement of Lessee as bankrupt or insolvent in any proceedings;
- D. Appointment of a receiver or trustee for all, or substantially all, assets of Lessee; or
- E. Abandonment by Lessee of any portion of leased premises.

Upon becoming aware of the occurrence of any such event of default, Lessor shall notify Lessee in writing. Notwithstanding section 13. B. above, if the default event has not been cured within 30 days of such notice, Lessor may, in addition to, and not instead of, any other remedies available at law or in equity, terminate this Lease without additional notice or demand to Lessee and enter onto and take possession of the leased premises. Lessee shall be liable to Lessor for all rent due hereunder and any loss and expenses incurred by Lessor by reason of such default or termination.

14. ENTRY. Lessor, its agents and representatives shall have access to leased premises and all improvements and structures thereon at all times for the purpose of inspecting and securing compliance with the terms and conditions of this Lease, and for all other lawful purposes.

15. NOTICE. Any notice required or permitted under this Lease shall be deemed to have been given when actually delivered, or when deposited in the United States mail, first class postage prepaid, addressed as follows: *To Lessor:* Bureau of Parks and Lands, 22 State House Station, Augusta, Maine 04333, ATTN: Submerged Lands Program. *To Lessee:* at the address given below by Lessee, or at such other address as Lessee may have theretofore specified by written notice actually received and placed of record with Lessor.

16. ALTERATION. Lessee shall make no alteration to leased premises, and shall place no improvements or structures in, on, or over leased premises except as specifically described in Paragraph 2 of this Lease, without Lessor's prior written consent.

17. IMPROVEMENTS. Upon the expiration, cancellation, or termination of this Lease, regardless of the reason therefore, Lessee shall have ninety (90) days to remove his property. Lessor, at its discretion, shall become owner of all improvements and structures upon leased premises not so removed. Lessor may, at its option, require Lessee to remove all such improvements and structures at Lessee's expense, and to restore leased premises to the condition in which they existed prior to the placement of any improvements or structures thereon.

18. OTHER APPLICABLE LAWS AND RULES. This Lease is subject to cancellation by an Act of the Legislature. This lease is issued in accordance with the Rules of the Bureau of Parks and Lands in effect on the effective date of this lease.

19. ABANDONMENT. Structures as described under section 2 of this Lease shall be placed on the leased premises within two (2) years of the issuance of this Lease. Once installed, such structures shall be used and maintained for their intended purpose. Failure of the Lessee to install the structures within this time frame or to use and maintain the leased premises shall be deemed an abandonment. Upon determining that the leased premises or a portion thereof have been abandoned, the Lessor at its option may terminate this lease as to the entire leased premises, or as to such portion as has not been so used or maintained, in accordance with the default provisions of Section 13.

20. MISCELLANEOUS. This Lease shall be binding upon, and shall inure to the benefit of, Lessor and Lessee and their respective successors, assigns and legal representatives. Failure of either party to complain of any act or omission on the part of the other, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. A waiver by either party at any time, express or implied, of any breach of any provision of this Lease shall not be deemed a waiver of, or consent to, any subsequent breach of the same or any other provision. Lessee may not file this Lease of record, or cause or permit the same, without Lessor's prior written consent. Lessor makes no warranty of Lessee's leasehold estate, and in the event of any

lawful ejectment of Lessee, Lessor shall refund to Lessee any rentals paid to Lessor for any period of Lease term then remaining. Lessee shall comply with all applicable laws, regulations and ordinances of governmental entities having jurisdiction over leased premises. This Lease contains the entire agreement of the parties and may not be modified except by a writing subscribed by both parties.

21. GENERAL RIGHT TO TERMINATE. Lessee shall have the right to terminate this Lease by notifying Lessor at least thirty (30) days prior to termination date. In terminating, Lessee agrees to vacate leased premises and remove all structures and personal property of Lessee located thereon, unless other arrangements have been made, with prior approval of Lessor, to transfer ownership or otherwise dispose of same. Rental payments made by Lessee for such terminated use may, upon proper request, be equitably adjusted, subject to a service charge.

22. EXTINGUISHMENT OF CONSTRUCTIVE EASEMENT. Lessee hereby relinquishes any and all rights to leased premises, or any portion thereof that may have been formerly held by constructive easement under Title 12 M.R.S.A. Sections 1801 & 1862, or otherwise.

Accepted and agreed to on

_____, 2012

_____, 2012

(Lessee Signature)

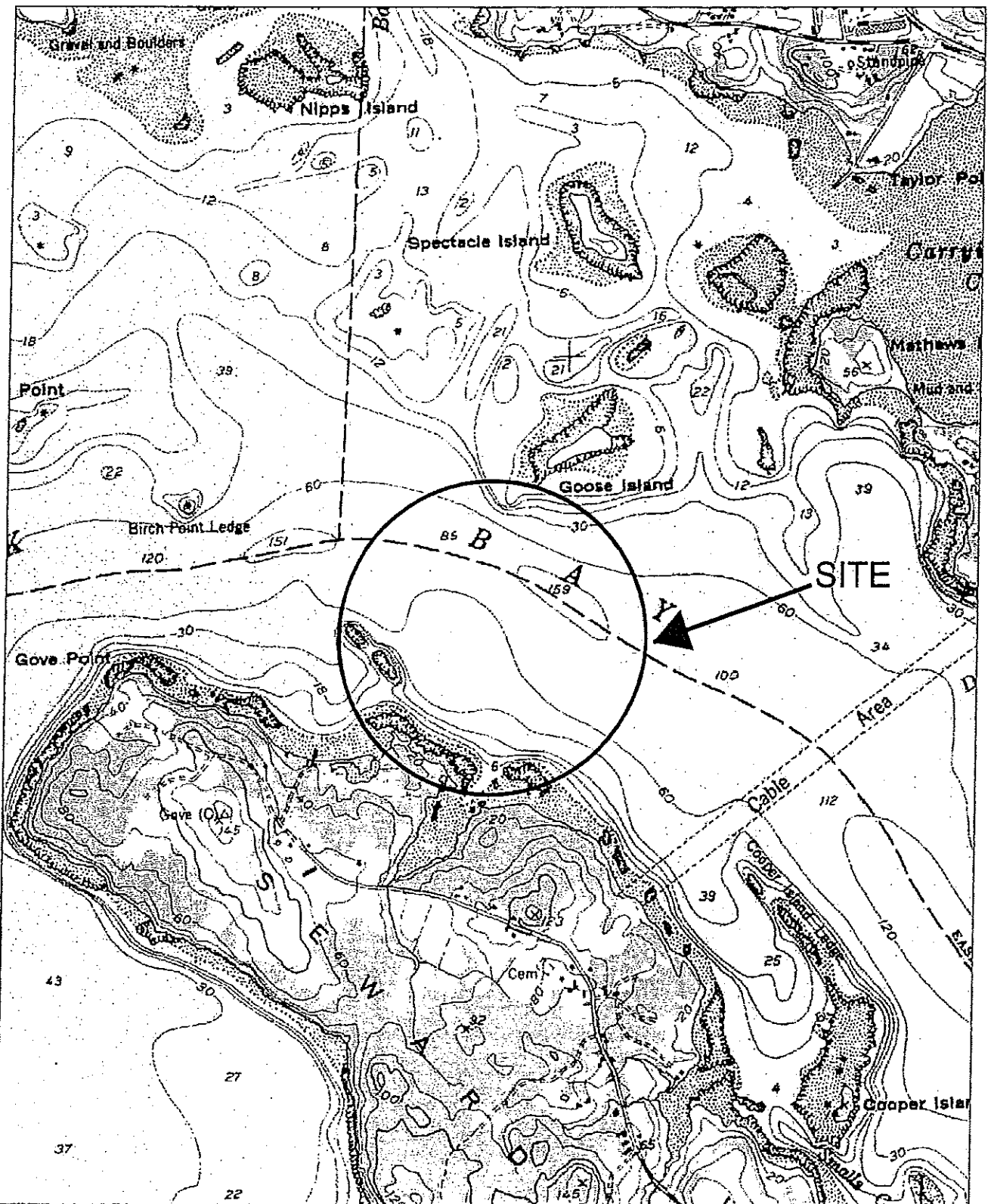
(Lessor Signature)

(Print Name)

Willard R. Harris, Jr.
Director, Bureau of Parks and Lands
Department of Conservation
State of Maine

(Title)

(Address of Record)

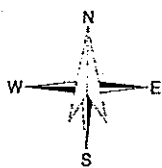


SITE COORDINATES: 44°54'31"N 67°24'1"W

HALEY & ALDRICH

PROPOSED COBSCOOK BAY TIDGEN PROJECT
EASTPORT AND LUBEC, MAINE

PROJECT LOCUS



U.S.G.S. QUADRANGLE: EASTPORT (DIGITAL), ME

SCALE: 1:24,000
JUNE 2011

37690-000 1.PDF

ATTACHMENT A

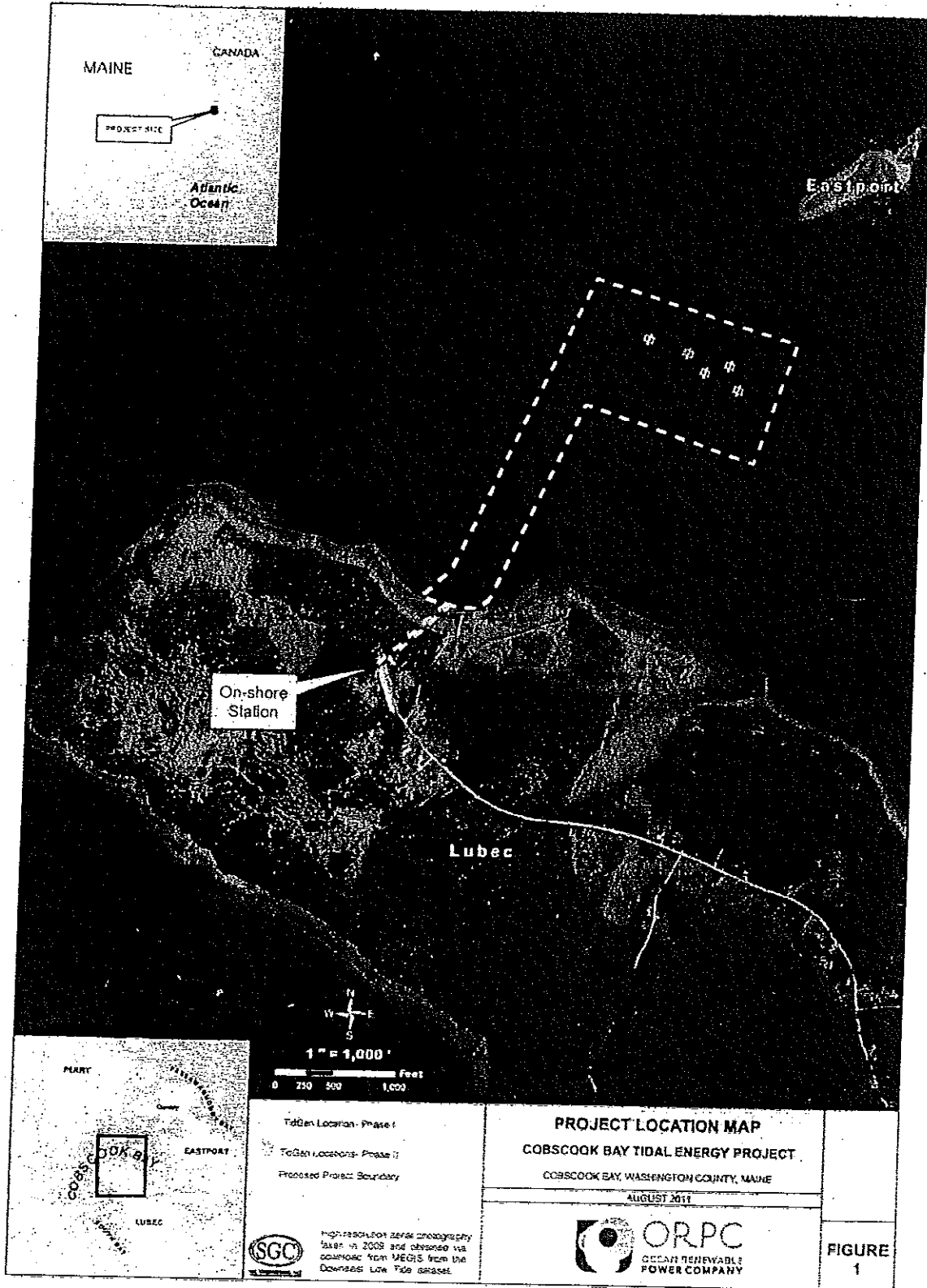
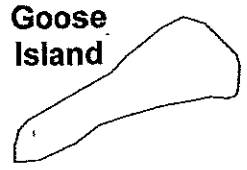
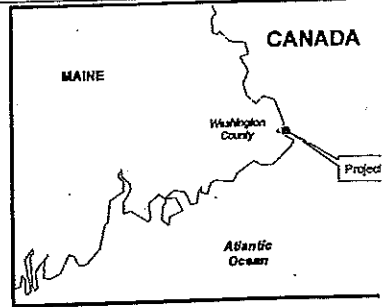


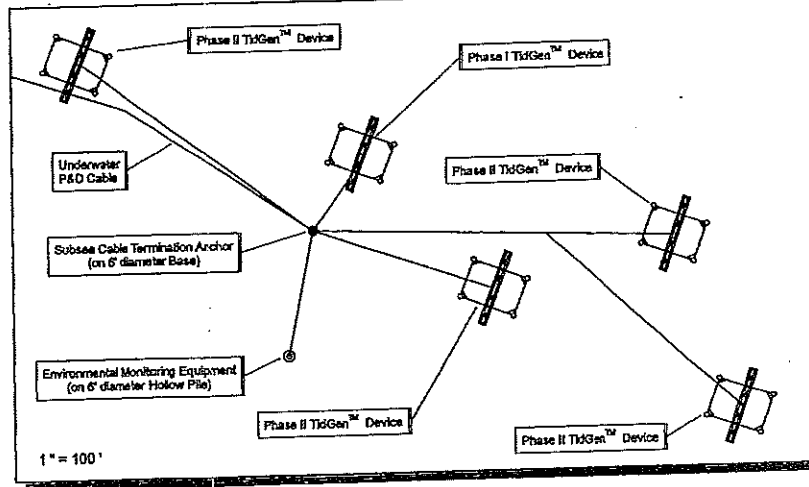
Figure 1. Cobscook Bay Tidal Energy Project location map.



N: 16,322,500
E: 2,145,000

Underwater Activity Exclusion Zone

COBSCOOK BAY



PRELIMINARY FOR REVIEW ONLY

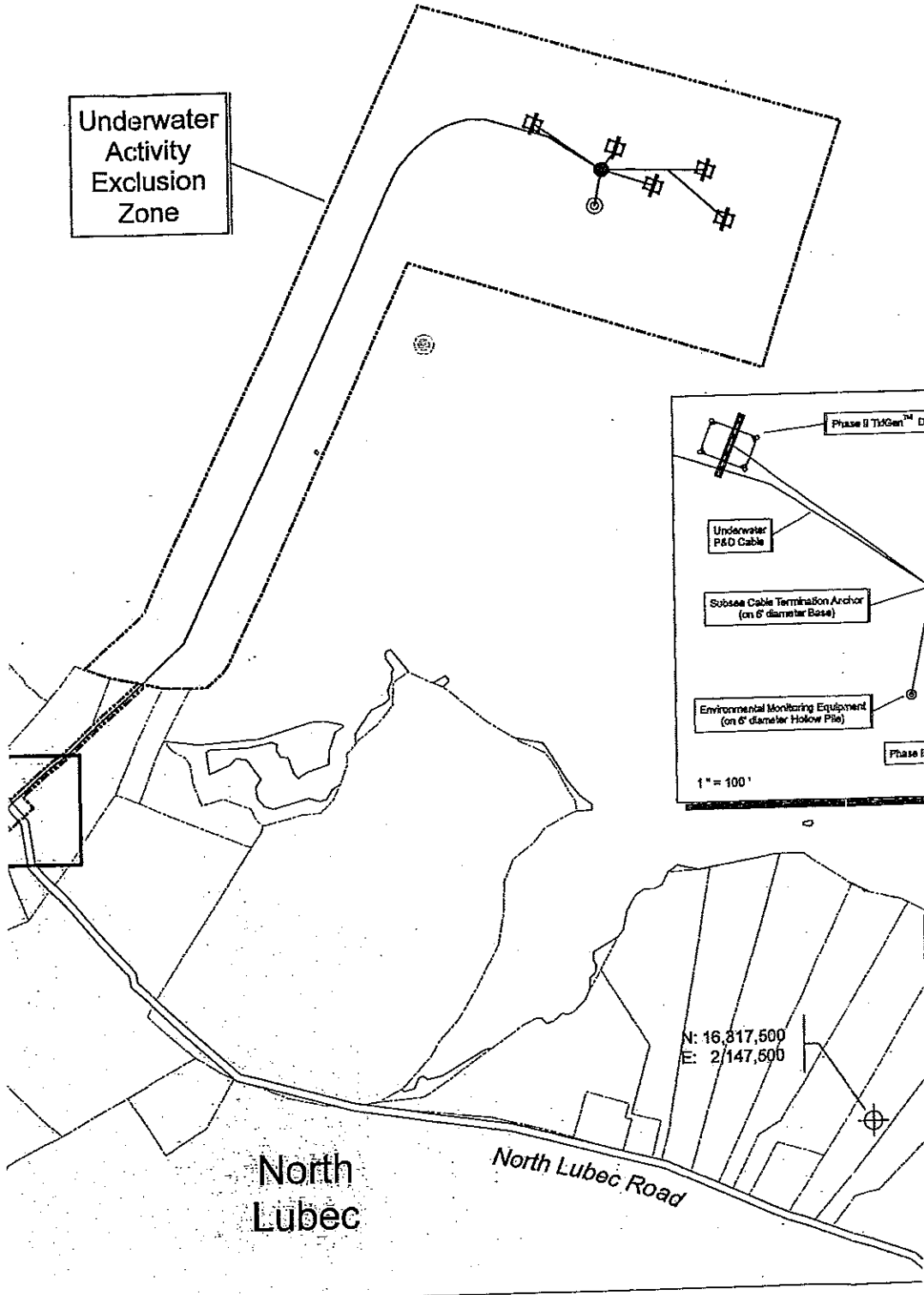


EXHIBIT G-1	SHE
PROJECT BOUNDARY MAP	
COBSCOOK BAY TIDAL ENERGY PROJECT	
FERC Project No. 12711	
COBSCOOK BAY, WASHINGTON COUNTY, MAINE	
OCEAN RENEWABLE POWER COMPANY 120 EXCHANGE ST., SUITE 508, PORTLAND, MAINE	
DATE: AUGUST 2011	SCALE: AS NOTED APPR: