



# Regulatory Introduction: Roles and Responsibilities within the Permitting Process

*DOE Marine and Hydrokinetic Workshop for State and Federal Regulators*

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# Applicable Laws and Executive Orders

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- National Environmental Policy Act
- Endangered Species Act
- Marine Mammal Protection Act
- Magnuson-Stevens Fishery Conservation and Management Act
- Marine Protection, Research and Sanctuaries Act
- National Marine Sanctuaries Act
- E.O. 13186 (Migratory Birds)
- Coastal Zone Management Act
- Clean Air Act
- Clean Water Act
- E.O. 13547 (Stewardship of Oceans, Our Coasts and the Great Lakes)
- Ports, and Waterways Safety Act
- Rivers and Harbors Appropriations Act
- Resource Conservation and Recovery Act
- National Historic Preservation Act
- Archaeological and Historical Preservation Act
- American Indian Religious Freedom Act
- Federal Aviation Act
- Federal power Act
- E.O. 13007 (Indian Sacred Sites)
- Marking of Obstructions



# Environmental Issues and Concerns

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- DoD – Military training and operating areas
- Fishing – Commercial & Recreational
- Viewshed
- Port Access
- Navigation and safety
- Archaeological and cultural sites
- Historic sites and places
- Protected species (marine mammals, birds, turtles)
- Migratory species
- Socioeconomic issues and environmental justice
- Sensitive offshore habitats (cold water corals, EFH)



# Federal Licensing and Permitting Agencies

Agency	Permit or Authorization	Purpose	Authority
Federal Energy Regulatory Commission	<ul style="list-style-type: none"><li>• Marine and Hydrokinetic License</li></ul>	<ul style="list-style-type: none"><li>• Responsible for siting and operation of hydrokinetic projects</li></ul>	<ul style="list-style-type: none"><li>• Federal Power Act</li></ul>
Bureau of Ocean Energy Management	<ul style="list-style-type: none"><li>• Renewable Energy Lease and Right-of-Way</li></ul>	<ul style="list-style-type: none"><li>• Responsible for granting leases, easements, and rights-of-way for renewable energy development activities</li></ul>	<ul style="list-style-type: none"><li>• Energy Policy Act</li></ul>
National Marine Fisheries Service	<ul style="list-style-type: none"><li>• Incidental Take Authorization (marine species)</li><li>• Marine Mammal Permit (non-listed marine mammals)</li></ul>	<ul style="list-style-type: none"><li>• Protection and recovery of threatened and endangered species and marine mammals</li></ul>	<ul style="list-style-type: none"><li>• Federal Endangered Species Act</li><li>• Marine Mammal Protection Act</li></ul>

# Federal Licensing and Permitting Agencies (continued)

Agency	Permit or Authorization	Purpose	Authority
U.S. Fish and Wildlife Service	<ul style="list-style-type: none"> <li>Incidental Take Authorization (terrestrial species)</li> </ul>	<ul style="list-style-type: none"> <li>Protection and recovery of threatened and endangered species</li> </ul>	<ul style="list-style-type: none"> <li>Federal Endangered Species Act</li> </ul>
U.S. Army Corps of Engineers	<ul style="list-style-type: none"> <li>Section 10 Permit</li> <li>Section 404 permit (if waters of the U.S. are dredged or filled)</li> </ul>	<ul style="list-style-type: none"> <li>Responsible for use of navigable waterways</li> <li>Protect water quality and wetlands</li> </ul>	<ul style="list-style-type: none"> <li>Rivers and Harbors Act</li> <li>Clean Water Act</li> </ul>
U.S. Coast Guard	<ul style="list-style-type: none"> <li>Private Aids to Navigation</li> </ul>	<ul style="list-style-type: none"> <li>Responsible for siting of navigation aids in coastal waters</li> </ul>	<ul style="list-style-type: none"> <li>33 CFR 66 – Code of Federal Regulations (CFR)</li> </ul>

# Federal Energy Regulatory Commission (FERC)

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- Independent federal agency
- Exclusive jurisdiction to issue licenses and exemptions for marine and hydrokinetic projects on the OCS and on state ocean waters
- MOU (2009) with BOEM that clarifies regulatory roles on the OCS

# Bureau of Ocean Energy Management (BOEM)

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- Bureau within the Department of the Interior
- Oversees development of the nation's oil and gas, renewable energy, and mineral resources on the Outer Continental Shelf (OCS)
- OCS jurisdictional boundary is typically 3 - 200 nautical miles from the coastline

# BOEM's Renewable Energy Authority

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## Energy Policy Act 2005

- Gave the Secretary of the Interior authority to regulate a broad spectrum of activities:
  - Production, transportation or transmission of energy from sources other than oil and gas – Renewable Energy

## Types of Renewable Energy Activities Regulated by BOEM

- Solar
- Wind
- Ocean Current
- Wave
- Transmission







# BOEM & FERC

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## **BOEM**

- Exclusive jurisdiction over wind and solar technologies
- Exclusive jurisdiction to issue leases, easements, and rights-of-way for OCS lands for MHK projects

## **FERC**

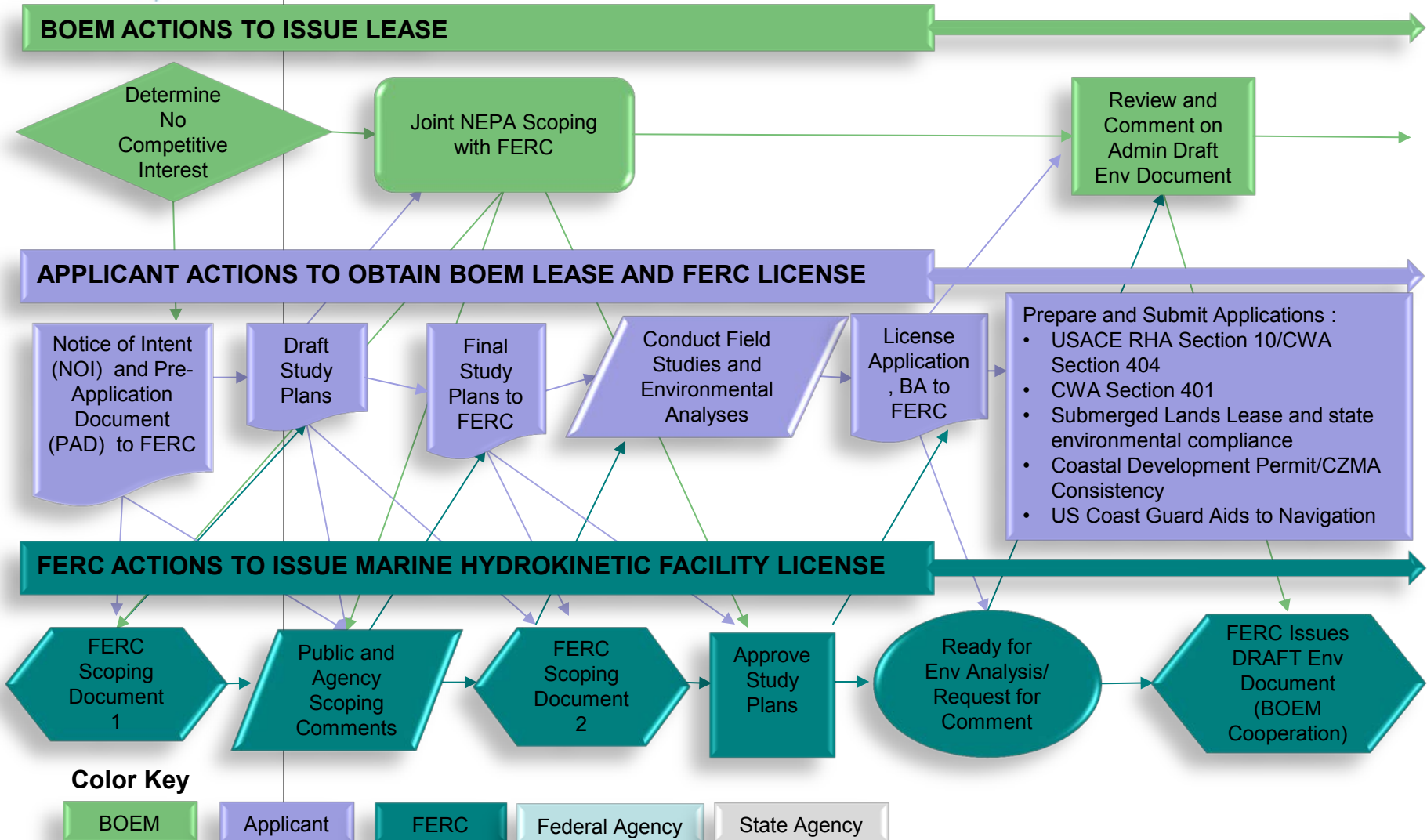
- Exclusive jurisdiction to issue licenses for MHK projects on the OCS and state waters

# Types of Authorizations

- Commercial Lease/License
- Research Lease/License
- Limited Lease/Pilot Project License

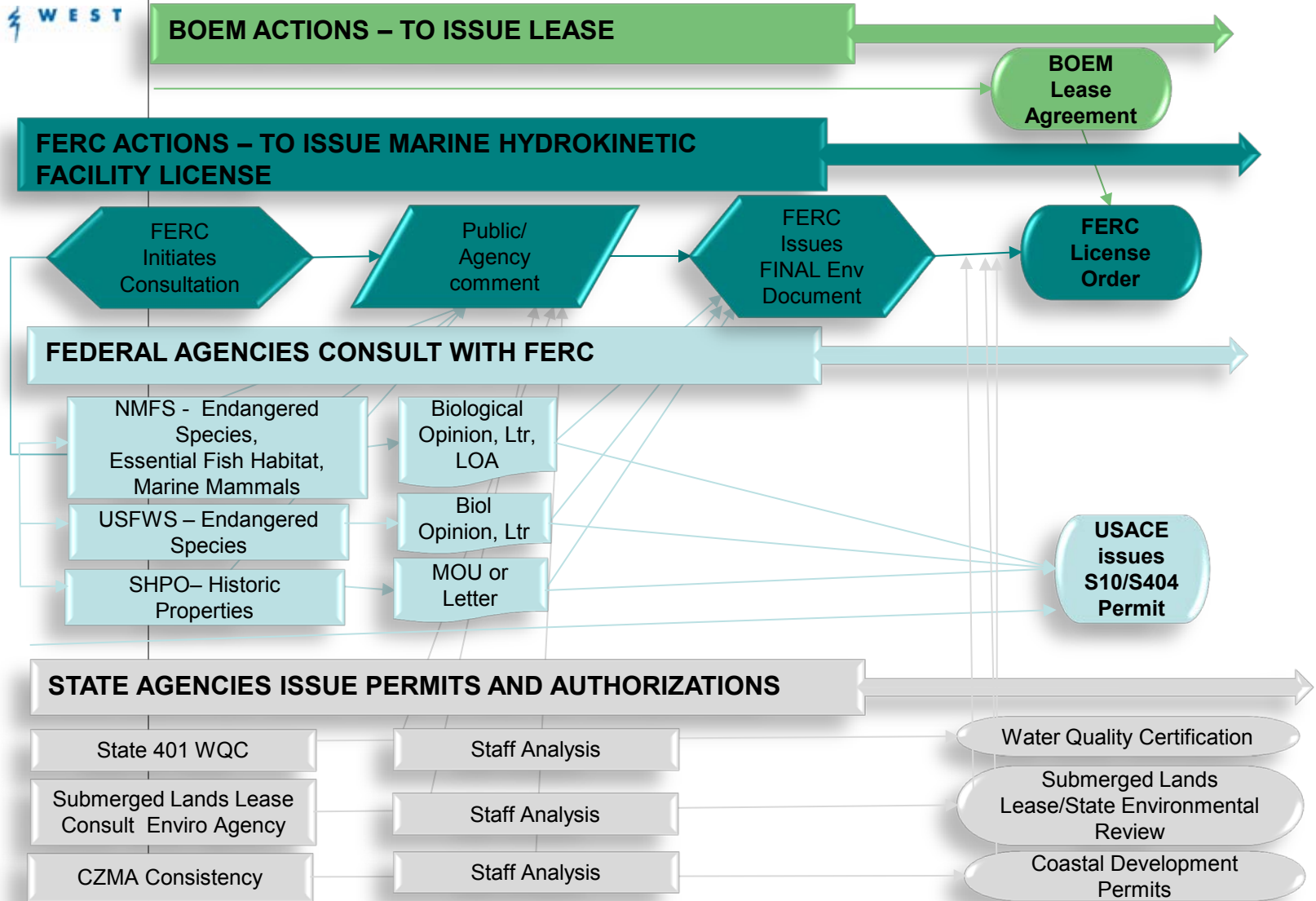
# Project Permitting 1 - Prepare Lease, License, and Permit Applications on OCS

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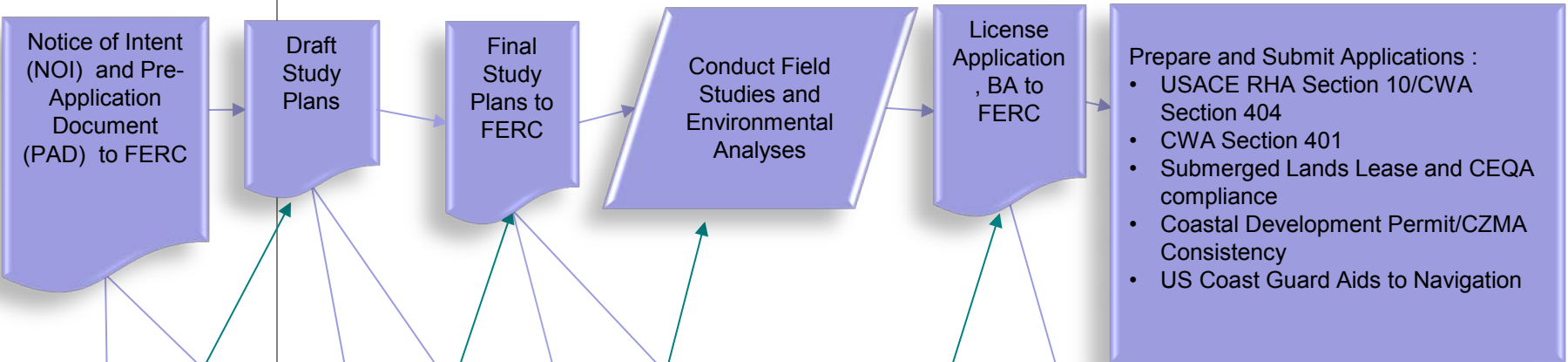
# Permitting 2 – Agencies Process Applications and Permit on OCS

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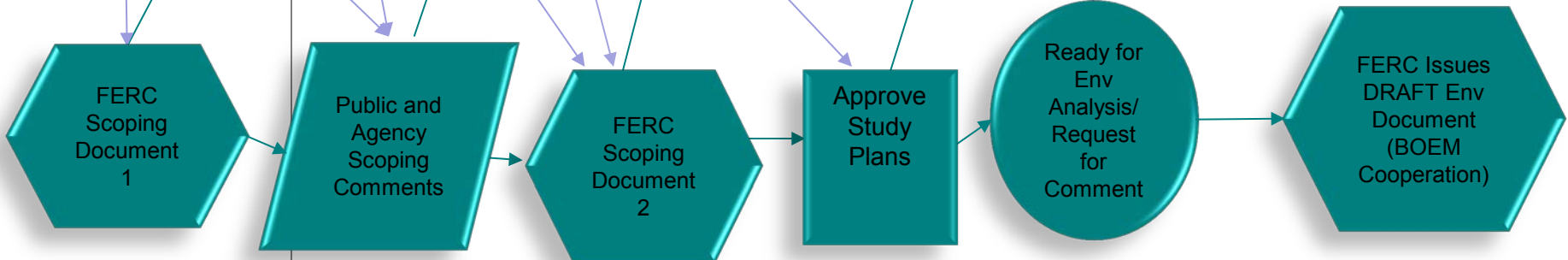


# Project Permitting 1 – Prepare Lease, License, and Permit Applications in State Waters

## APPLICANT ACTIONS TO OBTAIN FERC LICENSE



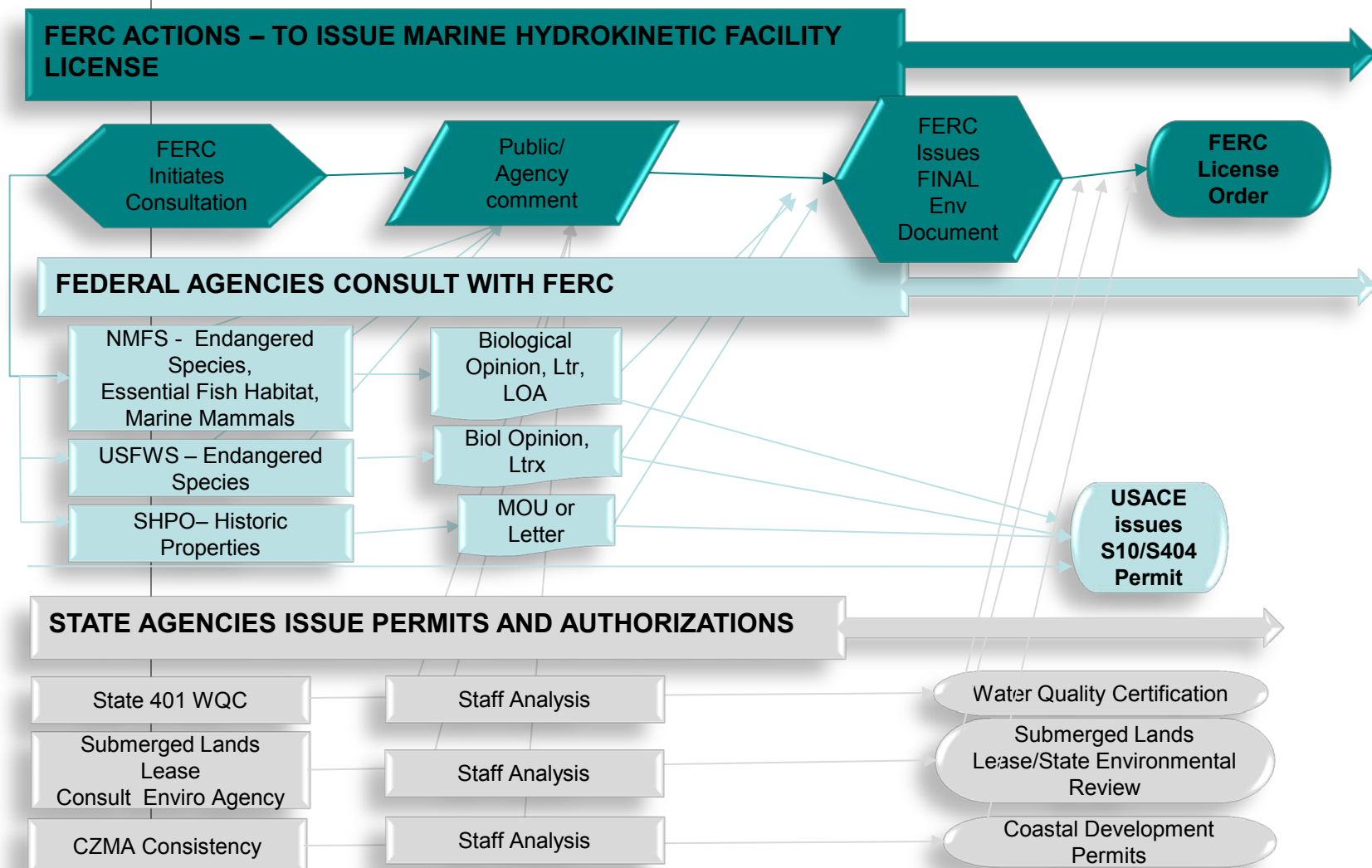
## FERC ACTIONS TO ISSUE MARINE HYDROKINETIC FACILITY LICENSE



### Color Key



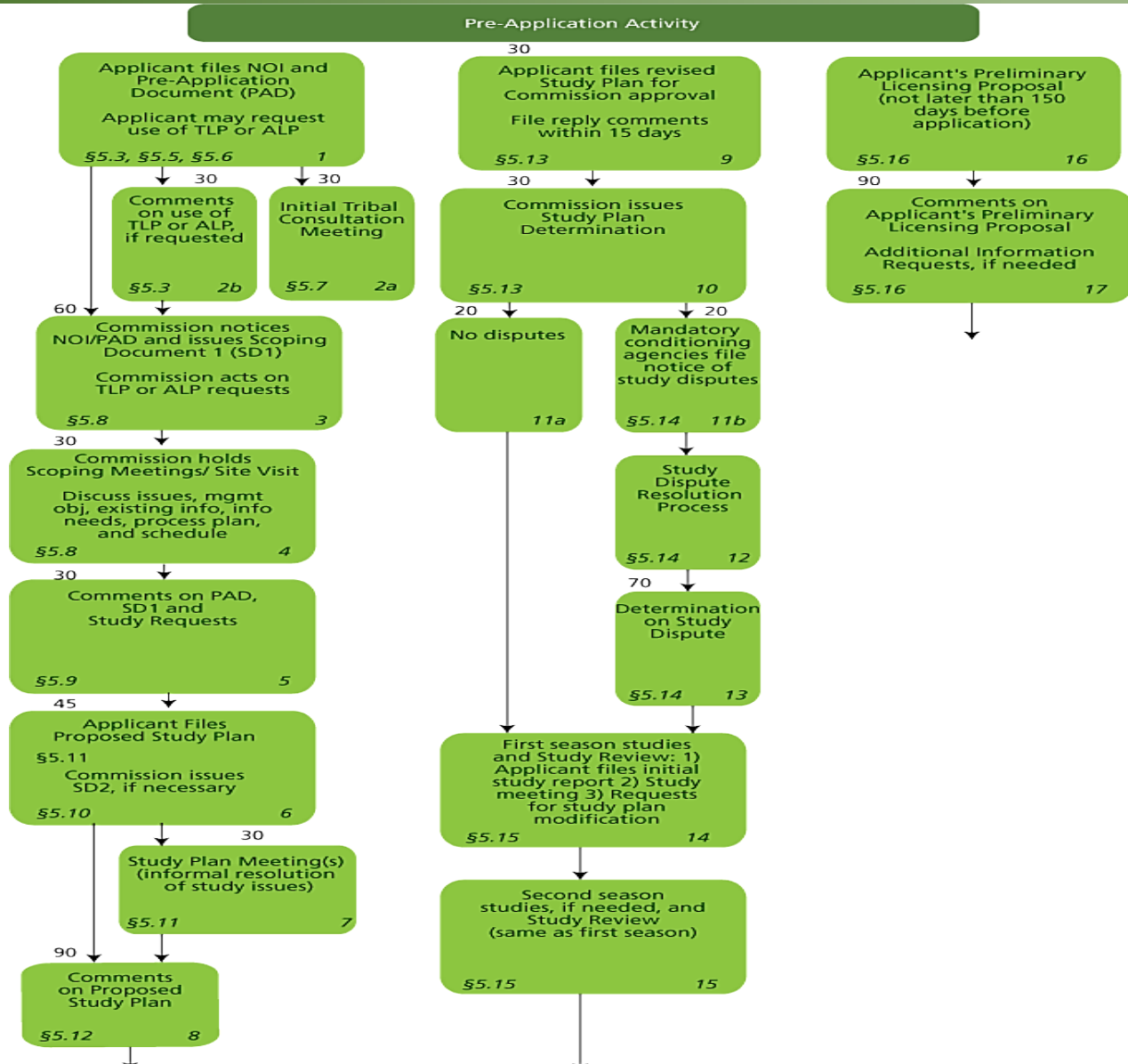
# Project Permitting 2 – Agencies Process Applications and Issue License/Lease Agreement in State Waters



# Processes for Hydropower Licenses— Integrated Licensing Process (ILP)



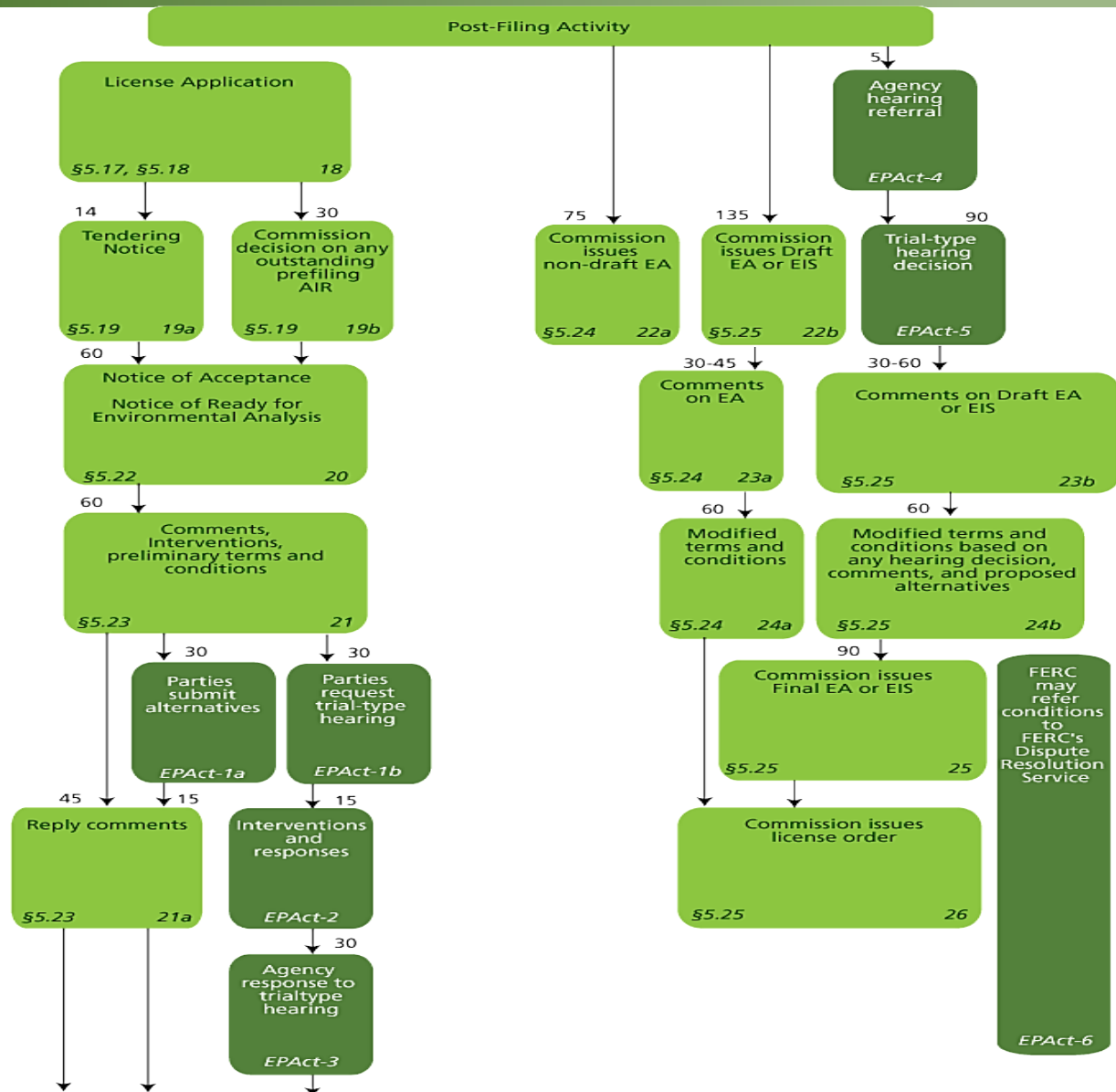
*5.5-5 years  
before  
expiration for  
relicense*



Citation: FERC,  
<http://www.ferc.gov/help/processes/flow/hydro-5.asp>

# Processes for Hydropower Licenses— ILP

2 years  
before  
expiration for  
relicense

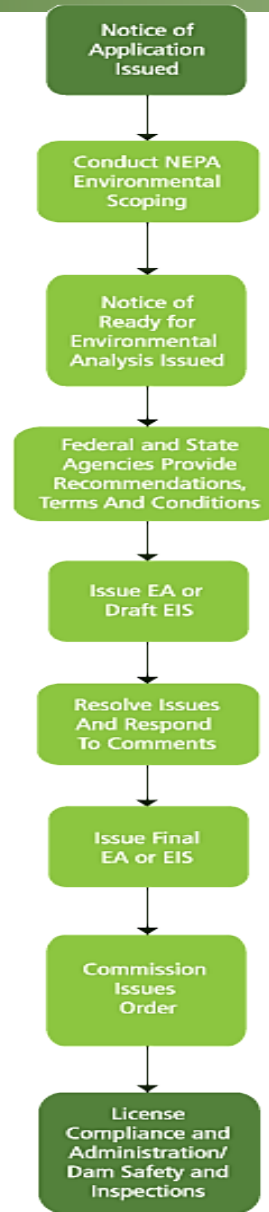




# Processes for Hydropower Licenses— Traditional Licensing Process (also ALP)

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## *FERC Application Process*



Citation: FERC,  
<http://www.ferc.gov/help/processes/flow/hydro-2.asp>



# National Marine Fisheries Service

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- Federal agency (part of NOAA) under the Department of Commerce
- Manages, conserves, and protects marine life within the U.S. Exclusive Economic Zone (water 3 to 200 miles offshore)
- Protects and recovers marine species (whales, turtles)
- Authority under the Marine Mammal Protection Act, the Endangered Species Act, and the Magnuson-Stevens Fishery Conservation and Management Act: Essential Fish Habitat



# U.S. Fish and Wildlife Service

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- Bureau within the Department of the Interior
- Enforces federal wildlife laws
- Protects endangered species
- Manages migratory birds
- Restores nationally significant fisheries
- Conserves and restores wildlife habitat such as wetlands
- Manages the National Wildlife Refuge System



# U.S. Army Corps of Engineers

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- Consists of civilians and soldiers providing engineering services to customers worldwide
- Builds and maintains infrastructure; provides military facilities
- Provides water transportation systems (channels, harbors, waterways) for commerce, national security, and recreation
- Evaluates permit applications for construction activities that occur in the U.S.'s waters (includes wetlands)



# U.S. Coast Guard

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- One of the five armed forces
- The only military organization within the Department of Homeland Security
- Safeguards maritime interests and environment
- Regulates approval for private aids to navigation (buoy, light, or daybeacon)

# State Licensing and Permitting Agencies: Florida

Agency	Permit or Authorization	Purpose	Authority
Department of Environmental Protection (Beaches, Inlets, & Ports program)	<ul style="list-style-type: none"> <li>Joint Coast Permit (JCP)</li> <li>Environmental Resource Permit (ERP)</li> <li>CWA Section 401 Water Quality Certification</li> </ul>	<ul style="list-style-type: none"> <li>Reviews projects to ensure potential adverse impacts are minimized or avoided</li> </ul>	<ul style="list-style-type: none"> <li>Florida Statutes: Chapter 161, 253, 258, 373</li> <li>Florida Coastal Management Program</li> </ul>
Division of Historical Resources	<ul style="list-style-type: none"> <li>2012–2016 Comprehensive Historic Preservation Plan</li> </ul>	<ul style="list-style-type: none"> <li>Protection for historical and archaeological resources</li> </ul>	<ul style="list-style-type: none"> <li>National Historic Preservation Act</li> </ul>
Bureau of Archaeological Research	<ul style="list-style-type: none"> <li>State Underwater Archaeologist performs surveys and excavations on offshore historic sites</li> </ul>	<ul style="list-style-type: none"> <li>Preservation of state cultural resources</li> </ul>	

# State Licensing and Permitting Agencies: Maine

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Agency	Permit or Authorization	Purpose	Authority
Department of Agriculture, Conservation and Forestry	<ul style="list-style-type: none"> <li>Maine Coastal Program</li> <li>Submerged Lands Leases</li> </ul>	<ul style="list-style-type: none"> <li>Enabling projects that benefit coastal communities</li> </ul>	<ul style="list-style-type: none"> <li>Coastal Zone Management Act</li> <li>Maine Statute Title 12 M.R.S.A. Section 1801 and 1862-1867</li> </ul>
Maine Department of Environmental Protection	<ul style="list-style-type: none"> <li>CWA Section 401 Water Quality Certification (for activities not subject to Land Use Planning Commission permitting and review)</li> </ul>	<ul style="list-style-type: none"> <li>Protecting Maine's natural resources and enforcing environmental laws</li> </ul>	<ul style="list-style-type: none"> <li>Clean Water Act</li> </ul>
Maine Historic Preservation Commission	<ul style="list-style-type: none"> <li>Historic Preservation Easements (in conjunction with the federal NPS)</li> <li>Archaeological Site Easements</li> </ul>	<ul style="list-style-type: none"> <li>Protecting, identifying, and evaluating Maine's cultural resources</li> </ul>	<ul style="list-style-type: none"> <li>National Historic Preservation Act</li> <li>33 MRSA § 1551-1555</li> </ul>
Land Use Planning Commission	<ul style="list-style-type: none"> <li>Development permits</li> </ul>	<ul style="list-style-type: none"> <li>Certifying agency</li> </ul>	<ul style="list-style-type: none"> <li>Maine Waterway Development and Conservation Act</li> </ul>

Citations: <http://www.maine.gov/dacf/mcp/about/>; [http://www.maine.gov/dacf/parks/about/submerged\\_lands.shtml](http://www.maine.gov/dacf/parks/about/submerged_lands.shtml); <http://www.maine.gov/dep/water/wd/wqc/>; [http://www.maine.gov/mhpc/historic\\_preservation\\_easements/index.html](http://www.maine.gov/mhpc/historic_preservation_easements/index.html); <http://www.maine.gov/dacf/lupc/index.shtml>

# State Licensing and Permitting Agencies: New York

Agency	Permit or Authorization	Purpose	Authority
Department of State	<ul style="list-style-type: none"> <li>Coastal Management Plan</li> <li>New York State Coastal Management Program</li> </ul>	<ul style="list-style-type: none"> <li>Establish coastal area boundaries and managing/ coordinating actions on the state's coast</li> </ul>	<ul style="list-style-type: none"> <li>Coastal Zone Management Act</li> <li>New York Waterfront Revitalization of Coastal Areas and Inland Waterways Act</li> </ul>
Department of Environmental Conservation	<ul style="list-style-type: none"> <li>CWA Section 401 Water Quality Certification</li> </ul>	<ul style="list-style-type: none"> <li>Improve and protect the environment, as well as health and safety of citizens</li> </ul>	<ul style="list-style-type: none"> <li>Clean Water Act</li> </ul>
State Historic Preservation Office	<ul style="list-style-type: none"> <li>Statewide Historic Resources Survey</li> <li>Federal and state Registers of Historic Places</li> <li>State and federal environmental review</li> </ul>	<ul style="list-style-type: none"> <li>Preserves and revitalizes historic and cultural resources</li> </ul>	<ul style="list-style-type: none"> <li>National Historic Preservation Act</li> <li>New York State Historic Preservation Act of 1980</li> </ul>



# State Licensing and Permitting Agencies: Virginia


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Agency	Permit or Authorization	Purpose	Authority
Virginia Department of Environmental Quality	<ul style="list-style-type: none"> <li>Virginia Pollutant Discharge Elimination System Permits</li> <li>Virginia Coastal Zone Management Program</li> </ul>	<ul style="list-style-type: none"> <li>Regulates water resources and protects coastal resources</li> </ul>	<ul style="list-style-type: none"> <li>CWA Section 402</li> <li>VA Executive Order 35</li> <li>Coastal Zone Management Act</li> </ul>
Virginia Marine Resource Commission	<ul style="list-style-type: none"> <li>Subaqueous Lands Management Permits</li> </ul>	<ul style="list-style-type: none"> <li>Considers effects on marine resources, wetlands, and water quality</li> </ul>	<ul style="list-style-type: none"> <li>Code of Virginia § 28.2-1200 thru 28.2-1213</li> </ul>
Virginia Department of Environmental Quality Water Division	<ul style="list-style-type: none"> <li>Virginia Water Protection Permit Program (CWA Section 401 Water Quality Certification)</li> </ul>	<ul style="list-style-type: none"> <li>Protects wetlands and streams; aims to reduce water pollution</li> </ul>	<ul style="list-style-type: none"> <li>Clean Water Act</li> </ul>
Department of Historic Resources	<ul style="list-style-type: none"> <li>Easements</li> <li>Section 106 compliance</li> </ul>	<ul style="list-style-type: none"> <li>Stewardship of state historic, archaeological, and cultural resources</li> </ul>	<ul style="list-style-type: none"> <li>National Historic Preservation Act</li> </ul>

Citations: <http://www.deq.state.va.us/Programs/Water/PermittingCompliance.aspx>; <http://www.deq.state.va.us/Programs/RenewableEnergy/WaterRelatedEnergy.aspx>; <http://www.deq.state.va.us/programs/coastalzonemanagement.aspx>; <http://www.deq.state.va.us/Programs/CoastalZoneManagement/Laws,Regulations,Guidance.aspx>; <http://www.deq.virginia.gov/Programs/Water/WetlandsStreams.aspx>; <http://www.dhr.virginia.gov/>

# Suggestions to Consider in Permitting

- Information Gathering/Studies
  - Encourage the applicant to identify existing information thoroughly; assist with identifying your agency's information, if available.
  - Consider case experiences elsewhere (MHK, offshore wind, international cases).
  - Consider other industry relevant experience (e.g., EMF cable experience; Oil and Gas moorings/platforms, Dept. of Defense)
- NEPA/Environmental Analysis
  - Define the alternatives broadly so the full range is considered, not setting up to “redo” the environmental analysis.
- New Technologies, Unknown Impacts Leads to Uncertainties
  - Try to identify/determine the range of potential impacts of the proposed installation (based on general understanding of the specific device(s), and scale/scope.
  - Prioritize resources and risks (high impact to highly valued resource v. low risk/less important resource, and those in between).
  - Identify ways to avoid or minimize high risk/high value resources, and, to a lesser extent, the lesser resources (invest where it makes the biggest difference).
  - Then determine mitigation (where you can)



# Suggestions to Consider in Permitting (continued)

- Agency/Applicant Coordination
  - Coordinate across agencies and with the applicant, reflect stakeholders inputs as well as agency mandates when prioritizing.
  - Interagency coordination can improve efficiencies (do it once, right with all involved).
- “Bounded Adaptive Management”
  - For those areas where you don’t have enough information, build an adaptive management program.
  - What will you monitor.
  - What is the range of potential impacts you anticipate.
  - What actions would be taken to avoid, minimize or mitigate. (monitor to inform action)



# Conclusion

- FERC and BOEM (if on the OCS) have the lead roles; FERC to obtain a license and NEPA lead; BOEM for a lease and right of way grant.
- FERC lead federal agency within state waters
- BOEM determination of competitive interest or not impacts the process
- Multiple federal and state agencies involved with various jurisdictions
- Study plans development and determination is a critical driver, information source
- Coordination across agencies with the applicant tends to be central to assure efficiency, reduce sequential information gathering, and align protection, mitigation and enhancement measures that satisfy all agencies' needs
- Uncertainties are a given (relatively new technology; not extensive case experiences), and requires careful, thoughtful participation to navigate meeting regulatory responsibilities with scientific uncertainty



Questions? Comments?

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