

# Licensing and Permitting Hydrokinetic Projects



**Cherise M. Oram**  
**STOEL RIVES LLP**

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# New Hydro Technologies

Wave  
Current  
Tidal Current  
In-Stream

Could double U.S. hydropower production from just below 10% to close to 20% of national supply.

- Hydroelectric Infrastructure Technical Conference, Docket No. AD06-13-000 (Dec. 6, 2006), transcript 12; 22 (testimony of George Hagerman).

# Federal Energy Regulatory Commission (FERC)

- Jurisdiction under Federal Power Act (FPA)
- License required:
  - navigable waters
  - connected to grid
- License not required:
  - experimental technology
  - power not transmitted into, and does not displace power from, national energy grid
  - Must obtain other necessary federal and states approvals

# FERC Licensing Process

- Same basic process as for other hydro licensing
- Preliminary permit
  - Optional, three-year permits
  - Maintain priority for site
  - Use time to determine project feasibility, consult with stakeholders, perform baseline studies, develop license application.
- “Pilot Project” process designed to take 6 months from submitting application
  - For demonstration projects up to 5 MW, short term licenses
  - Timing doesn’t account for other agency permitting
- Can apply for long-term license
  - Uncertainty is the challenge

# Minerals Management Service (MMS) (Dep't of Interior)

- Leases on outer continental shelf (OCS) for alternative energy
  - Wind, wave, solar, underwater current, generation of hydrogen
- Completed rulemaking, developed MOU with FERC in early 2009
  - MMS and FERC share authority on OCS
  - FERC preliminary permits in state waters only
  - MMS issues “limited leases” and “commercial leases”

# Regulatory Issues

- Issues raised in siting new technologies:
  - installation impacts
  - shipping and navigation
  - crabbing and fishing
  - endangered species
  - marine mammals
  - migratory birds
  - electromagnetic field (EMF)
  - recreation and public safety
- Env't'l Laws Implicated:
  - Clean Water Act
  - Endangered Species Act
  - Magnuson-Stevens Fishery Conservation & Management Act
  - Marine Mammal Protection Act
  - Coastal Zone Management Act
  - National Historic Preservation Act
  - Migratory Bird Treaty Act
  - National Environmental Policy Act
  - State water right
  - State removal/fill permit
  - State lease
  - State shoreline permit
  - State coastal zone management plan

# Resolving Uncertainties

- Pre-application study requests
  - Should be minimal for short-term, demonstration projects
- Post-license studies and monitoring
  - Confirm anticipated impacts; use to develop commercial-scale project
- Adaptive management
  - Use as a tool to address uncertainties
  - Flexibility vs. limits
- Understand information standards for each statute, for example:
  - NEPA
  - ESA
  - CWA
  - FPA
- Rely on best available data, best professional judgment, adaptive management to address uncertainties that remain.

# Looking Forward

- Regulatory framework finally complete, now we need to implement them
- Need to streamline process for small, short-term, demonstration projects
  - Smarter, more efficient, environmentally responsible
  - Can work within existing statutes to carve out simpler process for certain projects
  - Need resource agency recognition of minor impacts from small, short-term projects
- Marine spatial planning at the state and federal levels introduces additional element
  - Helpful to the extent it carves out areas for alternative energy
  - May have to overcome hurdles to develop in area not green lit for development
- Near term goal is to demonstrate that projects can be permitted at commercially viable levels



**Cherise M. Oram**  
**(206) 386-7622**  
**cmoram@stoel.com**

