



## Ocean Thermal Energy Conversion (OTEC) Regulatory Regime

### NOAA's OTEC Licensing Authority:

In 1980, the Ocean Thermal Energy Conversion Act (OTECA) established a licensing program for OTEC facilities and plantships [42 U.S.C. § 9101 *et seq.*]. No person may construct or operate an ocean thermal energy conversion facility located within the territorial sea of the United States, except pursuant to a license issued by NOAA.

### Licensing Process:

The process for issuing an OTEC license is set forth by statute. The following timeline commences once an applicant submits their OTEC license application to NOAA.

• <b>Day 0</b>	The NOAA OTEC license application is received.
• <b>Day 21</b>	After the license application is received, NOAA has 21 days to determine whether the application is complete. The application must contain financial, technical and other information to determine whether the project satisfies all issuance criteria.
• <b>Day 26</b>	Within 5 days after making such a determination, NOAA must publish notice of the application and a summary of the plans in the Federal Register and forward a copy of the application to all interested Federal agencies and adjacent coastal states.
• <b>Day 206</b>	A draft environmental impact statement relating to the proposed facilitates shall be prepared and published within 180 days after notice of the application in the Federal Register.
• <b>Day 266</b>	Within 240 days after notice of the application in the Federal Register, NOAA must hold all public hearings.
• <b>Day 356</b>	NOAA will publish the final environmental impact statement within 90 days of the conclusion of public hearings and issue a decision of the license application.

### Responsibilities Placed on Other Agencies:

Under OTECA, there are several federal agencies with roles in the OTEC licensing process. The U.S. Coast Guard authorizes OTEC facilities in regards to safety, pollution, construction and operations, and impacts to the thermal gradient in surrounding waters. OTECA also requires the Department of Justice to conduct anti-trust reviews of proposed OTEC facilities. Other federal statutory requirements which are applicable to OTEC facilities and plantships such as the Clean Water Act, Clean Air Act, Endangered Species Act and Marine Mammal Protection Act trigger reviews by other agencies. These authorizations are incorporated into the OTEC license.

In addition to federal authorizations, OTECA provides for state authorizations of OTEC projects. Under OTECA, a state which is adjacent to an OTEC project located in federal waters must approve the project in order for it to be licensed. States also retain their authority under the Coastal Zone Management Act to review an OTEC project for consistency with the enforceable policies of their federally approved coastal zone management programs.

A project certified by the Department of Energy (DOE) as a demonstration project is exempt from being required to obtain an OTEC license from NOAA. This exemption does not relieve project developers from all of the requirements associated with obtaining an OTEC license, nor any requirements imposed by other federal statutes.

### Need for Rule Making

Following the enactment of OTECA, NOAA's Office of Ocean and Coastal Resource Management (OCRM) developed a licensing program. By 1981, a programmatic environmental impact statement and implementing regulations had been issued. In the 1990s when no OTEC license applications had been received, NOAA dismantled the OTEC licensing program and the OTEC licensing regulations were rescinded. With the renewed interest in developing OTEC, NOAA is currently working to meet its statutory obligations to develop the capacity to administer its licensing responsibilities.