

# Offshore Wind Procurement

Lessons Learned from East Coast Projects

**Presented by: Judy Chang**

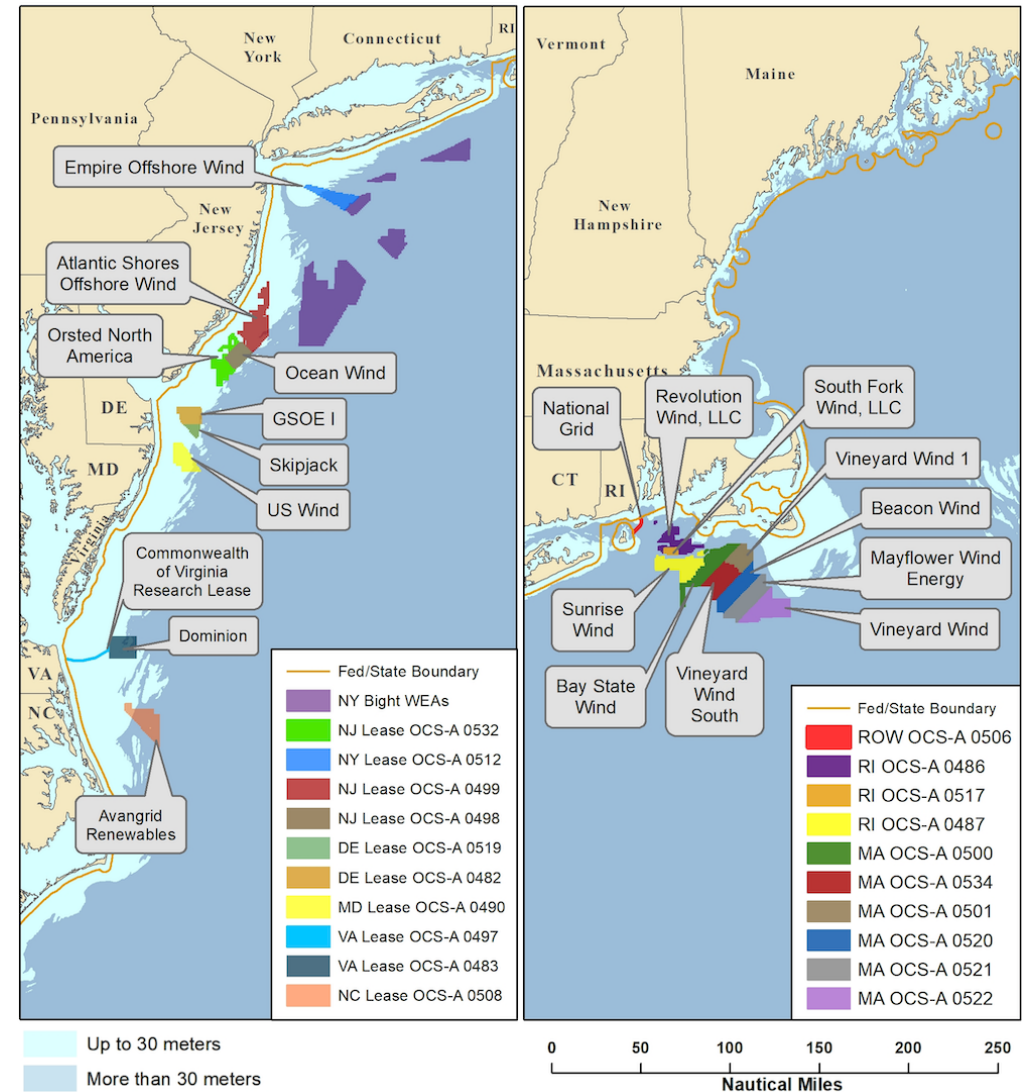
Prepared by: Megan Accordino, Eshika Arora, and Evie Goryshina

# Agenda

<b>1</b>	East Coast Procurement Update
<b>2</b>	Development Timeline
<b>3</b>	Litigation Challenges
<b>4</b>	Procurement Method Comparison: Massachusetts vs. New York
<b>5</b>	Qualitative Considerations: Port Buildout, Workforce Development, Labor Agreements
<b>6</b>	Transmission Development

# Quick Update on Offshore Wind Projects in the East

- 2 small projects operational
  - Block Island Wind Farm (Rhode Island, 30 MW)
  - Coastal Virginia Offshore Wind (12 MW)
- 2 projects under construction
  - Vineyard Wind 1 (Massachusetts, 800 MW)
  - South Fork Wind (New York, 132 MW)
- Over 13 GW in the permitting phase
- Developers cancel contracts for >9,800 MW in last year
- Some projects likely to re-bid in upcoming solicitations
- Recent and upcoming solicitations in MA and NY provide developers with contract price adjustments based on price indices to address future inflation uncertainties



Source: "Offshore Wind Update - 2022 Q1 and Q2," Bureau of Ocean and Energy Management (BOEM), June 23, 2022, <https://www.mass.gov/news/offshore-wind-update-2022-q1-and-q2>.

## Summary of Procurement Status of East Coast Projects

State	Mandated (MW)	Installed/Under Construction (MW)	Awarded (MW)	Re-Bid/Contract Terminated (MW)
New York	9,000	132	5,766	2,490
Massachusetts	5,600	800	-	2,436
Rhode Island	1,430	430	-	-
Connecticut	2,000	304	-	800
Maine	3,000	-	12	-
<b>New York and New England</b>	<b>21,030</b>	<b>1,666</b>	<b>5,778</b>	<b>5,726</b>
New Jersey	11,000	-	5,252	2,248
Maryland	8,500	-	1,079	966
Virginia	5,200	12	2,587	-
<b>Mid-Atlantic</b>	<b>24,700</b>	<b>12</b>	<b>8,918</b>	<b>3,214</b>
<b>TOTAL</b>	<b>45,730</b>	<b>1,678</b>	<b>14,696</b>	<b>8,940</b>

*Notes: [1] In October 2023, MA, CT, and RI entered into a memorandum of understanding to procure up to 6,000 MW of electricity to New England states. [2] The Virginia Clean Economy Act, passed by the state in 2020, requires Dominion Energy, Inc. to “construct, acquire, or purchase” 5,200 MW of offshore wind energy by 2034.*

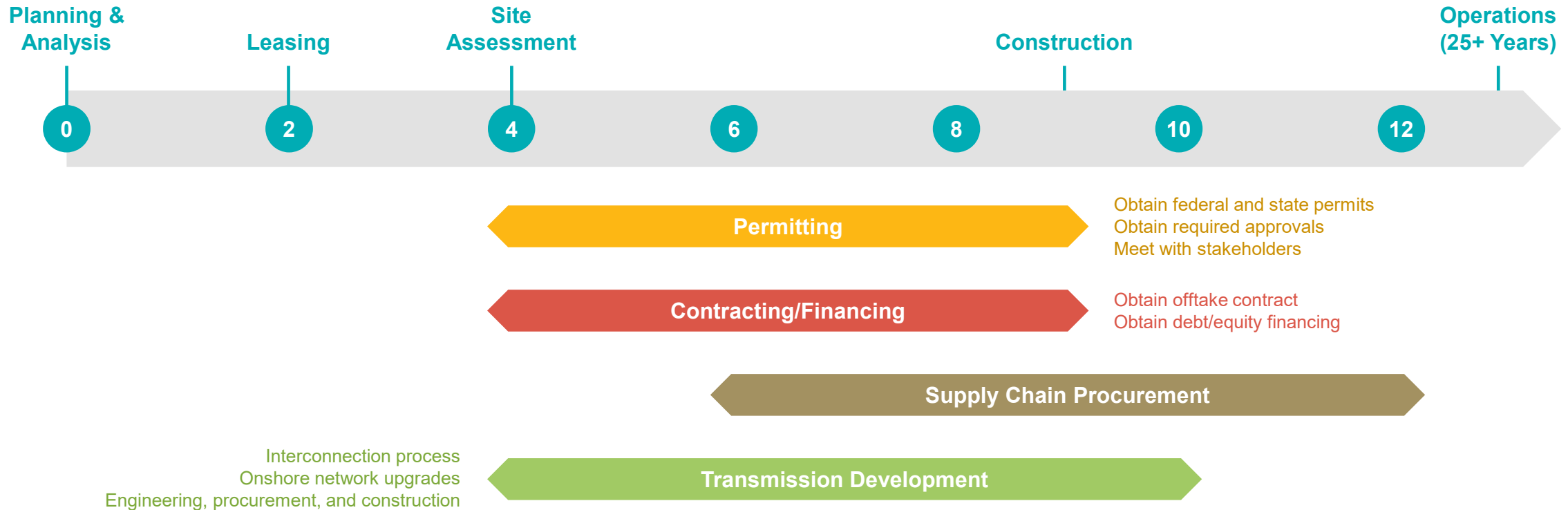
*Sources: “Offshore Wind Market Report: 2023 Edition,” US Department of Energy, August 24, 2023, <https://www.energy.gov/eere/wind/articles/offshore-wind-market-report-2023-edition>; developer and state websites; “Offshore Wind Update 2023 Q3 and Q4,” Commonwealth of Massachusetts, January 3, 2024, <https://www.mass.gov/news/offshore-wind-update-2023-q3-and-q4>; Jake Bolster, “New Legislation Aiming to Inject Competition Into Virginia’s Offshore Wind Market Could Spark a Reexamination of Dominion’s Monopoly Power,” Inside Climate News, <https://insideclimatenews.org/news/02022024/virginia-legislation-aims-to-inject-competition-into-offshore-wind-market>.*

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# Offshore Wind Project Development Timeline

Project Development Process (years)



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# Litigation Challenges

## Stakeholders

Local residents

- Year-round residents
- Vacation homeowners

Local business associations

Indigenous peoples

Commercial fishing industry groups

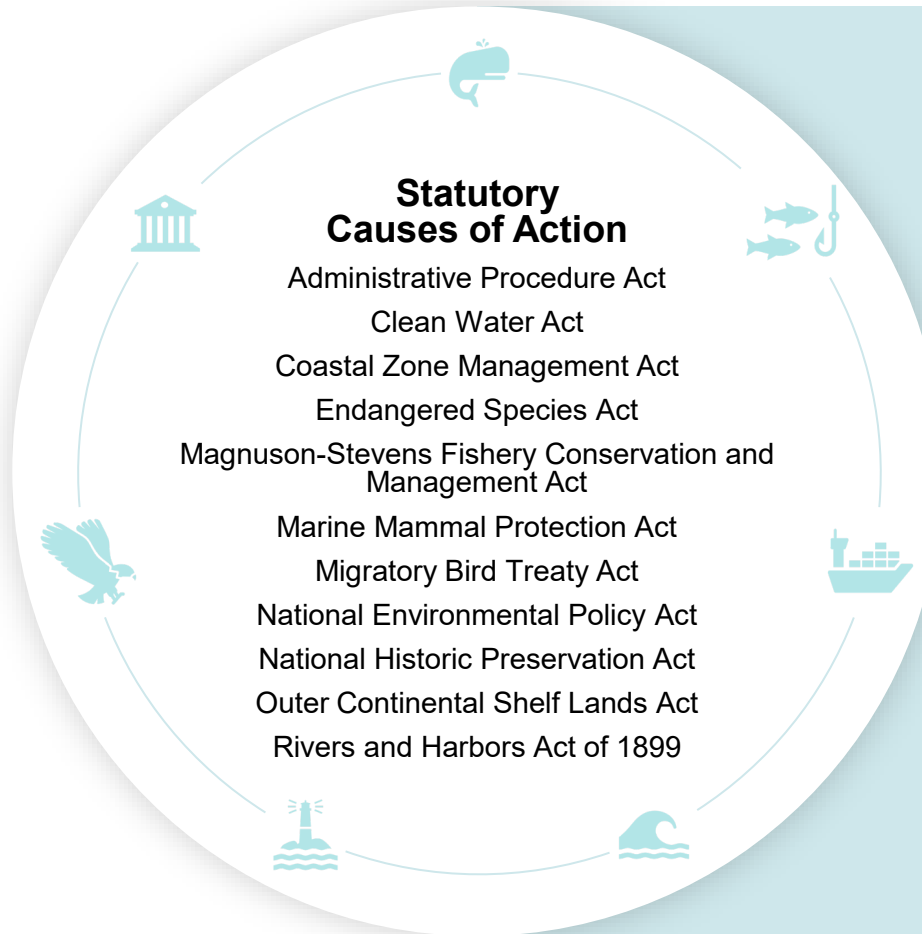
Historical preservation groups

Wildlife conservationists

County and municipal governments

Small-scale renewable energy developers

Existing generators



## Federal Agencies

Bureau of Ocean Energy Management

Federal Aviation Administration

National Marine Fisheries Service

National Oceanic and Atmospheric Administration

US Army Corp of Engineers

US Department of Defense

US Environmental Protection Agency

US Fish and Wildlife Service

## State Involvement

Coastal management offices

Departments of energy

Departments of environmental conservation

Departments of transportation

Public service commissions



# Litigation Challenges

## Lessons Learned

- It is critical to engage stakeholders early in the development and permitting process.
- Find clear and concise ways to explain the benefits to local communities – impact assessment analyses should be as transparent as possible.
- Project developers may want to undertake voluntary outreach to build goodwill with stakeholders and avoid potential disputes.

## Looking Ahead

- The judiciary has been siding with project developers; lawsuits challenging the regulatory approval processes tended to be dismissed under the *Chevron* doctrine.
- The Supreme Court's ruling with regard to the *Chevron* doctrine may impact future offshore wind litigation.
- The construction and operation phases of offshore wind projects have not yet been tested in court. As more projects enter those phases, there is the potential for future litigation of issues related to large construction projects, including breach of contract, nuisance, and design and construction defects.

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## Procurement Method Comparison: MA vs. NY

### Massachusetts

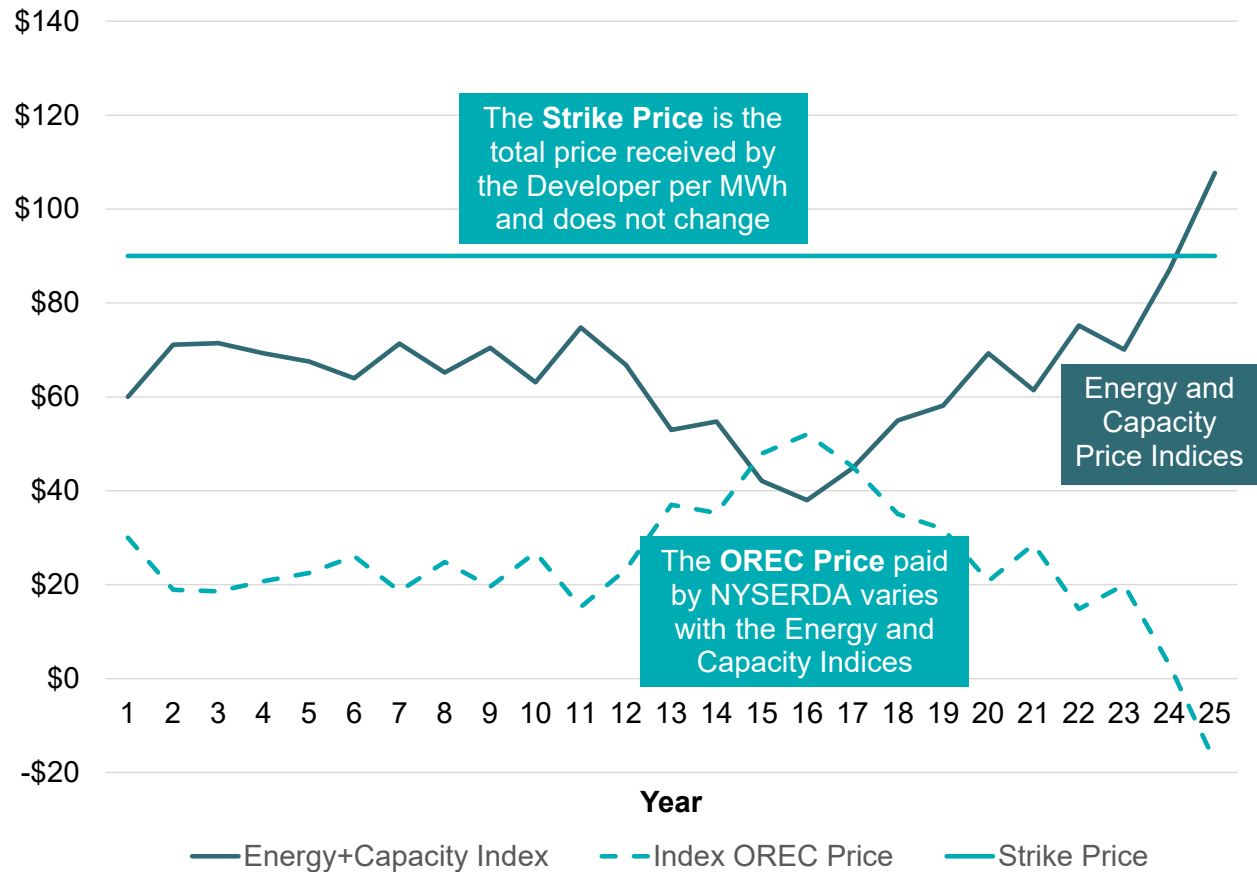
- **Counterparty:** Distribution utility
- **Product:** Energy and/or renewable energy certificates (RECs) (capacity sold separately)
- **Pricing rules in initial solicitations:**
  - Fixed price; may change by a defined rate or amount over time
  - Subject to a cap based on previous auction prices
- **Updated pricing rules in recent solicitation:**
  - REC price required to be greater than a minimum amount and percentage of the total bid
  - Price cap removed via 2022 legislation
  - Optional index pricing adjustment: Allows a one-time price adjustment one year after Department of Public Utilities approval based on a preset price index, subject to 15% increase cap

### New York

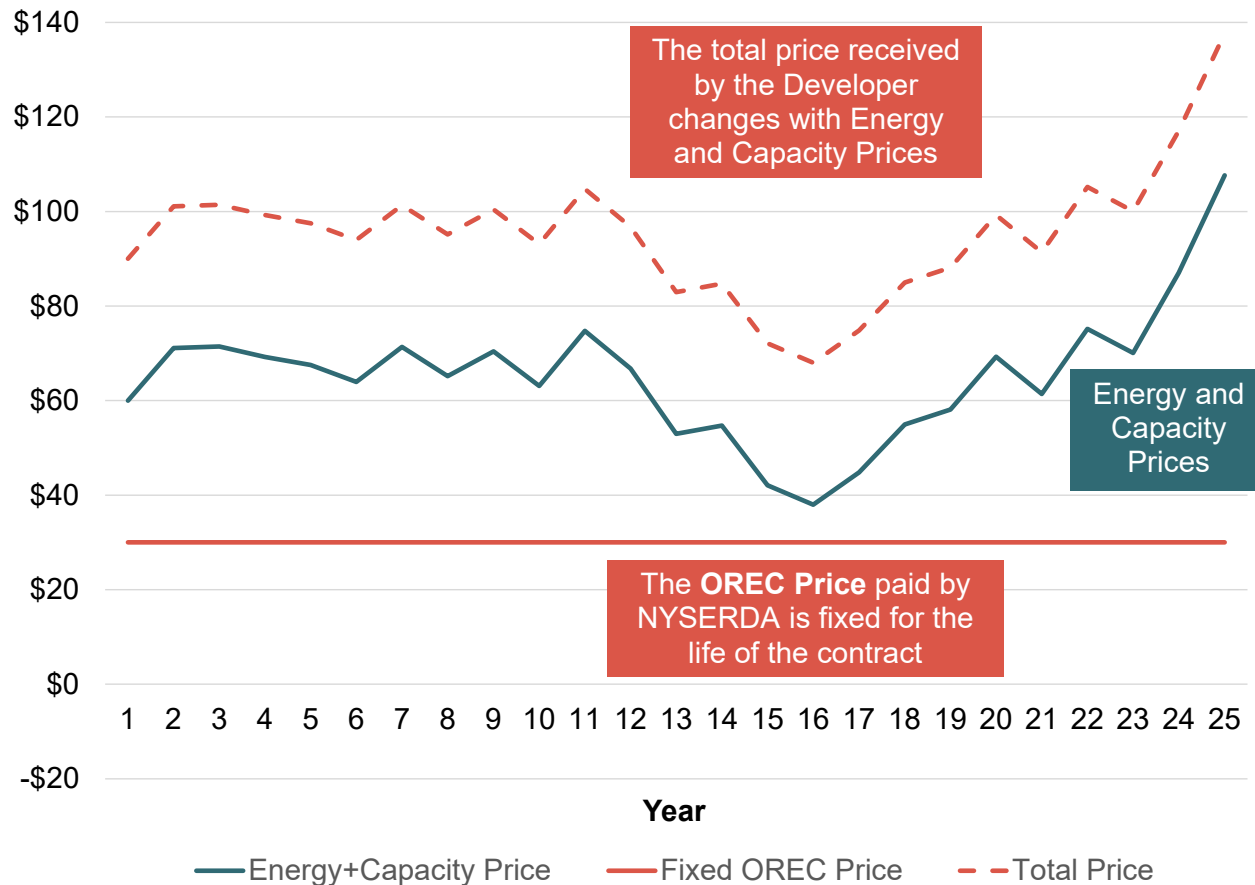
- **Counterparty:** New York State Energy Research and Development Authority (NYSERDA), assigned to load serving entities
- **Product:** Offshore Wind Renewable Energy Certificates (ORECs) (energy and capacity sold separately)
- **Pricing rules in initial solicitations:** Developers submit:
  - Fixed OREC price for life of contract
  - Index OREC price equal to strike price minus energy and capacity price indices
  - NYSERDA selects which price to accept\*
- **Updated pricing rules in recent solicitation:**
  - Optional inflation adjustment: Allows a one-time price adjustment on date of Bureau of Ocean Energy Management (BOEM) approval of the project's construction and operations plan (COP) based on a preset price index
  - Interconnection cost sharing and savings sharing provisions

*\*In completed auctions, NYSERDA has selected the index price each time.*

# NYSERDA Index OREC Price Example



# NYSERDA Fixed OREC Price Example



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## Qualitative Considerations

- Qualitative considerations are becoming increasingly important in offshore wind procurement.
- On September 20, 2023, nine East Coast states and four federal agencies executed an agreement to “collaborate on expanding key elements of the offshore wind supply chain, from manufacturing facilities, to port capabilities, to workforce development.”
- Massachusetts:
  - The 2023 solicitation allocates **30 points out of 100** to qualitative factors:
    - 15 points for “economic development and project impact criteria”
    - 15 points for “bidder experience and project viability criteria”
- New York:
  - The 2022 solicitation allocated **30 points out of 100** to qualitative factors:
    - 20 points for “New York economic benefits”
    - 10 points for “project viability”
  - In its 2022 solicitation, New York required developers to submit a New York Jobs and Workforce Plan describing the impact on the offshore wind workforce, particularly with regard to skilled trades and labor unions, members of disadvantaged communities, minority- and women-owned business enterprises, and service-disabled veteran-owned businesses.

*Sources: “Federal-State Memorandum of Understanding on East Coast Offshore Wind Supply Chain Collaboration,” The White House, September 20, 2023, <https://www.whitehouse.gov/wp-content/uploads/2023/09/Federal-State-MOU-on-East-Coast-Offshore-Wind-Supply-Chain-Collaboration.pdf>; “Request for Proposals for Long-Term Contracts for Offshore Wind Energy Projects,” Electric Distribution Companies and the Massachusetts Department of Energy Resources, August 30, 2022; “Purchase of Offshore Wind Renewable Energy Certificates: Request for Proposals,” NYSERDA, July 27, 2022.*

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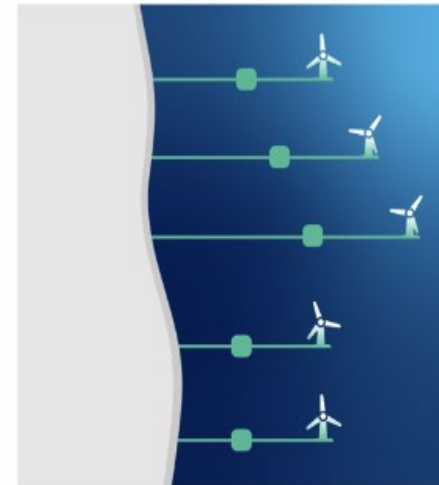


# Transmission Development

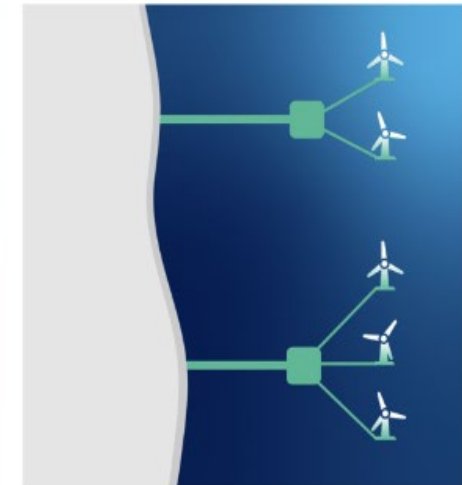
## Changing Transmission Requirements

- Initial solicitations on the East Coast have required each project to be responsible for its own transmission requirements.
  - Bids included the costs of the transmission required to interconnect the new facilities to the existing network.
  - Developers bore the risk of high transmission costs.
  - Transmission interconnections were radial lines connecting individual projects to the onshore grid.
- However, states have recognized that radial lines for every project are inefficient in terms of development costs, environmental costs, and reliability consequences and are revising their solicitations to encourage a network approach.

Status Quo/Individual Cables



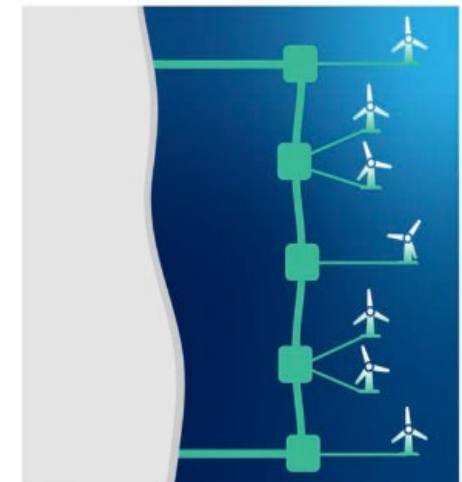
Shared Collector Stations



Meshed Cables



Offshore Backbone

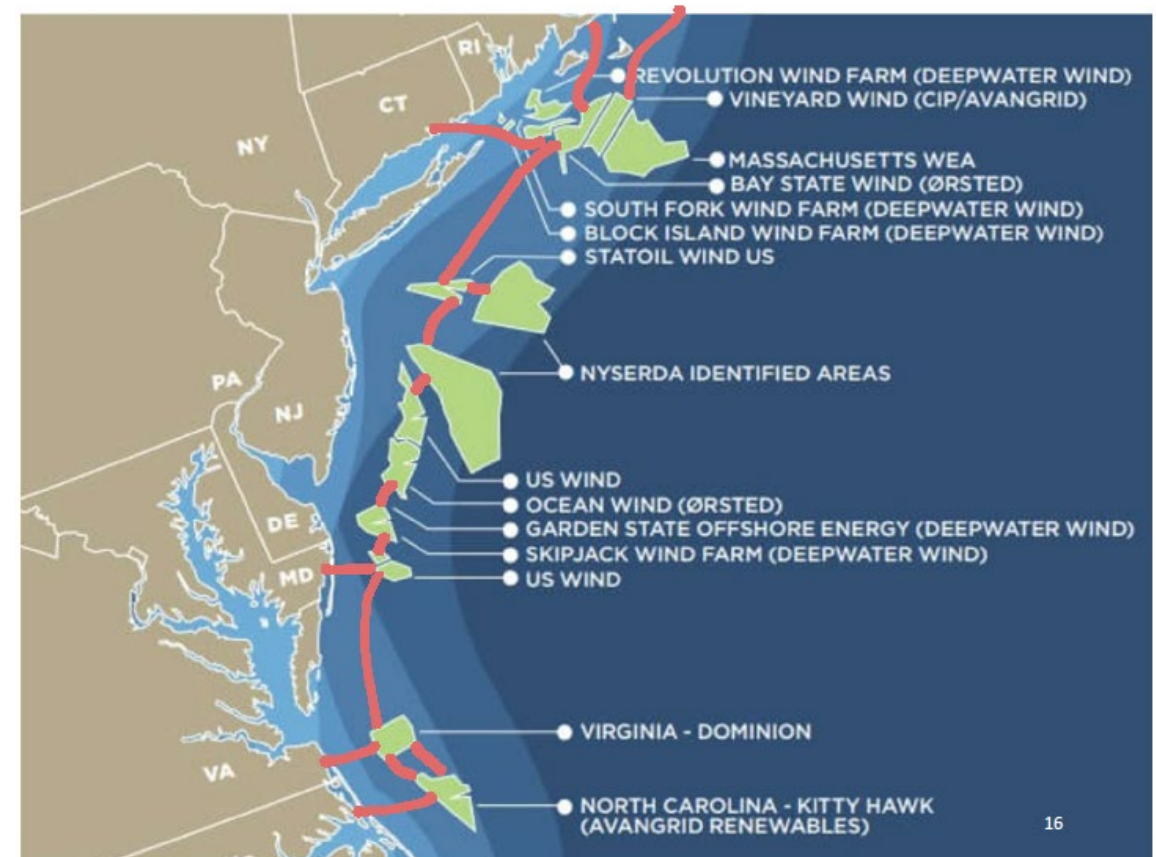


Source: "As offshore wind plans grow, so does the need for transmission," WBUR, October 18, 2022, <https://www.wbur.org/news/2022/10/18/offshore-wind-transmission-lines-grid>.

## A Long-Term View of the Offshore Grid for the East Coast

**A well-connected network offshore could provide significant reliability value.**

- Over time, the offshore grid could be as “meshed” as the onshore AC system.
- To optimize and reduce cost, New York, New Jersey, and New England are beginning to envision the long-term onshore and offshore grid solutions.



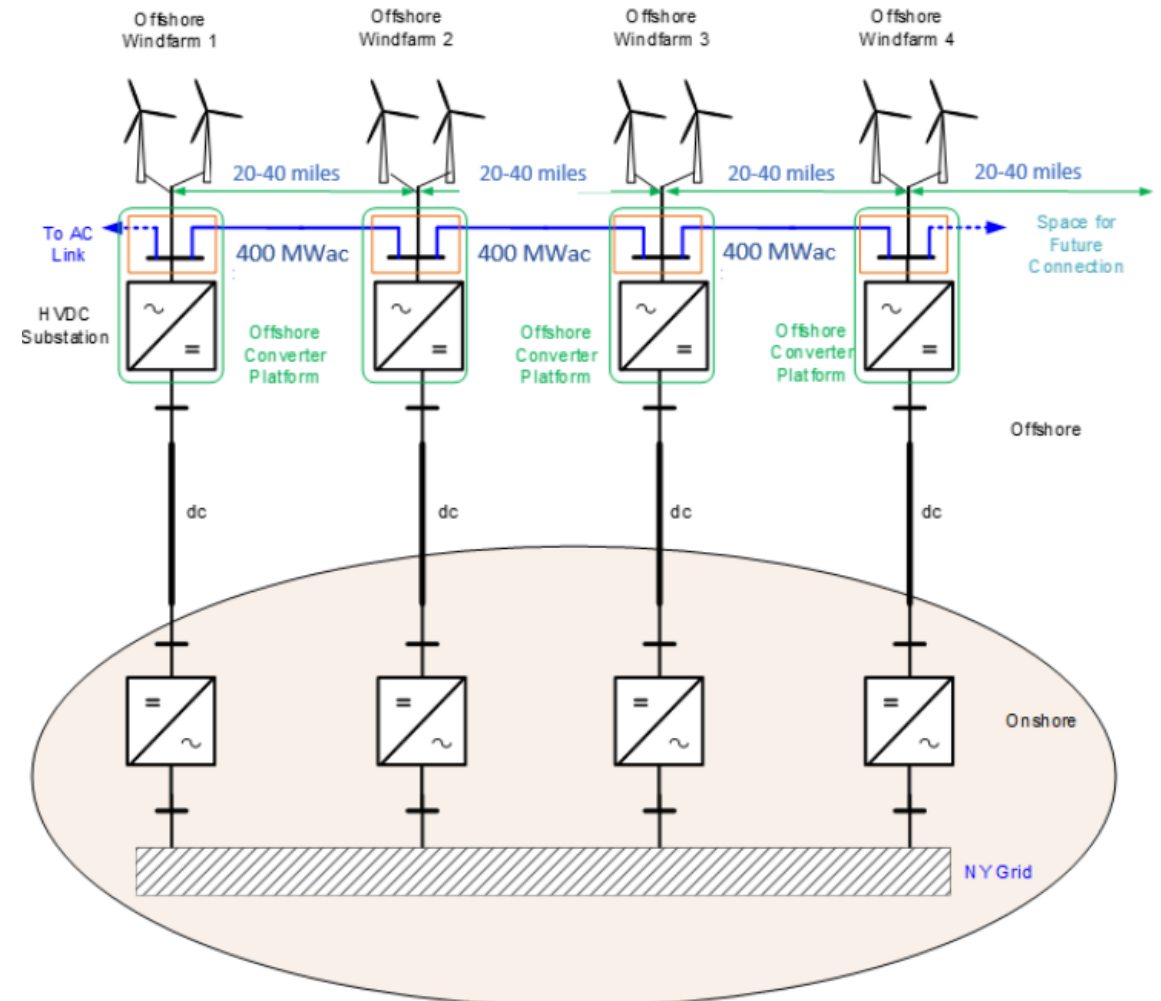
Source: “Panel: Grid Planners Must Abandon Silos for Renewable Future,” RTO Insider, April 28, 2021, <https://www.rtoinsider.com/20158-panel-grid-planners-must-abandon-silos-for-renewable-future/>.

# New York

## Meshed Network Requirements

- New York’s most recent solicitation now requires bidders’ transmission plans to include measures to create a meshed network of offshore wind transmission.
- Exceptions to this requirement require justification.
- Although initial transmission lines are expected to be radially connected to onshore transmission, the lines must be ready to be linked to a meshed network per specific technical requirements.

Figure F.1: Meshed Network Configuration

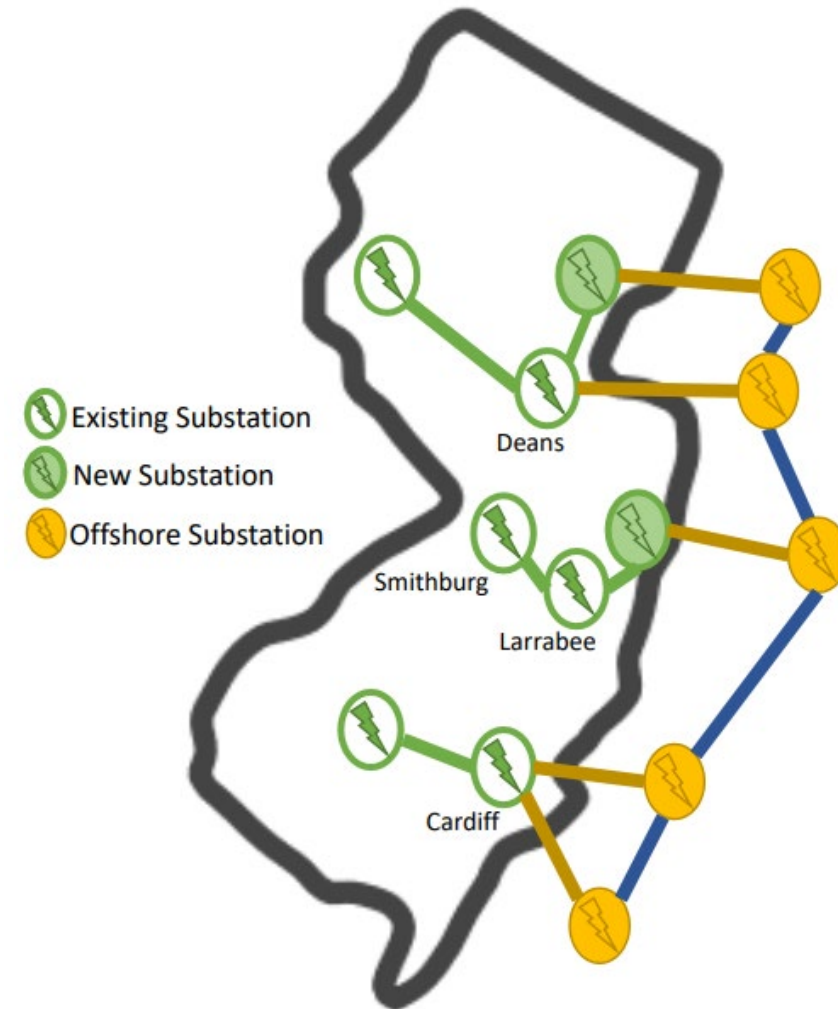


Source: "Purchase of Offshore Wind Renewable Energy Certificates Request for Proposals," NYSERDA, January 12, 2024, p. 20, Appendix F: Meshed Ready Technical Requirements.

# New Jersey

## State Agreement Approach

- New Jersey’s State Agreement Approach involves working with PJM to assess the most efficient upgrades to the system to incorporate expected projects.
- New Jersey then solicits transmission projects to meet desired criteria, with upgrade costs covered by New Jersey ratepayers.
- The first solicitation, with 80 proposals, resulted in small onshore upgrades related to the Larrabee substation being selected that will facilitate future offshore interconnections.
- A second study agreement with PJM was filed in February 2024 to facilitate the connection of an additional 3,500 MW of offshore wind at the Deans substation.



Sources: In the Matter of Declaring Transmission to Support Offshore Wind a Public Policy of the State of New Jersey, Docket No. QO20100630 (NJ Board of Public Utilities Oct. 26, 2022); “New Jersey’s State Agreement Approach 2.0,” meeting of the PJM Transmission Expansion Advisory Committee, June 6, 2023.

## Top 10 Lessons from East Coast Offshore Wind Experience

Western states have an opportunity to take advantage of lessons learned.

10

Ports for deployment require significant capital investments from public and private sources

9

Offshore wind supply chain (components for offshore wind projects, vessels, transmission) is a global market → requires US to learn and lead in a coordinated fashion

8

Workforce development requires intentional investments → need to create an ecosystem for training that will help build up US workforce

7

Set up project labor agreements (PLAs) up front

6

Close federal and state coordination is essential

# Top 10 Lessons from East Coast Offshore Wind Experience

Western states have an opportunity to take advantage of lessons learned.

5

Design of state procurement will have significant implications for prices and costs

4

Long-term contracts from competitive procurements do not guarantee financing when costs increase unexpectedly → learned to use index prices

3

Economic development benefits must flow to all communities

2

Transmission development needs much more coordination and long-term planning than the current approach of interconnecting one project at a time

1

Work closely with ISO to ensure alignment between procurements and interconnection



# Analysis Group Example Cases

## Offshore Wind Projects

### **In the Matter of Skipjack Offshore Energy, LLC's Qualified Offshore Wind Project**

An Analysis Group team was retained on behalf of Orsted North America, a Danish energy company and parent of Skipjack Offshore Energy, to support Skipjack in an evidentiary hearing before the Maryland Public Service Commission regarding Skipjack's decision to use a 12 MW turbine for its offshore wind project. A team led by Managing Principal Pavel Darling supported academic affiliate Corey Lang, who testified that Skipjack's choice of the 12 MW turbine would have little to no impact on the area's tourism and economy. Citing Professor Lang's testimony in its opinion, the commission held that Skipjack's selection of the 12 MW turbine was consistent with both the commission's previous orders and Maryland's Offshore Wind Energy Act, and that "no further action is necessary regarding Skipjack's turbine selection."

### **Assessing Implications of Offshore Wind Development**

An Analysis Group team was retained on behalf of an energy asset manager and developer to provide strategic advice related to its efforts to develop transmission infrastructure to connect offshore wind to the PJM Interconnection electric grid at different interconnection points in the region. Our role included addressing the cost and feasibility of transmission interconnection options, technical and economic issues, and the longer-term wholesale market implications of the growth of offshore wind resources delivering power to the region.

### **Offshore Wind Project in NYISO**

An Analysis Group team indirectly supported an offshore wind developer to evaluate its participation in New York's offshore wind renewable energy credit procurements. The work involved reviewing and summarizing wholesale electricity market participation rules.

## Other Recent Energy Reports from Analysis Group

- **Capacity Market Alternatives for a Decarbonized Grid: Prompt and Seasonal Markets**, Todd Schatzki, Joseph Cavicchi, and Phillip Ross (January 2024)
- **Electric Utilities and the IRA/IIJA: Ensuring Maximum Benefits for Consumers from New Federal Funding Opportunities**, Paul Hibbard, Grace Howland, Grace Maley, Daniel Stuart, and Susan F. Tierney (January 2024)
- **Fuel and Energy Security In New York State: An Assessment of Winter Operational Risks for a Power System in Transition**, Paul Hibbard, Joseph Cavicchi, Grace Howland, Jack Graham, and Marios Vafiadis (November 2023)
- **Massachusetts' Energy Transition: Innovation for Electric Utility Regulation**, Paul Hibbard, Susan F. Tierney, Grace Howland, and Daniel Stuart (September 2023)
- **Heavy Duty Vehicle Electrification: Planning for and Development of Needed Power System Infrastructure**, Paul Hibbard, Laurie Hakes, Daniel Stuart, and Sam Churchill (June 2023)
- **The Economic Impacts of the Regional Greenhouse Gas Initiative on Ten Northeast and Mid-Atlantic States: Review of RGGI's Fourth Three-Year Compliance Period (2018-2020) and Options for RGGI States to Advance Key Equity Priorities**, Paul Hibbard and Daniel Stuart (May 2023)
- **Pathways Study: Evaluation of Pathways to a Future Grid**, Todd Schatzki, Christopher Llop, Phillip Ross, Jenny Shen, Daniel Stuart, Tyler Farrell, Conor McManamy, Luke Daniels, and Shaina Ma (April 2022)



# More Background Materials

## Procurement Status: New York and New England

State	Mandated Procurement		Projects			
	Capacity (MW)	Procured By	Project Name	MW	Status	Commercial Operation Date
<b>New York</b>	9,000	2035	South Fork Wind	132	Under Construction	2024
			Empire Wind 1	810	Awarded	2026
			Sunrise Wind 1	924	Awarded	2026
			Empire Wind 2	1,260	Contract Terminated	2027
			Beacon Wind 1	1,230	Contract Terminated	2028
			Attentive Energy One	1,404	Awarded	2030
			Community Offshore	1,314	Awarded	2030
			Excelsior Wind	1,314	Awarded	2030
			<b>New York Total</b>	<b>8,388</b>		
<b>Massachusetts</b>	5,600	2027	Vineyard Wind 1	800	Under Construction	2024
			SouthCoast Wind 1a	804	Re-bid	2028
			SouthCoast Wind 1b	400	Re-bid	2029
			New England Wind 2	1,232	Re-bid	2028
			<b>Massachusetts Total</b>	<b>3,236</b>		
<b>Rhode Island</b>	1,430	2030	Block Island Wind Farm	30	Installed	2016
			Revolution Wind	400	Under Construction	2025
			<b>Rhode Island Total</b>	<b>430</b>		
<b>Connecticut</b>	2,000	2030	Revolution Wind	304	Under Construction	2025
			New England Wind 1	800	Re-bid	2027
			<b>Connecticut Total</b>	<b>1,104</b>		
<b>Maine</b>	3,000	2040	Aqua Ventus	12	Awarded	2024
			<b>Maine Total</b>	<b>12</b>		
			<b>New England Total</b>	<b>4,782</b>		

Sources: "Offshore Wind Market Report: 2023 Edition," US Department of Energy, August 24, 2023, <https://www.energy.gov/eere/wind/articles/offshore-wind-market-report-2023-edition>; developer and state websites.

## Procurement Status: Mid-Atlantic

State	Mandated Procurement		Projects			
	Capacity (MW)	Procured By	Project Name	MW	Status	Commercial Operation Date
<b>New Jersey</b>	11,000	2040	Ocean Wind 1	1,100	Contract Terminated	2025
			Ocean Wind 2	1,148	Contract Terminated	2028
			Atlantic Shores Offshore Wind South (Project 1)	1,510	Awarded	2027
			Attentive Energy Two	1,342	Awarded	2031
			Leading Light Wind	2,400	Awarded	2031
			<b>New Jersey Total</b>	<b>7,500</b>		
<b>Maryland</b>	8,500	2031	Skipjack 1	120	Contract Terminated	2026
			MarWin	270	Awarded	2025
			Momentum Wind	809	Awarded	2028
			Skipjack 2	846	Contract Terminated	2027
			<b>Maryland Total</b>	<b>2,045</b>		
<b>Virginia</b>	5,200	2034	CVOW (Pilot)	12	Installed	2020
			CVOW (Commercial)	2,587	Awarded	2026
			<b>Virginia Total</b>	<b>2,599</b>		
			<b>Mid-Atlantic Total</b>	<b>12,144</b>		

Sources: "Offshore Wind Market Report: 2023 Edition," US Department of Energy, August 24, 2023, <https://www.energy.gov/eere/wind/articles/offshore-wind-market-report-2023-edition>; developer and state websites.

## Qualitative Considerations: Port Buildout

- The 2021 Massachusetts offshore wind solicitation required bidders to show a commitment to port infrastructure.
- New York committed to a \$700 million investment in offshore wind port infrastructure.
  - New York's 2020 offshore wind solicitation included \$200 million in New York State funding.
    - The final project contracts with Empire Wind 2 and Beacon Wind included public and private funding commitments of \$644 million in port infrastructure.
  - On January 5, 2022, the state announced a \$500 million investment proposal for offshore wind ports, manufacturing, and supply chain infrastructure.

*Sources: "Request for Proposals for Long-Term Contracts for Offshore Wind Energy Projects," Electric Distribution Companies and the Massachusetts Department of Energy Resources, May 7, 2021, § 13.3; "83C III Mayflower Wind Request for Proposal Application Form," Electric Distribution Companies and the Massachusetts Department of Energy Resources, May 25, 2022, § 9-22, 10-8; Vineyard Wind, <https://www.vineyardwind.com/masswinds>; "2022 Offshore Wind Solicitation," NYSERDA, July 27, 2022, <https://www.nyserda.ny.gov/All-Programs/Offshore-Wind/Focus-Areas/Offshore-Wind-Solicitations/2022-Solicitation>; "Governor Hochul Announces Key Offshore Wind Milestone as Contracts for Empire Wind 2 and Beacon Wind Projects are Finalized," NYSERDA, January 14, 2022, <https://www.nyserda.ny.gov/About/Newsroom/2022-Announcements/2022-01-14-Governor-Hochul-Announces-Key-Offshore-Wind-Milestone>.*

# Qualitative Considerations: Workforce Development

## Massachusetts

### 2021 solicitation (83C III)

- RFP § 13.3: Specific commitments to economic activity or development should include (but are not limited to):
  - ii) Investment in workforce development to support the offshore wind industry, which may include partnerships with vocational and technical schools, community colleges, labor groups, and community-based organizations to create paid training, internship, apprenticeship programs. These investments could include public-facing educational outreach programs to engage youth, high schools, and residents about offshore wind, clean energy, and climate topics.

### Winning bidder commitments

- Attentive Energy One: \$78 million in targeted community investments, of which 96% will prioritize disadvantaged communities and \$62.5 million will be devoted to workforce training initiatives

*Sources:* "Request for Proposals for Long-Term Contracts for Offshore Wind Energy Projects," Electric Distribution Companies and the Massachusetts Department of Energy Resources, May 7, 2021, § 13.3; Vineyard Wind, <https://www.vineyardwind.com/masswinds>; "Offshore Wind Works Grants And Community Of Practice," Massachusetts Clean Energy Center, <https://www.masscec.com/program/offshore-wind-workforce-grants>.

# Qualitative Considerations: Workforce Development

## New York

### Solicitation

- The New York Public Service Commission (PSC) directs NYSERDA to consider workforce development in disadvantaged communities in its procurement policies:
  - “NYSERDA is directed to continue to take measures to ensure that the interests of disadvantaged communities are explicitly valued in the selection process, and build upon its workforce development policies to specifically promote good jobs in disadvantaged communities.”
- The 2022 and 2023 solicitations require proposals to include a detailed **New York Jobs and Workforce Plan** describing the “impact and benefit to New York’s offshore wind workforce, with specific focus on recruiting and collaborating with skilled trades/labor unions, members of Disadvantaged Communities, Minority and Women Owned Business Enterprises and Service-Disabled Veteran-Owned Businesses.”

### Winning bidder commitments

- Mayflower Wind (SouthCoast Wind) committed to investing up to \$80.9 million to “grow the local offshore wind workforce, increase the capacity of Massachusetts educational institutions, and drive the local economy.”
  - Its prior winning bid in 2019 (83C II), which was merged with the 2021 bid, included an additional commitment, for a total of \$119.8 million.
- Vineyard Wind commitments include:
  - \$2 million Windward Workforce program to recruit, mentor, and train Massachusetts residents
- The Massachusetts Clean Energy Center administers workforce grants funded by SouthCoast and Vineyard Wind:
  - 2023: grants awarded to 11 entities
  - 2022: grants awarded to nine entities

*Sources:* Order Adopting Modifications to the Clean Energy Standard, Case No. 15-E-0302 (State of New York Public Commission Oct. 15, 2020), p. 46; “Purchase of Offshore Wind Renewable Energy Certificates: Request for Proposals,” NYSERDA, July 27, 2022, p. 100; “Purchase Of Offshore Wind Renewable Energy Certificates: Attentive Energy,” NYSERDA, January 26, 2023, p. 259.

# Qualitative Considerations: PLAs

## Massachusetts

### Solicitation

- No statutory or regulatory requirement to consider PLAs as part of the procurement process.
- The 2021 solicitation (83C III) did not contain overt references to PLAs.
- The 2023 solicitation (83C IV) notes that “preference shall be given to projects which demonstrate benefits from. . . Community Benefits Agreements and **workforce agreements** that support workforce harmony and community benefits, **with appropriate labor organizations** for construction, renovation, reconstruction, alteration, installation, demolition, expansion, maintenance and repair.”

### Winning bidder commitments

- In its winning 2021 bid, Vineyard Wind stated that it will commit to “negotiate a Project Labor Agreement (PLA) and pay prevailing wages.”
  - In July 2021, Vineyard Wind signed the first PLA for an offshore wind project in the US.
- In September 2022, Mayflower Wind (SouthCoast Wind) signed a memorandum of understanding with North America’s Building Trades Unions and the United Brotherhood of Carpenters, which included a commitment to negotiate three separate construction-related PLAs.

*Sources:* “Request for Proposals for Long-Term Contracts for Offshore Wind Energy Projects,” Electric Distribution Companies and the Massachusetts Department of Energy Resources, May 7, 2021; “Vineyard Wind’s Response to the Request for Proposals,” Vineyard Wind, September 16, 2021, § 2-2; “83C III Mayflower Wind Request for Proposal Application Form,” Electric Distribution Companies and the Massachusetts Department of Energy Resources, May 25, 2022, § 13-9; “Mayflower Wind Signs MOU with Massachusetts and Rhode Island Building Trades for Offshore Wind Workforce Development,” SouthCoast Wind, September 30, 2022, <https://southcoastwind.com/mayflower-wind-signs-mou-with-massachusetts-and-rhode-island-building-trades-for-offshore-wind-workforce-development/>.

# Qualitative Considerations: PLAs

## New York

### Solicitation

- The New York PSC directs NYSERDA to consider PLAs as contract requirements:
  - “Given the need to meet the statutory timetable for offshore wind deployment, the Commission directs NYSERDA to consider measures that will incentivize timely project completion. In particular, NYSERDA **should continue to consider project labor agreements** and other standards as contract requirements”
- 2022 solicitation: “each awardee will be required to present to NYSERDA for its review a plan outlining its intentions with respect to the negotiation of one or more PLAs.”
- 2023 solicitation: “each awardee will be required to present to NYSERDA for its review a plan outlining a list of the expected PLAs.”

### Winning bidder commitments

- Community Offshore Wind, as part of its 2022 bid, secured a memorandum of understanding with the NYS Building Trades for a PLA.
- Vineyard Offshore’s 2022 proposal identified a labor liaison and outlined its experience negotiating and implementing the first-of-its-kind PLA in Massachusetts.

*Sources:* Order Adopting Modifications to the Clean Energy Standard, Case No. 15-E-0302 (State of New York Public Commission Oct. 15, 2020), p. 46; “Purchase of Offshore Wind Renewable Energy Certificates: Request for Proposals,” NYSERDA, July 27, 2022, § 2.2.2; “Purchase of Offshore Wind Renewable Energy Certificates: Request for Proposals,” NYSERDA, November 30, 2023, § 2.2.2; “New York Jobs & Workforce Plan,” Community Offshore Wind, January 25, 2023.



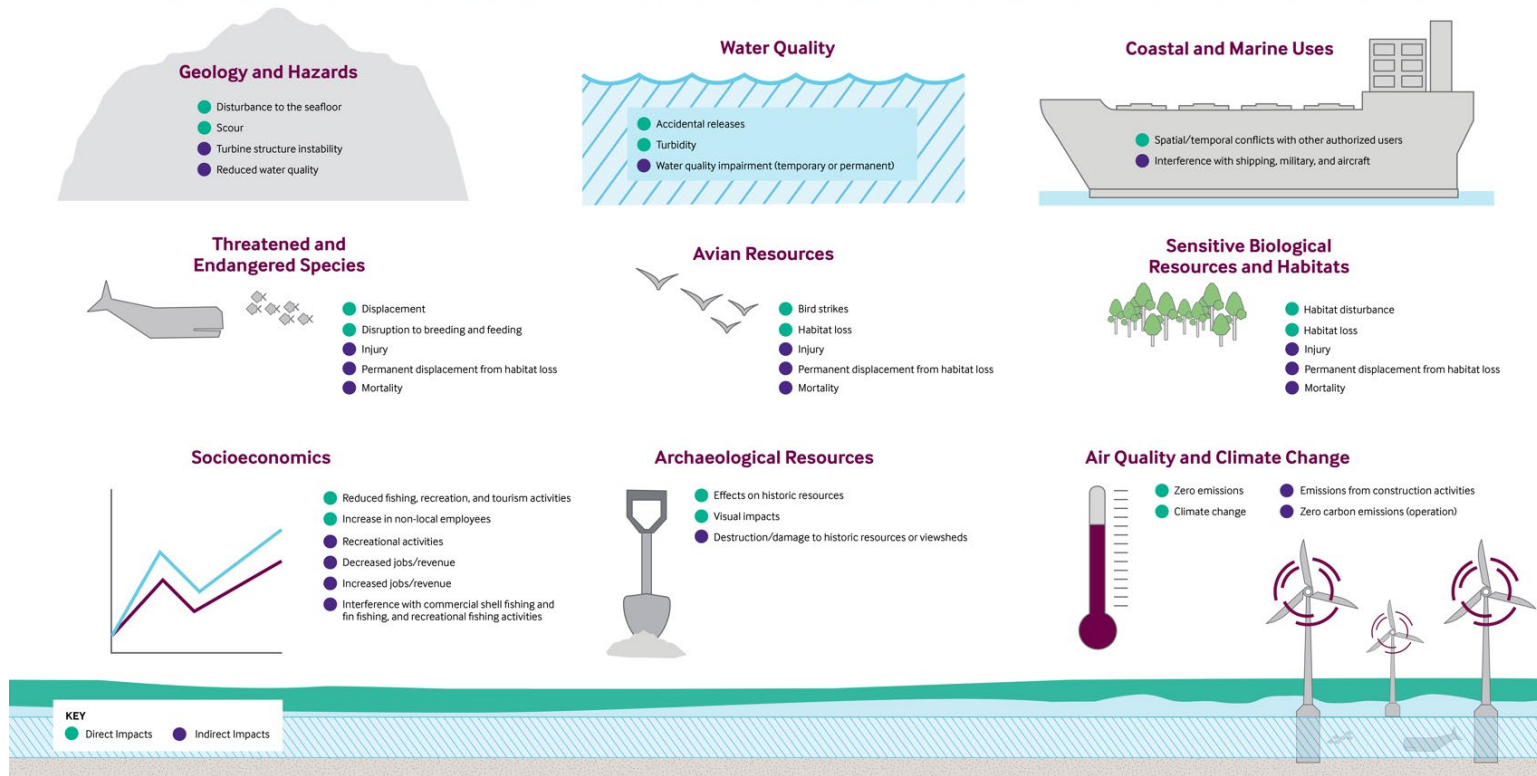
# Litigation Challenges

## Overview

- Federal agency actions and determinations during the permitting process have been subject to litigation challenges, alleging their applications of applicable statutes were improper and that permits should not have been granted.
  - Example: Allegations by New Jersey tourism and fishing groups that in issuing permits for the Ocean Wind project, the federal agencies did not adequately account for potential harms to North Atlantic right whales, sea turtles, and migrating birds (*County of Cape May v. United States*, Docket No. 1:23-cv-21201 (D.N.J. Oct. 17, 2023)).
  - Example: Allegations by Rhode Island preservation groups that the federal government approved permits for the Revolution Wind and South Fork Wind projects without properly considering the impact on the historic Newport mansions and the area's historic character (*Preservation Society of Newport County v. Haaland, et al.*, Case No. 1:2023cv03510 (D.R.I. Nov. 22, 2023)).
- State involvement:
  - The Coastal Zone Management Act (CZMA) allows states to develop plans to manage their coastal zones, which can involve balancing offshore wind projects against other coastal uses such as residential, recreational, commercial, and industrial development.
  - The CZMA allows states with coastal management plans to weigh in on federal permitting decisions through a “federal consistency” review process, which requires projects to demonstrate that they are consistent with state policies.
  - State federal consistency reviews are subject to state court challenges (see, e.g., *In re: Challenge to the Consistency Certification of the Ocean Wind 1 Offshore Wind Turbine Project* (N.J. Sup. Ct. App. Div. June 8, 2023); challenging the New Jersey Department of Environmental Protection's determination that the Ocean Wind I project is consistent with state coastal management rules).

# Litigation Challenges

## POTENTIAL IMPACTS FOR THE CONSTRUCTION AND OPERATIONS PLAN OF AN OFFSHORE WIND FARM



Source: "U.S. offshore wind permitting: the SAP, the COP, and the regulatory process in between," RPS Group, June 24, 2021, <https://www.rpsgroup.com/insights/energy/us-offshore-wind-permitting-the-sap-the-cop-and-the-regulatory-process-in-between/>.

# Litigation Challenges

## Outcomes

- Some of these challenges have been dismissed at early stages on the following grounds:
  - Claims are unripe/litigation was initiated before a final agency decision on a project (see, e.g., *Save Long Beach Island, et al. v. U.S. Department of the Interior, et al.*, Case No. 22-cv-55 (DLF) (D.D.C. Mar. 9, 2023), finding that the plaintiffs could not challenge BOEM's issuance of an area identification memorandum establishing a wind energy area in the New York Bight, as the memorandum did not constitute a final agency action and the duty to conduct a wildlife assessment had not yet been triggered).
  - The plaintiffs' claims were not sufficiently connected to the statutory causes of action (see, e.g., *Seafreeze Shoreside Inc. v. U.S. Department of the Interior, et al.*, Case No. 1:22-cv-11091-IT (D. Mass. Oct. 12, 2023), finding that the plaintiffs' economic interests were not protected by environmental statutes such as the Endangered Species Act and that the plaintiffs did not provide sufficient evidence of non-economic harm).
  - Deference to agencies' analysis during the permitting process (see, e.g., *Melone v. Coit, et al.*, Case No. 23-1736 (D. Mass. Aug. 4, 2023), finding that BOEM and the National Marine Fisheries Service were not arbitrary and capricious in their consideration of Vineyard Wind's impact on the endangered right whale when designating a wind energy area).
- Several lawsuits are currently on appeal.

# Litigation Challenges

## Looking Ahead

- In offshore wind cases to date, the judiciary has been siding with project developers. Lawsuits challenging the regulatory approval processes tended to be dismissed under the *Chevron* doctrine, which stands for the idea that courts should defer to an agency's reasonable interpretation of an ambiguous statute.
- The US Supreme Court is currently considering two cases that bring the *Chevron* doctrine into question (*Loper Bright Enterprises v. Raimondo* and *Relentless, Inc. v. Department of Commerce*).
  - Oral arguments were heard in January 2024.
  - A ruling has not yet been issued.
- Although the two cases are not related to offshore wind, the Supreme Court's ruling with regard to the *Chevron* doctrine may impact future offshore wind litigation that challenges agency actions.
- The construction and operation phases of offshore wind projects have not yet been tested in court. As more projects enter those phases, there is potential for future litigation of issues related to large construction projects, including breach of contract, nuisance, and design and construction defects.