

U.S. OFFSHORE WIND PERMITTING: THE SAP, THE COP, AND THE REGULATORY PROCESS IN BETWEEN

Introduction

- **As the offshore wind industry in the U.S. continues to gain momentum, it's worth exploring the permitting regime in more detail. The following article delivers an overview of this and some insights regarding the Construction and Operations Plan (COP), some of the associated challenges and potential solutions.**
- To begin with the regulatory perspective: BOEM is the main federal agency responsible for managing energy development on the outer continental shelf (OCS), for both traditional and renewable energy projects. This includes the siting and operation of offshore wind facilities.
- BOEM's renewable energy regulations were updated in 2011 and will continue to adapt to support the evolving industry. This refinement will be essential as the industry grows and lessons are learned along the way.
- BOEM's renewable energy program occurs in four distinct phases for authorizing offshore wind energy projects: **planning and analysis, leasing, site assessment, and construction and operations**. Our focus here is mainly on the construction and operations phase, but it's important to see this in the context of the other phases (see **Figure 1**).

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to help navigate the
complex regulatory
requirements for
offshore wind farm
developments



Figure 1 - Four Key Regulatory Phases for Offshore Wind Development

The Site Assessment Plan & the Construction and Operations Plan

Site assessment includes submission, and BOEM’s review and approval, of a Site Assessment Plan (SAP). The plan’s purpose is to provide a description of site assessment activities to be performed within the lease area, including details related to the construction and installation of a meteorological tower or buoys on the site.

The Construction and Operations Plan (COP) is a detailed plan for the construction and commercial operation of a wind energy project submitted to BOEM by the developer. The Construction and Operations phase includes submission and approval of the COP, which provides a description of all proposed activities and planned facilities (onshore and offshore) for the lease area. The COP includes data and results from survey investigations (including those conducted to support the SAP) and provides the analysis of direct and indirect environmental and socioeconomic impacts resulting from the offshore wind farm project.

In addition to these potential direct and indirect impacts (see **Figure 2**), an offshore wind farm project will also need to contend with the challenges associated with the assessment of cumulative impacts from the development in question and other offshore wind farm developments. [Cumulative impacts assessment](#) presents a challenge in many offshore wind markets around the world as they must take the broader setting into account, along with many different sectors, pressures/activities, and ecological receptors to consider at different scales. This is also the case in the U.S. where Vineyard Wind recently came under scrutiny on this subject during BOEM's technical review of the COP and during the National Environmental Policy Act (NEPA) required documentation.

The process to address and identify direct and indirect impacts also entails extensive coordination and approvals from various federal and state agencies. It's often more complicated if they aren't on the same page, not to mention objections from special interest groups like the fishing industry or coastal landowners' citizen groups.

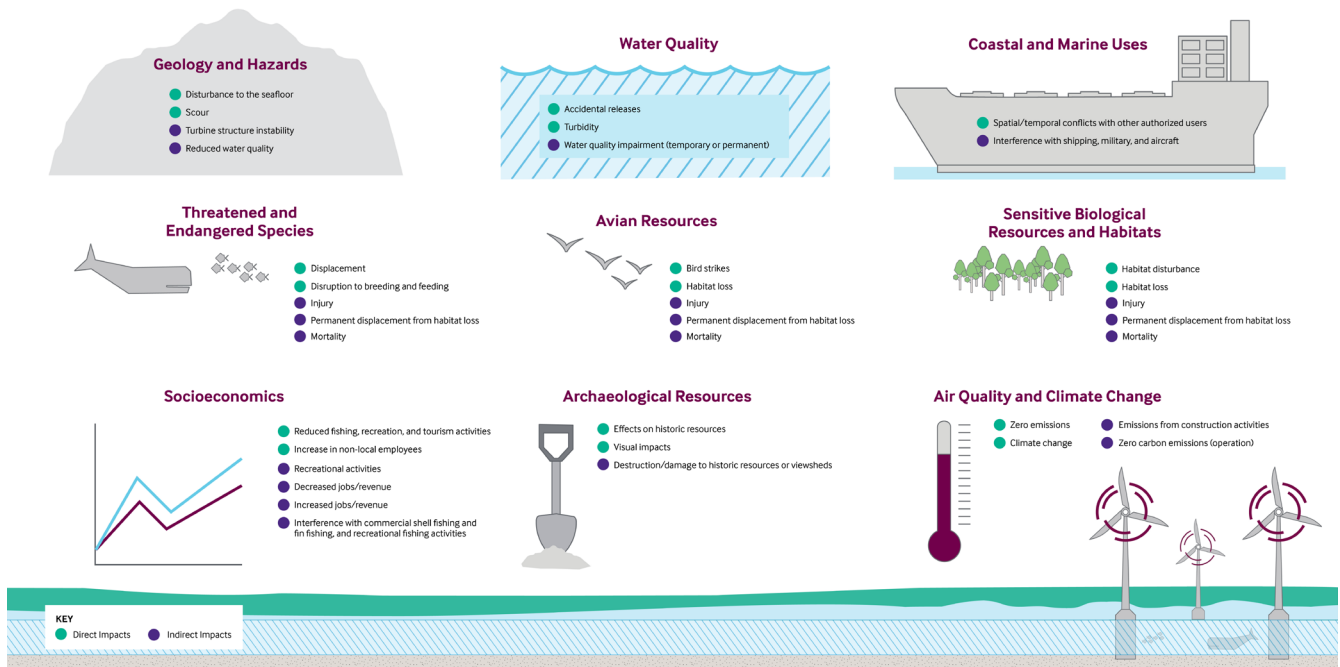


Figure 2 represents (at a cursory level) the potential direct and indirect impacts associated with construction and operations which typically require analysis in the COP

Additional Federal and State permitting

In addition to the BOEM SAP and COP, there is a complex federal, state, and local permitting process that will run concurrently with or tangentially to the BOEM process.

In the U.S., one of the biggest impediments to progress is making sure projects not only comply with federal laws, but also state environmental and coastal management plans, and in some states, regional and local permits and approvals. For example, it took almost eight years for Dominion to get all the necessary permits and approvals for its 12-megawatt windfarm project located off the coast of Virginia!

The right time to submit your COP

A COP is only submitted once there is sufficient data and a clearly defined project proposal for BOEM to conduct their technical, environmental, and other reviews. Usually the COP is submitted six months prior to the completion of the site assessment term outlined in the SAP, but the developer can submit the SAP and COP concurrently. There are certain trade-offs that should be factored in when deciding whether to submit separately or concurrently – for example, schedule delays that can affect underlying power purchase agreements and contracts with electric utilities which require the developer to begin delivering energy, face the crunch of lost financial viability, and possibly even affect political support.

Once the COP is approved, the developer is then required to submit additional reports that substantiate and detail the selection of final design components. Ongoing communication with BOEM, other agencies, and interested stakeholders throughout the review process will help to reduce unanticipated requests and set expectations for all parties. In addition, an early assessment of potential stakeholder concerns and issues and appropriate strategies to respond to controversies and opposing environmental opinions is strongly advised.

Developing a faster and more predictable approvals process

The Biden Administration recently laid out specific goals for BOEM to review at least 16 COPs by 2025. To reach this ambitious target, the timeline of the regulatory approvals process will need to be faster and more predictable; one thing that will help improve this process is to maintain better communication and collaboration between stakeholders – regulators, stakeholder groups, developers, scientific researchers, and consultants.

According to BOEM guidelines, the Construction and Operations phase can take up to two years to obtain approval, but it has been shown that the review process can take much longer. For example, Vineyard Wind, which was the first COP to go through the BOEM regulatory review process, only recently received approval of its COP after years of delay and a challenging environmental review process. There are several reasons why this took longer, including having to negotiate with the state of Rhode Island which used the Coastal Zone Management Act to engage with the process. They also faced concerns from fishing groups and other federal agencies even after agreeing to a fisherman compensation fund and after multiple rounds of revisions to its plans to address technological developments and respond to sometimes contradictory concerns of distinct groups of commercial fishermen.

Related read: [How RPS supports clients navigating complexity in the US offshore wind sector](#)



Learning our lessons to minimize delays

Today, developers are experimenting with the COP to determine how much detail BOEM will require and how much flexibility within the Project Design Envelope (PDE) can be retained moving into construction. As a result, developers and stakeholders are and will be watching the public dockets to see what's being filed and what BOEM will accept. Hopefully these experiences offer lessons for how collaborative governance approaches could minimize delays in future projects.

The complex regulatory environment facing offshore wind farm developers represents just one piece of the puzzle that must come together to successfully execute an offshore wind farm project. Offshore wind farm developers face an array of technical, physical, and budgetary challenges which can certainly seem daunting. However, when backed by the proper experience, knowledge, and resources, wind energy projects in the U. S. can be key to support the Biden Administration's 2035 goal of a NetZero electricity sector.

If you would like additional information on the local, state, and federal permitting strategy for and the regulatory processes associated with the U.S. offshore wind market, please consider contacting RPS' Jill Rowe, Director Ocean Science, jill.rowe@rpsgroup.com

Read more: an extended version of this article is available upon request if you would like a more detailed look at this topic, including information on the four authorization phases. Please contact Jill at the above email address.