

An aerial photograph of a large offshore wind farm. The image shows a vast expanse of blue ocean with numerous white wind turbines scattered across the horizon. The sky is a clear, light blue. The text is overlaid on the center of the image.

# Regulations Governing the Development of Offshore Wind

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# Outline

- I. State of Policy Development
- II. US Federal Role
- III. State Role
- IV. Canadian Role



# Policy Development

- Lawmakers have not developed any significant policy to govern offshore wind development in the Great Lakes
- Policies that govern offshore wind were created without offshore wind in mind

# Federal Role – Selected Regulations

- Rivers and Harbors Act
- National Environmental Policy Act
- Coastal Zone Management Act
- Migratory Bird Treaty Act
- National Historic Preservation Act
- Magnuson-Stevens Fishery Conservation & Management Act
- National Marine Sanctuary Act
- Endangered Species Act
- Clean Water Act
- Fish and Wildlife Coordination Act

# Federal Role

- There are jurisdictional differences between the waters of the Great Lakes and in the Oceans
- The Submerged Lands Act affirmed that Federal Jurisdiction begins 3nm off of America's coast, except in the waters off of Texas where jurisdiction begins 9nm from the coast.
- However in the Great Lakes, state jurisdiction extends from the coast to international boundaries.



# Energy Policy Act of 2005

- In most of the country (on the Outer Continental Shelf) lead jurisdiction for permitting and leasing of offshore wind development was given to the Minerals Management Service (MMS)
- There was no lead agency designation made for development in the Great Lakes

# Rivers and Harbors Act

- Officials of the USFWS have been quoted as saying that lead jurisdiction belongs to the Army Corp of Engineers
- The Army Corp of Engineers have authority over actions that affect navigable waters

# State Role

- Most discussion of policy development has taken place amid agency civil servants
- Michigan Permitting Dry Run
- Wisconsin Public Service Commission

# Coastal Zone Management Act

- 16 U.S.C. Section 1455, (d), (2) – state coastal zone management programs should include, “each of the following required program elements... (H) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including a process for anticipating the management of impacts resulting from such facilities.”
- In the Great Lakes the Coastal Zone extends to the international boundary between the US and Canada
- What do state coastal zone programs look like?

# State Environmental Regulations

- Since the Great Lakes are state waters, individual state regulations will need to be followed for the development of offshore wind facilities
- This could cause some difficulty in the development of facilities that will have footprints in multiple state jurisdictions (Southern Lake Michigan)
- Commonalities



# State Public Service Commissions

- Wind energy facilities are subject to varying state regulations of electric utilities
- Market regulation or deregulation can play an impact in the development of wind facilities
- Could rate of return regulation facilitate the development of offshore wind?
- RPS mandates can influence development as well

# Ohio

- Cuyahoga County created the Great Lakes Energy Development Task Force in 2006
- Explores legal, technical, environmental, economic, and financial aspects of developing offshore wind.
- In 2007 the taskforce issued a report that called for, among other things, an offshore wind demonstration project of between 5MW and 20MW
- Cuyahoga County is currently conducting a feasibility study.



# Canadian Regulations - Role of Federal Agencies

- Natural Resources Canada
- Fisheries and Oceans Canada
- Transport Canada
- Environmental Canada
- Indian and Northern Affairs Canada
- Industry Canada
- Health Canada

# Ontario

- Issued a moratorium on offshore wind developments in November 2006.
- Moratorium was lifted in early 2008 and an environmental assessment process for offshore wind farms has been set up by the Ministry of Natural Resources
- The OMNR has developed a document to help in the review of offshore wind projects titled, "Guideline to Assist MNR Staff in the Review of Wind Power Proposals in or Near Water"

# Where do we go?

- European Example
- Texas

