REPORT ON DEVELOPING A FISHING COMMUNITY PROTECTION TAX INCENTIVE PROGRAM

Report Prepared for the Joint Standing Committee on Taxation and Joint Standing Committee on Energy, Utilities and Technology

February 1, 2024

Department of Administrative and Financial Services
Maine Revenue Services
Office of Tax Policy

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Report on Developing a Fishing Community Protection Tax Incentive Program

I. Legislative Study Directive and Scope

This Report is submitted pursuant to P.L. 2023 c.481 (LD 1895), "An Act Regarding the Procurement of Energy from Offshore Wind Resources" (OSW Power Act, or the Act), which directs the Department of Administrative and Financial Services (DAFS), Office of Tax Policy in Maine Revenue Services (Office of Tax Policy), to study and develop a tax credit program for qualified investments in offshore wind (OSW) power projects, and to report to the Legislature its findings, recommendations about developing the program, including suggested legislation. In accordance with Section 16 of the Act, the Office of Tax Policy prepared this Report in consultation with the Department of Marine Resources (DMR) and the Governor's Energy Office (GEO).[1]

II. Executive Summary – Findings, Recommendations, and Suggested Legislation

On February 23, 2023, the GEO released the Maine Offshore Wind Roadmap detailing strategies for Maine to achieve the benefits from offshore wind power in a manner that protects and supports Maine communities, fisheries, and the wildlife of the Gulf of Maine.[2] Governor Mills has signed into law a prohibition on commercial offshore wind projects in state waters.[3] The law includes exemptions from certain activity in LMA1 related to the state's test sites, transmission cables, and activities related to the construction and deployment of commercial turbines at Maine ports. Beyond state waters, the federal government is responsible for offshore wind leasing, through the Bureau of Ocean Energy Management (BOEM). BOEM is preparing for a Gulf of Maine commercial lease sale in late 2024. Through the comment processes, informed by the Roadmap efforts and feedback from stakeholders, the State has strongly advocated that any commercial leasing should not be in LMA1.[4] A final decision on lease areas is expected sometime in 2024.

In July 2023, the Governor signed the OSW Power Act into law, Section 16 of which directs the Office of Tax Policy to prepare this Report and develop the Fishing Community Protection Tax Incentive Program. The framework of the Act focusses the Fishing Community Protection Tax Incentive Program on commercial OSW power development,[5] and Section 16 provides that the Program must include a tax credit not to exceed $16 million in the aggregate annually for up to 20 years that meets the three listed program requirements and in a manner consistent with the purposes described in the Act. The first listed program requirement is that the program provide incentives for siting offshore wind power projects with generation facilities outside "Lobster Management Area 1" (LMA1), an area that

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[1] The text of Section 16 is set forth at Appendix A. Pursuant to that section, Office of Tax Policy posted a draft of the report for a 30-day public comment period on November 30, 2023. See Appendix F.

[2] See 02/23/2023 Governor's Office press release, Mills Administration Releases Comprehensive Plan to Responsibly Advance Offshore Wind in Maine. The full Maine Offshore Wind Roadmap (PDF), Executive Summary (PDF), and underlying technical studies of the economic, socioeconomic, and energy needs and impacts of offshore wind power are posted online at maineoffshorewind.org. The Roadmap Report sets out the proposed milestones for Maine's OSW power development objectives, listing those at page 10 in three time periods: 2023-2024; 2025-2030; and 2030 and beyond.

[3] See 35-A MRSA §3405.

[4] See October 20, 2023 press release, https://www.maine.gov/governor/mills/news/governor-mills-maines-congressional-delegation-react-boems-draft-wind-energy-area-proposal , and November 16, 2023 press release, https://www.maine.gov/governor/mills/news/maines-congressional-delegation-and-governor-mills-continue-push-prohibit-offshore-wind.

[5] See, e.g., Section 6 of the Act, addressing cost-competitive commercial-scale development.

encompasses waters and submerged lands of Maine, other New England states, and the U.S. federal government.[6] Only LMA1 areas in federal waters have been under consideration by BOEM for OSW power development.[7] The second and third listed tax incentive program requirements under the Act are that the program must protect ratepayers and increase the State's competitiveness for securing offshore wind power projects. With respect to the Program incentives to protect LMA1 from commercial OSW power development,[8] this objective now appears to have been largely addressed for the foreseeable future by the October 2023 BOEM announcement excluding all of LMA1 from its designated wind energy area, except for limited areas it will consider further.[9] A final federal determination by BOEM has not been made as of the date of submitting this Report but is expected sometime in 2024. Accordingly, this Report finds that at present a development tax incentive program to protect LMA1 is not needed.

However, if BOEM revises its OSW development area in the coming months to include LMA1, this Report recommends the appropriate tax incentive program for incentivizing non-LMA1 development would be the State of Maine's new Dirigo capital investment and jobs training program, adapting it as needed by rulemaking and legislation. Finally, the Report recommends that the other two listed objectives expressed in the Act – including *onshore* components of OSW infrastructure development and consideration of equity issues with respect to ratepayers, taxpayers, and OSW siting costs – should be reviewed separately by the GEO, the Department of Economic and Community Development (DECD), and the Office of Tax Policy for narrowing the specific activities and geographic areas where tax incentives within the Dirigo tax credit program, or non-tax incentives, should be focused.

III. Discussion

A. Background

As part of Governor Mills' Maine Offshore Wind Initiative launched in June 2019, after an 18-month participatory process, the GEO released in February 2023 a comprehensive plan detailing strategies for development of offshore wind power in a responsible manner beneficial to Maine. The plan, titled Maine Offshore Wind Roadmap,[10] provides a comprehensive overview of key considerations related to the responsible advancement of offshore wind in Maine. One piece of the Maine Offshore Wind Initiative involves coordinating the State's OSW goals with the federal regulatory process for identifying federal waters to be open for bids to secure OSW power development leases. That regulatory process is managed by the BOEM.

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[6] See note 12, infra.

[7] Maine statute bars OSW development in Maine waters, An Act To Prohibit Offshore Wind Power Development in Territorial Waters and Submerged Lands of the State, P.L. 2021, c. 407, and BOEM has not been considering state 3-mile waters zone as part of the OSW power development process.

[8] The objective of avoiding OSW power projects in LMA1 is also listed in the Roadmap Report, infra., n. 2, Fisheries Working Group Recommendation #9, stating in part: "Offshore wind development should not be sited inshore of an area bound by the US/Canada border, following the LMA 1/3 line southwest to the 69 30' line, and then due south to the 42 20' line."

[9] BOEM 10/19/2023 announcement, BOEM Releases Draft Wind Energy Area in the Gulf of Maine for Public Review and Comment | Bureau of Ocean Energy Management. See also map at Appendix C.

[10] See n. 2 above, and the *Maine Offshore Wind Roadmap*. See also illustrations from the Roadmap at Appendices D and E.

On July 27, 2023, the Office of Governor Mills issued a press release announcing that the Governor signed into law LD 1895, the OSW Power Act). The press release noted that the enactment of the bill into law takes a number of steps to advance offshore wind in Maine, including the following:

- authorizes the GEO to establish an offshore wind energy procurement and schedule, to be issued by the Maine Public Utilities Commission, to procure up to 3,000 megawatts of electricity from offshore wind projects by 2040; and
- protects prime lobstering ground, LMA1, in the Gulf of Maine by giving preference in Maine's procurement process to offshore wind projects sited outside this critical area for Maine's fishing industry.

Section 16 of the Act directs the Office of Tax Policy, in consultation with the DMR and the GEO, to study and develop a tax credit program for qualified investments in offshore wind power projects consistent with the objective of protecting LMA1 from commercial offshore wind power projects by instead incentivizing development of such power projects outside of LMA1, and to do so in a manner that addresses the other two listed requirements of the program: protecting ratepayers from accompanying additional costs and increasing the State's competitiveness for securing offshore wind power projects.

The Act specifies that the Fishing Community Protection Tax Incentive Program (Program) shall provide tax credit incentives of up to $16 million annually for siting offshore wind power projects with generation facilities outside LMA1, as defined by the DMR by rule. The purpose of this program under the Act is to address commercial OSW power projects.[11] In addition, the program must protect ratepayers, increase the State's competitiveness for securing offshore wind power projects, and meet certain other objectives.

In sum, the three goals central to LD 1895's directive that Office of Tax Policy develop a OSW and Fishing Community Protection Tax Incentive Program tax incentive program are: 1) advancing overall OSW objectives in a manner that would protect LMA1 from commercial OSW development; 2) identifying the appropriate model for a tax incentive program that would meet the other LD 1895 objectives; and 3) responding to the BOEM regulatory process and the areas and conditions for OSW development in a manner that furthers the State's interests and objectives. These three pieces are addressed in more detail in the following sections of the Report.

B. <u>Tax Incentive Program Goals</u>

The OSW Power Act directs the Office of Tax Policy to develop a program to provide "a tax credit to applicants for qualified investments in offshore wind power projects consistent with the purposes described in the Maine Revised Statutes, Title 35-A, sections 3407 and 3408." In addition, the Act provides that the program must:

A. Provide incentives for siting offshore wind power projects with generation facilities outside of LMA1;
B. Protect ratepayers from any additional costs associated with the siting outside of LMA1;
C. Increase the State's competitiveness in securing offshore wind power projects and its associated climate and economic benefits; and

[11] See, e.g., Section 6 of the Act, addressing cost-competitive commercial-scale development.

D. Include a tax credit not to exceed $16 million in the aggregate annually for up to 20 years.

C. LMA1 and Maine Lands and Waters, Other States' Lands and Waters, Federal Lands and Waters

LMA1 is an area that encompasses U.S. federal waters and submerged lands as well as those of Maine and other New England states.[12] However, only the LMA1 areas in federal waters have been under consideration by the BOEM for OSW power development.[13]

D. Dirigo Tax Incentive Program

The Biennial Budget signed into law this July established the Dirigo Business Incentive Program, a replacement for the sunsetting Pine Tree Development Zone program. The Dirigo program provides tax credits to businesses for making capital investments in their businesses in Maine, and for training workers.[14]

In addition to incentivizing OSW power development outside of LMA1, a Fishing Community Protection Tax Incentive Program would need to identify the specific business segments, activities, and geographic areas in the OSW power generation, distribution, sale, and use processes that are intended to be encouraged through a tax credit. The following is an example of different focal points that could be addressed through a tax credit program: onshore site for construction; port for construction, launch, and repair; OSW generation facility site location; power line landing point; power sale or use location.

Some OSW power development at these sites may be covered under the current Dirigo tax credit program, other activities at such sites could be incentivized by amending the Dirigo statute. Under the current Dirigo tax credit statute, "manufacturing" is an eligible sector. 36 M.R.S. §5219-AAA(1)(G)(2). The proposed DECD and DAFS Dirigo program joint rule, currently in public comment stage of rulemaking,[15] addresses aspects of OSW power sector that may qualify under the Dirigo tax credit statute. See DECD and DAFS Joint Rule 815, DIRIGO BUSINESS INCENTIVES PROGRAM, §1:

> **Construction versus manufacturing.** In general, on-site construction and assembly of an asset is considered part of the construction industry and is not an eligible sector, while the off-site production of an asset may be considered manufacturing and is an eligible sector. For example, the on-site construction of "stick-built" residential housing is not an eligible sector, but the production of manufactured housing at a central facility is an eligible sector. Similarly, the on-site construction of a power generation structure would be classified as construction while the

[12] LMA1 is defined by the DMR by rule, 13-188 CMR ch. 25 § 07 (A)(1) (https://www.maine.gov/dmr/sites/maine.gov.dmr/files/inline-files/Chapter25_11052023.pdf), and corresponds to the federally designated LMA1, 50 CFR § 697.18. See the map at Appendix B to this report. This Report uses the term "waters" to refer to submerged land and waters. See generally, Submerged Lands Act of 1953 (43 U.S.C. §§ 1301 et seq.).

[13] Maine statute bars OSW development in Maine waters, PL 2021, c.407 (LD 1619), and BOEM has not been considering state 3-mile waters zone as part of the OSW power development process.

[14] See the new Dirigo Tax Credit enacted in the Biennial Budget, P.L. 2023, c.258 (Part J., page 292, effective 2025). The tax credit provision itself is codified at 36 MRSA § 5219-AAA. Maine Revenue Service's summary of the Dirigo tax credit program is published on the MRS website at pages 10-11 in the following link: legischange23.pdf (maine.gov).

[15] The Joint Rulemaking Fact Sheet lists the comment deadline for the proposed Rule 815 as February 23, 2024.

> off-site assembly and preparation of the structure components may be classified as manufacturing. For example, the assembly and preparation of an offshore wind turbine at an onshore facility would be classified as manufacturing while the final installation and ongoing operation activities would be classified as construction and electric power generation, respectively.

Other states have enacted tax credits to incentivize OSW power development,[16] and these would be a reference points of comparison and contrast for building a Maine tax incentive tax credit or non-tax incentive program. However, because no development incentive is needed to prevent development in LMA1 at present, this Report did not pursue this analysis further. Further, review of tax and non-tax incentives to address the other two LD 1895 objectives noted above requires additional information and review beyond the time frame of this Report.

If the Dirigo tax credit program were to be revised to included desired OSW investments, three leading areas to consider would be:

> i) which activities and focal points listed above should be the focus of the incentive?
>
> ii) is the maximum $16 million program cap per year specified in the Act the right amount for incentivizing the desired level of investment?
>
> iii) are any of the desired activities already sufficiently incentivized by federal tax benefits and funding for OSW development?[17]

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[16] See New Jersey Offshore Wind Tax Credit Program established under the New Jersey Offshore Wind Economic Development Act, P.L. 2010, c. 51, as amended, and Program Rule 53 N.J.R. 1922(a) and 50 N.J.R. 2254(a), Offshore Wind Economic Development Tax Credit Program. A summary of the tax credit is available at the following NJ Economic Development Authority link: NJ Fact Sheet on OSW Tax Credit. The New Jersey program includes both threshold capital investment and threshold new employee requirements.

See Massachusetts Offshore Wind Tax Incentive Program, administered by the Massachusetts Clean Energy Center (MassCEC) in consultation with the Massachusetts Department of Revenue. The MassCEC summarized that State's OSW tax incentives at the following webpages: Offshore Wind 2023 Tax Incentives | MassCEC. As summarized by MassCEC, the tax credits available include an Offshore Wind Jobs Credit, and OSW facility tenant credit, and a Capital Investment Tax Credit with both threshold capital investment and threshold new employee requirements, as authorized under the following statutes: MGL c. 23J, s. 8A; MGL c. 62, s. 6 (bb) & (cc); MGL c. 63, s. 38LL & s.38MM. See MassCEC Offshore Wind Tax Incentives Solicitation, OSW-2023-08 (December 21, 2023), at MassCEC_OSW Tax Incentive Solicitation_12-21-2023.pdf.

See Rhode Island New Qualified Jobs Incentive Tax Credit listed with statute and regulation links on the RI Department of Revenue web page at Credits | RI Division of Taxation. The statutory definition of "targeted industry" provides that the term shall be defined through the state's administrative and regulatory process. The Rhode Island Clean Energy Portfolio includes wind power and is described generally at RI Office of Energy Resources webpage: Wind | Rhode Island Office of Energy Resources (ri.gov). Rhode Island Commerce, listed as a quasi-public agency, lists broad categories for qualifying targeted industries, and wind energy projects as listed by that entity as qualifying for the RI Jobs Incentive Tax Credit. See Boston Energy Wind Power Services (wind turbine technicians and supporting staff) and GEV Wind Power (blade technicians, supporting staff, and management).

[17] See, e.g., the Infrastructure Investment and Jobs Act, U.S. Pub.-L. 117-58; the CHIPS and Science Act, U.S. Pub.-L. 117-167; and the Inflation Reduction Act, U.S. Pub.-L. 117-169.

E. BOEM Announcement of Gulf of Maine Draft Wind Energy Area – Avoids LMA1

During much of 2023, BOEM held public meetings in New England on the topic of its proposed sale of commercial offshore wind leases in the Gulf of Maine in 2024. On October 19, 2023, BOEM announced its preliminary decision of the Gulf of Maine Draft Wind Energy Area (Draft WEA) with BOEM Secondary Areas for Further Analysis, identifying the areas for its proposed sale of commercial offshore wind leases in the Gulf of Maine in 2024. ***The BOEM Draft WEA excludes LMA1 areas.*** However, two of the "Secondary Areas for Further Analysis" are within LMA1. BOEM announced a 30-day public comment period on whether any part of the secondary areas should be included in the Final WEA, and if so, under what recommended conditions. BOEM will review all comments prior to deciding whether or not to incorporate these areas into Final WEAs, but noted the opportunity to comment on Secondary Areas was provided in an effort to be transparent that the model indicated these areas were highly suitable, as well as to give the State of Maine and its stakeholders additional opportunity to comment. BOEM has posted a map of the Draft WEA on its Gulf of Maine webpage.[18] The state submitted comments to BOEM in response to the Draft WEA in opposition to development of the Secondary Areas within LMA1, as did Maine's congressional delegation and the Governor.

F. Timeline for Further BOEM Action

BOEM has announced plans to issue a final WEAs in early 2024 and hold a lease sale in late 2024.

IV. CONCLUSION

The OSW Power Act directing this study and Report specifies that the Fishing Community Protection Tax Incentive Program shall provide tax credit incentives of up to $16 million annually for siting commercial OSW projects with generation facilities outside LMA1, as defined by the DMR by rule. In addition, the Program must protect ratepayers, increase the State's competitiveness for securing OSW power projects, and meet certain other objectives. The first listed concern of the Program of protecting LMA1 from such development appears to have been addressed by recent federal regulatory action. A final federal determination within the current BOEM process has not yet been made as of the submission date of this Report. Accordingly, this Report finds that at present a development tax incentive program to protect LMA1 is not needed.

Further, if at some point BOEM should change its development area designations to include LMA1, this Report recommends the likely appropriate tax incentive program for incentivizing non-LMA1 development would be the State of Maine's new Dirigo capital investment and jobs training program, adapted by further rulemaking and legislation as needed, or, alternatively, a non-tax incentive program. Dirigo rulemaking addressing some aspects of OSW projects is underway.

Finally, the State's Roadmap objectives include both OSW economic development and equity concerns. Consequently, this Report recommends that the state continue to explore how State policy tools might be designed and applied most effectively to advance the state's climate, clean energy, equitable ratepayer and taxpayer impact and economic development objectives. This report recommends that DECD, GEO, and DOT work with the Office of Tax Policy to develop further recommendations related to both non-tax incentives as well as tax incentives (for example the new Dirigo capital investment and job training tax credit) as possible ways to maximize economic development activity in Maine from the

[18] See map at Appendix B.

implementation of the Act and implementation of the Roadmap's recommendations. In addition to advancing a state approach, the GEO is also collaborating with other states on supply chain, procurements, and related activity with the goal of advancing economic development opportunities while also delivering low-cost energy to the state and region. Per the Act, the state welcomes feedback from interested stakeholders on tax policy proposals as it relates achieving these goals.

In sum, the concern of the Program to protect LMA1 from commercial offshore wind development now appears to have been addressed by recent federal regulatory action of the U.S. Department of Interior's BOEM.[19] A final federal determination by BOEM will be made after the date of publishing this Report. Accordingly, this Report finds that at present a development tax incentive program to protect LMA1 is not needed. The other objectives for a Fishing Community Protection Tax Incentive Program should be reviewed separately by the GEO, the Department of Economic and Community Development (DECD), and the Office of Tax Policy for narrowing the specific activities and geographic areas where tax incentives, or non-tax incentives, should be focused.

[19] BOEM 10/19/2023 announcement.

APPROVED	CHAPTER
JULY 27, 2023	481
BY GOVERNOR	PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

S.P. 766 - L.D. 1895

An Act Regarding the Procurement of Energy from Offshore Wind Resources

Be it enacted by the People of the State of Maine as follows:

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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[redacted]

[redacted]

[redacted]

[redacted]

Sec. 16. Office of Tax Policy to develop Fishing Community Protection Tax Incentive Program. The Department of Administrative and Financial Services, Bureau of Revenue Services, Office of Tax Policy, in consultation with the Department of Marine Resources and the Governor's Energy Office, shall develop the Fishing Community Protection Tax Incentive Program, referred to in this section as "the program," to provide a tax credit to applicants for qualified investments in offshore wind power projects consistent with the purposes described in the Maine Revised Statutes, Title 35-A, sections 3407 and 3408. For purposes of this section, "qualified investments" means activities that relate to the design, permitting, construction, modification or equipment of an applicant's offshore wind power project.

1. Program requirements. The program must:

A. Provide incentives for siting offshore wind power projects with generation facilities outside of Lobster Management Area 1, as defined by the Department of Marine Resources by rule;

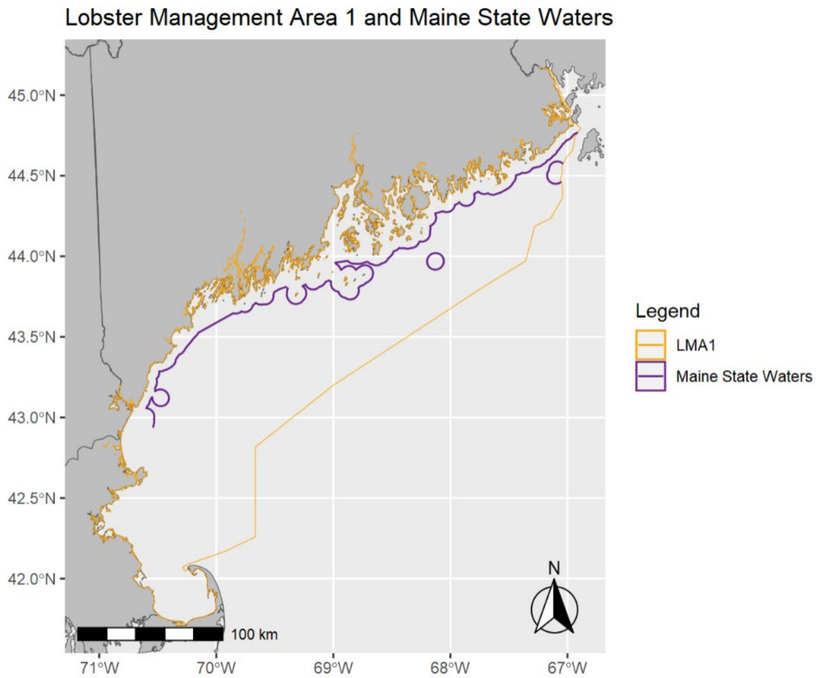
B. Protect ratepayers from any additional costs associated with the siting objectives in paragraph A;

C. Increase the State's competitiveness in securing offshore wind power projects and its associated climate and economic benefits; and

D. Include a tax credit not to exceed $16,000,000 in the aggregate annually for up to 20 years.

2. Reports. No later than December 1, 2023, the Office of Tax Policy shall publish on its publicly accessible website a draft report on the development of the program and shall accept public comments on the draft report for at least 30 days. No later than February 1, 2024, the Office of Tax Policy shall submit a final report to the Joint Standing Committee on Taxation and the Joint Standing Committee on Energy, Utilities and Technology that includes its findings and recommendations about developing the program, including suggested legislation. The Joint Standing Committee on Taxation may report out a bill to the Second Regular Session of the 131st Legislature relating to the report.

[redacted]


Lobster Management Area 1 and Maine State Waters
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44.5°N
44.0°N
43.5°N
43.0°N
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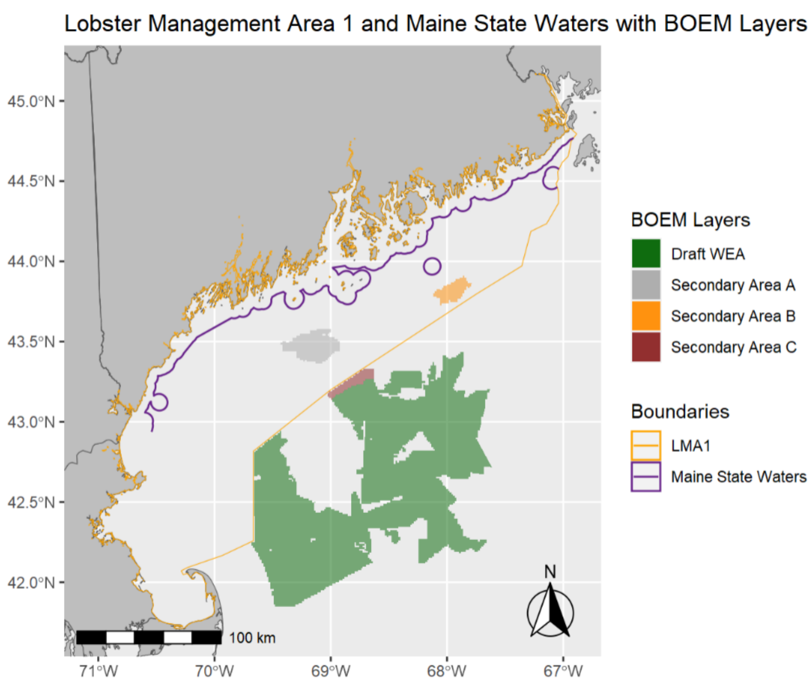
Legend
LMA1
Maine State Waters


Lobster Management Area 1 and Maine State Waters with BOEM Layers
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44.5°N
44.0°N
43.5°N
43.0°N
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42.0°N
71°W
70°W
69°W
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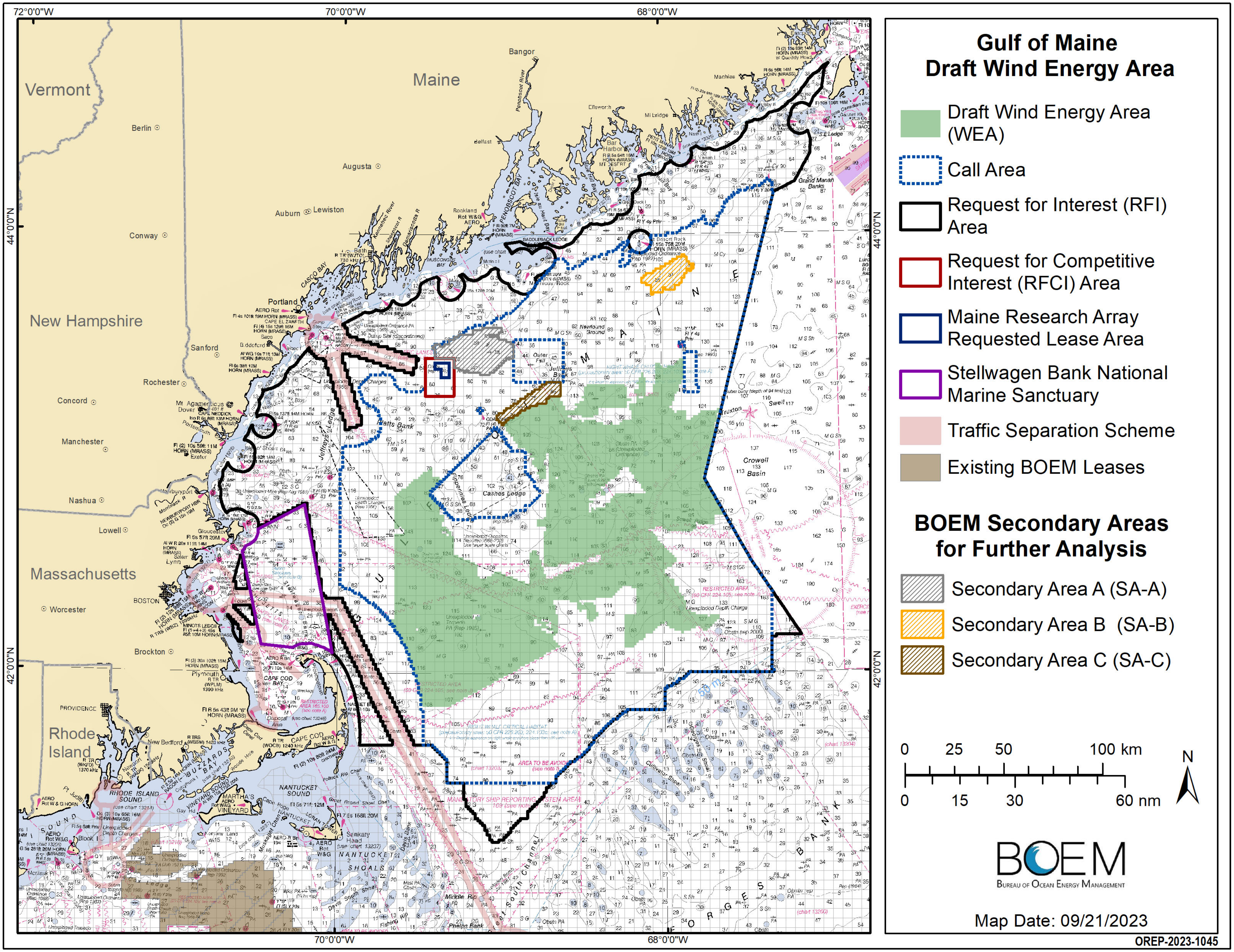
BOEM Layers
Draft WEA
Secondary Area A
Secondary Area B
Secondary Area C
Boundaries
LMA1
Maine State Waters

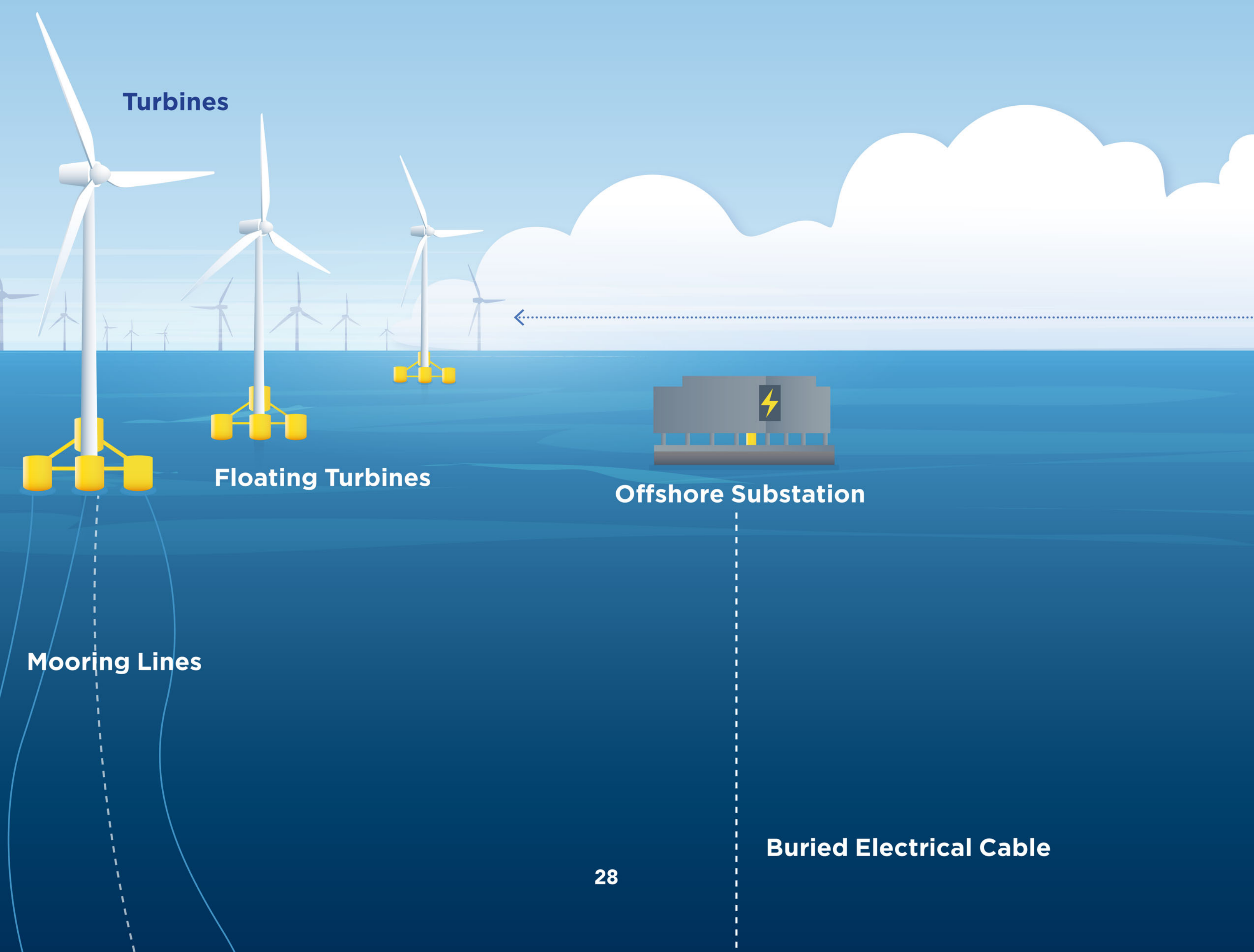


Gulf of Maine
Draft Wind Energy Area
Draft Wind Energy Area (WEA)
Call Area
Request for Interest (RFI) Area
Request for Competitive Interest (RFCI) Area
Maine Research Array Requested Lease Area
Stellwagen Bank National Marine Sanctuary
Traffic Separation Scheme
Existing BOEM Leases
BOEM Secondary Areas for Further Analysis
Secondary Area A (SA-A)
Secondary Area B (SA-B)
Secondary Area C (SA-C)
0 25 50 100 km
0 15 30 60 nm
N
BOEM
Bureau of Ocean Energy Management
Map Date: 09/21/2023
OREP-2023-1045
72°0'0"W
70°0'0"W
68°0'0"W
44°0'0"N
42°0'0"N
Vermont
Maine
New Hampshire
Massachusetts
Rhode Island
Bangor
Augusta
Portland
Boston
Providence
Berlin
Conway
Auburn
Lewiston
Sanford
Rochester
Concord
Manchester
Nashua
Lowell
Worcester
Brockton
New Bedford
Plymouth
Gloucester
Lynn
Bath
Rockland
Belfast
Ellsworth
Machias
Bar Harbor
Jeffreys Ledge
Platts Bank
Cashes Ledge
Jeffreys Bank
Crowell Basin
Grand Manan Banks
Cape Cod Bay
Nantucket Sound
Nantucket Shoals
Martha's Vineyard
Buzzards Bay
Rhode Island Sound
Georges Bank
Gulf of Maine

How Commercial Floating Wind Farms Would Work

Floating wind turbines are configured in an array to optimize the capture of wind energy and other requirements.

Energy captured by the turbines is conveyed through a transmission line to likely a floating platform substation for commercial projects.



A buried transmission cable transmits the power from the floating substation to the shore, where it is connected to the existing onshore electrical grid.

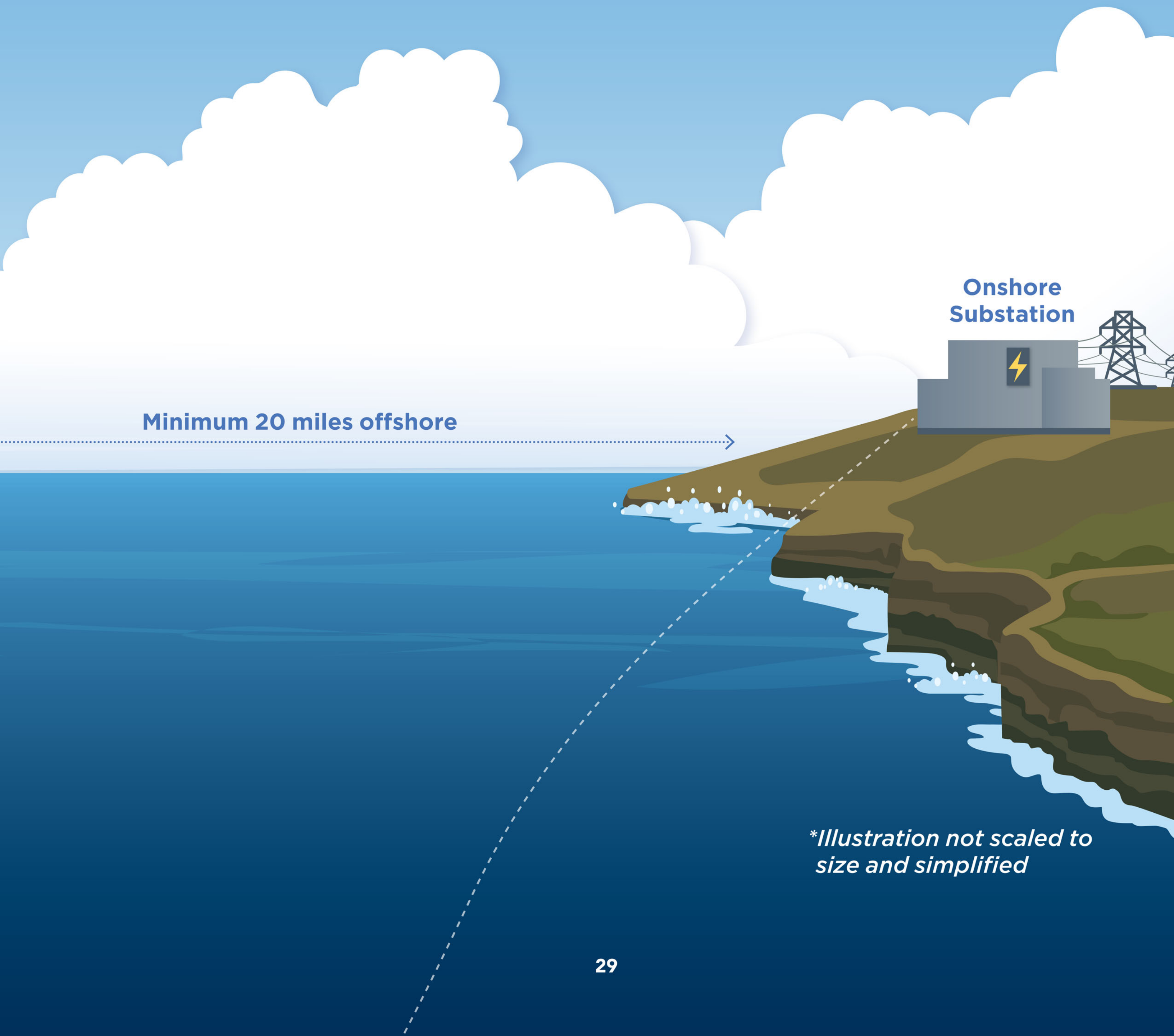


Illustration not scaled to size and simplified

The Federal Offshore Wind Leasing and Development Process

In federal waters, which start three miles offshore, the Bureau of Ocean Energy Management (BOEM) in the Department of Interior retains exclusive jurisdiction to lease energy developments, including offshore wind. This process takes several years and includes multiple decision gates and opportunities for stakeholder engagement. BOEM plans to hold a Gulf of Maine lease sale by the end of 2024 and has started the process of determining the appropriate areas.

The Gulf of Maine Intergovernmental Renewable Energy Task Force, convened by BOEM, serves as a forum to collect and share relevant information that would be useful during BOEM's decision-making process. The Task Force consists of state and local officials from Maine, New Hampshire, and Massachusetts, along with federally recognized Tribes and federal agencies.

The BOEM leasing process takes place in four main stages that stretch out over nearly a decade: planning and analysis to identify lease areas, leasing, site assessment, and construction and operations.

Commercial offshore wind leasing process announced for the Gulf of Maine:

1. Planning and Analysis to Identify Lease Areas—Started with a large Request for Interest Area (Q3 2022), and currently winnowing to a smaller Call Area (Q1 2023), then reducing further to Wind Energy Areas (Q3 2023) and final identification of lease areas.
2. Leasing—BOEM aims to complete a lease sale in the Gulf of Maine in 2024. Recent BOEM leases have included new stipulations around engagement, local workforce and supply chain development, as well as community benefits agreements.
3. Site Assessment—After leases are issued, BOEM reviews and approves the developer's environmental site assessment, including scientific studies and monitoring studies.
4. Construction and Operations—Review of the developer's Construction and Operations Plan (COP), including an Environmental Impact Statement (EIS). Construction and operations of wind projects is not anticipated to begin in the GOM before 2030. *note that BOEM has recently proposed regulatory changes to its offshore wind program, which are not reflected here.

All of these steps present opportunities for Maine stakeholders to provide input and influence outcomes.

Visit boem.gov/renewable-energy/state-activities/maine-history to find current information about Gulf of Maine federal offshore wind activities.

Appendix F – Public Comments Received on the draft report; Consideration Note

Public Comments Received on the LD 1895 Draft Report

1. January 7, 2024 letter from the Natural Resources Council of Maine (PDF of letter attached)

Public Comment Summary:

The NRCM letter indicated that the LD 1895 final Report should go beyond looking at what the draft Report terms the Study's "primary objective" of protecting LMA1 from commercial offshore wind power projects to also address what the NRCM comment calls the "co-equal goals laid out in LD 1895" of protecting ratepayers from costs associated with siting outside LMA1 and increasing the State's competitiveness in securing such projects. In addition, the NRCM letter stated that it encouraged the final Report to "fully analyze other states tax incentive approaches." Finally, the NRCM letter made specific suggestions regarding the Dirigo tax credit program if that program were modified to include offshore wind power tax incentives.

Final Report Note:

With respect to the other two goals listed in LD 1895 (the State's competitiveness in securing OSW projects; and protecting ratepayers) the Draft Report already expressly recommended that DECD, GEO, and DOT work with the Office of Tax Policy to develop further recommendations for both non-tax and tax incentives for furthering the State's OSW Roadmap objectives. The State's Roadmap objectives include both OSW economic development and equity concerns. The final Report includes revisions to make it clear that the final Report views the LD 1895 goal of protecting ratepayers as included in the Roadmap's equity concerns objectives.

With respect to the NRCM comments on tax programs of other States and possible revision of Maine's Dirigo tax credit, the Final Report conclusion remains that inclusion of a full analysis of tax incentive options and comparison with OSW power tax credit tax incentive programs in other States is both premature and beyond the time frame for completing the Report. However, the Final Report includes additional detail about the New Jersey, Massachusetts, and Rhode Island tax incentive programs. In addition, comment was added with respect to the pending Dirigo Tax Credit proposed Rule 815.

Natural Resources Council of Maine
3 Wade Street • Augusta, Maine 04330 • (207) 622-3101 • Fax: (207) 622-4343 • www.nrcm.org

January 7, 2024

Michael J. Allen
Associate Commissioner for Tax Policy
Department of Administrative and Financial Services
24 State House Station
Augusta, ME 04333-0024
VIA ELECTRONIC MAIL

Subject: Comments from the Natural Resources Council of Maine on the Draft Report on Developing a Fishing Community Protection Tax Incentive Program.

Dear Associate Commissioner Allen,

On December 1st, the Office of Tax Policy (OTP) released a Draft Report on Developing a Fishing Community Protection Tax Incentive Program, pursuant to Public Law 2023 chapter 481, passed by the legislature as LD 1895.[1] The office requested comments on the draft report by January 8th.

The Natural Resources Council of Maine (NRCM) is Maine's leading environmental advocacy organization, with more than 30,000 members and supporters. NRCM has been working for more than 60 years to protect, restore, and conserve Maine's environment. Climate change is the single largest threat to Maine's woods, waters, coasts, and communities, and protecting Maine's environment cannot meaningfully be achieved without addressing climate change. One key strategy to combat climate change is developing significant new sources of renewable energy, including floating offshore wind in the Gulf of Maine, which is why NRCM was a leader in the effort to pass LD 1895 in 2023 alongside many coalition partners.

We appreciate the opportunity to provide comment on this draft report.

I. Clarification of statutory purpose

LD 1895 directs OTP to develop a Fishing Community Protection Tax Incentive Program, with four explicit requirements. As laid out in the law, these are to:

[1] https://legislature.maine.gov/bills/getPDF.asp?paper=SP0766&item=5&snum=131

A. Provide incentives for siting offshore wind power projects with generation facilities outside of Lobster Management Area 1, as defined by the Department of Marine Resources by rule;
B. Protect ratepayers from any additional costs associated with the siting objectives in paragraph A;
C. Increase the State's competitiveness in securing offshore wind power projects and its associated climate and economic benefits; and
D. Include a tax credit not to exceed $16,000,000 in the aggregate annually for up to 20 years.

At several points in the draft report, OTP characterizes the "primary" purpose or objective of the program to be influencing the siting of projects outside of federal Lobster Management Area 1 (LMA1). While this is an explicit objective of the program, the other objectives are equally important. In particular, protecting ratepayers by offsetting the additional costs associated with longer transmission lines from project sited further offshore was intentionally paired with the siting objectives. In NRCM's testimony at the public hearing for LD 1895, we referenced the three objectives of this section of the bill all together: "This incentive is designed to encourage the siting of projects to avoid conflicts with Maine's fishing industry, to offset any additional transmission costs related to these siting decisions, and to increase Maine's competitiveness in securing offshore wind projects and their myriad benefits."[2]

During the legislative debate, the tension between siting incentives and incurring additional transmission costs was explicit, with this provision in the legislation deliberately crafted to address all three considerations: Siting, cost, and competitiveness. Further adding to this evidence, the inclusion of the limit of $16,000,000 annually over 20 years was a deliberate choice. Studies and expert consultation indicated that transmission costs were the major driver of increased costs related to siting further offshore, resulting in up to a 10% increase for project sited 100km from shore vs. 50km from shore.[3] Using benchmark capital expenditure numbers from the National Renewable Energy Lab (NREL) for the cost of a project in 2030, the total investment cost for a typical 800MW project would be $3.2 billion, thus the potential aggregate tax credit of $320 million could be sufficient to offset the additional transmission cost for a project of this size and cost.[4]

II. Lowering ratepayer costs is essential

The New England grid's reliance on natural gas for power generation has resulted in extreme price volatility over the past few years, resulting in an 83% supply rate increase in 2022, and a 49% supply rate increase in 2023. Fortunately, supply rates were adjusted lower in 2024, but remain higher than they were two years ago. This has put serious pressure on Maine rate-payers, including businesses, and low-income households. According to the Electric Ratepayer Advisory

[2] NRCM Testimony on LD 1895, page 8. https://legislature.maine.gov/bills/getTestimonyDoc.asp?id=178867
[3] https://www.sciencedirect.com/science/article/abs/pii/S1364032121011564
[4] This calculation assumes an 800 MW project at a capital cost of $4,000/kW in 2030, or a total cost of $3.2 billion. $16 million annually over 20 years totals $320 million, or 10% of the total project cost.

Council's 2023 report "approximately 115,000 low-income households in Maine need approximately $126M of financial help each year to pay their electricity bills."[5]

Offshore wind will be a critical element of achieving Maine's statutory greenhouse gas reduction and clean energy goals. However, floating offshore wind technology is relatively new compared to fixed-bottom offshore wind being developed elsewhere in the United States, and initial costs are anticipated to be slightly higher, making a focus on ratepayer impacts essential. Offshore wind, like other forms of renewable energy, is generally expected to lower price volatility and put downward pressure on wholesale market rates in New England.[6] Policies that will reduce the energy prices included in offshore wind bids, especially in the early rounds of procurement called for in LD 1895, will both benefit ratepayers and help launch this new industry more quickly.

III. Dirigo Business Incentive program modifications

The draft report offers that the newly established Dirigo Business Incentive Program could be a vehicle for an offshore wind tax credit that addresses some of the explicit goals laid out in LD 1895. The report does not analyze other states' offshore wind tax incentives because "no incentive is needed to prevent development in LMA1 at present." As noted above, there are other explicit co-equal goals laid out in LD 1895, and we encourage the final report to the Legislature to fully analyze other states tax incentive approaches, particularly as they relate to offsetting ratepayer costs from siting outside LMA1, as well as increasing Maine's competitiveness.

As Governor Mills' announcement of the Dirigo Business Incentive program noted, the purpose of these new incentives is to attract and expand businesses in promising, high-value sectors.[7] This perfectly describes the potential of the offshore wind industry for Maine. If the Dirigo tax credit program were to be modified to include offshore wind tax incentives, we suggest the following:

- Offshore Wind Energy could be added to the eligible sectors listed in subsection 1(G) of MRSA Chapter 36, section 5219-ZZ.
- If the tax credit is tightly focused on offsetting additional transmission costs associated with siting further offshore, the tax credit should be focused on eligible offshore wind projects themselves. Early drafts of LD 1895 included defining qualified applicants for an offshore wind tax credit as follows: "Qualified applicant" means an applicant that, at the time an application for a certificate of approval is submitted, satisfies all of the following criteria:
    - (1) Has developed or intends to develop an offshore wind power project for which the generation facilities are located outside of Lobster Management Area 1;

[5] https://www.pressherald.com/wp-content/uploads/sites/4/2023/12/2023-12-01_ERAC-2nd-Annual-Rpt-to-EUT-Committee.pdf
[6] https://renewne.org/wp-content/uploads/2023/02/Wind-in-Winter-RENEW-FINAL-2023-02-01.pdf; https://news.ncsu.edu/2022/04/study-finds-offshore-wind-could-drive-down-energy-costs-in-new-england/
[7] https://www.maine.gov/governor/mills/news/governor-mills-unveils-legislation-modernize-strengthen-maines-business-incentive-program-2023

    - (2) The applicant employs or demonstrates plans to employ at least 500 full-time employees based in the State either directly or through its contractors or subcontractors.
- The tax incentive should be scaled to match the anticipated additional cost incurred by the developer of an offshore wind project for siting further offshore. An estimate of these costs is included in an earlier footnote in this comment, however the specific amount could be applied for by the developer, and the approval of the amount could be subject to review by the Governor's Energy Office, the Office of Public Advocate, and the Public Utilities Commission.
- Eligible investments could also be extended to onshore construction and manufacturing, port development, maintenance and operations, transmission investments, and investments in transmission interconnection points (for example, the cost of an onshore substation upgrade).

IV. Conclusion

We appreciate the opportunity to comment on this draft report, and encourage the final report to include a full analysis of the opportunities a tax incentive program could provide to advance all of the specific directives included in LD 1895, and to advance the timely and lower-cost development of floating offshore wind in the Gulf of Maine. If successful, this policy avenue could substantially contribute to a major new source of jobs and economic development for Maine, as well as enable the state to achieve its statutory greenhouse gas reduction and renewable energy targets.

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