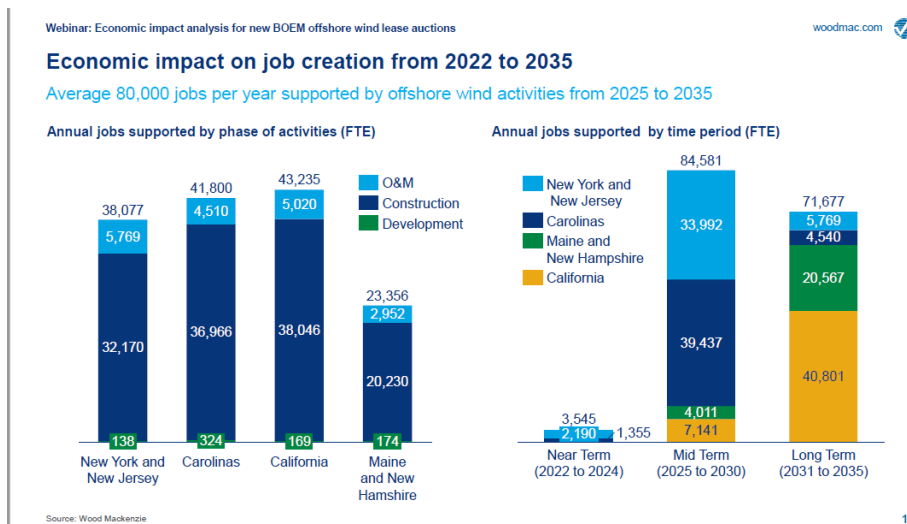


NOIA Offshore Wind Priorities List for Biden Administration November, 2020

“When I think about these windmills, I see American manufacturing, American workers racing to dominate the global market. I see the steel that will be needed for those windmill platforms, towers, and ladders that can be made in small manufacturers... I see the union train(ed) and certified men and women who will manufacture and install it all. I see the ports that will come back to life, the longshoreman, the shipbuilders, the communities they support.”

-Joseph R. Biden, July 14, 2020

Topline Economic Opportunity:



As of August 2020, there are only two offshore wind turbine arrays in U.S. waters, the first being the Block Island Wind Farm in state waters off Rhode Island and the second being the Coastal Virginia Offshore Wind Project, or CVOW, in Federal waters offshore Virginia. However, with the right regulatory environment this is positioned to change dramatically.

Earlier this year, NOIA and several other allied organizations funded the attached study (Attachment One) aimed at examining the possible net economic benefits of offshore wind. That study found that by leasing the areas the Department of Interior has discussed for future opportunities in places like offshore New York, New Jersey, the Carolinas, the Northeast and California the U.S. economy could support some 80,000 jobs *per year*, in addition to bringing in *billions* of dollars to the Treasury in the form of new lease sales. This will be high-paying (and in some areas, union) jobs at a time when **economic recovery** is a focus at all levels of government in light of the ongoing COVID-19 crisis.

Critically, this will also improve **environmental justice**; a flourishing offshore-wind space will bring some 160 billion kWh of renewable energy, enough to power 20 million US households in areas that have traditionally relied on fossil-fuel energy.



Vice President of Government Affairs Richard England

However, this opportunity will rely on a policy environment favorable to renewable energy. Given this, we have recommended policy changes that break down into two broad categories—regulatory reforms and longer-term legislative initiatives.

Regulatory Priorities:

ITEM 1: Leasing and Permitting of Offshore Renewable Energy

Background: The Department of the Interior has permitting and development authority over renewable energy projects built in federal waters. Through Section 388 of the Energy Policy Act of 2005 (EPACT 2005), Congress took action to amend the Outer Continental Shelf Lands Act to allow for offshore wind development through leases, easements, and rights-of-way. Pursuant to EPACT 2005, the OCSLA was amended to include 43 U.S.C. 1337(p) for leases, easements or rights-of-way for energy and related purposes. This section specifically authorizes the Secretary of the Interior to grant a lease, easement, or right-of-way for activities that “produce or support production, transportation, or transmission of energy from sources other than oil and gas.” In coordination with the relevant states, BOEM has identified Wind Energy Areas (WEAs) offshore the Atlantic coast, Pacific coast and Hawaii that appear most suitable for renewable energy. BOEM issues leases on a competitive basis unless it determines that no competitive interest exists. At the end of the lease term, the developer must decommission facilities in compliance with BOEM regulations.

BOEM has seen strong interest in offshore renewable energy projects on the OCS and coordinates federal-state renewable energy task forces in 16 coastal states. To date, BOEM has held eight competitive lease sales, which generated over \$473 million in winning bids for nearly two million acres in federal waters. BOEM has issued 15 commercial wind energy leases on the OCS, and is in the planning stages for additional areas. Critically, a NOIA/AWEA funded study by Wood Mackenzie consultancy shows that the Treasury could bring in well over a billion dollars, along with the enormous economic, environmental, climate and domestic energy security benefits offered by offshore wind. Some of the topline figures from this study are included here:

	<u>2025</u>	<u>2030</u>	<u>2035</u>	<u>Beyond 2035</u>
Capacity	4 GW	25 GW	37 GW	37 GW
Jobs	80,000	80,000	80,000	16,000
Investment	\$17 Billion	\$108 Billion	\$166 Billion	\$60 Billion

2020-21 winning bids for offshore wind lease blocks could total \$1.2 billion in revenues for the U.S. Treasury. Lease sales in 2022, which could include California and Maine, would increase winning bids to \$1.7 billion.

However, these benefits only occur if the Department of Interior leases additional acreage, and economic and environmental benefits only occur if DOI moves forward on permitting projects. Critically, a leading major project in the offshore, an 800 MW site known as Vineyard Wind, was significantly delayed in August 2019 by the decision to conduct a broader Supplemental Environmental Impact Statement on the cumulative impacts of offshore wind projects. This process was *further* delayed in February of 2020 with the announcement that the review is continuing that commercial operation is unlikely in 2022. While the Department has moved forward in this process, delays have been substantial and to the detriment of domestic energy.



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Further, as it stands DOI has not yet issued Notices of Intent (NOIs) for the environmental reviews needed for future offshore wind activities in areas like the New York Bight and beyond. These regulatory steps are critical for projects to move forward.

Recommended Administration Action: The Department of Interior’s Bureau of Ocean Energy Management should:

1. Move to finalize the Supplemental Environmental Impact Statement for the Vineyard Wind project and issue a Record of Decision;
2. Issue Notices of Intent for projects with completed Construction and Operations Plans (COPs);
3. Issue Notices of Intent for additional offshore wind leasing in areas such as the New York Bight and other federal waters;
4. Ensure BOEM’s Office of Renewables is adequately staffed and resources to process applications in a timely way; and
5. Establish a long-term offshore wind lease schedule that is regular and predictable.

ITEM 2: Appoint Renewable Energy Permitting Czar Inside Executive Office of the President

Background: Most large infrastructure projects requiring federal approval—including renewable energy projects on federal lands and waters or the transmission lines needed to bring their energy to load-centers—are subject to the National Environmental Policy Act or NEPA (PL 91-190). NEPA is a bedrock of environmental protection and environmental justice in this country and must be preserved. However, it is also true that reviews for key projects that are otherwise in the national interest remain sluggish. In fact, between 2010 and 2017, the average length of time from a Notice of Intent to a Record of Decision (akin to “start to finish”) had swelled to the point that key agencies for the offshore such as the Department of Interior reached some *five years*.¹

The 2015 Fixing America’s Surface Transportation (FAST) Act was written as a step in the direction of improving major permitting actions. This includes with the creation of the Federal Permitting Improvement Steering Council (FPISC) to standardize interagency coordination. The Trump Administration further sought to reduce these delays through both reforms to NEPA and also Executive Orders such as EO 13807. However, the changes to NEPA have proven controversial and may be a focus of alteration or reversal under the Biden Administration. Whatever tack is taken on Trump Administration-era changes, we do believe the basic concept of streamlining the reviews for projects are valid and can be accomplished in a way protective of the environment and communities.

Recommended Administration Action: The Executive Office of the President should:

1. Assign a “Renewable Energy Permitting Czar” or other official within the E.O.P. with a mandate to effectively implement the 2015 FAST Act and the FAST-41 permitting

¹ <https://www.whitehouse.gov/wp-content/uploads/2020/01/20200207-NPRM-Overview-PowerPoint.pdf>



program and the FPISC by regularly convening senior officials at the Departments of Interior, Commerce, Defense, and other relevant permitting officials to centralize decision-making on renewable energy permitting;

- Empower this official to designate a lead federal agency for complex renewable energy projects and mediate disagreements where necessary;
 - Empower this official to set agency-specific goals for timelines for permitting reviews; and
 - Require this individual and their staff to create a “best practices” list to be shared among permitting and review agencies regarding renewable energy permitting.
2. Prioritize staffing in the formulation of budgetary requests for agencies tasked with reviewing or issuing permits for renewable energy projects such as the Bureau of Ocean Energy Management.

ITEM 3: Offshore Wind Investment Tax Credit Implementation Regulations

Background: The Investment Tax Credit (ITC) is a federal income tax credit for capital investments in commercial-scale renewable energy projects. The credit is not based on the amount of energy produced (like the perhaps better-known the Production Tax Credit common for onshore wind projects), but rather on the upfront investment made to *build* a project. The credit has generally been worth between 12%-30% of that value. For offshore wind projects, the credit is particularly important given the higher costs and added hurdles of building offshore wind.²

While several offshore wind projects qualified for the Investment Tax Credit ahead of its expiration this year, this is not the sole hurdle they must meet. Projects that qualify for the ITC by beginning construction while the credit is still available must *remain* eligible by one of two paths:

1. Completing construction within four years under the ITC’s “safe harbor” provision; or
2. Demonstrate compliance with the ITC’s “continuity requirement” showing continuous construction was undertaken from the point of beginning construction up until the project is completed.

This sounds reasonable. However, the fact remains that the environment for offshore wind is particularly onerous right now. Without reforms allowing for a move to “continuous effort”, the many steps needed to bring offshore wind to fruition—such as multi-year permitting and survey work—leave projects at risk of falling out of compliance. They also, of course, are facing the delays companies across the nation are facing related to the COVID-19 crisis that will threaten targeted completion dates. Crews have been disrupted, supply chains have been stressed, and in one case we are aware of a planned staging ground for offshore wind work was turned by government officials into an emergency morgue housing victims of the COVID pandemic in the greater New York City Area.

² <https://www.bloomberg.com/news/articles/2019-10-01/why-it-s-so-hard-to-build-offshore-wind-farms-in-the-us>



Vice President of Government Affairs Richard England

Already, the Internal Revenue Service released IRS Notice 2020-41 to grant a one-year extension of the safe harbor to certain projects that began work years ago and are coming up upon their expiration. However, this generally only applied to onshore wind projects begun in 2016 who are approaching completion—not those more recent projects facing catastrophic delays as they *begin* construction.

Recommended Administration Action: The Department of the Treasury, via the Internal Revenue Service, should:

1. Expand Notice 2020-41 to grant a 3 year extension for safe harbor to *all* vintages of wind projects qualifying for the Investment Tax Credit, moving the deadline from 4 years to 7; and
2. Alter the “continuous construction” clause for compliance to a “continuous effort” clause, to allow continued forward progress even in the face of delays outside the control of project developers.

ITEM 4: Reverse or Alter Trump Administration Withdrawal of Offshore Wind Leasing Acreage

Background: Section 12(a) of the Outer Continental Shelf Lands Act (OCSLA), (also known as 43 U.S.C. 1341(a)), states that “The President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf.” Past presidents have periodically used this provision to remove offshore areas from leasing, for example when President Obama removed areas in Alaska’s Beaufort and Chukchi Seas in an effort to block oil and gas development in the region. President Trump attempted to reverse these President Obama Withdrawals related to the Beaufort and Chukchi Seas, but the U.S. District Court for the District of Alaska struck down that Trump decision, ruling that Congress expressly granted the President the authority to withdraw lands but did NOT grant the President authority to revoke such withdrawals. In a very literal reading of the statute, the Court has thus determined the OCSLA provides a one-way ratchet. This decision is currently on appeal to the Ninth Circuit.

At a rally on September 8th, 2020, President Trump took action pursuant to the Outer Continental Shelf Lands Act to withdraw the Eastern Gulf of Mexico Planning Area, the Straits of Florida Planning Area, and the South Atlantic Planning Area from leasing from 2022-2032. On September 25th, President Trump took similar action at a rally in Virginia by withdrawing the areas offshore North Carolina (and possibly Virginia as well, though this is not yet formalized) from leasing from 2022-2032. The Trump Administration has stated that the leasing withdrawals apply to both offshore oil and gas and offshore wind. Both of the Presidential orders do *not* apply to leasing for environmental purposes, including shore protection, beach nourishment and restoration, wetlands restoration, and habitat protection. Both documents also state that rights under existing leases are not affected.

Recommended Administration Action: The Biden Administration should immediately:



Vice President of Government Affairs Richard England

1. Department of Interior: Examine legal options to clarify that President Trump's withdrawals under 12(a) do *not* apply to offshore wind;
2. Department of Interior: Examine existing authority to issue non-leased permits for offshore wind development in federal waters off North Carolina, South Carolina, Georgia and Florida, such as via rights-of-way or easements as permitted by 43 U.S.C. 1337(p); and/or:
3. Support legislative language to reverse the Trump Administration orders' applicability to offshore wind (see below).

ITEM 5: Improve Coordination on the Pacific Coast Between Industry and The Department of Defense

Background: The West Coast remains a significant target for the development of offshore wind, particularly (given deeper water in the Pacific adjacent to shore) of advanced floating turbine technology instead of turbines on “monopiles” fixed to the seabed. While the potential for the West Coast is large—as large as 9GW by 2035—there remains controversy given that many areas under consideration are also important for the Department of Defense and military training and security operations. This is most notable for areas off of the central and northern coast, such as Morrow Bay Call area and the Diablo Canyon Call area.

At the same time, there is an existing process to navigate similar difficulties onshore housed in the Office of the Assistant Secretary of Defense for Sustainment's Military Aviation and Installation Assurance Siting Clearinghouse as laid out in CFR Part 211 of Title 32. This is an orderly process—usually called the Clearinghouse—for ensuring that wind turbines near military facilities do not impact radar capabilities or otherwise create “clutter” for military operations and surveillance.

Despite this, to date there has been no final agreement on how to proceed with protecting national security while still allowing critically-important renewable energy projects to proceed.

Recommended Administration Action: President Biden should:

1. Create a Renewable Energy Coordinating Task Force between the Department of Defense, Department of Interior, and State of California to identify sufficient sea space for offshore wind development that can meet the state's renewable energy goals while adequately mitigating impacts on military operations; and
2. Reinforce the need for offshore wind leasing and permitting to have a pathway inside the existing Office of the Assistant Secretary of Defense for Sustainment's Military Aviation and Installation Assurance Siting Clearinghouse in the longer-term as additional projects are considered in the years ahead.

Legislative Priorities:

ITEM 1: Extension of the Energy Tax Support for Offshore Wind



Vice President of Government Affairs Richard England

Background: The Investment Tax Credit (ITC) is a federal income tax credit for capital investments in commercial-scale renewable energy projects. The credit is not based on the amount of energy produced (like perhaps better-known the Production Tax Credit common for onshore wind projects), but rather on the upfront investment made to *build* a project. The credit has generally been worth between 12%-30% of that value. Onshore projects have generally qualified for the Production Tax Credit (PTC), which is a credit on energy *produced* from renewable energy projects, rather than the construction of a project itself. Some in the industry may support a renewed option for a PTC for offshore wind. For offshore wind projects, any form of tax credit is particularly important given the higher costs and added hurdles of building offshore wind.

Recommended Administration Action: Support an extension of the Investment Tax Credit—or a renewed Production Tax Credit—for offshore wind and other emerging renewable energy sectors.

1. NOIA recommends an extension of the qualifying period until December 31, 2024.

ITEM 2: Renewable Energy Job Training

Background: Offshore wind will lead to tens of thousands of renewable energy jobs across the country if projects are properly permitted. In fact, Wood Mackenzie estimates that in the back half of this decade we could see over 80,000 jobs supported. However, it is also true that these openings will need a well-trained workforce, and we already know that in recent energy booms such as fracking in places like North Dakota work has been hampered by a shortage of labor.³

To prevent this from occurring in the renewable energy space, we have seen bipartisan proposals such as the Offshore Wind Jobs and Opportunity Act from Senators Carper, Markey, Collins and Whitehouse in the Senate. This bill would support funds to finance educational activities, tuition assistance, and other workforce needs.

Recommended Administration Action: Support the Offshore Wind Jobs and Opportunities Act's passage while using existing funding to accomplish similar tasks.

ITEM 3: Offshore Wind for U.S. Territories

Background: Due to current law, the U.S. territories are unable to reap the many benefits of their own resources. There is a need for federal authority to be able to oversee offshore energy development, including offshore wind energy, in the Exclusive Economic Zone offshore from U.S. territories.

Clarifying the Secretary of the Interior's authority and responsibility under OCSLA will provide the support and opportunity for a comprehensive process for planning and developing offshore

³ <https://www.marketplace.org/2017/07/17/crude-oil-drivers-wanted-worker-shortages-hold-back-fracking-crews/>



Vice President of Government Affairs Richard England

energy in coordination with the territories. There has been recent bipartisan and bicameral support for expanding OCSLA to allow for offshore wind lease sales.

Recommended Administration Action: Support the legislation that would amend OCSLA to include offshore wind lease opportunities for U.S. territories.

ITEM X: Support Added Appropriations for Permitting Staff

Background: Open positions and an ability to hire additional staff are a significant hindrance for permitting of significant infrastructure. Even the Trump Administration requested additional funds for BOEM's Renewable Energy Program in FY 2021—suggesting a funding increase up to \$26.5 million. Likewise, the National Marine Fisheries Service (NMFS) within the National Oceanographic and Atmospheric Administration (NOAA) is tasked with considering applications related to offshore wind and has faced an increasing workload which will likely only grow.

Recommended Administration Action: The Administration should put forward an FY 2022 budget request that exceeds the FY2021 requests for NMFS and BOEM's REP, with the exact request level based on the most aggressive anticipated needs from career staff within these agencies.