

OFFSHORE WIND ENERGY

**Course No. ENG5402
Vermont Law and Graduate School
Summer Session 2024, Term 1**

Oakes Hall, 208

Friday, June 7:
1:00-5:00 PM (Class 1)

Saturday, June 8:
9:30 AM - 12:00 AM (Class 2)
1:30 PM - 4:00 PM (Class 3)

Sunday, June 9:
9:00 AM - 12:00 PM (Class 4)

Course Information

1. **Overview:** Offshore wind development in the US is growing at a rapid pace as companies spend hundreds of millions of dollars to obtain offshore leases from the federal government and the right to invest billions more to develop, construct and operate massive offshore wind farms. This course will examine the federal statutory and regulatory frameworks that govern offshore renewable energy leases and the federal permitting requirements associated with project development and construction and the ways in which they have been challenged in the courts. Students completing this course will obtain a firm understanding of the overall permitting framework for offshore wind projects and the challenges associated with their development, construction and finance.

2. **Materials:** Materials are available on the course website on Canvas. Email Courtney Collins (ccollins@vermontlaw.edu) if you need assistance accessing this site.

3. **Examination:** Open book, take home. Further detailed instructions will be provided at the end of the course.

4. **Instructor Contact Information:**
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 - Office Phone: (703) 470-6250
 - E-mail: jbelcher@vermontlaw.edu
 - LinkedIn: <https://www.linkedin.com/in/jlbelcher>

5. **Requirements:**
 - **Class Attendance:** Vermont Law and Graduate School (VLGS) requires that you attend class. Roll will be taken at the beginning of each class. Anyone who is more than five minutes late for class without an acceptable excuse will be marked absent for the class.
 - **Preparation:** This is a reading-intensive course covering multiple and complex areas of

law. So that we can have a meaningful discussion of the issues, you are expected to come to class fully prepared by reading all the required materials in advance. Extensive materials have been assigned, but note the required reading often refers only to specific sections and subparts of the provided statutes and regulations. You will be held responsible for the contents of all required reading materials on the final exam. While you will not be responsible for the “recommended” reading, these readings typically provide useful context and summaries of the primary law. Note that prior classes in administrative law will be extremely helpful.

- Final Exam: There will be a written final examination. This examination will be take home, open book. Performance on the exam will be a major determinant of your grade in the course.
- Conduct/Honor Code: You are expected to conduct yourself in a professional manner throughout all aspects of the course. You are expected to abide fully by the VLGS Honor Code.
- Class Participation: A significant portion of your grade will be based on class participation. Participation will be judged by the quantity and the quality of your participation. Please plan to be an active but respectful member of the class!

6. Grading: Your grade in this course will be based on the following:

- Class Participation: 40 percent
- Final Examination: 60 percent

7. Further Information/Updates: This course syllabus provides tentative assignments for this course and may be amended depending on how the class develops. Additions or modifications to assignments will be announced in class. This is designed to be a formative, collaborative class. In other words, unless you take responsibility for your own learning, you will not get much out of this course.

Syllabus

CLASS 1

Friday, June 7: 1:00 PM to 5:00 PM

US OFFSHORE WIND: INTRODUCTION TO THE REGULATORY FRAMEWORK

We will use the first part of Class 1 to get acquainted personally and professionally and to discuss the learning objectives for the course. Following introductions, we will discuss at a high level the various laws and policies applicable to offshore wind in the US, including economic drivers and the framework of federal and state laws governing permitting, construction and operations. We will then start to examine the primary federal laws governing the process for leasing portions of the Outer Continental Shelf for offshore wind projects, beginning with the key authorizing statutes and implementing renewable energy program regulations promulgated by the Bureau of Ocean Energy Management.

Reading:

- Required:
 - *Citizen's Guide to the Bureau of Ocean Energy Management's Renewable Energy Authorization Process* (BOEM, Dec. 2016) ([link](#))
 - Outer Continental Shelf Lands Act (OCSLA), 43 USC Sections [1332](#) & [1337\(p\)](#)
 - BOEM, Environment – Regulatory Framework and Guidelines ([link](#))
 - Vineyard Wind Permitting Dashboard ([link](#))
 - DOI, "Secretary's Duty to Prevent Interference with Reasonable Uses of the Exclusive Economic Zone, the High Seas, and the Territorial Seas in Accordance with Outer Continental Shelf Lands Act Subsection 8(p), *Alternate Energy-related Uses on the Outer Continental Shelf*" (Dec. 2020) ([link](#))
 - DOI, "Secretary's Duties under Subsection 8(p)(4) of the Outer Continental Shelf Lands Act When Authorizing Activities on the Outer Continental Shelf" (April 2021) ([link](#))
 - BOEM Renewable Energy Program Regulations (30 CFR Part 585), Subparts [A](#), [B](#), [C](#), & [E](#) (high-level review for familiarity)

- Recommended:
 - DOE, EERE, Offshore Wind ([link](#))
 - NREL Offshore Wind Video Series ([link](#))
 - US Offshore Wind Power Economic Impact Assessment (AWEA, Mar. 2020)([link](#))
 - NYSERDA, Offshore Wind 101 ([link](#))
 - CNN, The Future of Offshore Wind Energy in the US ([link](#))
 - Windpower Engineering & Development, *Comparing offshore wind turbine foundations* ([link](#))
 - DOE, EERE, Top 10 Things You Didn't Know About Offshore Wind Energy ([link](#))
 - DOE, EERE – How do Wind Turbines Work? ([link](#))
 - U. Delaware & DOE, *Video: Offshore Wind - Industrializing Development to Reduce Cost* ([link](#))

CLASS 2

Saturday, June 8: 9:30 AM to 12:00 PM

THE PRIMARY FEDERAL PERMITS GOVERNING OFFSHORE WIND

Class 2 will continue our dive into the primary federal laws and implementing regulations governing offshore wind projects. We will then focus on key federal permits outside of BOEM's purview that proceed in parallel with the consideration and approval of an offshore wind project's Construction and Operations Plan.

Reading:

- Required:
 - BOEM Renewable Energy Program Regulations ([30 CFR Part 585](#)), Sections 585.103, 585.200-.206, .235-.239; 585.300-.303 & 585.600-.635 (more detailed review; don't focus too much on the specific contents required in SAPs/COPs)
 - Vineyard Wind 1, Lease OCS-A 0501 (pp. 1-7 & Addendum C (Sections 2 and 4)) ([link](#))
 - Site Assessment Plan, Vineyard Wind (pp. 3-20 [skim]; 62-69 [focus]) ([link](#))
 - Construction and Operations Plan, Vineyard Wind (Vol. 1, Sec 1.6 & Table) ([link](#))
 - Construction and Operations Plan, Vineyard Wind (Vol. 1, Sec. 5) ([link](#))
 - Migratory Bird Treaty Act (MBTA) (16 USC Subch. II), Sections [703\(a\)](#)
 - Regulations Governing Take of Migratory Birds; Revocation of Provisions, 86 Fed. Reg. 54642-54646 (Oct. 4, 2021) ([link](#))
 - Endangered Species Act of 1973 (ESA), 16 USC Sections [1536\(a\)-\(d\)](#) and [1539\(a\)](#) & BOEM overview ([link](#))
 - NOAA Fisheries, Section 7: Types of Endangered Species Act Consultations in the Greater Atlantic Region ([link](#))
 - ESA Interagency Cooperation (50 CFR Part 402), Subparts A and B ([link](#))
- Recommended:
 - BOEM, Governing Statutes ([link](#))
 - BOEM, Lease and Grant Information ([link](#))
 - *OCS Renewable Energy Leases, Map Book* (BOEM Mar. 2021) ([link](#))
 - DOI, Final Regulation, Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf, 74 Fed. Reg. 19,638 (Apr. 29, 2009) (pp. 19,648-19,651 – table of agencies/authorities) ([link](#))
 - The Federal Permitting Improvement Steering Council & FAST-41 ([link](#))
 - FWS, Migratory Bird Permits ([link](#))
 - Regulations Governing Take of Migratory Birds, 86 Fed. Reg. 1134 (Jan. 7, 2021)(pp. 1-9) ([link](#))
 - The National Law Review, *USFWS Issues Rule Excluding Incidental Take from the Migratory Bird Treaty Act: Implications for the Wind Energy Industry* (Jan. 12, 2021) ([link](#))
 - Bloomberg Law, *Migratory Bird Rule Likely Shelved Until After November Election* (Jan. 23, 2024) ([link](#))

CLASS 3

Saturday, June 8: 1:30 PM to 4:00 PM

FEDERAL PERMITS AND APPROVALS

Class 3 will continue our examination of the key federal permits required for offshore wind development.

Reading:

- Required:
 - Marine Mammal Protection Act of 1972 (MMPA), 16 USC Sections [1362](#), [1371](#)(a)(5)(A)(i) and (D)
 - Regulations Governing Marine Mammal Takes (50 CFR Part 216), Subpart I ([link](#))
 - Rivers and Harbors Act (RHA), 33 USC Section 403 ([link](#))
 - Clean Water Act (CWA), 33 USC Section 1344(a)-(e), (t) ([link](#))
 - USACE Permit Regulations, 33 CFR Parts 322, 323, Sections 325.1 and .4, and Appendix B ([link](#))
 - Coastal Zone Management Act (CZMA), 16 USC Sections [1456](#)(c) and [1465](#)
 - CZMA Federal Consistency Regulations (15 CFR Part 930), Subparts A, B and D ([link](#))
- Recommended:
 - NOAA Fisheries, Offshore Wind Energy ([link](#))
 - NOAA Fisheries, Incidental Take Authorizations Under the Marine Mammal Protection Act ([link](#))
 - WGBH, *The complicated truths about offshore wind and right whales* (Apr. 1, 2024) ([link](#))
 - BOEM, Coastal Zone Management Act ([link](#))
 - NOAA, CZMA: Federal Consistency Overview (Feb. 24, 2020) ([link](#))
 - CRS, Coastal Zone Management Act (CZMA): Overview and Issues for Congress (Jan. 2019) ([link](#))

CLASS 4

Sunday, June 9: 9:00 AM to 12:00 PM

ENVIRONMENTAL REVIEW & JUDICIAL CHALLENGES

Class 4 will first discuss the environmental review process under the National Environmental Policy Act, which is common to all federal permits required to authorize the development, construction and operation of offshore wind projects.

After environmental reviews have been completed and permits have been issued by the various federal agencies, projects will face scrutiny under the inevitable judicial challenges. We will examine these challenges and how they can be anticipated and managed.

Reading:

- Required:
 - CRS, The Legal Framework of the National Environmental Policy Act ([link](#))
 - National Environmental Policy Act (NEPA), 42 USC 4321 et seq. ([link](#))
 - NEPA Implementing Regulations (40 CFR Ch. V, Subch. A) Parts 1500-1502 ([link](#))
 - *Robertson v. Methow Valley Citizens Council*, 490 US 332 (1989) ([link](#)) [focus on discussion in Section II]
 - Vineyard Wind ROD (Section 1, pp. 3-10) ([link](#))
 - First Amended Complaint for Declaratory and Injunctive Relief, Nantucket Residents Against Turbines (D. Mass. Feb. 10, 2022) [focus on Sections I, II, IV, V.G and VI] ([link](#))
 - *Nantucket Residents Against Turbines v. BOEM* (1st Cir. Apr. 24, 2024) ([link](#))
- Recommended:
 - CEQ, A Citizen's Guide to NEPA ([link](#))
 - National Historic Preservation Act (NHPA), 54 USC 306108 (Section 106) ([link](#))
 - NHPA Section 106 Regulations (36 CFR Part 800) ([link](#))
 - National Environmental Policy Act (NEPA) Substitution for Section 106 Consulting Party Guide (Aug. 4, 2021) ([link](#))
 - CRS, An Introduction to Judicial Review of Federal Agency Action (Dec. 7, 2016) ([link](#))
 - Harvard Gazette, 'Chevron deference' faces existential test (Jan. 16, 2024) ([link](#))
 - E&E, Why Vineyard Wind is a legal test case for US clean energy (Jan. 19, 2024) ([link](#))
 - Memorandum & Order, *Nantucket Residents Against Turbines v. BOEM* (D. Mass May 17, 2023) (focus on Section VI, skim the rest) ([link](#))