

OFFSHORE WIND ENERGY

**Course No. ENG5402
Vermont Law and Graduate School
Summer Session 2025, Term 2**

Oakes Hall, 211

Friday, June 20:
1:00-5:00 PM (Class 1)

Saturday, June 21:
9:00 AM - 11:30 AM (Class 2)
1:30 PM - 4:00 PM (Class 3)

Sunday, June 22:
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: The syllabus is available on the course website on Canvas. All readings are available on the Internet at the hyperlinks provided. Email Courtney Collins (ccollins@vermontlaw.edu) if you need assistance accessing Canvas.

3. Examination: Open book, take home. Due date one week following the last day of class. Further detailed instructions will be provided at the end of the course.

4. Instructor Contact Information:

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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 course is reading-intensive, 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 environmental and 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 20: 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:
 - *Offshore Wind Energy Development: Legal Framework* (CRS, 2023) ([link](#))
 - *Citizen's Guide to the Bureau of Ocean Energy Management's Renewable Energy Authorization Process* (BOEM, Dec. 2016) ([link](#))
 - *Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects* (Executive Order, 2025) ([link](#))
 - Vineyard Wind Permitting Dashboard ([link](#))
 - Outer Continental Shelf Lands Act (OCSLA), 43 USC Sections [1332](#) & [1337\(p\)](#)
 - DOI Opinion, "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](#), [C](#), [D](#), [E](#) & [G](#) [*skim for familiarity with subject matter and content, we will do a deeper dive in Class 2*]
- Recommended:
 - BOEM, Environment – Regulatory Framework and Guidelines ([link](#))
 - *Top 10 Things You Didn't Know About Offshore Wind Energy* (DOE, EERE) ([link](#))
 - DOE, EERE, Offshore Wind Energy ([link](#))
 - NYSERDA, Offshore Wind 101 ([link](#))
 - NREL Offshore Wind Market Report (2024)([link](#))
 - *The Future of Offshore Wind Energy in the US* (CNN)([link](#))
 - Windpower Engineering & Development, *Comparing offshore wind turbine foundations* ([link](#))
 - DOE, Pathways to Commercial Liftoff: Offshore Wind (2024)([link](#))
 - NREL Offshore Wind Video Series ([link](#))

CLASS 2

Saturday, June 21: 9:00 AM to 11:30 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 585.100-.104, .113
 - Sections 585.200-.206, .210-.216, .235-.239
 - Sections 585.300-.303
 - Sections 585.600-.607, .611-.615, .620-.635
 - Lease OCS-A 0501 (Vineyard Wind 1) (pp. 1-7 & Addendum C, Section 4))([link](#))
 - Site Assessment Plan, Vineyard Wind (pp.3-20 [*skim*]; pp. 62-69 [*focus*]) ([link](#))
 - Construction and Operations Plan, Vineyard Wind (Vol. 1, Sec. 5) ([link](#))
 - Migratory Bird Treaty Act (MBTA) (16 USC Subch. II), Sections [703\(a\)](#)
 - Final Rule, Regulations Governing Take of Migratory Birds; Revocation of Provisions, 86 Fed. Reg. 54642-54646 [*stop at "Public Comments"*] (Oct. 4, 2021) ([link](#))
 - DOI Opinion, "Withdrawal of Solicitor Opinion M-37065" (April 2025)([link](#))
 - Endangered Species Act of 1973 (ESA), 16 USC Sections [1538\(a\)](#), [1536\(a\)](#)-(d) and [1539\(a\)](#) & BOEM overview ([link](#))
 - Proposed Rule, Rescinding the Definition of "Harm" Under the Endangered Species Act, 90 Fed. Reg. 16102 (Apr. 17, 2025) ([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](#))
 - 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 (follow links for the eagle incidental take permits) ([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](#))

CLASS 3

Saturday, June 21: 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](#), [1372](#), [1371](#)(a)(5)(A)(i) and (a)(5)(D)
 - Regulations Governing Marine Mammal Takes (50 CFR Part 216), Subpart I ([link](#))
 - NOAA Fisheries, Incidental Take Authorizations Under the Marine Mammal Protection Act ([link](#))
 - Rivers and Harbors Act (RHA), 33 USC Section 403 ([link](#))
 - Clean Water Act (CWA), 33 USC Section 1344(a)-(e), (t) ([link](#))
 - Vineyard Wind ROD [*p. 30 only*] ([link](#))
 - BOEM, Coastal Zone Management Act ([link](#))
 - Coastal Zone Management Act (CZMA), 16 USC Sections [1453](#), [1456](#)(c)(1) and (c)(3)(A) and [1465](#)
 - CZMA Federal Consistency Regulations (15 CFR Part 930), Subparts A, B and D [*focus on D*] ([link](#))
- Recommended:
 - NOAA Fisheries, Offshore Wind Energy ([link](#))
 - WGBH, *The complicated truths about offshore wind and right whales* (Apr. 1, 2024) ([link](#))
 - USACE Permit Regulations, 33 CFR Sections 322.1-322.3, 323.1-323.3 ([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 22: 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 (Sept. 2021) ([link](#))
 - National Environmental Policy Act (NEPA), 42 USC 4321 et seq. [*only Subchapter I*] ([link](#))
 - DOI's NEPA Implementing Regulations (43 CFR Part 46)([link](#)) [*skim for familiarity*]
 - CEQ, Removal of National Environmental Policy Act Implementing Regulations (Interim Final Rule), 90 Fed. Reg. 10610 (Feb. 25, 2025)([link](#)) [*Sections I and II only*]
 - H&K, DOI Implements Unprecedented 14-Day NEPA Review Process Under National Energy Emergency EO (Apr. 24, 2025)([link](#))
 - National Historic Preservation Act (NHPA), 54 USC 306108 (Section 106) ([link](#))
 - National Environmental Policy Act (NEPA) Substitution for Section 106 Consulting Party Guide (Aug. 4, 2021) ([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, 7-10) ([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](#))
 - NHPA Section 106 Regulations (36 CFR Part 800) ([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](#))