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The U.S. Jones Act and Its Implications for Canadian Companies in the Offshore Wind Supply Chain

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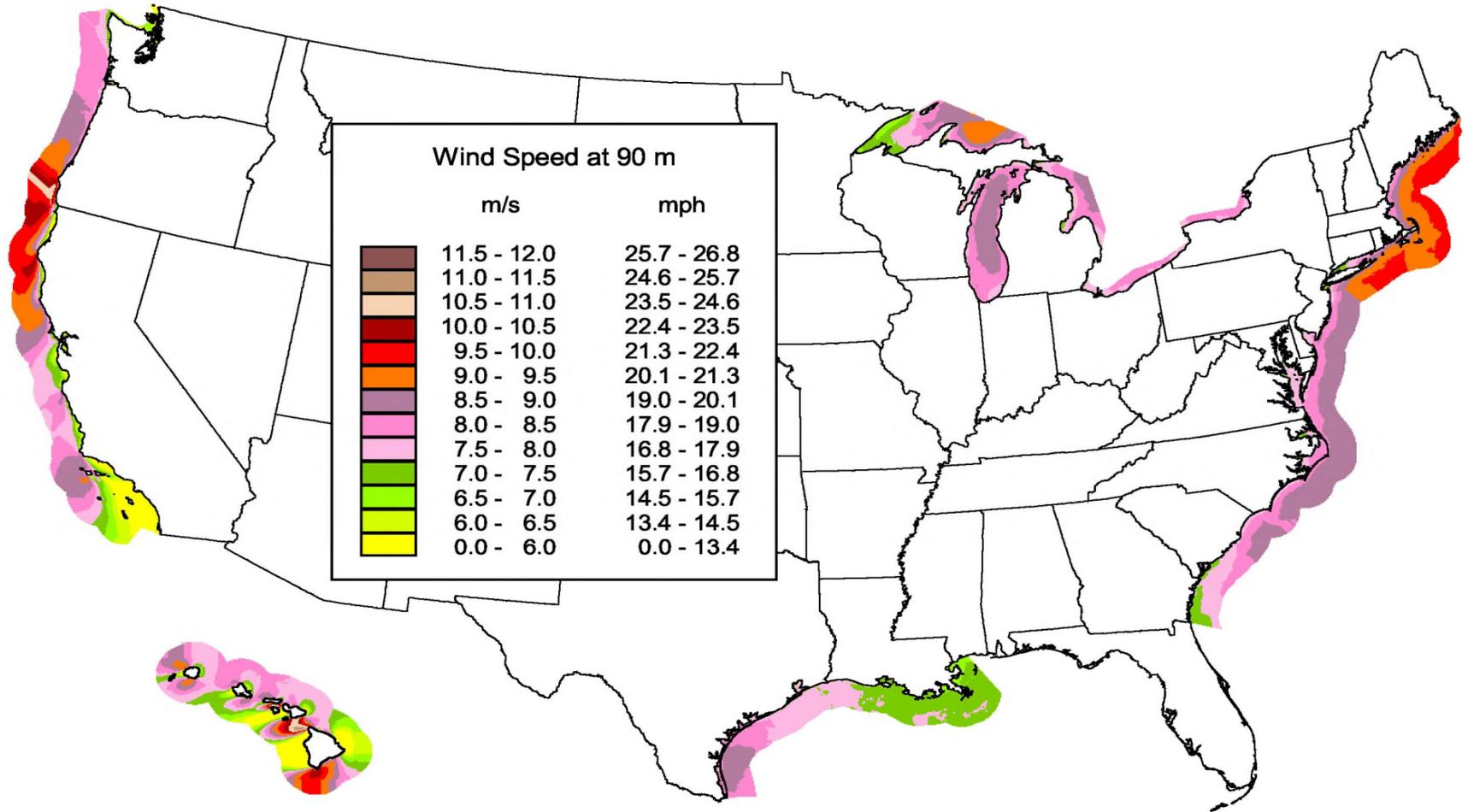
The Future of Offshore Wind Development in the U.S. under Biden Administration

Goal to deploy 30 gigawatts (GW) of offshore wind in the United States by 2030, while protecting biodiversity and promoting ocean co-use

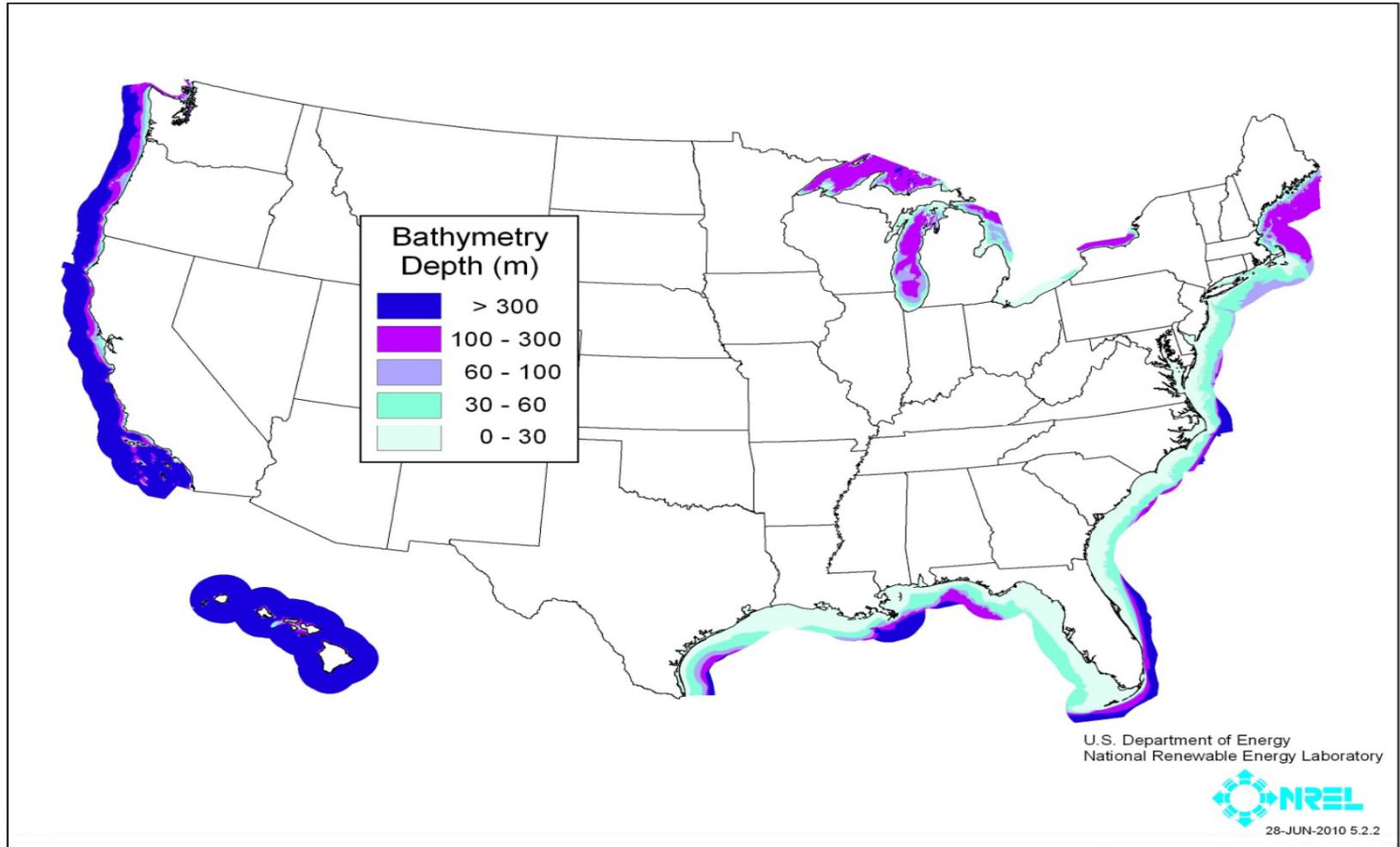
Bureau of Ocean Energy Management (BOEM) plans to advance new lease sales and complete review of at least 16 Construction and Operations Plans by 2025

Unlock a pathway to 110 GW by 2050

U.S. Offshore Wind Speed Map



U.S. Offshore Depth



The Jones Act (a/k/a Coastwise Trade) in Offshore Wind

What is the Jones Act and what activities are restricted by it?

Implications in offshore wind projects:

- Site Selection
- Construction and Installation
- Operation and Maintenance

Strategies applied to offshore wind activities

What is the Jones Act?

Laws which limit the following activities to be carried out by U.S. coastwise vessels owned by U.S. coastwise citizens:

1. Transportation of merchandise between U.S. points;
2. Transportation of passengers between U.S. points;
3. Towing; and
4. Dredging.

What is a Coastwise Qualified Vessel?

- U.S. flag
- Owned by U.S. citizen owners that meet strict standards
- Meets U.S. build content requirements
- Foreign citizens can not exercise “control” of owner or vessel

“Coastwise Points”

- Points within the “territorial waters” of the U.S. (generally 3 miles off shoreline)
- Points on the U.S. Outer Continental Shelf where installations or devices are permanently or temporarily attached to the seabed for purposes of exploring, developing or producing natural resources (*including wind*)
 - “Pristine” seabed is not a coastwise point

Transportation of Merchandise

*“A vessel may not provide any part of the **transportation of merchandise** by water, or by land and water, **between points in the United States to which the coastwise laws apply**, either directly or via a foreign port unless the vessel” is a coastwise qualified vessel.*

- “Merchandise” or “Vessel Equipment” (i.e. is the item necessary and appropriate for the navigation, operation, or maintenance of a vessel and for the comfort and safety of the persons on board?)
- Is the movement between two U.S. coastwise points?
- Pipeline and Cable Laying are not “transportation” if “paid out”
- Lifting Operations generally not “transportation”

Transportation of Passengers

*“A vessel may not transport **passengers** between **ports or places in the United States to which the coastwise laws apply**, either directly or via a foreign port, unless the vessel” is a coastwise qualified vessel.*

- “Passenger” or “Crew” (i.e. is the person directly and substantially connected with the operation, navigations, ownership or business of the vessel?)
- Is the movement within U.S. territorial waters, a harbor or between two U.S. coastwise points?

Towing

Coastwise citizenship restrictions apply to the towing of:

- "(1) a vessel between ports or places in the United States to which the coastwise laws apply, either directly or via a foreign port or place;
- (2) a vessel from point to point within the harbors of ports or places to which the coastwise laws apply; or
- (3) a vessel transporting valueless material or dredged material, regardless of whether it has commercial value, from a point in the United States or on the high seas within the exclusive economic zone, to another point in the United States or on the high seas within the exclusive economic zone."

Dredging

“A vessel may engage in dredging in the navigable waters of the United States only if--

- (1) the vessel is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade;
- (2) the charterer, if any, is a citizen of the United States for purposes of engaging in the coastwise trade; and
- (3) the vessel has been issued a certificate of documentation with a coastwise endorsement under chapter 121 of this title or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.”

Recent Developments

- December 2019 - Customs clarified position on “vessel equipment” and also movement related to offshore lifting operations
- Customs Rulings related to offshore wind:
 - Scour material installation
 - Wind turbine generator installation
 - Cable repair
- Ongoing litigation challenging Customs’ position on “vessel equipment”

Recent Developments - Considerations

- Consider Jones Act issues in the planning stage
- Prepare for uncertainty
- Apply for customs ruling determination
- Monitor ongoing changes

Site Selection Phase

- Survey vessels (environmental, geophysical)
- AUVs and ROVs
- Oceanographic research is not coastwise trade, but consider who qualifies as “passengers” or “research equipment”
 - Seabed, water, biological sample collection and net tows
 - Underwater video monitoring and sea floor mapping
 - Weather monitoring
 - Equipment removal?

Construction and Installation Phase

- Installation vessels (jack-up platforms, liftboats and turbine installation vessels (TIV))
- Feeder vessels
- Diving vessels
- Tugs
- Personnel transfer vessels (PTV)
- Cable laying vessels
- Heavy lift vessels
- Barges (construction, lifting and transportation)

Construction and Installation Phase

- Determination is ***fact specific***
- Permitted Lifting Operations
- Recent rulings address:
 - Scour material installation
 - Cable laying
 - Wind turbine generator installation

Construction and Installation

➤ Foreign components installed on a coastwise qualified vessel can violate the U.S. build requirement on a coastwise vessel.

Operation and Maintenance Phase

- Personnel transfer vessels (PTV)
- Cable laying vessels for repairs
- Maintenance vessels (similar to installation vessels)

Scour Protection Examples (HQ H317289)

Scenario A:

- Load material at U.S. port
- Transport on foreign flag vessel to site
- Unload scour protection material to seabed prior to installation of the monopile foundation
- Proceed to next site and unload scour material at new seabed site

Scour Protection Examples (HQ H317289)

Scenario B:

- Load second round of material at U.S. port
- Transport on foreign flag vessel to installed monopile site
- Unload scour protection material and apply second layer of material to site

Scour Protection Examples (HQ H317289)

Scenario C:

- Same process as Scenario A and B *except* scour material is loaded at a Canadian port
- Vessel returns to Canada for each load of scour material once depleted

Scour Protection Examples (HQ H317289)

Scenario D:

- Scour material loaded onto a foreign flag barge in Canada
- Barge transported to U.S. territorial waters or point on Outer Continental Shelf and anchored to use for storage
- Foreign flag vessel transports materials from barge to site for installation

Scour Protection Examples (HQ H317289)

Scenario E:

- Scour material loaded onto a foreign flag construction barge in the U.S.
- Construction barge is towed to site on OCS by coastwise qualified tugs
- Material is installed from construction barge to site

Scour Protection Examples (HQ H317289)

Scenario F:

- Scour material loaded onto a foreign flag construction barge in the U.S.
- Construction barge is towed to site on OCS by foreign flag tugs
- Material is installed from construction barge to site

Strategies for Jones Act Compliance

- Use a coastwise qualified feeder vessel to accompany foreign flag vessel
 - Joint venture with U.S. coastwise vessel owner
 - Time charter of U.S. coastwise vessel
 - Transportation from a non-U.S. site to coastwise point
 - Transportation of merchandise back to exact same point of lading
 - Does an “exception” apply?
- Submit Customs ruling request to confirm compliance

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Questions?

