

The background of the slide is a composite image. The lower half shows a view of Earth from space, with the blue oceans and brown landmasses of North America visible. The upper half transitions into a deep blue and black space filled with numerous white stars. A bright, glowing sun or star is visible on the right side, creating a lens flare effect.

Morgan Lewis

OFFSHORE WIND NEW JERSEY: OPPORTUNITIES AND CHALLENGES

Geri Edens
Chris McAuliffe

April 19, 2018

Introduction and Overview

- State utility commission-based approval system with environmental permitting for natural resource protection
 - State process under development, but with Governor's support
 - Financial incentives available, but significant regulatory hurdles to surmount
 - State environmental permits required, but regulatory programs are well-established
- Federal resource management program
 - An established, but multi-faceted, complex program
 - Significant data needs, but potentially significant financial returns if successful

NJ's Offshore Wind Economic Development Act ("OWEDA")

- OWEDA signed into law on August 19, 2010
- Authorized the development of an offshore wind renewable energy certificate ("OREC") program
 - A percentage of energy sold in the state would be from qualified offshore wind projects
 - Electric power suppliers and basic generation service providers would be required to purchase ORECs from qualified offshore wind projects or pay an alternative compliance payment if insufficient ORECs were available
 - Intended to support at least 1,100 MW from qualified offshore wind projects
- The NJ Board of Public Utilities to develop the OREC program
- Allows for BPU approval of a 20 MW to 25 MW projects in territorial waters offshore of Atlantic City if the project obtains approvals from NJDEP and the project meets the other requirements of OWEDA

OWEDA Application Requirements

- “An entity seeking to construct an offshore wind project shall submit an application to the board for approval by the board as a qualified offshore wind project....” (N.J.S.A. 48:3-87.1 emphasis added)
 - What is a “qualified offshore wind project”?
 - Wind turbine electricity generation facility in the Atlantic Ocean and connected to the electric transmission system in NJ, and includes the associated transmission-related interconnection facilities and equipment, and approved by the BPU.
 - Fourteen topics by statute; sixteen topics with multiple sub-topics by regulation
 - Technical, financial, environmental impacts, benefits to the State
- The BPU shall determine:
 - Consistent with NJ Energy Master Plan
 - Positive economic and environmental net benefits to NJ
 - Financing based on actual electrical output with costs of non-performance borne by shareholders
 - Applicant’s demonstrated financial integrity and access to capital
- The BPU announces open and close dates for application periods at its discretion
- Regulatory program incomplete



OWEDA Implementation

- BPU opened the application window on May 16, 2011 for 30-days for offshore wind projects proposed for territorial waters
 - One application received
 - Five 5MW turbines on monopole foundations 2.8 miles offshore from Atlantic City (subsequently modified)
 - Issues in the proceeding included: requirement to identify one turbine design, finances/economics/fiscal integrity, delays
- Application denied, appeals denied
 - Perceived potential impacts to the ratepayers were key issues for the BPU

Executive Order #8 - January 31, 2018

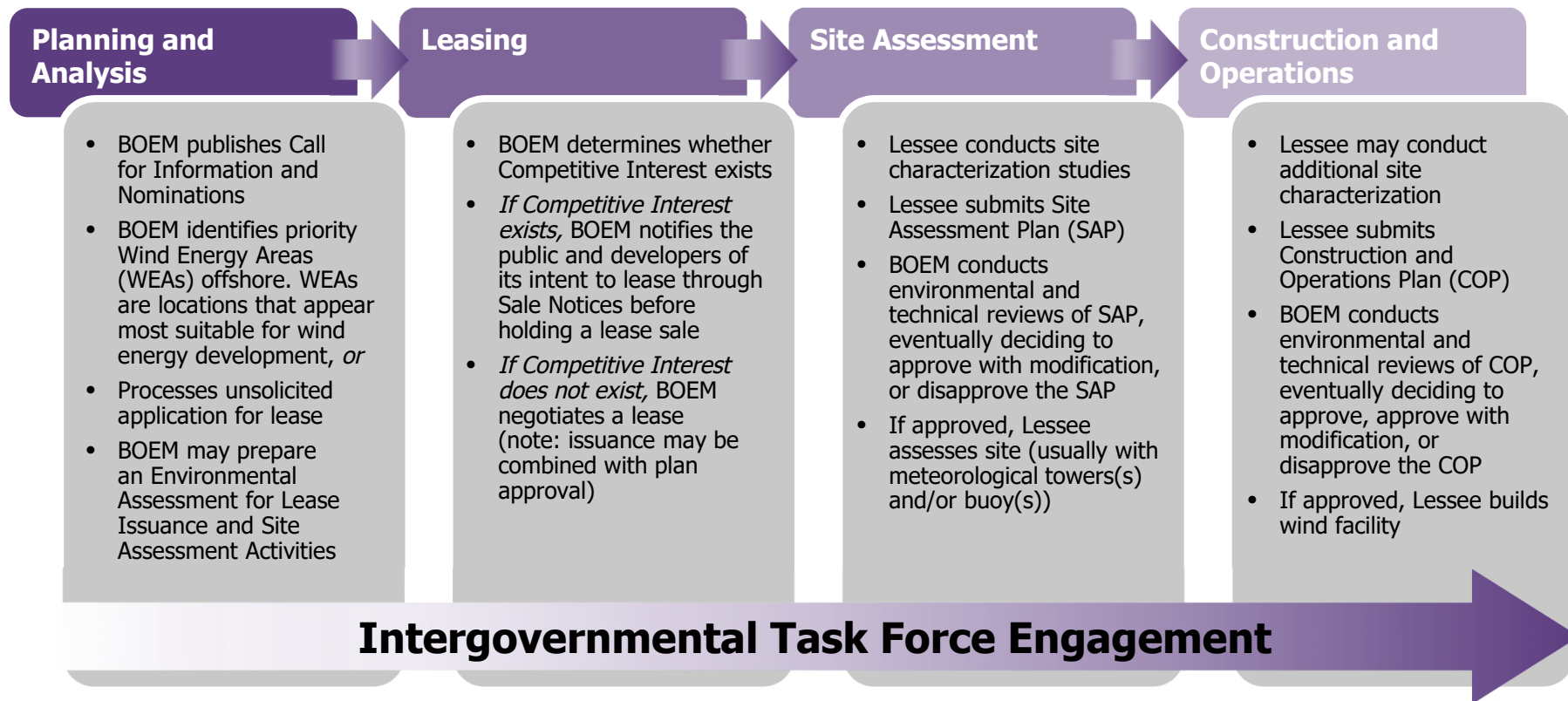
- Goal of 3,500 MW of offshore wind generation by 2030.
- BPU and NJDEP to develop Offshore Wind Strategic Plan
- BPU to develop OREC pricing plans and regulations for OREC Funding Mechanism
- BPU to open the application window and solicit 1,100 MW

NJ Environmental

- DLUR Application
- CAFRA Permit
- Waterfront Development Permit
- Coastal Wetlands Permit
- Tidelands License / Lease
- CZMA / federal consistency determination
- Linear Construction site remediation requirements and guidance
- Permit by Rule, General Permits, Individual Permits, exemptions
- Pre-Application conference!!!

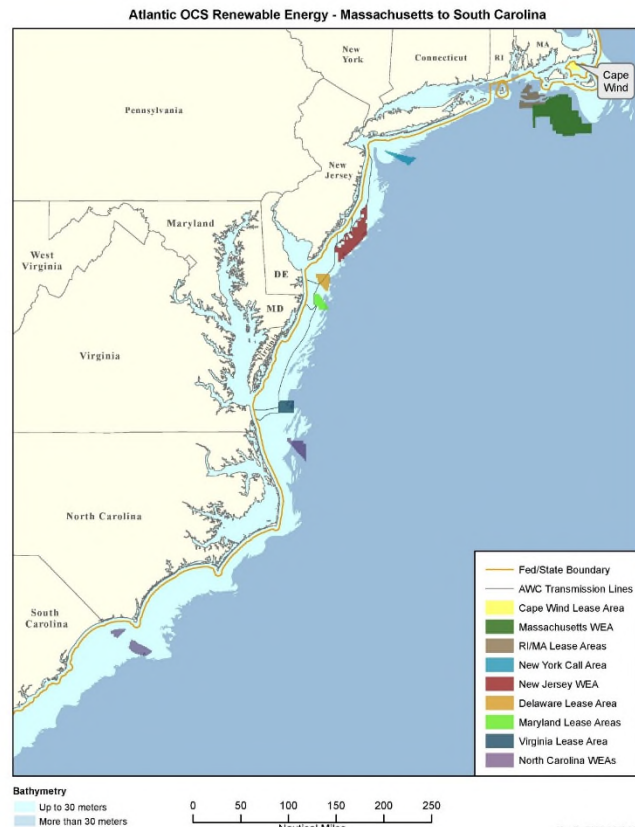


BOEM Offshore Wind Development Process



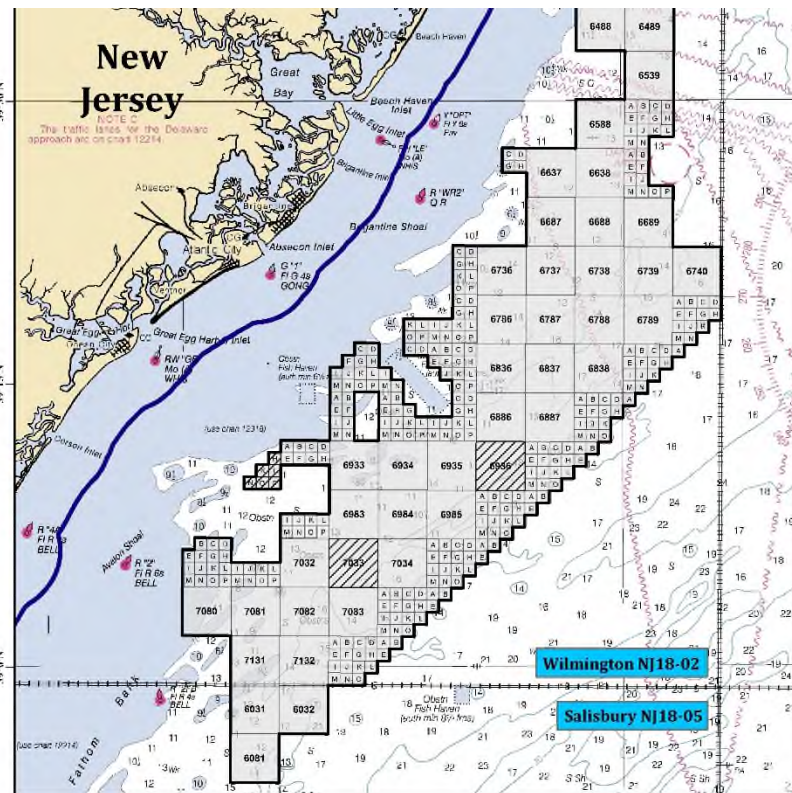
Wind Development Areas

- 15 GW potential
- Wind energy development
 - Massachusetts WEA
 - Rhode Island/Massachusetts WEA
 - New York Bight
 - New Jersey WEA
 - Delaware WEA
 - Maryland WEA
 - Virginia WEA
 - North Carolina



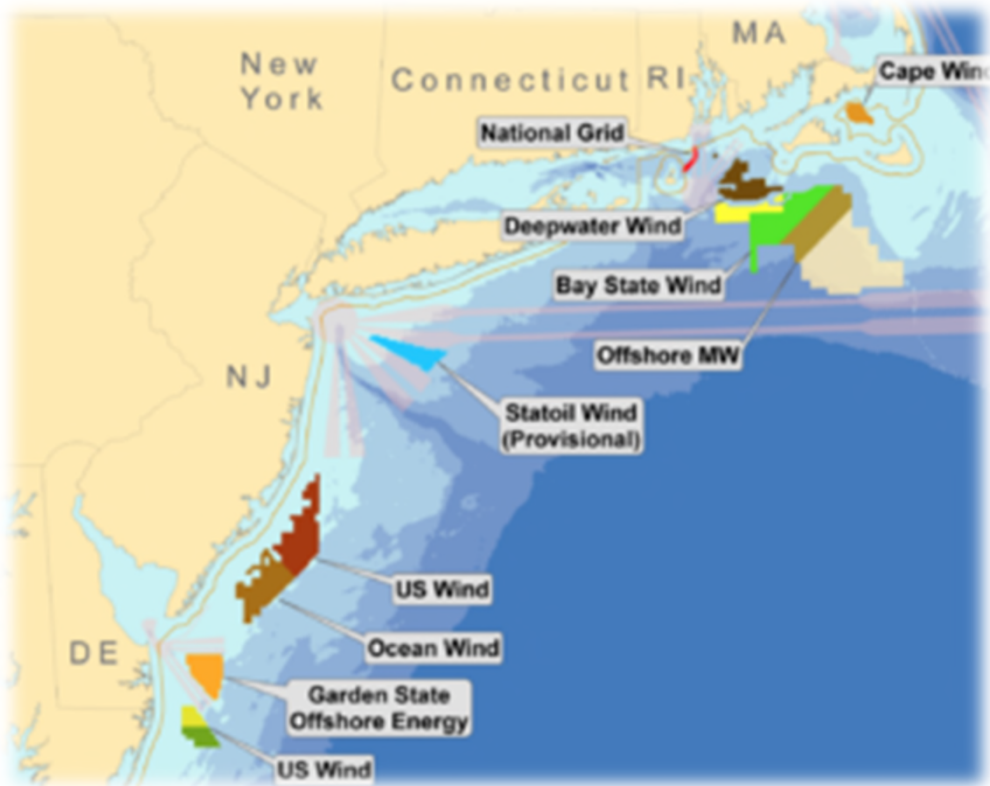
New Jersey WEA

- Approximately 418 square miles
- Begins 7 nm from the shore and extends roughly 23 nm seaward
- Extends 53 nm along the Federal/state boundary from Seaside Park south to Hereford Inlet



Commercial Leases

- Competitive or Noncompetitive
- Exclusive right to seek approval for the development of the leasehold
- No right to construct facilities
- 10 commercial leases issued
- 2 leases issued in New Jersey WEA
 - Ocean Wind
 - US Wind



Site Assessment

- Details initial activities necessary to characterize a lease site
 - installation of meteorological towers and meteorological buoys
 - resource assessment surveys
 - technology testing activities that involve installation of bottom-founded facilities
- Submitted 12 months from lease issuance
- Contains environmental baseline information and analysis of potential impacts
- BOEM must approve before activities commence
- Four SAPs approved; two pending (including NJ-Ocean Wind)

Construction and Operations Plan

- Key decision document
- Detailed plan for the construction and operation of the wind project
- Includes extensive analysis of baseline environmental conditions and analysis of potential project impacts
- BOEM prepares Environmental Impact Statement to inform COP decision
- Cape Wind received COP approval in 2011
- Vineyard Wind submitted COP in December 2017
 - Notice of Intent to prepare EIS – March 30, 2018

Federal Regulatory Framework

- Outer Continental Shelf Lands Act
- National Environmental Policy Act (NEPA)
- Endangered Species Act
- Coastal Zone Management Act
- Magnuson-Stevens Fisheries Conservation and Management Act
- Marine Mammal Protection Act
- Clean Air Act
- Clean Water Act
- Rivers and Harbors Act of 1899
- National Historic Preservation Act
- Migratory Bird Treaty Act
- Federal Aviation Act
- US Coast Guard Regulations and navigational safety

Federal Agency Involvement



**US Army Corps
of Engineers®**



COP Approval

- Executive Order 13807
 - Coordination of federal reviews
 - Complete all environmental reviews and authorization decisions within 2 years
- DOI Secretarial Order 3355
 - FEIS completed within 1 year of NOI
 - 150 to 300 pages
- FAST-41 (42 U.S.C. 4370m)
 - Federal Permitting Improvement Steering Council
 - Coordinated reviews
 - 2-year statute of limitation
 - PI factors - potential effects on public health, safety, and the environment, and the potential for significant negative effects on jobs

Developers Need Flexibility

- Rapid technological advancements
- Permitting occurs in advance of engineering
- Design Envelop
 - Turbine sizes
 - Foundation design
 - Cable routes
- Environmental Review
 - Maximum design scenario – resource by resource

Stakeholder Engagement

- Commercial fishing
- Protected resources
- Tribal interests
- Historic preservation
- Aesthetic interests
- Navigational interests
- Labor and employment
- Economic interests



Questions?



Geri Edens

T +1.202.739.5060

geri.edens@morganlewis.com



Chris McAuliffe

T +1.609.919.6619

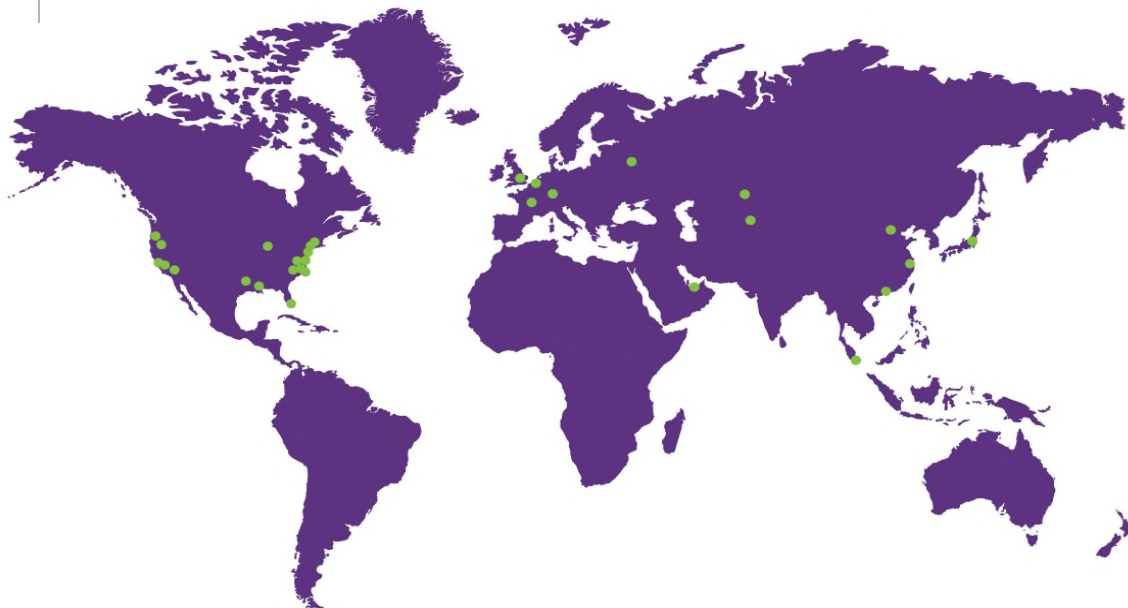
christopher.mcauliffe@morganlewis.com

Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Almaty	Chicago	Houston	Orange County	Shanghai*
Astana	Dallas	London	Paris	Silicon Valley
Beijing*	Dubai	Los Angeles	Philadelphia	Singapore
Boston	Frankfurt	Miami	Pittsburgh	Tokyo
Brussels	Hartford	Moscow	Princeton	Washington, DC
Century City	Hong Kong*	New York	San Francisco	Wilmington



Morgan Lewis

*Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan Lewis operates through Morgan, Lewis & Bockius, which is a separate Hong Kong general partnership registered with The Law Society of Hong Kong as a registered foreign law firm operating in Association with Luk & Partners.

THANK YOU

© 2018 Morgan, Lewis & Bockius LLP
© 2018 Morgan Lewis Stamford LLC
© 2018 Morgan, Lewis & Bockius UK LLP

Morgan, Lewis & Bockius UK LLP is a limited liability partnership registered in England and Wales under number OC378797 and is a law firm authorised and regulated by the Solicitors Regulation Authority. The SRA authorisation number is 615176.

Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan Lewis operates through Morgan, Lewis & Bockius, which is a separate Hong Kong general partnership registered with The Law Society of Hong Kong as a registered foreign law firm operating in Association with Luk & Partners.

This material is provided for your convenience and does not constitute legal advice or create an attorney-client relationship. Prior results do not guarantee similar outcomes. Attorney Advertising.