

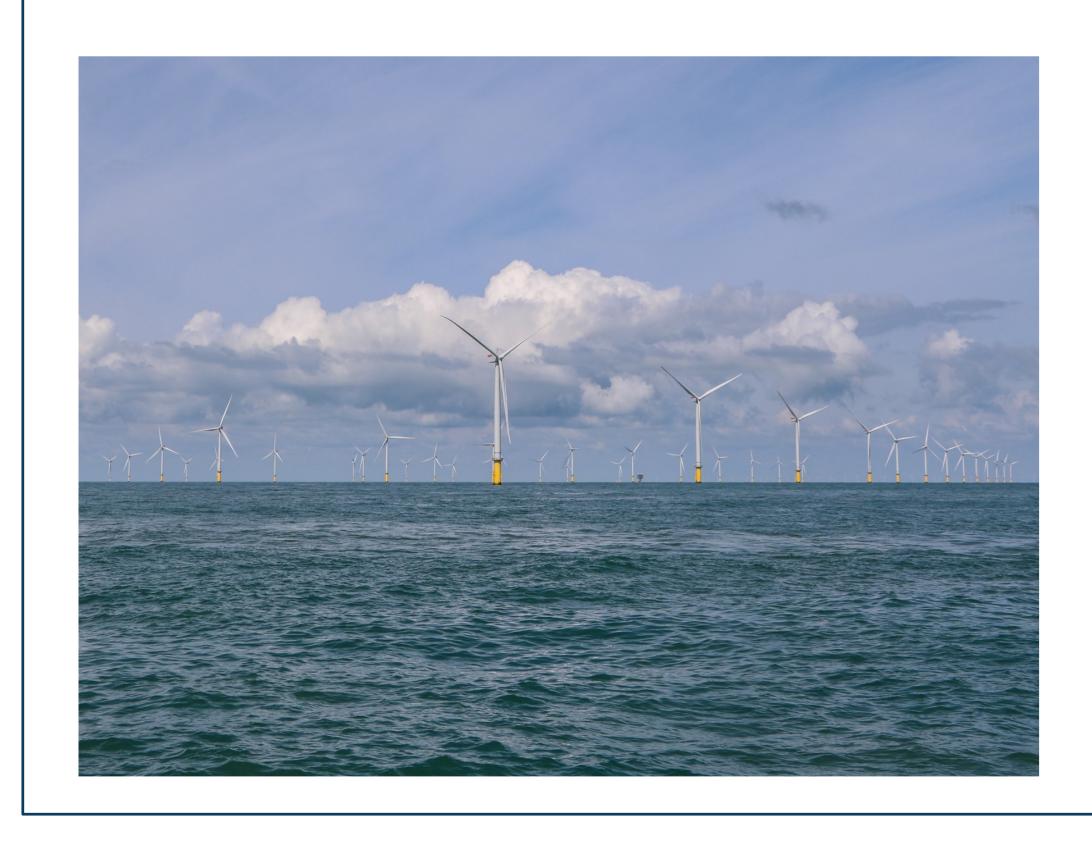
# Regulatory Issues Affecting The Offshore Wind Industry: An Update

Holland & Knight

Author, M. KALPIN

#### KEY CONSIDERATIONS

- Substantial Progress Has Been Made Over the Last Two Decades
- Technology continues to mature
- Costs / LCOE continue to decline
- Regulatory system has developed
- > But Much Remains to be Done
- ➤ Regulatory Improvements Need to be Fully Implemented and Remaining Challenges Timely Resolved for Industry to Reach its Full Potential



## 1. WHERE WE STARTED (CAPE WIND)

- ➤ No Renewable Energy Leasing Program under OCSLA
  - Uncertainty over seabed ownership / ability to construct
- ➤ Section 10 of Rivers and Harbors Act of 1899
  - Regulation of obstructions in Navigable Waters
  - "Public Interest" standard
- ➤ Limited State Interest in PPAs / Incentives
- Climate Change Concerns not as Pronounced
- ➤ Technology Not Proven and Still Evolving

RESULT: Major Challenges for Financing and Development of Offshore Wind Projects

### 2. WHAT HAS BEEN ACCOMPLISHED

- ➤ Formal OCSLA Renewable Energy Leasing Program
- Development / Refinement of BOEM Regulatory Process
  - State-specific stakeholder process
- Project Design Envelope Guidance
- Future: SAP Process / Decommissioning
- Streamlining of Federal Permitting Process
- FAST-41 / One Federal Decision MOU
- Proliferation of State OSW Programs
  - Increased emphasis on addressing climate change
- Desire to capture economic / employment benefits
- > Improvement in Technology = Reduction in Cost

### 3. REMAINING CHALLENGES TO ADDRESS

- ➤ Can the Stakeholder Process Produce Consensus?
  - Energy production, fisheries, visual
  - Ability to shape Administrative Record
- ➤ Will the Regulatory and Permitting Process Improvements Succeed?
- Information sufficiency for NEPA / ESA / MMPA reviews
- Ability to analyze Cumulative Impacts
- Supply Chain build-out, phased development, multiple projects and leases
- Ability to deliver timely / defensible results
- > Response of Stakeholders
  - Is the perfect the enemy of the good?
  - Is Fisheries Survival Fund an indication of more to come?
- > What about Offshore Transmission?
- ➤ Ability to Capture and Move Beyond State Incentive Programs

#### **CONTACT INFORMATION**

Mark C. Kalpin
Partner, Holland & Knight LLP
Phone 617.305.2076 (o) | 617.835.7020 (m)
mark.kalpin@hklaw.com
www.hklaw.com/Mark-Kalpin/

