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NOTICE OF DRAFT REPORT FOR PUBLIC COMMENT

The Office of Tax Policy has prepared the attached Draft Report on Developing a Fishing Community Protection Tax Incentive Program for public comment pursuant to P.L. 2023 c.481 (LD 1895), "An Act Regarding the Procurement of Energy from Offshore Wind Resources." In accordance with Section 16 of the Act, the Office of Tax Policy prepared this draft report in consultation with the Department of Marine Resources (DMR) and the Governor's Energy Office (GEO). The Act requires the draft report to be posted for at least a 30-day public comment period by December 1, 2023, and, after any revision submitted in final report form to the Legislature by February 1, 2024. The draft report will be available, as of December 1, 2023, on MRS's website, at www.maine.gov/revenue/taxes/tax-policy-office. Comments on the draft report are due before January 8, 2024, and must be directed to the MRS Office of Tax Policy at otp.mrs@maine.gov or by mail at P.O. Box 1060, Augusta, ME 04332-1060.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Allen".

Michael J. Allen
Associate Commissioner for Tax Policy
Department of Administrative and Financial Services

**DRAFT REPORT ON DEVELOPING A FISHING COMMUNITY
PROTECTION TAX INCENTIVE PROGRAM**

Report Prepared for the Joint Standing Committee on
Taxation and Joint Standing Committee on Energy,
Utilities and Technology

– DRAFT FOR PUBLIC COMMENT –

December 1, 2023

Department of Administrative and Financial Services
Maine Revenue Services
Office of Tax Policy

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I. LEGISLATIVE STUDY DIRECTIVE AND SCOPE

This Report is submitted pursuant to P.L. 2023 c.481 (LD 1895), “An Act Regarding the Procurement of Energy from Offshore Wind Resources” (Offshore Wind Procurement Act, or the Act), which directs the Department of Administrative and Financial Services (DAFS), Office of Tax Policy in Maine Revenue Services (Office of Tax Policy), to study and develop a tax credit program for qualified investments in offshore wind (OSW) power projects, and to report to the Legislature its findings, recommendations about developing the program, including suggested legislation. In accordance with Section 16 of the Act, the Office of Tax Policy prepared this draft report in consultation with the Department of Marine Resources (DMR) and the Governor’s Energy Office (GEO).¹ The Act requires the draft report to be posted for a 30-day public comment period by December 1, 2023, and, after any revision submitted in final report form to the Legislature by February 1, 2024.

II. EXECUTIVE SUMMARY – FINDINGS, RECOMMENDATIONS, AND SUGGESTED LEGISLATION

On February 23, 2023, the GEO released the Maine Offshore Wind Roadmap detailing strategies for Maine to achieve the benefits from offshore wind power in a manner that protects and supports Maine communities, fisheries, and the wildlife of the Gulf of Maine.² Governor Mills has signed into law a

¹ The text of Section 16 is set forth at Appendix A.

² See 02/23/2023 Governor’s Office press release, [Mills Administration Releases Comprehensive Plan to Responsibly Advance Offshore Wind in Maine](#). The full [Maine Offshore Wind Roadmap \(PDF\)](#), [Executive Summary \(PDF\)](#), and underlying technical studies of the economic, socioeconomic, and energy needs and impacts of offshore wind power are posted online at [maineoffshorewind.org](#). The Roadmap Report sets out the proposed milestones for Maine’s OSW power development objectives, listing those at page 10 in three time periods: 2023-2024; 2025-2030; and 2030 and beyond.

prohibition on commercial offshore wind projects in state waters³. The law includes exemptions from certain activity in LMA1 related to the state's test sites, transmission cables, and activities related to the construction and deployment of commercial turbines at Maine ports. Beyond state waters, the federal government is responsible for offshore wind leasing, through the Bureau of Ocean Energy Management (BOEM). BOEM is preparing for a Gulf of Maine lease sale in late 2024. Through the comment processes, informed by the Roadmap efforts and feedback from stakeholders, the State has strongly advocated that any commercial leasing should not be in LMA1.⁴ A final decision on lease areas is expected in 2024.

In July 2023, the Governor signed the Act into law, Section 16 of which directs the Office of Tax Policy to prepare this Report and develop the Fishing Community Protection Tax Incentive Program. The framework of the Act focusses the Fishing Community Protection Tax Incentive Program on commercial OSW power development,⁵ and Section 16 provides that tax credit incentives of up to \$16 million annually for siting offshore wind power projects with generation facilities outside "Lobster Management Area 1" (LMA1), an area that encompasses waters and submerged lands of Maine, other New England states, and the U.S. federal government.⁶ Only LMA1 areas in federal waters have been under consideration by the U.S. Department of Interior's Bureau of Ocean Energy Management (BOEM) for OSW power development.⁷ The new Act further provides that the state tax incentive program must protect ratepayers, increase the State's competitiveness for securing offshore wind power projects, and meet certain other objectives. The primary component of this portion of the Program is protecting LMA1 from commercial OSW power development.⁸ This key objective now appears to have been largely addressed for the foreseeable future by the October 2023 BOEM announcement excluding all of LMA1 from its designated wind energy area, except for limited areas it will consider further.⁹ A final federal determination by BOEM will be made after the date for publishing this draft Report for comment, but possibly before the date for submitting the final Report to the Legislature. Accordingly, this draft Report finds that at present a development tax incentive program to protect LMA1 is not needed.

However, if BOEM revises its OSW development area in the coming months to include LMA1, this Report recommends the appropriate tax incentive program for incentivizing non-LMA1 development would be the State of Maine's new Dirigo capital investment and jobs training program, adapting it as needed by rulemaking and legislation. Finally, the Report recommends that secondary objectives expressed in the Act, including *onshore* components of OSW infrastructure development, should be reviewed separately

³ See 35-A MRSA §3405.

⁴ See October 20, 2023 press release, <https://www.maine.gov/governor/mills/news/governor-mills-maines-congressional-delegation-react-boems-draft-wind-energy-area-proposal> , and November 16, 2023 press release, <https://www.maine.gov/governor/mills/news/maines-congressional-delegation-and-governor-mills-continue-push-prohibit-offshore-wind>.

⁵ See, e.g., Section 6 of the Act, addressing cost-competitive commercial-scale development.

⁶ See note 12, *infra*.

⁷ Maine statute bars OSW development in Maine waters, An Act To Prohibit Offshore Wind Power Development in Territorial Waters and Submerged Lands of the State, P.L. 2021, c. 407, and BOEM has not been considering state 3-mile waters zone as part of the OSW power development process.

⁸ The objective of avoiding OSW power projects in LMA1 is also listed in the Roadmap Report, *infra*, n. 2, Fisheries Working Group Recommendation #9, stating in part: "Offshore wind development should not be sited inshore of an area bound by the US/Canada border, following the LMA 1/3 line southwest to the 69 30' line, and then due south to the 42 20' line."

⁹ BOEM 10/19/2023 announcement, [BOEM Releases Draft Wind Energy Area in the Gulf of Maine for Public Review and Comment | Bureau of Ocean Energy Management](#). See also map at Appendix C.

by the GEO, the Department of Economic and Community Development (DECD), and the Office of Tax Policy for narrowing the specific activities and geographic areas where tax incentives within the Dirigo tax credit program, or non-tax incentives, should be focused.

III. DISCUSSION

A. Background

As part of Governor Mills' Maine Offshore Wind Initiative launched in June 2019, after an 18-month participatory process, the GEO released in February 2023 a comprehensive plan detailing strategies for development of offshore wind power in a responsible manner beneficial to Maine. The plan, titled Maine Offshore Wind Roadmap,¹⁰ provides a comprehensive overview of key considerations related to the responsible advancement of offshore wind in Maine. One piece of the Maine Offshore Wind Initiative involves coordinating the State's OSW goals with the federal regulatory process for identifying federal waters to be open for bids to secure OSW power development leases. That regulatory process is managed by the BOEM.

On July 27, 2023, the Office of Governor Mills issued a press release announcing that the Governor signed into law LD 1895, "An Act Regarding the Procurement of Energy from Offshore Wind Resources," (the OSW Power Act, or the Act). The press release noted that the enactment of the bill into law takes a number of steps to advance offshore wind in Maine, including the following:

- authorizes the GEO to establish an offshore wind energy procurement and schedule, to be issued by the Maine Public Utilities Commission, to procure up to 3,000 megawatts of electricity from offshore wind projects by 2040; and
- protects prime lobstering ground, LMA1, in the Gulf of Maine by giving preference in Maine's procurement process to offshore wind projects sited outside this critical area for Maine's fishing industry.

Section 16 of the Act directs the Office of Tax Policy, in consultation with the DMR and the GEO, to study and develop a tax credit program for qualified investments in offshore wind power projects consistent with the primary objective of protecting LMA1 from commercial offshore wind power projects by instead incentivizing development of such power projects outside of LMA1.

The Act specifies that the Fishing Community Protection Tax Incentive Program (Program) shall provide tax credit incentives of up to \$16 million annually for siting offshore wind power projects with generation facilities outside LMA1, as defined by the DMR by rule. The purpose of this program under the Act is to address commercial OSW power projects.¹¹ In addition, the program must protect ratepayers, increase the State's competitiveness for securing offshore wind power projects, and meet certain other objectives.

In sum, the three goals central to LD 1895's directive that Office of Tax Policy develop a OSW and Fishing Community Protection Tax Incentive Program tax incentive program are: 1) advancing overall OSW objectives in a manner that would protect LMA1 from commercial OSW development; 2) identifying the

¹⁰ See n. 2 above, and the [Maine Offshore Wind Roadmap](#). See also illustrations from the Roadmap at Appendices D and E.

¹¹ See, e.g., Section 6 of the Act, addressing cost-competitive commercial-scale development.

appropriate model for a tax incentive program; and 3) responding to the BOEM regulatory process and the areas and conditions for OSW development in a manner that furthers the State's interests and objectives. These three pieces are addressed in more detail in the following sections of the Report.

B. Tax Incentive Program Goals

The OSW Power Act directs the Office of Tax Policy to develop a program to provide “a tax credit to applicants for qualified investments in offshore wind power projects consistent with the purposes described in the Maine Revised Statutes, Title 35-A, sections 3407 and 3408.” In addition, the Act provides that the program must:

- A. Provide incentives for siting offshore wind power projects with generation facilities outside of LMA1;
- B. Protect ratepayers from any additional costs associated with the siting outside of LMA1;
- C. Increase the State's competitiveness in securing offshore wind power projects and its associated climate and economic benefits; and
- D. Include a tax credit not to exceed \$16 million in the aggregate annually for up to 20 years.

C. LMA1 and Maine Lands and Waters, Other States' Lands and Waters, Federal Lands and Waters

LMA1 is an area that encompasses U.S. federal waters and submerged lands as well as those of Maine and other New England states.¹² Only LMA1 areas in federal waters have been under consideration by the BOEM for OSW power development.¹³

D. Dirigo Tax Incentive Program

The Biennial Budget signed into law this July established the Dirigo Business Incentive Program, a replacement for the sunseting Pine Tree Development Zone program. The Dirigo program provides tax credits to businesses for making capital investments in their businesses in Maine, and for training workers.¹⁴

In addition to incentivizing OSW power development outside of LMA1, a Fishing Community Protection Tax Incentive Program would need to identify the specific business segments, activities, and geographic areas in the OSW power generation, distribution, sale, and use processes that are intended to be encouraged through a tax credit. The following is an example of different focal points that could be addressed through a tax credit program: onshore site for construction; port for construction, launch, and repair; OSW generation facility site location; power line landing point; power sale or use location.

¹² LMA1 is defined by the DMR by rule, 13-188 CMR ch. 25 § 07 (A)(1) (https://www.maine.gov/dmr/sites/maine.gov/dmr/files/inline-files/Chapter25_11052023.pdf), and corresponds to the federally designated LMA1, 50 CFR § 697.18. See the map at Appendix B to this report. This Report uses the term “waters” to refer to submerged land and waters. See generally, Submerged Lands Act of 1953 (43 U.S.C. §§ 1301 et seq.).

¹³ Maine statute bars OSW development in Maine waters, PL 2021, c.407 (LD 1619), and BOEM has not been considering state 3-mile waters zone as part of the OSW power development process.

¹⁴ See the new [Dirigo Tax Credit](#) enacted in the Biennial Budget, P.L. 2023, c.258 (Part J., page 292, effective 2025).

Other states have enacted tax credits to incentivize OSW power development,¹⁵ and these would be a reference points of comparison and contrast for building a Maine tax incentive tax credit or non-tax incentive program. However, because no development incentive is needed to prevent development in LMA1 at present, this Report did not pursue this analysis further.

If the Dirigo tax credit program were to be revised to included desired OSW investments, three leading areas to consider would be:


- i) which activities and focal points listed above should be the focus of the incentive?
- ii) is the maximum \$16 million program cap per year specified in the Act the right amount for incentivizing the desired level of investment?
- iii) are any of the desired activities already sufficiently incentivized by federal tax benefits and funding for OSW development?¹⁶

E. BOEM Announcement of Gulf of Maine Draft Wind Energy Area – Avoids LMA1

During much of 2023, BOEM held public meetings in New England on the topic of its proposed sale of commercial offshore wind leases in the Gulf of Maine in 2024. On October 19, 2023, BOEM announced its preliminary decision of the Gulf of Maine Draft Wind Energy Area (Draft WEA) with BOEM Secondary Areas for Further Analysis, identifying the areas for its proposed sale of commercial offshore wind leases in the Gulf of Maine in 2024. **The BOEM Draft WEA excludes LMA1 areas.** However, two of the “Secondary Areas for Further Analysis” are within LMA1. BOEM announced a 30-day public comment period on whether any part of the secondary areas should be included in the Final WEA, and if so, under what recommended conditions. BOEM will review all comments prior to deciding whether or not to incorporate these areas into Final WEAs, but noted the opportunity to comment on Secondary Areas was provided in an effort to be transparent that the model indicated these areas were highly suitable, as well as to give the State of Maine and its stakeholders additional opportunity to comment. BOEM has posted a map of the Draft WEA on its [Gulf of Maine webpage](#).¹⁷ The state submitted comments to BOEM in response to the Draft WEA in opposition to development of the Secondary Areas within LMA1, as did Maine’s congressional delegation and the Governor.

F. Timeline for Further BOEM Action

BOEM has announced plans to issue a final WEAs in early 2024 and hold a lease sale in late 2024.

¹⁵ See NJ, [NJ Fact Sheet on OSW Tax Credit](#); MA, Mass. General Laws c.63 § 38MM, and investment tax credit for OSW Power facilities, added by [St.2022, c.268, § 106](#), effective for taxable years beginning on or after January 1, 2023; RI, see [Qualified Jobs Incentive Tax Credit](#) authorized by the [Qualified Jobs Incentive Act, R.I.G.L. § 44-48.3](#) .

¹⁶ See, e.g., the Infrastructure Investment and Jobs Act, U.S. Pub.-L. 117-58; the CHIPS and Science Act, U.S. Pub.-L. 117-167; and the Inflation Reduction Act, U.S. Pub.-L. 117-169.

¹⁷ See map at Appendix B.

IV. CONCLUSION

The OSW Power Act directing this study and Report specifies that the Fishing Community Protection Tax Incentive Program shall provide tax credit incentives of up to \$16 million annually for siting commercial OSW projects with generation facilities outside LMA1, as defined by the DMR by rule. In addition, the Program must protect ratepayers, increase the State's competitiveness for securing OSW power projects, and meet certain other objectives. However, the primary concern of the Program of protecting LMA1 from such development appears to have been addressed by recent federal regulatory action. A final federal determination within the current process will be made after the date for publishing this draft Report, but likely before the date for submitting the final Report to the Legislature. Accordingly, this Report finds that at present a development tax incentive program to protect LMA1 is not needed.

Further, if at some point BOEM should change its development area designations to include LMA1, this Report recommends the likely appropriate tax incentive program for incentivizing non-LMA1 development would be the State of Maine's new Dirigo capital investment and jobs training program, adapted by rulemaking and legislation as needed, or, alternatively, a non-tax incentive program.

Finally, the Report recommends that the state continue to explore how State policy tools might be designed and applied most effectively to advance the state's climate, clean energy, and economic development objectives. This report recommends that DECD, GEO, and DOT work with the Office of Tax Policy to develop further recommendations related to both non-tax incentives as well as tax incentives (for example the new Dirigo capital investment and job training tax credit) as possible ways to maximize economic development activity in Maine from the implementation of the Act and implementation of the Roadmap's recommendations. In addition to advancing a state approach, the GEO is also collaborating with other states on supply chain, procurements, and related activity with the ultimate goal of advancing economic development opportunities while also delivering low-cost energy to the state and region. Per the Act, the state welcomes feedback from interested stakeholders on tax policy proposals as it relates achieving these goals.

In sum, the primary concern of the Program is protecting LMA1 from commercial offshore wind development – an objective that now appears to have been addressed by recent federal regulatory action of the U.S. Department of Interior's BOEM.¹⁸ A final federal determination by BOEM will be made after the date for publishing this draft Report, but perhaps before the date for submitting the final Report to the Legislature. Accordingly, this Report finds that at present a development tax incentive program to protect LMA1 is not needed.

¹⁸ BOEM 10/19/2023 announcement.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-THREE

—
S.P. 766 - L.D. 1895

**An Act Regarding the Procurement of Energy from Offshore Wind
Resources**

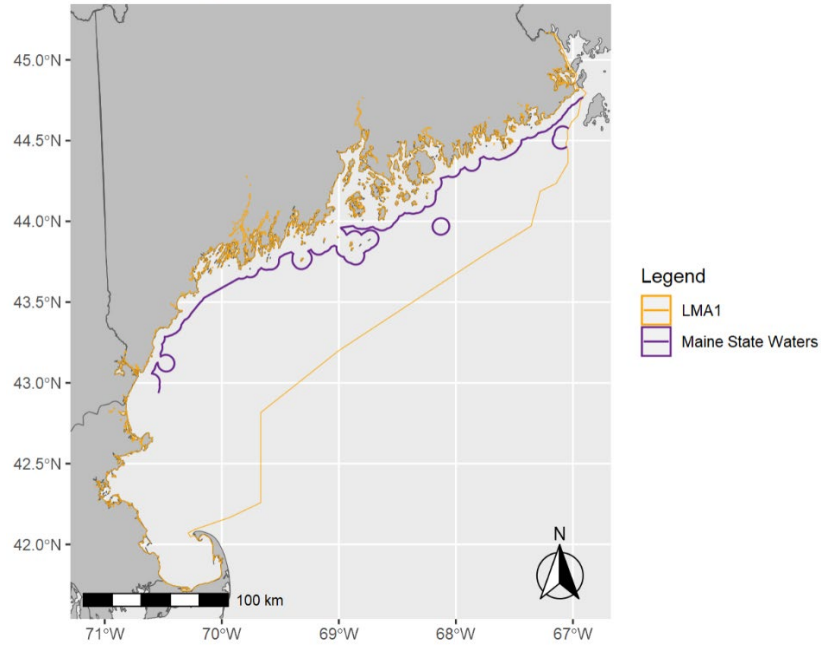
Be it enacted by the People of the State of Maine as follows:

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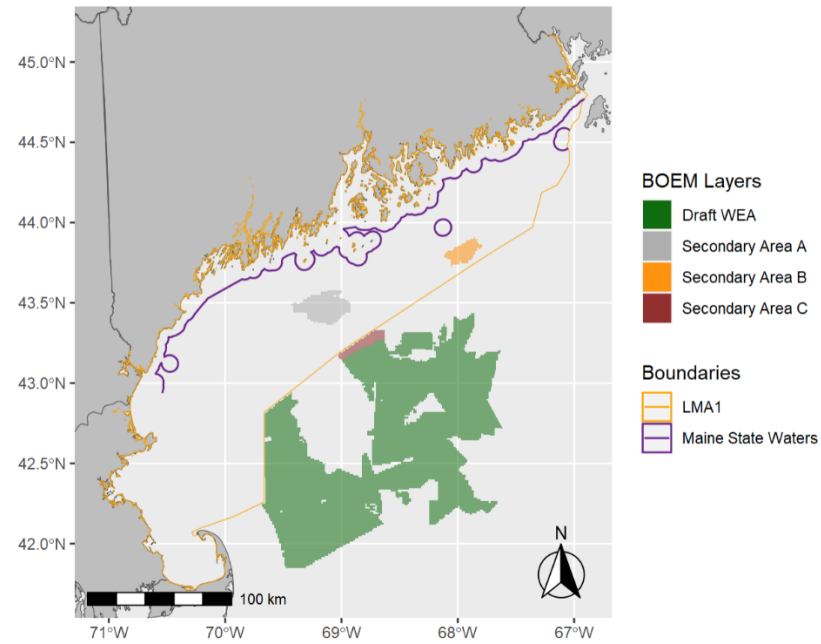
Sec. 16. Office of Tax Policy to develop Fishing Community Protection Tax Incentive Program. The Department of Administrative and Financial Services, Bureau of Revenue Services, Office of Tax Policy, in consultation with the Department of Marine Resources and the Governor's Energy Office, shall develop the Fishing Community Protection Tax Incentive Program, referred to in this section as "the program," to provide a tax credit to applicants for qualified investments in offshore wind power projects consistent with the purposes described in the Maine Revised Statutes, Title 35-A, sections 3407 and 3408. For purposes of this section, "qualified investments" means activities that

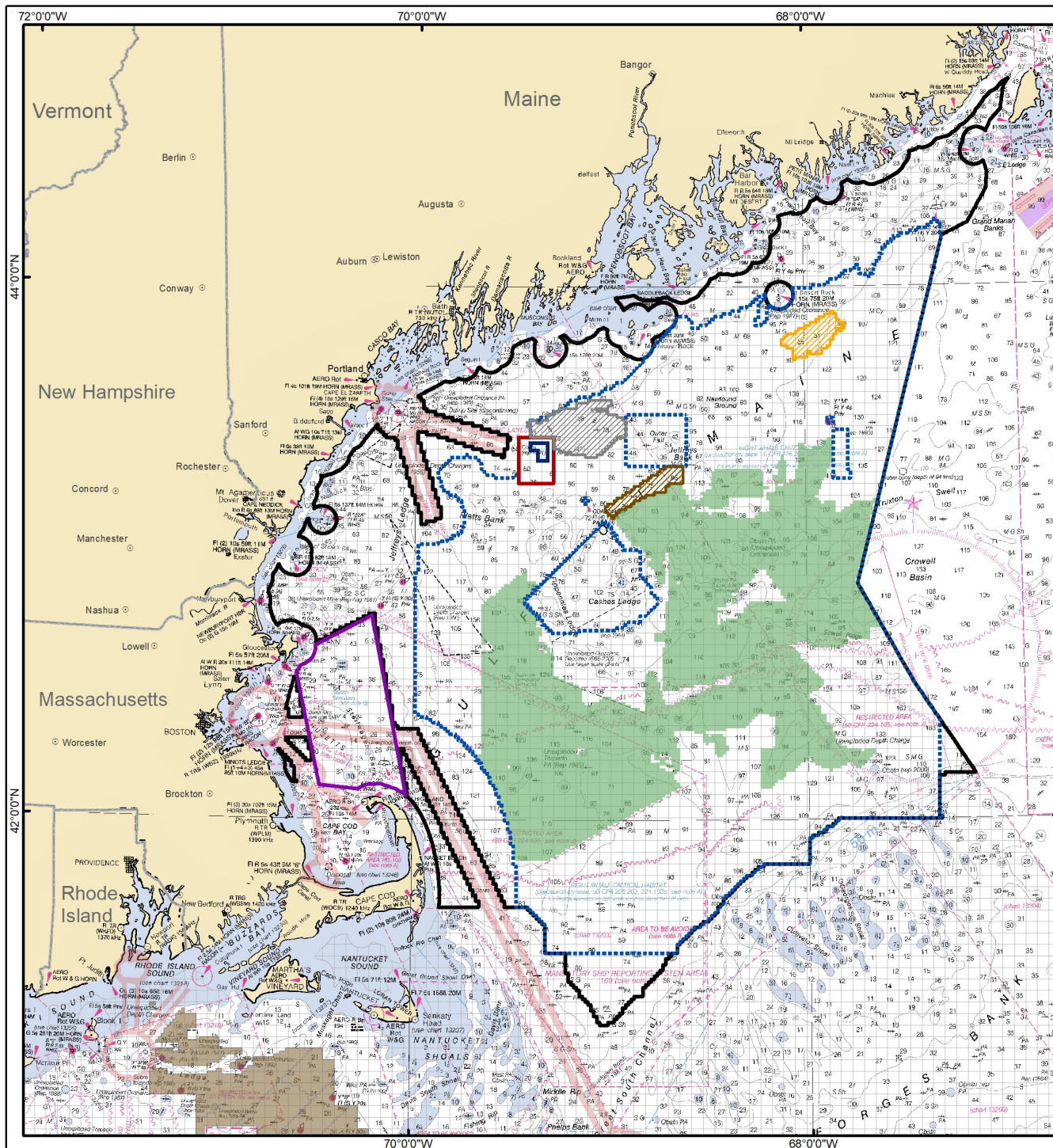
DRAFT OSW TC REPORT – APPENDIX B

Lobster Management Area 1 and Maine State Waters



Lobster Management Area 1 and Maine State Waters with BOEM Layers



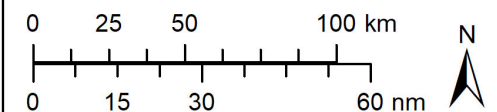


Gulf of Maine Draft Wind Energy Area

- Draft Wind Energy Area (WEA)
- Call Area
- Request for Interest (RFI) Area
- Request for Competitive Interest (RFCI) Area
- Maine Research Array Requested Lease Area
- Stellwagen Bank National Marine Sanctuary
- Traffic Separation Scheme
- Existing BOEM Leases

BOEM Secondary Areas for Further Analysis

- Secondary Area A (SA-A)
- Secondary Area B (SA-B)
- Secondary Area C (SA-C)



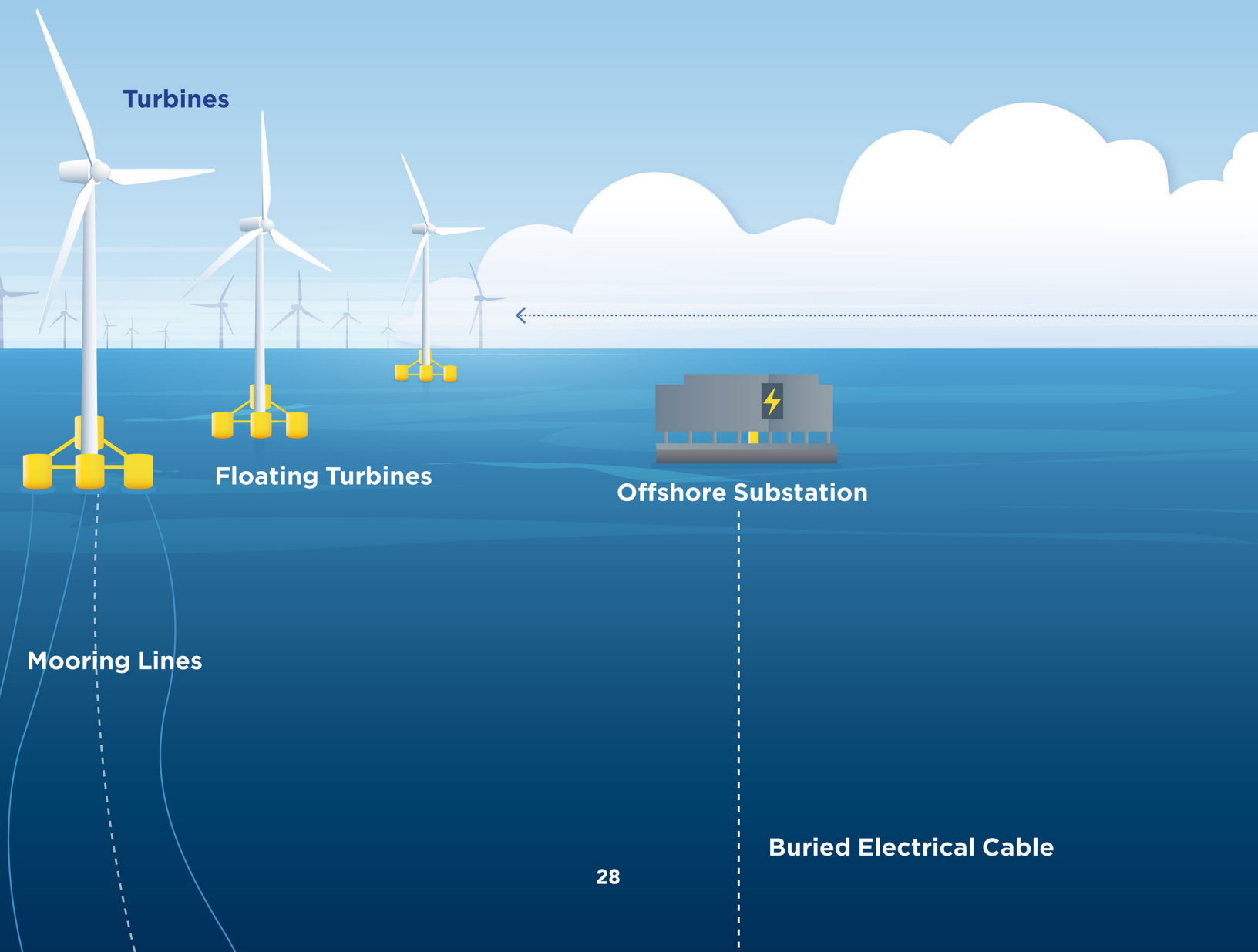
Map Date: 09/21/2023

OREP-2023-1045

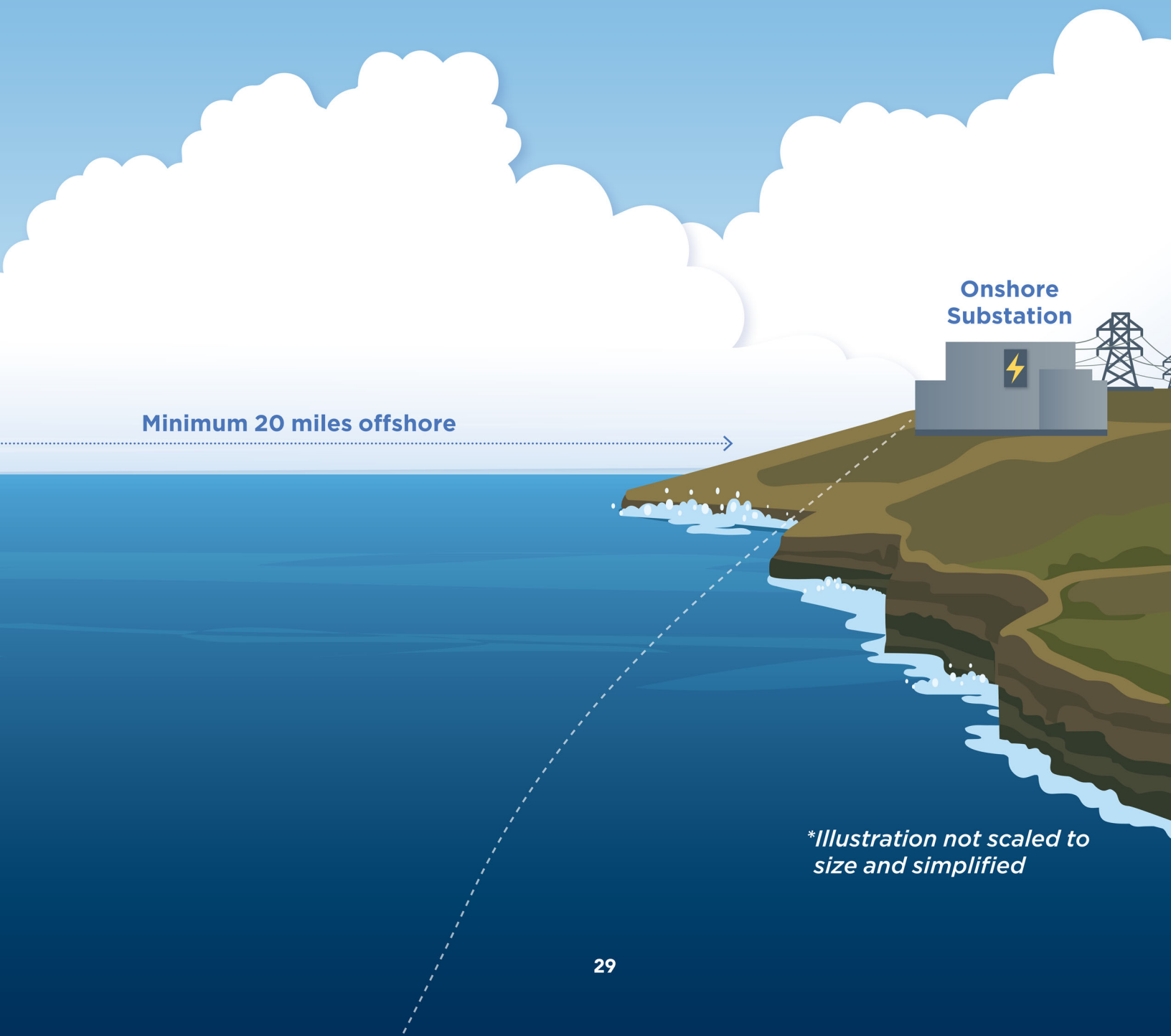
How Commercial Floating Wind Farms Would Work

Floating wind turbines are configured in an array to optimize the capture of wind energy and other requirements.

Energy captured by the turbines is conveyed through a transmission line to likely a floating platform substation for commercial projects.



A buried transmission cable transmits the power from the floating substation to the shore, where it is connected to the existing onshore electrical grid.



**Illustration not scaled to size and simplified*

The Federal Offshore Wind Leasing and Development Process

In federal waters, which start three miles offshore, the Bureau of Ocean Energy Management (BOEM) in the Department of Interior retains exclusive jurisdiction to lease energy developments, including offshore wind. This process takes several years and includes multiple decision gates and opportunities for stakeholder engagement. BOEM plans to hold a Gulf of Maine lease sale by the end of 2024 and has started the process of determining the appropriate areas.

The Gulf of Maine Intergovernmental Renewable Energy Task Force, convened by BOEM, serves as a forum to collect and share relevant information that would be useful during BOEM's decision-making process. The Task Force consists of state and local officials from Maine, New Hampshire, and Massachusetts, along with federally recognized Tribes and federal agencies.

The BOEM leasing process takes place in four main stages that stretch out over nearly a decade: planning and analysis to identify lease areas, leasing, site assessment, and construction and operations.

Commercial offshore wind leasing process announced for the Gulf of Maine:

1. Planning and Analysis to Identify Lease Areas—Started with a large Request for Interest Area (Q3 2022), and currently winnowing to a smaller Call Area (Q1 2023), then reducing further to Wind Energy Areas (Q3 2023) and final identification of lease areas.
2. Leasing—BOEM aims to complete a lease sale in the Gulf of Maine in 2024. Recent BOEM leases have included new stipulations around engagement, local workforce and supply chain development, as well as community benefits agreements.
3. Site Assessment—After leases are issued, BOEM reviews and approves the developer's environmental site assessment, including scientific studies and monitoring studies.
4. Construction and Operations—Review of the developer's Construction and Operations Plan (COP), including an Environmental Impact Statement (EIS). Construction and operations of wind projects is not anticipated to begin in the GOM before 2030. *note that BOEM has recently proposed regulatory changes to its offshore wind program, which are not reflected here.

All of these steps present opportunities for Maine stakeholders to provide input and influence outcomes.

Visit boem.gov/renewable-energy/state-activities/maine-history to find current information about Gulf of Maine federal offshore wind activities.