

STATE OF MAINE

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

—
S.P. 512 - L.D. 1619

**An Act To Prohibit Offshore Wind Power Development in Territorial Waters
and Submerged Lands of the State**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, development of offshore wind power projects, particularly those which deploy deep-water, floating platform technology, in suitable locations off Maine's coast may provide significant economic and environmental benefits to the State by generating renewable energy needed to achieve the goals and objectives of the State's climate action plan adopted pursuant to the Maine Revised Statutes, Title 38, section 577 and related state economic and environmental goals and objectives developed by the Maine Climate Council pursuant to Title 38, section 577-A; and

Whereas, the siting, construction and operation of offshore wind power projects in Maine's territorial waters, as defined by Title 12, section 6001, subsection 48-B, may adversely affect resources, including scenic and aesthetic resources, and recreational and economic uses, including commercial fishing, which are more commonly found or take place in the State's submerged lands and territorial waters than in proximate federal waters; and

Whereas, Maine's renewable, natural resources-based commercial fishing industry contributed direct revenues of \$517 million to the State's economy in 2020 and is a vital part of the State's economy and cultural heritage and identity; and

Whereas, Maine's lobster fishery is active primarily in Maine's territorial waters, had landings valued in excess of \$405 million in 2020, had an additional statewide economic impact of \$1 billion and is among the most valuable fisheries in the United States; and

Whereas, there are outstanding questions regarding the manner in and extent to which the siting, construction and operation of offshore wind power projects may displace or otherwise adversely affect natural resources within and uses of the State's submerged lands and territorial waters; and

Whereas, it is anticipated that the growth and development of the offshore wind power industry in the Northeast region and elsewhere in the United States over the next

decade will provide additional information through project-specific studies, research findings, monitoring results and operational experience that may assist the State in evaluating the siting and development of new offshore wind power projects in the State's submerged lands and territorial waters; and

Whereas, a moratorium on the development of offshore wind power projects will allow the State to undergo a review of applicable state laws and rules to determine whether the existing offshore wind power regulatory framework adequately protects Maine's coastal resources in a manner that avoids or minimizes adverse effects on coastal resources and uses; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 35-A MRSA §3404, sub-§3 is enacted to read:

3. Wind energy development; impacts to fisheries. If, in reviewing a proposed commercial lease for a wind energy development for any purpose other than scientific research or technological development to be located in federal waters within lobster management area 1, the United States Department of the Interior, Bureau of Ocean Energy Management determines that the wind energy development would have a significant adverse impact on fisheries, the State shall request that the Bureau of Ocean Energy Management work to minimize that impact.

For the purposes of this subsection, "wind energy development" has the same meaning as in section 3451, subsection 11 and "lobster management area 1" means the area defined by rule by the Department of Marine Resources.

Sec. 2. 35-A MRSA §3405 is enacted to read:

§3405. Prohibition on offshore wind power projects in territorial waters and submerged lands

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Associated facilities" has the same meaning as in section 3451, subsection 1.

B. "Offshore wind energy demonstration project" has the same meaning as in Title 38, section 480-HH, subsection 1, paragraph H.

C. "Offshore wind power project" means an offshore project that uses a windmill or wind turbine to convert wind energy to electrical energy. "Offshore wind power project" includes both generating facilities as defined by section 3451, subsection 5 and associated facilities, without regard to whether the electrical energy is for sale or use by a person other than the generator.

D. "Pilot-scaled, limited duration offshore wind power research and development project" means an offshore project that uses a wind turbine to convert wind energy to electrical energy, has a generating capacity of no more than 0.5 megawatts and is operational for no more than 5 years.

E. "Submerged lands" has the same meaning as in Title 12, section 1801, subsection 9.

F. "Territorial waters" has the same meaning as in Title 12, section 6001, subsection 48-B.

2. Prohibition. Notwithstanding any provision of law to the contrary and except as otherwise provided by subsection 3, a state agency or municipality or other political subdivision of the State may not license, permit or otherwise approve or authorize the siting, construction or operation of or issue a lease or grant an easement or other real property interest for a windmill or wind turbine or tower for an offshore wind power project in state-owned submerged lands or territorial waters.

3. Exemption. The prohibition established under subsection 2 does not apply to:

A. A pilot-scaled, limited-duration offshore wind power research and development project;

B. An offshore wind energy demonstration project and its associated facilities proposed for location in the Maine Offshore Wind Energy Research Center designated by the Department of Agriculture, Conservation and Forestry pursuant to Title 12, section 1868 and for which, prior to the effective date of this section, the commission has approved the terms of a long-term power purchase agreement. Subsequent amendment of the terms of such an agreement does not affect the applicability of this exemption;

C. The licensing, permitting or approval by a state agency or municipality or other political subdivision of the State of the siting, construction or operation of or the issuance of a lease or the grant of an easement or other real property interest for portside infrastructure or associated facilities other than utility cables or transmission lines governed by paragraph D that are intended to support generation of electricity from offshore wind energy facilities located seaward of the territorial waters; and

D. The licensing, permitting or approval by a state agency or municipality or other political subdivision of the State of the siting, construction or operation of or the issuance of a lease or the grant of an easement or other real property interest for utility cables or transmission lines that are intended to support generation of electricity from offshore wind energy facilities located seaward of the territorial waters if, by March 1, 2023:

(1) The Governor's Energy Office has completed a strategic plan to inform the development of offshore wind power projects that minimizes conflict with existing maritime industries, particularly fishing; identifies opportunities to preserve existing maritime businesses and jobs; and maximizes jobs, investment, new technologies and sustainability;

(2) The Governor's Energy Office, in consultation with other state agencies, has conducted a review of applicable state laws and rules to determine whether the existing offshore wind energy statutory and regulatory framework protects the State's coastal resources in a manner that avoids or minimizes adverse effects on coastal resources and users from the development of offshore wind power projects located seaward of the territorial waters; and

(3) The Governor's Energy Office, with input from the advisory board of the Offshore Wind Research Consortium established in section 3406, has identified the preliminary research questions the consortium seeks to answer regarding the development of offshore wind power projects.

The Governor's Energy Office shall submit a report to the joint standing committee of the Legislature having jurisdiction over energy and utility matters when the conditions established under subparagraphs (1) to (3) are met.

Sec. 3. 35-A MRSA §3406 is enacted to read:

§3406. Offshore Wind Research Consortium; fund established

1. Offshore Wind Research Consortium. The Offshore Wind Research Consortium is an initiative of the Governor's Energy Office to coordinate, support and arrange for the conduct of research on offshore wind power projects in the Gulf of Maine.

2. Advisory board. The Governor's Energy Office, in consultation with independent scientific experts, shall establish an advisory board of the consortium to oversee the development and execution of a research strategy to better understand the local and regional impacts of floating offshore wind power projects in the Gulf of Maine. The advisory board must include, but is not limited to, the following members:

- A. Two individuals from organizations that represent commercial lobster harvesting interests in the State;
- B. At least one individual from an organization that represents the interest of commercial fisheries other than lobster harvesting;
- C. The Commissioner of Marine Resources, or the commissioner's designee;
- D. Two individuals, not represented by an organization, that represent the interests of the commercial lobster harvesting industry and commercial fisheries in the State; and
- E. One individual from the recreational charter fishing industry.

The advisory board is subject to all applicable provisions of the Freedom of Access Act. The operation of the advisory board must be informed by the work of regional and national scientific entities. The advisory board shall solicit input from stakeholders, including representatives of the fishing industry, state and federal agencies and scientific experts.

3. Research strategy. The advisory board established in subsection 2 in developing a research strategy shall at a minimum identify:

- A. Opportunities and challenges caused by the deployment of floating offshore wind power projects to the existing uses of the Gulf of Maine;
- B. Methods to avoid and minimize the impact of floating offshore wind power projects on ecosystems and existing uses of the Gulf of Maine; and
- C. Ways to realize cost efficiencies in the commercialization of floating offshore wind power projects.

The advisory board shall advise the Governor's Energy Office on the development of the components of the research strategy.

4. Offshore Wind Research Consortium Fund; established. The Offshore Wind Research Consortium Fund, referred to in this subsection as "the fund," is established as a

nonlapsing fund administered by the Governor's Energy Office and the Department of Marine Resources. The fund consists of funds that are appropriated by the Legislature, funds received from federal and state sources and other funds from any public or private source received for use for any of the purposes under this subsection. The source of any funds received from public or private sources must be publicly disclosed. The fund may be used to support the consortium and the work of the advisory board established in subsection 2, including for:

- A. Developing the research strategy under subsection 3;
- B. Conducting research;
- C. Producing reports or other materials;
- D. Compensating independent experts, if needed to assist in the development or execution of the research strategy under subsection 3; and
- E. Making any other expenditures that are necessary to achieve the purposes of this section.

The Governor's Energy Office, in consultation with the advisory board, shall provide an annual report on the use of the fund in the last quarter of each calendar year to the joint standing committee of the Legislature having jurisdiction over energy and utility matters.

Sec. 4. Department of Agriculture, Conservation and Forestry; submission of legislation. On or before February 1, 2022, the Department of Agriculture, Conservation and Forestry shall submit legislation to the Second Regular Session of the 130th Legislature necessary to align those provisions of law under its jurisdiction with the prohibition on offshore wind power projects under the Maine Revised Statutes, Title 35-A, section 3405.

Sec. 5. Public Utilities Commission; submission of legislation. On or before February 1, 2022, the Public Utilities Commission shall submit legislation to the Second Regular Session of the 130th Legislature necessary to align those provisions of law under its jurisdiction with the prohibition on offshore wind power projects under the Maine Revised Statutes, Title 35-A, section 3405.

Sec. 6. Department of Environmental Protection; submission of legislation. On or before February 1, 2022, the Department of Environmental Protection shall submit legislation to the Second Regular Session of the 130th Legislature necessary to align those provisions of law under its jurisdiction with the prohibition on offshore wind power projects under the Maine Revised Statutes, Title 35-A, section 3405.

Sec. 7. Appropriations and allocations. The following appropriations and allocations are made.

EXECUTIVE DEPARTMENT

Offshore Wind Research Consortium Fund N940

Initiative: Provides allocations to establish the Offshore Wind Research Consortium Fund.

OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
All Other	\$500	\$500
OTHER SPECIAL REVENUE FUNDS TOTAL	\$500	\$500

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.