

U.S. Coast Guard Updates its Offshore Wind Farm Approval Guidance

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On August 1, 2019, the U.S. Coast Guard published Navigation and Vessel Inspection Circular (NVIC) No. 01-19 entitled “[Guidance on the Coast Guard’s Roles and Responsibilities for Offshore Renewable Energy Installations \(OREI\)](#).” This guidance replaces guidance of the same name published March 9, 2007, as NVIC No. 02-07. The Coast Guard plays a leading role in the assessment of the impact an offshore wind farm may have on the U.S. “Marine Transportation System” as defined under federal law.

The recent NVIC notes that “offshore wind is a viable electricity source” and “the United States has abundant and high-quality offshore wind energy resources.” The Coast Guard also observes that “there are several projects on the Atlantic and Pacific coasts at various stages of the permitting process with the potential to generate 17 GW [gigawatts].”

Among other things, the recent NVIC clarifies the Coast Guard’s role in the offshore wind farm permitting process. The Energy Policy Act of 2005 amended the Outer Continental Shelf Lands Act to authorize the [Bureau of Ocean Energy Management \(BOEM\)](#) to issue leases, easements and right-of-ways on the U.S. outer continental shelf (beyond the 3 nautical mile limit from shore) for offshore renewable projects. The Coast Guard acts in an advisory role to BOEM (and potentially other agencies in other situations) in the issuance of such leases/easements/right-of-ways.

In that role, the Coast Guard may recommend to BOEM that the offshore wind farm developer conduct a “Navigation Safety Risk Assessment” or “NSRA” in connection with the permitting process. The most recent NVIC expands on and clarifies the subjects for such an NSRA from the earlier 2007 guidance.

An NSRA requires evaluation of marine traffic information based on an analysis of vessel movement data and consultation with Coast Guard officials, pilots’ associations, the maritime industry, local fisherman, recreational boat users and others. The NSRA must include analysis of changes that will occur as a result of the placement of the wind farm including potentially cumulative effects associated with adjacent wind farms.

The recent NVIC goes into substantially greater detail regarding the factors that should be considered than the 2007 NVIC. The recent NVIC also includes a checklist for development of an NSRA as well as for review of any NSRA by the Coast Guard.

Finally, the recent NVIC sets forth new “Marine Planning Guidelines” that are, as the NVIC points out, “nearly identical” to guidance established by the United Kingdom in its 2008 “Safety of Navigation: Offshore Renewable Energy Installation (OREIs)—Guidance of UK Navigational Practice, Safety, and Emergency Response.” The Guidelines are designed to assist in the establishment of minimum safe distances in offshore wind farm planning taking into account all sea uses. Congress had considered mandating minimum safe distances in the Coast Guard Authorization Act of 2019 but that provision was removed before the bill was passed by the U.S. House of Representatives on July 24, 2019.

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