

## Fostering Wind Energy Development In The Great Lakes

*Law360, New York (April 25, 2012, 1:16 PM ET)* -- Following the precedent of the Obama administration's "Smart from the Start" initiative to speed offshore wind energy development off the Atlantic Coast, on March 30, 2012, the Obama administration and five of the eight Great Lakes littoral states signed a memorandum of understanding (MOU) intended to streamline the efficient and responsible development of offshore wind energy resources in the Great Lakes.

The related announcement states that the MOU will enhance collaboration between federal and state agencies to speed review of proposed offshore wind energy projects and, in particular, to develop an action plan that sets the priorities and recommended steps for achieving efficient and responsible evaluation of wind power projects in the Great Lakes region.

The announcement further states that unlocking the Great Lakes' offshore wind energy resources could yield tremendous economic and environmental benefits throughout the region, and that it has the potential to produce more than 700 gigawatts of energy from offshore wind — approximately one-fifth of the total offshore wind potential in the United States.

The announcement notes that the development of even a small portion of the area's offshore wind potential could create tens of thousands of clean energy jobs and generate revenue for local businesses. These efforts are in line with the steps the Obama administration has taken to increase domestic energy production, including increased production of our nation's oil and natural gas resources — with domestic oil production higher than any time in the last eight years and natural gas at an all-time high.

Federal coordination of Great Lakes offshore wind energy development is generally seen as welcome, given that the primary federal permitting is undertaken by the U.S. Army Corps of Engineers (USACE) under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act of 1977.

In relatively sharp contrast to the Atlantic Coast's Outer Continental Shelf (OCS), which is under exclusive federal jurisdiction — and benefits from the significant prior experience with oil and gas leasing of the OCS — the littoral Great Lakes states have jurisdiction over the littoral lakebed, as well as the likely onshore transmission interconnection, and the permitting process in most states is either relatively immature or still being developed.

In Illinois, the recently established Lake Michigan Offshore Wind Energy Advisory Council is required to report its findings and recommendations to the governor and the general assembly of Illinois by June 30, 2012. The council is also charged with evaluating the following:

- The appropriate criteria for the Illinois Department of Natural Resources (DNR) to use to review applications for offshore wind development of Lake Michigan lakebed leases.
- The criteria for identifying areas that are favorable, acceptable and unacceptable for offshore wind development, including, but presumably not limited to, impacts to wildlife, protected habitats, navigation, commercial fisheries and recreational uses of Lake Michigan.
- A recommended process for ensuring public engagement in the DNR's process for leasing Lake Michigan lakebed for offshore wind energy projects.
- Options for how the state of Illinois shall be compensated for Lake Michigan lakebed leasing.
- A summary of the lessons learned from other domestic and international offshore wind development experiences, including those related to public policy, regulatory, and siting concerns for offshore wind development.
- Identification of local, state and federal authorities with permitting, siting or other approval authority for wind power development in Lake Michigan.
- Recommendations for needed state legislation and regulations governing offshore wind farm development.

Similar efforts are occurring in the other Great Lakes littoral states. Some of these efforts are more advanced than the Illinois efforts (others are less advanced), so coordination among these states would certainly be welcome to Great Lakes offshore wind energy developers and other interested parties.

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[1] Including the White House Council on Environmental Quality, the U.S. Department of Energy, U.S. Department of Defense, U.S. Department of the Army, Advisory Council on Historic Preservation, U.S. Coast Guard, U.S. Environmental Protection Agency and U.S. Fish and Wildlife Service.

[2] The states of Illinois, Michigan, Minnesota and New York and the Commonwealth of Pennsylvania. According to an Obama administration representative, the remaining littoral states of Indiana, Ohio and Wisconsin declined to participate but may join the MOU later.

[3] A 2009 map by the National Renewable Energy Laboratory of the DOE showing the Great Lakes offshore wind resource as ranging from Good to Superb is available at:  
[http://www.windpoweringamerica.gov/pdfs/wind\\_maps/us\\_windmap.pdf](http://www.windpoweringamerica.gov/pdfs/wind_maps/us_windmap.pdf).

[4] Although an important limit on the utility thereof is the revocable nature of the permit available thereunder.

[5] Established under Illinois Public Act 97-0266 (2010).