

Understanding State Versus Federal Roles in Project Siting and Permitting: Obstacles and Opportunities

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Daron Threet
Counsel

Federal NEPA

- Outlines the process for federal agency review of the environmental impacts of proposed projects
- Often results in comprehensive, multi-hundred page Environmental Impact Statements (EIS)
 - Generally used by all federal agencies in issuing approvals

State “Mini-NEPAs”

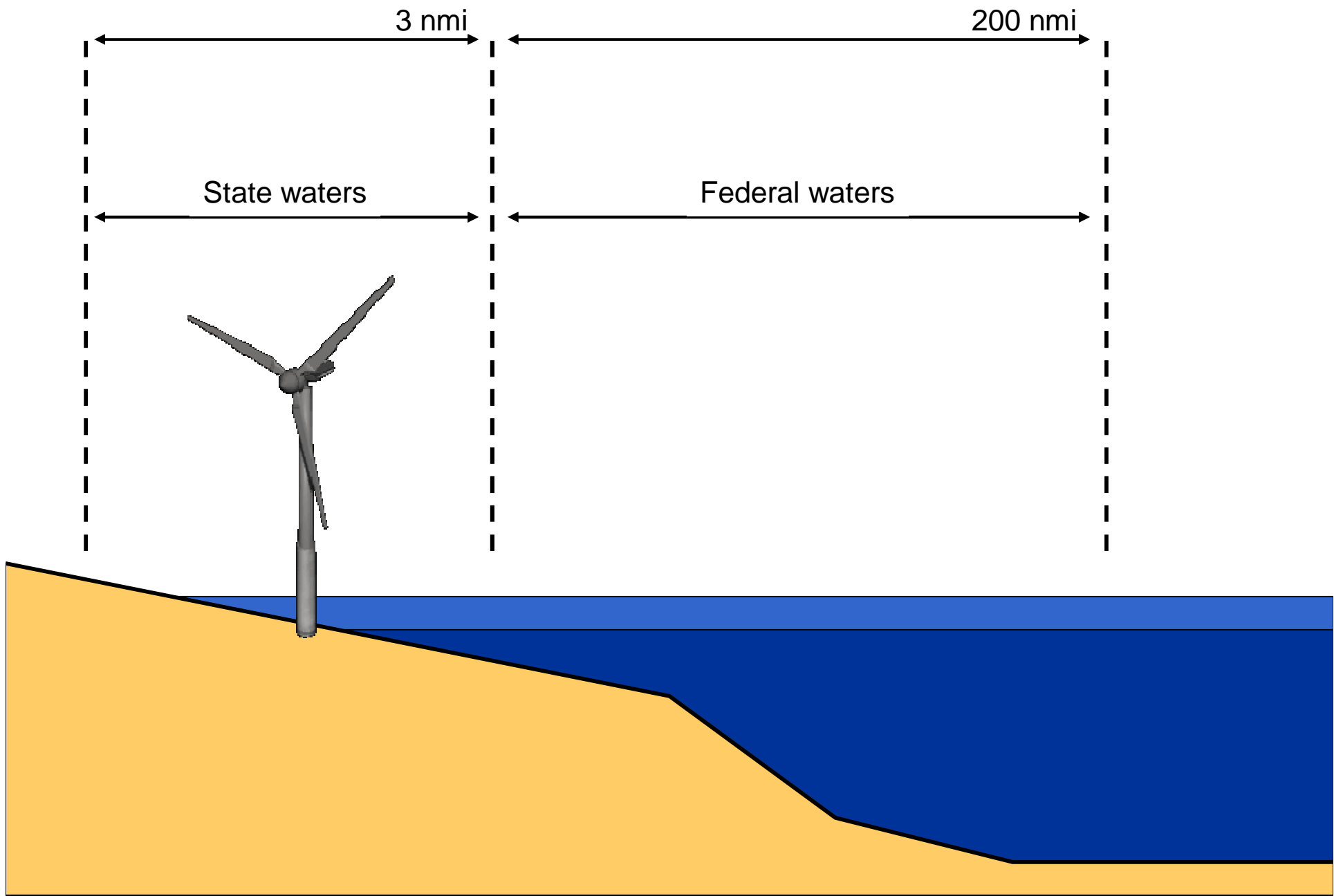
- State-level “mini-NEPAs” often govern state environmental reviews
- Where “mini-NEPAs” have not been enacted, many states have separate review requirements set by statute, executive order, or other directive
- Requirements are often similar to, but can differ from, federal NEPA
- State-level EISs or other environmental reports may be required

Projects in State Waters

- State jurisdiction generally extends 3 nautical miles (nmi) from shore
- State leases, rights-of-way, or other land use approvals are generally required to site and grid-connect projects
- Federal approvals are also required
 - e.g., U.S. Army Corps of Engineers, Coast Guard

Projects in Federal Waters

- Federal jurisdiction generally begins at the 3 nmi mark and extends out to 200 nmi
- Federal land leases and other approvals are required
- Various State approvals are required
 - State land leases, rights-of-way, or similar approvals
 - CZMA



Continental Shelf

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Project Review and NEPA Implications

- The bottom line is project reviews, regardless of whether the project is located in federal or state waters:
 - are multi-jurisdictional (e.g., many federal and state agencies involved)
 - potentially involve multiple layers of NEPA review (i.e., federal and state)
 - risk potential delay and complications if not well structured

Project Review and NEPA Implications

- Review processes can be coordinated and consolidated to
 - Share resources
 - Establish review schedules and timeframes
 - Resolve issues consistently
 - Develop common mitigation/adaptive management requirements
 - Avoid interagency disputes and redundant reviews

Efforts to Coordinate Reviews

Atlantic Offshore Wind Energy Consortium

- Memorandum of understanding (MOU) (dated June 8, 2010) between the secretary of interior and the states of Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina
- Participants agree to undertake activities to
 - Clarify permitting responsibilities
 - Evaluate where multi-agency coordination may be appropriate
 - Promote effective communication between regulatory bodies

Strategies and Approaches

- Participate in shaping regulatory policies and guidelines
 - Outreach to agencies and other stakeholders
- Suggest or request project-specific review protocols, coordination, and consolidation
 - Example: project-specific MOUs
- Develop permitting strategies that take into account the multiple areas and layers of review, draw on existing agency experience, and attempt to streamline and consolidate issues wherever possible

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- 2010 *U.S. News and Best Lawyers: National Tier 1*
- 2010 *Chambers Global*
Leading Energy Practice
- *The Energy Daily*
2009 Leadership Award
Most Dynamic Energy Practices in the United States