

Developments in Federal
and State Law

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Minimizing and Mitigating Potential Environmental
Justice Impacts from Offshore Wind Port Facilities through
Adaptive Public Engagement: Sharing Best Practices

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IN THIS ISSUE

Minimizing and Mitigating Potential Environmental Justice
Impacts from Offshore Wind Port Facilities through Adaptive
Public Engagement: Sharing Best Practices.....

21

LEGAL DEVELOPMENTS

31

♦ ADMINISTRATION.....

31

♦ ENERGY.....

31

♦ HAZARDOUS SUBSTANCES.....

32

♦ INSURANCE.....

33

♦ LAND USE.....

33

♦ OIL SPILLS & STORAGE.....

34

♦ SEQRA/NEPA.....

35

♦ TOXIC TORTS.....

36

♦ WILDLIFE & NATURAL RESOURCES.....

37

NEW YORK NEWSNOTES

37

WORTH READING

40

UPCOMING EVENTS

41

I began this project thinking about historical energy transitions and the role of community engagement. According to Canadian interdisciplinary scholar Vaclav Smil, “The history of energy use is a sequence of transitions to sources that are cheaper, cleaner, and more flexible.”¹ Offshore wind (OSW) has emerged in the northeastern United States because it fits the profile Smil describes but also in large part because of advocacy efforts by community and environmental justice groups.² In a 2021 report, the U.S. Department of Energy listed 33 OSW projects in some stage of development along the Atlantic seaboard.³ A recent study put out by the Special Initiative on Offshore Wind details more than \$109 billion in direct investment related to these projects that will go toward supporting local communities and building up a domestic supply chain by the year 2030.⁴

Each of these projects will be a large-scale construction operation with many moving pieces and a large footprint, stemming from a network of manufacturing and marshaling ports to be located up and down the East Coast. Approximately five staging ports will be required to meet the needs of the first 10 gigawatts of offshore wind energy projects on the Atlantic Coast alone.⁵ As this

¹ VACLAV SMIL, POWER DENSITY: A KEY TO UNDERSTANDING ENERGY SOURCES AND USES (2015); *see also* Vaclav Smil, *Trump’s Coal Policy Will Likely Do Just What Obama’s Did*, WASH. POST (Mar. 29, 2017), <https://wapo.st/3oE35bH>.

² *See, e.g.*, N.Y.C. Env’t Justice Alliance, New York City Environmental Justice Alliance Testimony to the New York City Council Committee on Environmental Protection in Relation to Facilitating the Use of Wind Power in New York City, and in Support of Intro 598 (Feb. 26, 2018), https://www.nyc-eja.org/wp-content/uploads/2018/05/Testimony-Wind_0226.pdf.

³ *See* OFFICE OF ENERGY EFFICIENCY & RENEWABLE ENERGY, U.S. DEPT. OF ENERGY, DOE/GO-102021-5614, OFFSHORE WIND MARKET REPORT: 2021 EDITION (Aug. 2021), https://www.energy.gov/sites/default/files/2021-08/Offshore%20Wind%20Market%20Report%202021%20Edition_Final.pdf.

⁴ *See* SPECIAL INITIATIVE ON OFFSHORE WIND, SUPPLY CHAIN CONTRACTING FORECAST FOR U.S. OFFSHORE WIND POWER – THE UPDATED AND EXPANDED 2021 EDITION (Oct. 2021), *available at* <https://sites.udel.edu/ceoe-siow/>.

⁵ *See* OFFICE OF ENERGY EFFICIENCY & RENEWABLE ENERGY, U.S. DEPT. OF ENERGY, *supra* note 3, at 28.

article will discuss, many of these ports will be in environmental justice (EJ) communities. What will be the impacts to each EJ community during construction, and how will these impacts potentially tail off during the operations and maintenance phase? OSW is broadly supported by EJ and stakeholder groups,⁶ due to climate change benefits and potential jobs for their communities. As this moment is widely considered the inception of the OSW industry in this country, we owe it to our local communities to get this right and do everything possible to mitigate adverse impacts when they cannot be eliminated.

This article will offer an overview of the OSW development process, discuss potential EJ impacts from port operations, and focus on community engagement strategies. We discuss how engagement has changed as the industry has developed and offer best practices on various adaptive engagement policies. As part of this project, nearly 20 industry experts and stakeholders were surveyed for their input on these topics. Their answers were intriguing and their passion for the industry inspiring. There is a clear enthusiasm to build a clean energy solution for this country, and a desire to do so while limiting impacts to surrounding environments.

Offshore Wind History in New York

The New York State Energy Research and Development Authority (NYSERDA) has been leading the way in New York OSW development since 2016, conducting research and analysis and extensive community outreach to gauge the feasibility of projects in New York lease areas. As Figure 1 details, New York currently has five projects in various stages of development from solicitation awards in 2018 and 2020, totaling more than 4,300 megawatts (MW) of capacity.



Figure 1. Current NY OSW Lease Areas and Proposed Ports⁷

This number will continue to grow. In June 2021, the Bureau of Ocean Energy Management (BOEM) announced its intent to lease areas in the New York Bight region, just south of Long Island and east of New Jersey.⁸ At the New York State level, in 2018, then-Governor Andrew Cuomo announced a goal of 2,400 MW of offshore wind power by the year 2030; this was later increased to a target of 9,000 MW by the year 2035 in the 2019 Climate Leadership and Community Protection Act.⁹ In 2018, NYSERDA and the Public Service Commission (PSC) each took important steps to meet the State's wind power goals with the issuance of the

⁶ See, e.g., Elizabeth Yeampierre & Angela Adrar, *Offshore Wind, Onshore Justice*, GOTHAM GAZETTE (Mar. 13, 2018), <https://www.gothamgazette.com/opinion/7533-offshore-wind-onshore-justice>.

⁷ Reprinted from *Offshore Wind Projects*, N.Y. STATE ENERGY RSCH. & DEV. AUTH. (NYSERDA), <https://www.nyserdera.ny.gov/All-Programs/Programs/Offshore-Wind/Focus-Areas/NY-Offshore-Wind-Projects> (last visited Dec. 9, 2021).

⁸ 86 Fed. Reg. 31524 (June 14, 2021); *New York Bight*, BUREAU OF OCEAN ENERGY MGMT. (BOEM), <https://www.boem.gov/renewable-energy/state-activities/new-york-bight> (last visited Dec. 9, 2021).

⁹ See N.Y. ENV'T CONSERV. LAW § 75-0103(13)(e); *New York Offshore Wind*, NY OFFSHORE WIND ALLIANCE, <https://www.nyowa.org/new-york-offshore-wind> (last visited Dec. 9, 2021).

Offshore Wind Master Plan (NY Master Plan), the establishment of the Offshore Wind Standard, and the first commercial-scale solicitation in the state for 800 MW of capacity.¹⁰ The PSC is the primary State environmental review and approval body for OSW projects, with its main purview being transmission facilities sited within three nautical miles of shore. Developers must obtain a Certificate of Environmental Compatibility and Public Need from the PSC for this portion of the OSW project.¹¹

In the process of developing the NY Master Plan, NYSERDA requested input from approximately 50 non-governmental organization (NGO) contacts. Their suggestions for focus areas are set forth in Appendix W of the NY Master Plan,¹² and listed below for comparison with our project survey:

- Ratepayers and vulnerable populations
- Jobs and training for transitional workers
- Supply chain development
- Outreach and engagement (education, involvement, and knowledge sharing)
- Environmental impacts
- Shipping and navigation impacts
- Visual impacts
- Potential offtake mechanisms

NYSERDA has also been extensively involved with community education programs such as the *Learning from the Experts* webinar series in which the agency hosts subject matter experts to present on various OSW topics.¹³ Technical working groups (TWGs)—maritime, fisheries, environmental, and jobs and supply chain—have sprung up over the last few years to inspire collaboration between NYSERDA and local OSW stakeholders.¹⁴

What Is an Environmental Justice Area?

The U.S. Environmental Protection Agency defines environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”¹⁵ EJ areas, or geographic pockets that experience elevated environmental impacts compared to similar areas within the state, are designated if they meet one of various socioeconomic metrics. The precise metrics vary a bit from state to state, but they will usually include median household income, percent minority population, and percent English proficiency. As an example, in Massachusetts a neighborhood is defined as an Environmental Justice population if one or more of the following four criteria is met:

1. the annual median household income is not more than 65 per cent of the statewide annual median household income;
2. minorities comprise 40 per cent or more of the population;
3. 25 per cent or more of households lack English language proficiency; or
4. minorities comprise 25 per cent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 per cent of the statewide annual median household income.¹⁶

It is important to note the use of “or” instead of “and” in this list. This key difference brings more geographic areas in for potential review.

Then let us quickly look at New York’s definition for EJ area.¹⁷ Potential EJ Areas are U.S. Census block groups of 250 to 500 households each that, in the Census, had populations that met or exceeded at least one of the following statistical thresholds:

¹⁰ See *Offshore Wind Master Plan*, NYSERDA, <https://on.ny.gov/3ItHk6a> (last visited Dec. 9, 2021); Press Release, NYSERDA, Governor Cuomo Issues New York’s Large-Scale Offshore Wind Solicitation (Nov. 8, 2018), <https://on.ny.gov/3IDut1c>.

¹¹ See generally Noah Shaw et al., *Beneath the Waves: New York State and Local Tax and Regulatory Landscape for Offshore Wind Projects*, HODGSON RUSS LLP (Aug. 6, 2020), <https://www.hodgsonruss.com/newsroom-publications-12655.html>.

¹² *N.Y. State Offshore Wind Master Plan: Outreach and Engagement Summary*, in NYSERDA, REPORT 17-25, NEW YORK STATE OFFSHORE WIND MASTER PLAN: CHARTING A COURSE TO 2,400 MEGAWATTS OF OFFSHORE WIND ENERGY app. W (2018), <https://on.ny.gov/31K54SH>.

¹³ *Learning from the Experts, a Webinar Series*, NYSERDA, <https://www.nyserdera.ny.gov/osw-webinar-series> (last visited Dec. 9, 2021).

¹⁴ See *Technical Working Groups (TWGs)*, NYSERDA, <https://on.ny.gov/3pLg6PM> (last visited Dec. 9, 2021); see also NYSERDA, GUIDING PRINCIPLES FOR OFFSHORE WIND STAKEHOLDER ENGAGEMENT—OFFSHORE WIND FOR ALL: ENGAGING NEW YORK STAKEHOLDERS (Oct. 2021) [hereinafter GUIDING PRINCIPLES], <https://on.ny.gov/3yfyEm>.

¹⁵ U.S. ENV’T PROT. AGENCY (EPA), GUIDANCE ON CONSIDERING ENVIRONMENTAL JUSTICE DURING THE DEVELOPMENT OF REGULATORY ACTIONS 4 (May 2015), <https://www.epa.gov/sites/default/files/2015-02/documents/team-ej-lexicon.pdf>.

¹⁶ See *Environmental Justice Populations in Massachusetts*, MASS.GOV, <https://www.mass.gov/info-details/environmental-justice-populations-in-massachusetts> (last visited Dec. 9, 2021).

¹⁷ See *Maps & Geospatial Information System (GIS) Tools for Environmental Justice*, N.Y. STATE DEPT. OF ENV’T CONSERV., <https://www.dec.ny.gov/public/911.html> (last visited Dec. 9, 2021).

1. At least 52.42% of the population in an urban area reported themselves to be members of minority groups; or
2. At least 26.28% of the population in a rural area reported themselves to be members of minority groups; or
3. At least 22.82% of the population in an urban or rural area had household incomes below the federal poverty level.

In recent years, a number of other states have enacted laws and policies to strengthen their EJ programs and give affected communities greater say in decisions that affect their local environments.¹⁸ New York and Massachusetts are noted here because they have the highest OSW projected capacities in

the region,¹⁹ and we can clearly see that although many of the same metrics are used, the precise thresholds for designating EJ communities vary. Why is this important? The simple answer is due to the number of potential ports that may be used for each OSW project, and the likelihood that these ports may be in different states. EJ programs are likely to differ from state to state. It is possible for the difference in program requirements to be significant. For example, in 2020, the State of New Jersey passed the first EJ law²⁰ that requires a state to deny permits for certain facilities located in EJ communities that cannot reduce their projected impacts.

At the time of this writing, at least 12 Atlantic and mid-Atlantic states²¹ have begun development of OSW ports or supply chain sites. Each of these sites is in a potential EJ area.²²

Figure 2 presents a summary of socially vulnerable regional demographics according to income level, minority status, education level, and average age of the population. Often, overburdened communities will meet more than one of a state's EJ area criteria, but it is important to note that they only need to meet one.

Region	Low Income (% population)	Minority (% population)	No High School (% population)	65 and Older (% population)
Contiguous U.S. Coast	32	39	13	15
Northwest (Detroit)	26	29	8	15
Northeast (Philadelphia)	26	44	12	15
Southeast-Atlantic	36	51	12	18
Southwest (Los Angeles)	30	63	17	14
Southern Great Plains	37	67	20	11
Southeast-Gulf	35	33	12	20

Figure 2. Current Distribution of Socially Vulnerable Populations in the Coastal Counties of the Contiguous U.S.²³

¹⁸ See Abby Blocker, *State Trends in Environmental Justice Legislation*, WASTE 360 (June 8, 2021), <https://www.waste360.com/legislation-regulation/state-trends-environmental-justice-legislation>.

¹⁹ See OFFICE OF ENERGY EFFICIENCY & RENEWABLE ENERGY, U.S. DEPT. OF ENERGY, *supra* note 3.

²⁰ *Environmental Justice Law, Policy and Regulation*, N.J. DEPT. OF ENV'T PROT., <https://www.nj.gov/dep/ej/policy.html> (last visited Dec. 9, 2021).

²¹ New Jersey, New York, Virginia, Maryland, Connecticut, Massachusetts, Rhode Island, Maine, Delaware, North Carolina, South Carolina, and Pennsylvania.

²² This assumes the New Jersey EJ law model as a representative "most sensitive case."

²³ Chris Whitehead & Michael Kolian, *Do Climate Impacts Have a Greater Effect on EJ Communities?*, Presentation to the A&WMA (2021) (derived from EPA, EPA 430-R-21-003, CLIMATE CHANGE AND SOCIAL VULNERABILITY IN THE UNITED STATES: A FOCUS ON SIX IMPACTS (2021), https://www.epa.gov/system/files/documents/2021-09/climate-vulnerability_september-2021_508.pdf).

How Does Environmental Justice Factor into OSW Projects?

Large projects proposed by or receiving funds or land from the federal government, including OSW projects, require a detailed analysis and stakeholder engagement process through the National Environmental Policy Act (NEPA). As noted in the most recent Vineyard Wind Environmental Impact Statement,

agencies are to consider whether there is or will be an impact on the natural or physical environment that significantly and adversely affects a minority population, low-income population, or Indian tribe, including ecological, cultural, human health, economic, or social impacts; and whether the effects appreciably exceed those on the general population or other appropriate comparison group.²⁴

States have been incorporating various EJ and community engagement requirements into their solicitations, with New York recently including section 3.2.8 (*Community Engagement and Prioritizing Disadvantaged Communities*), and New Jersey requiring that subsection 3.16 (*Economic Development Plan*) detail proposed project economic impacts over 20 years and how those investments would benefit local communities and workforce development.²⁵

In addition, under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, issued in 1994 by President Clinton, and through guidance from the Council on Environmental Quality (CEQ), all federal agencies identify and address, as appropriate, “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”²⁶

In 2016, a federal interagency NEPA working group recommended that,

to meaningfully engage minority populations and low-income populations and other interested individuals, communities, and organizations, agencies may consider (as appropriate)

encompassing adaptive and innovative approaches to both public outreach (i.e., disseminating relevant information) and participation (i.e., receiving community input) since minority populations and low-income populations often face different and greater barriers to engagement.²⁷

Such recommendations help move minimum industry practices from notification to engagement and partnership with local communities.

Overview of the OSW Project Development Process

Before we go any further, it may be useful to walk through how these OSW projects come to life, and where the established public input opportunities already exist. The federal government first began the process of identifying various potential outer continental shelf (OCS) lease areas in the Northeast in 2010.²⁸ These areas are in federal waters, usually at least 15–30 nautical miles off the nearest state coastline. They are chosen for their meteorological characteristics, lack of sensitive benthic receptors (limiting potential impact on aquatic biodiversity), and distance from high-density vessel traffic lanes, among other factors. As part of the process of identifying lease areas, BOEM holds regular public meetings before the formal leasing process begins, where the agency summarizes its findings and provides its raw data sources. CEQ has issued guidance for federal agencies such as BOEM on how to best reach out to EJ communities, detailing the sort of community groups to reach out to and potential media to use for the outreach.²⁹

If a state is identified as having a lease area off its coast, the state agencies are then tasked with gathering stakeholders and developing a plan for developing OSW in their state. As these plans are developed, business leaders, advocacy groups, and the public are given the chance to comment. Public notice during this process is given through advertisement across multimedia platforms. Platform popularity and access vary based on location, so outreach planning is necessary on a case-by-case basis.

²⁴ BOEM, BOEM 2021-0012, VINEYARD WIND 1 OFFSHORE WIND ENERGY PROJECT FINAL ENVIRONMENTAL IMPACT STATEMENT: VOLUME IV (Mar. 2021), <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Vineyard-Wind-1-FEIS-Volume-4.pdf>.

²⁵ J. Paul Forrester, *ESG in US Offshore Wind (and Not for the Reason That You Are Probably Thinking): Social Considerations for Other Infrastructure Also Likely*, MAYER BROWN (Mar. 23, 2021), <https://www.mayerbrown.com/en/perspectives-events/publications/2021/03/esg-in-us-offshore-wind-and-not-for-the-reason-that-you-are-probably-thinking-social-considerations-for-other-infrastructure-also-likely>.

²⁶ COUNCIL ON ENV'T QUALITY, ENVIRONMENTAL JUSTICE: GUIDANCE UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT (Dec. 10, 1997), <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>.

²⁷ FED. INTERAGENCY WORKING GRP. ON ENV'T JUSTICE & NEPA COMMITTEE, PROMISING PRACTICES FOR EJ METHODOLOGIES IN NEPA REVIEWS 8 (Mar. 2016), https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf.

²⁸ Press Release, U.S. Dept. of the Interior, Salazar Launches ‘Smart from the Start’ Initiative to Speed Offshore Wind Energy Development off the Atlantic Coast (Nov. 23, 2010), <https://www.doi.gov/news/pressreleases/Salazar-Launches-Smart-from-the-Start-Initiative-to-Speed-Offshore-Wind-Energy-Development-off-the-Atlantic-Coast>; see also NAT'L OCEAN COUNCIL, NORTHEAST OCEAN PLAN (Jan. 17, 2017), https://neoplan.org/wp-content/uploads/2018/01/Northeast-Ocean-Plan_Full.pdf.

²⁹ See COUNCIL ON ENV'T QUALITY, *supra* note 26.

BOEM will then coordinate OCS lease auctions where developers will have the chance to bid against each other for rights to develop projects in those locations. After the lease award, states may also discuss potential power purchase agreements (PPAs) or other mechanisms to plan future transmission allocations. BOEM lists the lease and grant information for each area sale dating back to 2013 on its website.³⁰

Once a lease is granted, the lessee then has 12 months to submit a site assessment plan (SAP) that details its investigation plans and provides the foundation for the development team to later submit their construction and operations plan (COP). The COP is a critical document that maps out all associated processes on the project and aims to list all known likely impacts. Impacts to the environment, including air impacts from onroad and offroad vehicles, stationary combustion sources, industrial processes, and marine vessels, are estimated for the life of the project. The developer is then tasked with securing emission offsets for the project from the corresponding state pursuant to Clean Air Act regulations for controlling air pollution from OCS sources.³¹ As part of the COP, the project details their avoided emissions, or the difference between a natural gas power plant of the same power capacity and their OSW project over a set time span. Most emissions from an OSW project occur during the construction phase, the first two to three years of the project. Recently developers have been looking into creative ways to minimize vessel emissions, including Mayflower Wind and Gladding-Hearn agreeing to design/build a new class of hybrid electric crew transfer vessels.³² Through all of this, port facilities will be activity hubs, exposing local communities to new and higher-frequency impacts than the levels of impacts to which they may be accustomed. New Jersey is trying to address this issue in part by installing electric vehicle (EV) charging hubs close to projected port facilities.³³ Power Edison Partners and Hugo Neu recently announced plans for the largest such charging station in the country to be located close to the Port of Newark.³⁴

Site assessment and COP development can take up to five years, but once the COP is submitted and deemed complete and sufficient, BOEM conducts NEPA and technical reviews. The completion of the environmental review and approval of the COP allow the developer to begin construction and start contracting along the supply chain.

Survey Method

While much of the domestic OSW industry has seemed to almost spring up out of nowhere over the past few years, the truth of the matter is we are here today because of work put in by many over the last decade. My goal for this project was to pull in much of that industry expertise to discuss potential best practices on community engagement and how improvements in engagement practices may lead to minimizing potential EJ impacts. The Island Institute published a report on this topic—*Engaging Communities in Offshore Wind: Case Studies and Lessons Learned from New England Islands*³⁵—just before Block Island, the first commercial offshore wind facility in the United States.³⁶ The report detailed three main recommendations: make mutual learning accessible, custom-tailor community benefits, and invest in social science research and communication. What progress has the industry made on their recommendations? What have we since learned that would allow us to update these recommendations and identify current best practices?

We focused this survey on impacts from port operations since ports are the hub for OSW activities. Dedicated marshaling and manufacturing ports will be needed for these projects during the construction phase. The first such port is currently under construction in Southern New Jersey.³⁷ Development of these dedicated ports will be facilitated through state development authorities, with developers being future tenants. During operations and maintenance, activities could potentially be run out of a few slips of an existing marina.

³⁰ *Lease and Grant Information*, BOEM, <https://www.boem.gov/renewable-energy/lease-and-grant-information> (last updated Dec. 9, 2021).

³¹ See 40 C.F.R. §§ 55.13, 55.14; see also *South Fork Wind LLC's - South Fork Windfarm Draft Outer Continental Shelf Air Permit*, EPA, <https://www.epa.gov/caa-permitting/south-fork-wind-llcs-south-fork-windfarm-draft-outer-continental-shelf-air-permit> (last updated Dec. 9, 2021); *Permit Documents for Vineyard Wind 1, LLC's Wind Energy Development Project (800MW Offshore Windfarm)*, EPA, <https://www.epa.gov/caa-permitting/permit-documents-vineyard-wind-1-llcs-wind-energy-development-project-800mw-offshore> (last updated June 14, 2021).

³² Press Release, Mayflower Wind, Mayflower Wind Signs Agreement with Gladding-Hearn for Design/Build of Industry-Leading Hybrid Electric Offshore Wind Crew Transfer Vessel (Oct. 14, 2021), <https://mayflowerwind.com/mayflower-wind-signs-agreement-with-gladding-hearn-for-design-build-of-industry-leading-hybrid-electric-offshore-wind-crew-transfer-vessel/>.

³³ Port electrification will likely be a part of the NJ PACT (Protecting Against Climate Threats) Rules that are expected to be issued in early 2022.

³⁴ Robin Whitlock, *Power Edison Partners with Hugo Neu Realty Management to Develop Largest EV Charging Site in the US*, RENEWABLE ENERGY MAG. (Nov. 11, 2021), https://www.renewableenergymagazine.com/electric_hybrid_vehicles/power-edison-partners-with-hugo-neu-realty-20211111/.

³⁵ SARAH KLAIN ET AL., ISLAND INST., *ENGAGING COMMUNITIES IN OFFSHORE WIND: CASE STUDIES AND LESSONS LEARNED FROM NEW ENGLAND ISLANDS* (Dec. 2015), https://islandgrid.org/wp-content/uploads/2017/04/EngagingCommunitiesOffshoreWind_2015_web.pdf.

³⁶ Block Island Wind Farm is off the coast of Rhode Island, has a 30 MW capacity, and was the first OSW project in the United States in 2016.

³⁷ *New Jersey Wind Port*, NJ.Gov, <https://nj.gov/windport/about/index.shtml> (last visited Dec. 9, 2021).

Topic: Examining Potential EJ Impacts from OSW Port Activities: Minimizing and Mitigating Impacts through Adaptive Community Engagement

Themes: How does EJ relate to the OSW industry? What sort of impacts can be expected in EJ areas near ports? How has community engagement adapted in OSW over the last decade? What role can the developers play in the community? How have we been doing and how can we improve?

Participants: Four main subgroups were selected within the overall stakeholder survey group: developers, legal, consultants, and EJ/community advocacy groups. Participants were selected based on their experience in OSW, their firm's current efforts in the space, and experience working with or for stakeholder groups. Extensive efforts were made to get an equal breakdown between each participant group, but as you will read in the later acknowledgements section, survey participants lean toward the developer and consulting spaces. The 19 survey participants have an average of just over four years of experience working domestically in OSW, with many having worked in the industry for longer than that internationally. Logically, community group members had less experience with OSW since their areas have only had to consider the question for a few years.

Participants were given the opportunity to review draft survey questions before they committed to the project, and either suggest slight edits to the question wording or skip questions when they deemed necessary. There were no suggested edits submitted. The questions built on various themes related to stakeholder engagement, potential EJ impacts, potential OSW project benefits, and appropriate mitigation measures. Questions comprised multiple choice, ranking, and free form text responses as well as various background affirmations. While the results of the multiple-choice questions will be

discussed later in this article, I have kept this section a blind sample. Findings will be presented based on responses given, and any themes from those responses will be analyzed in later sections. Survey participants are all acknowledged toward the end of this piece, and select quotations from participants were used with permission.

Goals: Community engagement is not a new idea, and neither is environmental justice, but both can and should be supported as the OSW industry develops. My hope is that this project provides useful data for future collaboration and encourages pending projects to learn from previous ones.

Disclaimer: I am not a survey specialist. I crafted this exercise more as an interview with stakeholders. The survey is supported by a lengthy literature review.

Survey Results

First, there was complete agreement among all participants that all OSW developers should have a community engagement policy, publish it on their website, and have a clear way for the public to ask questions or offer comments. Similarly, all respondents agreed that the OSW developer has a responsibility to educate the public on its processes. This session should assume that the stakeholder is new to offshore wind and include fundamentals on industry processes as well as project-specific details when possible. The latter point may vary a bit as confidentiality and changing project details must be considered. Lastly, nearly all respondents agreed that it was likely for a single OSW project to utilize port facilities in multiple U.S. states.

Figure 3 provides an overview of the results of our survey, detailing the percentage of respondents who chose each option, and ranking the severity of potential impacts and effectiveness of mitigation measures. Responses from community groups and developers varied a bit but saw near uniformity on potential project benefits, namely jobs, training, and educational opportunities for local citizens.

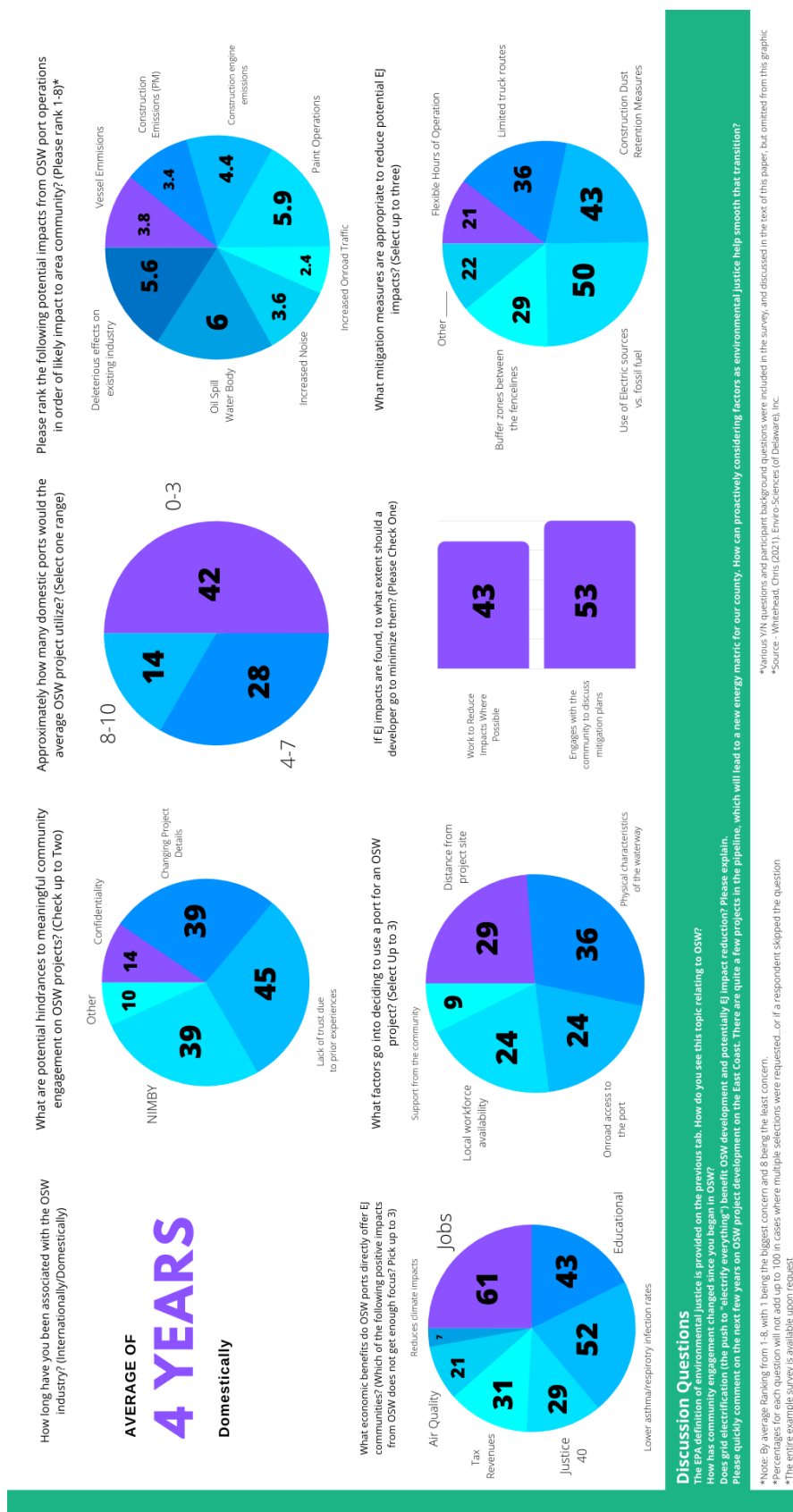


Figure 3. Potential EJ Impacts from OSW Port Operations Stakeholder Response Summary (by Percent Selected Unless Otherwise Noted)

The respondents were also asked to complete four freeform answers where they were encouraged to detail their experience with various topics and elaborate on their vision for community engagement. While reviewing these responses, a few themes arose.

The first theme is that the process and buy-in for community engagement have changed over time. BOEM and various state agencies have mandatory public comment periods built in as part of their regulatory compliance processes. However, as Ashley Anderson, a North Carolina attorney, has stated in a non-OSW context:

Some consider community engagement a necessary evil, as opposed to a critical and valuable part of the governing process. It is nothing more than a mandatory part of the statutory decision-making process. In other words, it's a "speed bump" in getting a plan approved. If a public hearing isn't required, then there won't be a public process. If a public hearing is required, then you'll have your "three-minute speeches."³⁸

While perhaps a generalization, most of our survey respondents argued that the modern engagement process has to become more of a partnership between developer and community groups. Such a partnership requires a type of adaptive engagement with the community. Instead of merely processing comments from mandated listening sessions, respondents favored a move toward more of an ongoing dialogue that includes educational opportunities for the community. If stakeholders feel their concerns are being addressed, they will be much more likely to support the project. Similarly, metrics can be developed to track the success of engagement avenues in a particular setting over time. Communities are not all the same, and an engagement matrix that works well in one area may not suffice in another. Census demographics can be quite different depending on location. These differences must be considered so that developers are ready to engage the community in their native languages and via the most accessible media.

How are community members' questions tracked over time, and is there a strategy for reducing the number of recurring questions? Companies often attempt to address recurring questions by posting a FAQs document on the company website and referring to it via social media posts and at community events. Along these lines, respondents were asked what potential hindrances could slow meaningful engagement on OSW projects and asked to select up to two answers. The options given were confidentiality, changing project details, lack of trust due to prior experiences, NIMBY,³⁹

vocal advocacy groups against the project, and "other." As you can see in Figure 3, the top responses were "lack of trust," changing project details, and NIMBY. Much of this can be alleviated through education, listening to concerns, and highlighting potential benefits. We received several comments that associated NIMBY concerns with potential visual impacts from the turbines, and onshore impacts from landfall location and cable-routing. This presents an interesting paradox as NIMBY was cited both within and outside of EJ communities, but for different reasons—potential environmental impacts for EJ communities and visual or economic impacts for the other communities.

Next, we looked at what sort of impacts can be expected in EJ areas close to the ports. Respondents were asked to rank the severity of the potential impact then discuss the responsibility of the developer to mitigate those impacts. This is a controversial point. OSW projects have extensive long-term economic and climate benefits for local communities, and while some impact is unavoidable from any large-scale utility project, how far should the developer go to further reduce these impacts over time? Will technological advancements such as electrifying traditionally fossil fuel-based processes aid in this mitigation? Are these mitigating measures the responsibility of the developer or of the port operating authority?

The survey form listed potential impacts based on likely OSW operations at port facilities. These impacts included: vessel emissions, construction emissions (particulate matter) and construction engine emissions (these are counted jointly in a COP but separately here to see if one component had more of an impact than another), painting operations, increased on-road traffic, increased noise, oil spills into water bodies, deleterious effects on existing industries, and "other." Respondents were asked to rank potential impacts listed from 1 to 8, with 1 being the biggest concern. Though it did not crack the top three impacts overall, multiple respondents listed noise impacts under "other," by far the highest response for that category. According to our respondents, as listed in Figure 3, the top three potential impacts that may have EJ implications were increased traffic, construction emissions, and vessel emissions. This is logical as each impact has direct potential effects on ambient air quality and climate change. It is perhaps to some a bit surprising, however, to see that vessel emissions ranked third, since they account for by far the largest chunk of emissions from these projects. Interestingly, deleterious effects on existing industry finished with one of the lowest concern rankings. Over the last few years OSW has been a topic of critical importance for the commercial fishing industry, which led us to expect a higher concern ranking in our survey.⁴⁰

³⁸ Ashley Anderson, *Why Your Community Engagement Practices Are Failing to Engage Your Community*, SANFORD HOLSHOUSER (Aug. 3, 2016), <http://shlawgroup.com/201683why-your-community-engagement-practices-are-failing-to-engage-your-community/>.

³⁹ NIMBY stands for "Not In My Back Yard." The term is interesting because it has been used both by EJ groups and by community groups who do not want a project located in a certain place, often for aesthetic concerns. See *NIMBY*, CORP. FIN. INST., <https://corporatefinanceinstitute.com/resources/knowledge/other/nimby/> (last visited Dec. 9, 2021).

⁴⁰ Nichola Groom, *U.S. Studies Plan to Pay Fishing Industry for Offshore Wind Impacts*, REUTERS (July 28, 2021), <https://www.reuters.com/business/sustainable-business/exclusive-us-studies-plan-pay-fishing-industry-offshore-wind-impacts-2021-07-28/>.

Having focused on localized negative impacts, respondents were then asked to pick up to three potential positive impacts that do not get enough focus. The options for this question were jobs, educational opportunities, lower asthma/respiratory infection rates, the Justice40 initiative,⁴¹ tax revenues, air quality, reduction of climate impacts, and biodiversity. The top three responses for this question were jobs, lower asthma/respiratory infection rates, and educational opportunities. Throughout this project we heard a desire from community groups for access to economic benefits from these projects, but to date, with a few exceptions, there does not seem to be the sort of ramping up of job training programs that will be needed to meet these project demands as well as those associated with the recent federal infrastructure law. Various other large-scale domestic infrastructure projects have sought to address this issue by creating community equity agreements to commit the project to various economic benefits for the area.⁴²

Respondents were then asked a background question about the factors in play when deciding on ports to use for an OSW project. If the respondent did not have experience in this area, they left the question blank. The choices offered for this question were distance from project site, physical characteristics of the waterway, road access to the port, local workforce availability, support from the local community, and “other.” The top three responses were physical characteristics of the waterway, distance from project sites, and road access to the port. Developers have objective physical characteristics that they need for these projects and will seek to secure sites with these characteristics as close to the lease area as possible.

If EJ impacts are found, to what extent should a developer go to minimize them? The options were eliminating all impacts over ambient (the baseline), working to reduce impacts where possible, mitigating so that benefits to EJ areas outweigh any potential minimal impacts (no further action needed), and engaging with the community to discuss mitigation plans. The top response for this question was the only one to specifically mention engaging with the community. This makes sense as NEPA requires public engagement in the development, scoping, and permitting of these projects.

What mitigation measures are appropriate to reduce potential EJ impacts? The options were limiting truck routes, flexible hours of operation, construction dust retention measures, use of electric sources instead of direct combustion of fossil fuels, buffer zones between the fence lines, and “other.” The top responses were

use of electric sources instead of fossil fuels, construction dust retention measures, and limiting truck routes. These choices are logical as they closely correlate to the perceived potential impacts discussed earlier.

Conclusions

Survey participants were asked four freeform questions that are listed at the bottom of Figure 3. I will focus on two responses that have been quoted below with permission from each participant. Each shows ambition and a desire to collaborate across the industry. Sharing best practices now and working toward an adaptive engagement model should show increasing benefits for future projects in the pipeline. This project focused on the Northeast and mid-Atlantic regions, but lessons learned here can easily be carried to other geographies. As this writing was being submitted, NYSERDA published their *Guiding Principles for Offshore Wind Stakeholder Engagement*.⁴³ This guidance document shares many of the same themes that have been discussed above and is a great step forward for adaptive engagement as each developer submitting project proposals in response to future OSW solicitations will have to include a stakeholder engagement plan based on the NYSERDA 10 guiding principles. We have all been through public meetings in the past with countless “three-minute speeches.” We can and must do better, and it has been encouraging to see developers and state agencies trying to be smart followers.

The offshore wind industry is in the unique position to be a smart follower and get this right from the start to create meaningful, long-term relationships with overburdened communities. We've heard directly from EJ groups that success for overburdened communities look like access to training, workforce development, and education at all levels of employment opportunities. In order to get there, we need to increase coordination and collaboration among developers, state and federal agencies to streamline training opportunities, to bring MWBEs⁴⁴ into the supply chain and to expand the opportunities available to equip frontline communities with the skills needed to become leaders in clean energy. **(Damian Bednarz, Managing Director, EnBW North America)**

The increase in community outreach and involvement can be leveraged to ensure environmental justice concerns and impacts are front and center. This is especially true given the opportunity for mutually beneficial educational and

⁴¹ Justice40 is a whole-of-government effort to ensure that federal agencies work with states and local communities to make good on President Biden's promise to deliver at least 40% of the overall benefits from federal investments in climate and clean energy to disadvantaged communities. Shalanda Young et al., *The Path to Achieving Justice40* (July 20, 2021), <https://www.whitehouse.gov/omb/briefing-room/2021/07/20/the-path-to-achieving-justice40/>.

⁴² See *Community Benefits Agreements and Organizing for Equitable Development*, POLICYLINK, <https://www.policylink.org/equity-in-action/webinars/community-benefits-agreements> (last visited Dec. 9, 2021).

⁴³ GUIDING PRINCIPLES, *supra* note 14.

⁴⁴ MWBE stands for Minority- and Women-owned Business Enterprise.

vocational programs, as well as mindful and intentional approaches to addressing direct and indirect impacts on the surrounding communities. Those communities will bear the burden of increased traffic, noise, and commercial activity as the flip side to the coin of increased economic opportunities and great progress for everyone in reduced overall emissions from conventional energy sources. Offshore wind developers have shown they are willing to engage in and support a wide range of activities to minimize and mitigate impacts on the local communities. Let's leverage that to greater effect by providing developers with a road map to efforts that would best serve the specific needs of their communities. **(Karen Hanley, Executive VP, The Permitting Institute)**

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Chris Whitehead, QEP, CESM, leads the air practice for Enviro-Sciences, Inc., based in New Jersey. His recent work has focused on offshore wind permitting, environmental justice regulation, and climate change impacts and indicators. He can be reached for questions at cwhitehead@enviro-sciences.com. This project has been accepted as a panel at the International Offshore Wind Partnering Forum, April 26-28, 2022. The presentation will discuss potential next steps for collaboration on this issue.