

Environmental regulation of offshore wind energy

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Authors

Márcio Pereira

Marlus Oliveira

Offshore wind farms are growing in Brazil, but certain aspects of the environmental regulation of the sector require attention to establish favorable conditions for investment in the sector.

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With climate change driving the transition towards a low-carbon economy, the share of renewable energy sources in the power matrix has been growing steadily. Offshore wind power projects have been part of that development, and the number of projects worldwide is expected to continue increasing until 2032.

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There are currently dozens of wind power projects awaiting approval by Ibama, Brazil's federal environmental agency responsible for licensing offshore energy projects. Given the competition for offshore areas and the numerous environmental challenges involved in determining the best location for wind power farms, improved regulation is needed.

At present, areas having potential for offshore wind power generation are made available under an assignment of rights of use (cessão de uso), as provided for in Federal Decree 10.946/2022 and Interministerial Directive MME/MMA 3/2022, issued jointly by the Ministry of Mines and Energy and the Ministry of the Environment. If approved, Bill 576/2021 will allow the development of offshore energy projects under grants (outorga). This arrangement would allow blocks to be auctioned, along the lines of the current practice of offshore oil and gas exploration, creating a more reliable regulatory environment for investors.

If such auctioning strategy is adopted, the environmental factor will be one of the variables that must be considered in tender bids and during the delimitation of the block boundaries, similar to oil and gas blocks. Also, the environmental impact assessment for wind projects in offshore locations shall encompass an alternative location study, to be conducted by the project owner during the environmental licensing process.

In recent decisions, Ibama has refused to issue environmental licenses for offshore oil and gas projects (in the "Equatorial Margin" on Brazil's northern coast). Project owners must therefore be attentive not just to the allocation of environmental risks in bid tenders, but also to their legal and economic fallouts when restrictions inherent to the offshore location make projects - unfeasible - which is quite different from the situation where an environmental license is denied due to ineffective control technology and/or need for further environmental assessments.

Among the points to be considered in designing offshore wind projects and in the licensing phase are issues related to installation (such as the effect of noise nuisance on marine life), operations (the risk of bird collisions), and the introduction of the infrastructure in the area (with the creation of artificial

ecosystems – the artificial reef effect – along with risks to commercial shipping and tourism, and changes in the seascape).

These and other aspects were included in the Standard Terms of Reference for Environmental Impact Assessments and Environmental Impact Reports (EIA/Rima) for Maritime Wind Complexes issued by Ibama in 2020, which aims at ensuring legal certainty on the Agency's analysis, as well as proper environmental protection in the licensing process. In addition to matters related to the turbines themselves, the Terms of Reference deal with issues related to supporting infrastructure, such as submarine cables, electricity substations and transmission lines, among others.

Nonetheless, improved regulations on the use of offshore areas are needed to avoid overlap in the areas contemplated by projects submitted for licensing. Overlaps are currently occurring in projects under licensing process, and such aspect should be considered when submitting new projects for environmental licensing.

Marine spatial planning could increase legal certainty for investment in wind power projects, by ensuring they are compatible with environmental and navigation regulations, thus encouraging construction, co-ownership and shared use of logistics infrastructure, which benefit all ocean-related economic activities.

The improvements of environmental regulations must follow the expansion trend in wind power projects, providing the legal certainty needed to support investment in the sector as well as ensuring proper control and mitigation of environmental impacts associated with the installation of wind farms.

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Márcio Pereira



Marlus Oliveira