

13. Japanese Law of Offshore Wind Power – in Comparison with German Offshore Wind Energy Act –

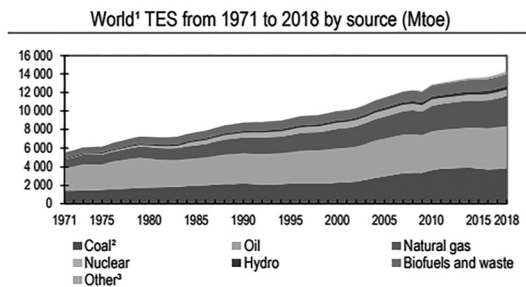
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1. Introduction

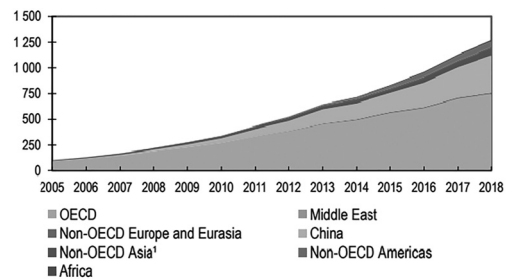
The more industrialized our society is, the more energy is demanded. World total primary energy supply amounted to 13,792 Mtoe and it is expected to be over 17,500 Mtoe in 2040¹. According to IAE, despite the Covid-19 crisis, total energy demand will return to its pre-crisis level by early 2023 and then increase gradually². While our energy demand increases, it is necessary to decrease independence on fossil fuel that contributes to the global warming and to invest more in renewable sources.

In 2019, around 11% of global primary energy came from renewable technologies. In 2018, the total amount of electricity generated from renewables was 6,586 TWh. Renewable hydro accounted for about 63% of this (4,149 TWh), followed by wind energy (1,263 TWh), solar energy (562 TWh), bioenergy (523 TWh), geothermal energy (88 TWh) and marine energy (1 TWh). Solar and wind generation in 2018 increased by 28% and 11% respectively. Together, these two sources of energy continue to dominate growth in renewable generation, accounting for 73% of growth since 2014³. This analysis shows potentials of wind energy (See Figure 1).

Global installed wind-generation capacity jumps from 7.5 gigawatts (GW) in 1997 to some 564 GW by 2018. And then 2020 saw global new wind power installations surpass 90 GW, a 53% growth compared to 2019, bringing total installed capacity to 743 GW (See Figure 2⁴). Production of wind electricity doubled



World wind electricity production from 2005 to 2018 by region (TWh)



from Key World Energy Statistics 2020 – Analysis – IEA¹
Figure 1 World Total Energy Supply and Wind Electricity Production

between 2009 and 2013, and in 2016 wind energy accounted for 16% of the electricity generated by renewables.

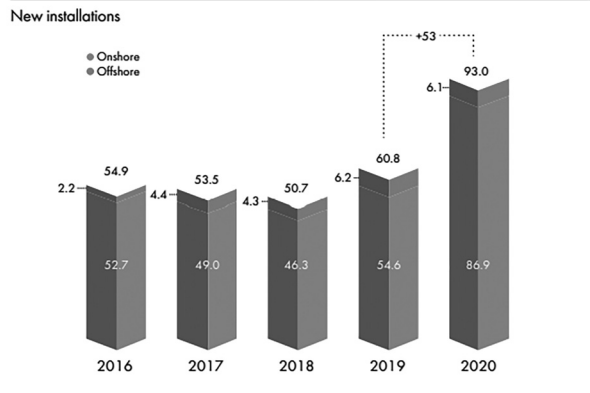
Offshore wind power has still small capacity compared to Onshore. In 2020, new installations in the onshore wind market reached 86.9 GW, while the offshore wind market reached 6.1 GW (See Figure 2). However, in the future, the latter is expected to experience significant growth, with some reasons. First, we expect stable and enough wind speeds in the sea. Second, some nations do not have enough land to use for installing wind power stations or have strict land-use regulations. Therefore, Offshore wind power offers tremendous potential.

In Japan, we have the new phase of energy policy in 2020. In his first policy address in the Diet, former Prime Minister Suga, who made the new cabinet in 2020, declared Japan's ambition to reach carbon neutrality by 2050. Japan, as the world's third-largest economy by nominal GDP and fifth-largest carbon-emitter, is behind other industrialized nations in promoting renewable energy. According to Agency for Natural Resources and Energy, the rate of renewable energy in total energy of 2019 was about 18%, compared to about 30% in some European nations⁵. To achieve carbon neutrality, the administration embarks on the new energy policy in Green Growth Strategy, hinting at 50% of renewable energy share of energy mix in 2050⁶. One of the targets in that strategy is to promote offshore wind power⁷.

Wind power was less than 4% of total renewable energy in 2019. As of the end of 2020, there are wind installations of 4,437 MW, including only 65 MW of offshore wind⁸. Considering a densely populated island nation, Green Growth Strategy expects offshore wind energy to be a mainstream source for renewable energy. From that perspective, that strategy empathizes the cooperation between the government and private sector in promoting offshore wind energy. Following Green Growth Strategy, the government established the government-private sector council which aims to strengthen competitiveness of offshore wind industry, and unveiled its Offshore Wind Industry Vision at the council in late 2020, which expresses the ambition to allocate 1 GW of offshore wind capacity annually through 2030⁹.

While the government and industries intend to install offshore wind power vigorously and new laws for that project have been enacted, it is necessary to check the effectiveness of our regulations that could prevent indiscriminate development in coastal and marine areas and to examine the consistency of the network of laws concerning offshore wind power. As offshore wind power is often installed in sea bed where the method of environmental assessment has yet to be established, our regulations face challenges in conserving eco-system. Further, there are some problems about cable-connecting. As offshore wind is practical when it connects to the land through the sea bed cable, areas used for offshore wind are wide and subject to various laws and regulations by authorities. Ad-hoc or inconsistent decisions would not only impair the promotion of offshore wind, but also damage the marine ecology.

This paper, in such a view point, estimates rationality of the system and network of laws concerning offshore wind installation in Japan. To achieve that task, I compare our law to German one which is a source



from Global Wind Report 2021

Figure 2 New Installations of Wind Power: Onshore and Offshore

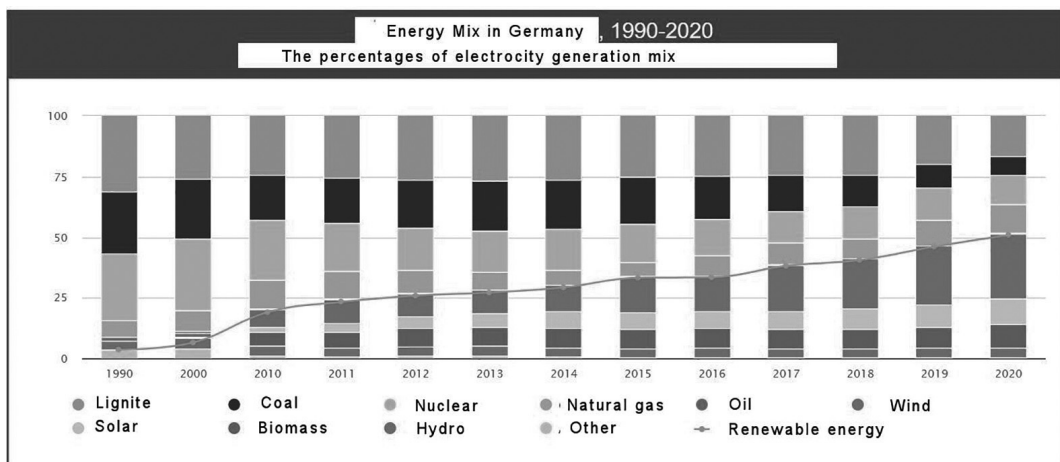
of our legal system and now has a systematic network concerning offshore wind. First, I have a survey of Offshore Wind Energy Act in Germany, the counterpart of Marine Renewable Energy Utilization Act in Japan. Second, I focus on the relationship between Offshore Wind Energy Act and other German planning laws to see how the integration of the relative plans is assured. Third, I pick up legal relief against offshore wind planning in Germany. Fourth, the same works are done about Japanese laws. Finally, I get some instructions, comparing two legal systems concerning offshore wind.

2. Wind energy in Germany Energy Policy

A historic turn for Germany energy policy was marked as energy transition (Energiewende) in 2010. The federal government adopted the Energy Concept document, which lays out a target to achieve emissions reductions of at least 80% by 2050 from 1990 levels. In order to achieve this target, the concept focuses on the significant expansion of renewable energy as well as rapid improvements in energy efficiency.¹⁰

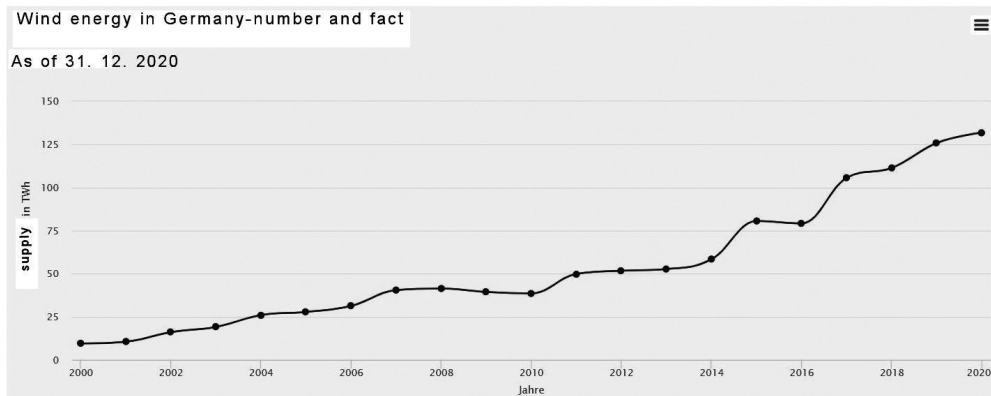
Starting in the early 2000s, Germany experienced impressive growth in the share of renewable energy (Figure 3¹¹). Back in 2000, the share was only 3%. Initially, this was driven by growth in bioenergy supply. Then the 2010 Energy Concept sets out the target and some laws serve the goal. Among them, The Renewable Energy Sources Act (Gesetz für den Ausbau erneuerbarer Energien, EEG) is the central instrument for the expansion of renewable energy in the electricity sector. EEG, introduced in April 2000, established guaranteed grid connection and access rights for renewables, priority dispatch, compensation for curtailment, and financial support for 20 years (feed-in tariffs [FiTs] and feed-in premiums)¹². Now the Act stipulates that the goal is to raise the percentage of electricity produced from renewable energy sources in gross electricity consumption to 65 by 2030 (Article 1 (2)).

In the energy mix in Germany 2020, 47.0% (236,5 TWh) in total electricity is generated by renewable energy sources, except nuclear energy¹³. Nuclear energy will phase out in 2022 because the federal government avoids it after Fukushima disaster in 2011. Under these circumstances, the wind energy is encouraged to rise particularly. That energy has been increasing gradually (Figure 4)¹⁴. As of 2020, total wind



from Strommix und Stromerzeugung in Deutschland (stromauskunft.de). translated by the author.

Figure 3 Energy Mix in Germany: 1990-2020



translated by the author.

Figure 4 Wind Energy in Germany

energy is 131.9 TWh. The detail of it consists of on shore (54.938 MW, 29.608 installations) and offshore (7.770 MW, 1.501 installations)¹⁵. And in the future, the legal target of each wind power is set respectively: 71 Gigawatt on shore in 2030 (EEG Article 4), 40 Gigawatt offshore in 2040 according to Offshore Wind Energy Act (Gesetz zur Entwicklung und Förderung der Windenergie auf See, WindSeeG) Article 1 (2).

3. The System and Network of Laws Concerning Offshore Wind Installation in Germany (1): Offshore Wind Energy Act and its Procedure¹⁶

The regulations over building offshore wind farm began with Offshore Installations Ordinance (Verordnung über Anlagen seewärts der Begrenzung des deutschen Küstenmeeres, SeeAnlV), which was enacted to develop the EEZ after the United Nations Convention on the Law of the Sea was signed. However, the ordinance was not enough to promote the offshore wind farm. Because the rule was adapted only to EEZ and was not specified on offshore wind. To resolve these faults, the government enacted WindSeeG in 2017. The Act regulates offshore wind farm totally, including zoning, auction and individual plan approval¹⁷.

WindSeeG introduces three steps to install offshore wind farm: 1) site development plan, 2) auction and 3) planning approval. To put it briefly, government designate the planning site in sea, where the bidder on the auction of offshore wind energy can seek an approval of installing the farm¹⁸.

1) Site development plan is made by The Federal Maritime and Hydrographic Agency (Bundesamt für Seeschifffahrt und Hydrographie, BHS). The site can be in the exclusive economic zone which is under the federal jurisdiction, or the territorial sea over which the coastal States have authorities. In the case of the latter, the plan needs an administrative agreement between the Federation and the respective State (WindSeeG section 4 (1)). Further, the plan shall contain stipulations about sites of converter platforms and routes or route corridors for offshore connection lines (section 5). The total plan has such a wide range that it can conflict with opposing public or private interests. To resolve the conflict of interests, the Act prepares the procedures for the drawing up of the site development plan that include the assessment of environmental impacts (section 6).

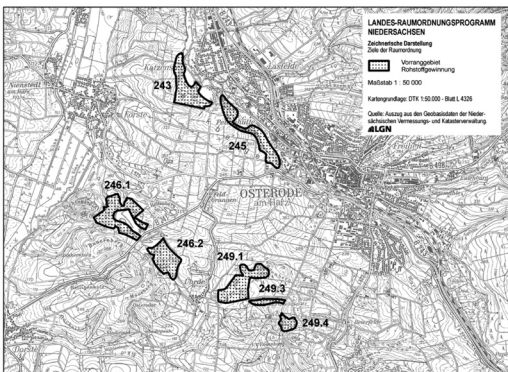
2) Auction is led by The Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway. The procedures are stipulated by EEG, in addition to WindSeeG. Only the bidder can apply for 3) planning approval of constructing and operating the facilities (WindSeeG section 46). The authority for the approval is BHS.

The Act (section 45) demands the procedure of approval be strictly done as “planning approval”, which is stipulated in Sections 72 to 78 of the Administrative Procedure Act (Verwaltungsgerichtsordnung, VwGO), meaning that the procedure of approval must be carefully scrutinized, particularly by public hearing and assessment of environmental impact and that an approval shall at once establish all legal relationships, public or private (VwGO Section 75 (1)).

4. The system and Network of Laws Concerning Offshore Wind Installation in Germany (2): the Relation with Other Land-Use Plans.

WindSeeG does not work alone. As the installation of offshore wind power is legally viewed as development of the national territory, it shall be integrated into total territory planning. Federal Regional Planning Act (Raumordnungsgesetz, ROG) makes the general framework of development and preservation of territory including the EEZ. But under federal system, the laws and authorities of planning are complicated (see. Satoshi A., Legal basis of the Integrated Coastal Zone Management by the USA, Germany, and Japan, chapter 1 this book). 1) land part of German territory including coastal area is, in principle, subject to planning power of each state and municipality although such plans as the traffic plan, nature conservation plan and so on are decided at the federal level. 2) Territorial sea (12-mile zone) is under the power of coastal states. But water area is strictly regulated federally. 3) the EEZ is under federal authority.

About 1) land part, ROG (section13) empowers the States to make regional plans for the territory of each individual State (Figure 5)¹⁹. And apart of regional plans by States, the Federal Building Code (Baugesetzbuch, BauGB) allows the municipality to set land-use plan (Flächennutzungsplans) and detail urban land-use plan (Bebauungsplan). Although regional plan is superior one, it is also limited by such plans as the traffic plan or natural conservation plan at the federal and European level (Figure 6)¹⁹. Under the hierarchy of planning authorities, land-use plan must correspond with regional plan, and detail urban land-use



The title is translated by the author.
 Figure 5 The Priority Areas for Raw Material Extraction

Meide-Nr.	Nr.	Name	Landkreis	Fläche (ha)
1	2	3	4	5
2513-301	008	Schwarzes Meer	Wittmund	16,00
3609-301	061	Berger Keienvenn	Emsland	5,70
3129-301	087	Bullenkuhle	Gifhorn	2,55
3825-302	116	Tongrube Ochtersum	Hildesheim	1,42
4022-301	124	Mühlenberg bei Pegestorf	Holzminde	11,00
4124-301	127	Kleyberg	Holzminde	10,10
4328-301	135	Steinberg bei Scharzfeld	Göttingen	12,65
4127-301	144	Schwermetallrasen bei Lautenthal	Goslar	12,00
3210-301	155	Stadtveen, Kesselmoor, Süd-Tannenmoor	Emsland	30,41*
3019-301	168	Amphibienbiotop Friedeholzer Schlatt	Diepholz	17,00
3507-301	172	Hügelgräberheide Halle-Hesingen	Grafschaft Bentheim	19,79
3613-301	175	Grasmoor	Osnabrück	24,00
2317-331	181	Extensivweiden nördlich Langen	Cuxhaven	4,27
2524-332	190	Este-Unterlauf	Stade	7,03

The title is translated by the author.
 Figure 6 Important Nature Areas and Protected Areas for Birds

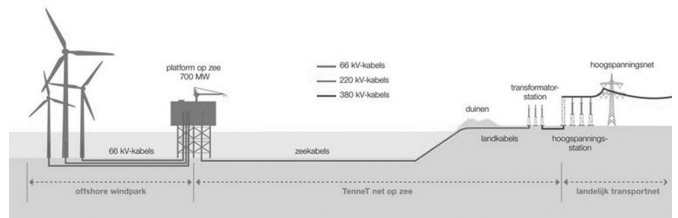
plan cannot be inconsistent with land-use plan. These legal aspects of the planning also work on the installation of offshore wind. For example, in the case of the cable routes in land, priority areas for them are often designated in regional plan. Its area map for land-use is legally binding when municipality makes plans.

About 2) territorial sea, the coastal States can make a plan on the space between the mean tidal high-water line and the 12-mile limit, where the cable of offshore wind turbines runs (Figure 7²⁰ and 8²¹). The route must be designated in regional plan (Figure 9²²). And also here, and more strictly than in land, many federal regulations work. Navigable waters in sea are controlled by the Federal Waterway Act, and some water areas are protected by the Federal Nature Conservation Act (Bundesnaturschutzgesetz, BNatSchG) and EU directives. And apart from regional plan, the coastal States have the program for Integrated Coastal Zone Management, which is not legally binding, but influence the regional plan (also see. Satoshi A., chapter 1).

About 3) the EEZ, ROG (section17) empowers the federation to make a regional plan for the EEZ. The plan shall be adopted as a form of federal ordinance, with the -



from The German Offshore Wind Energy Foundation
Figure 7 The Cable Route of Offshore Wind Power in the North Sea



from TenneT
Figure 8 The Offshore Grid Connection

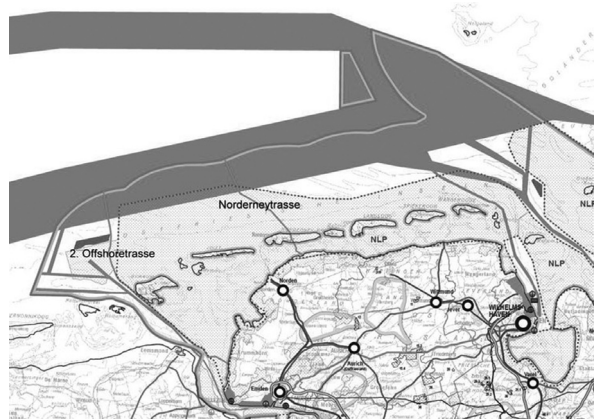
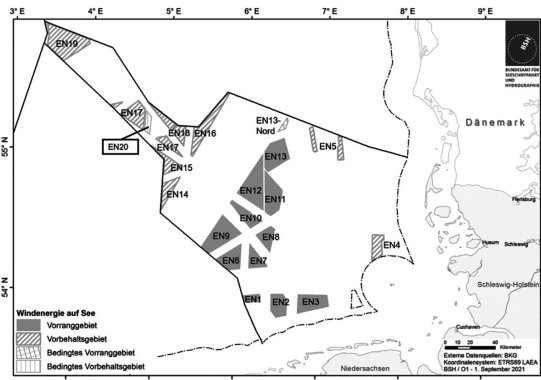
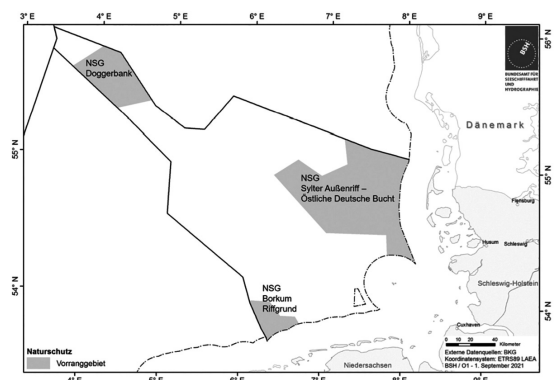


Figure 9 Lower Saxony Spatial Planning



The title translated by the author.
Figure 10 Specifications of Wind Energy Park in the North Sea from Annex of Federal Ordinance



The title translated by the author.
Figure 11 Specifications for Priority Nature Protection Area in the North Sea from Annex of Federal Ordinance

specifications for the safety of navigation, economic and scientific exploitations and protection of the Marine Environment (Figure 10 and 11²³). Also here BNatSchG and EU directives have priority. Further this federal plan needs to be coordinated and coherent with the coastal States' regional plans.

5. The System and Network of Laws Concerning Offshore Wind Installation in Germany (3): Legal Relief

Offshore wind farms in deeper waters are fixed to the seabed by foundation piles and the cables are connected to the shore through the sea, and in some cases through the islands. And then high-voltage cables run to the urban areas. As the electricity has such a long journey, the routes are needed to be integrated into various public plans. While regional plans see their own shapes, they raise such concerns as health, environment or so on. The zonings and approvals of plans often conflict with opposing public or private interests. Thus, it is necessary to provide legal remedies against such administrative decisions.

In general, judicial review of public decision is stipulated by VwGO²⁴. In the case of public development plans such as offshore wind farm, there are two procedural problems in law : 1) the subject matter of the dispute and 2) standing (party status). To pursue a claim for rescission of the administrative decision, according to VwGO Section 42, the plaintiff is required to claim 1) the administrative decision, from which he or she suffers, is the Administrative Action and 2) his/her rights have been violated by it. 1) the Administrative Action is defined as the one that has direct effect on legal positions or status of plaintiff. However, there is still an exception. The Code Section 47 allows Administrative Legislative Action itself to be the subject matter of the dispute in specified cases. 2) standing is the status of being plaintiff.

The process of installing offshore wind farm, as above seen, includes various decisions, all of which cannot be the subject matter of the dispute. Citizen cannot claim against regional plan in ROG as it is neither the Administrative Action nor Administrative Legislative Action. It is the same thing with land-use plan in BauGB, although VwGO Section 47 allows detail urban land-use plan to be the subject matter of the dispute. As a result, when the residents contend against the cable route or substation in land which may raise concerns about health or environment, they can claim only at a much later stage of authoritative decisions. Legal practices in WindSeeG are in the similar situation.

When BHS makes the site development plan in WindSeeG, it is required to take into consideration the coincidence with the regional plans, protection of the marine environment, the safety and efficiency of traffic, and so on (section 5). Without these considerations or with erroneous considerations, site development plan would be illegal and irrational. However, the same Act section 6 (9) stipulates that the site development plan cannot be subject to judicial review. Therefore, those who object to installing offshore wind farm must wait for planning approval in the Act section 47. And it is the last chance to legally complain against the wind farm. As planning approval at once determines all legal relationships, public or private, another civil litigation is not allowed (VwGO Section 75 (1)).

In addition to the problem of the subject matter of the dispute, standing is an obstacle to the legal relief. When land-use plan or coastal use plan can inflict burden on the private rights, particularly property right, it is no doubt for landowner or so to have standing. In the other hands, there are traditionally no party status in court for those who try to protect environment such as landscape or marine biodiversity. However, recently, there have been some developments in German law.

The Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz) entered into force on 15 December 2006. The Act responds to Aarhus-convention and relevant EU rules that guarantee citizen access to information, participation in decision making and access to justice to protect environment. When citizen group is recognized as environmental association pursuant to the Act section 3, it is conferred litigation rights over environmental problems without their having to show that their own rights are affected. In summary, the Act makes it possible for associations whose predominant purpose is to promote environmental protection objectives to appeal against violations of environmental law, i.e. request an internal review or take legal action²⁵. Further, environmental associations recognized in the Act can be conferred the right to participate in decision making. BNatSchG²⁶ confers such associations the rights of participation in various decisions which can intervene in nature and landscape in German territory (Article 63). And WindSeeG also stipulates that environmental associations shall be invited to the hearing by BHS in the Agency drawing up the site development plan (section 6 (3)).

6. Some Development of Laws Concerning Offshore Wind Installation in Japan.

Japan have had no specific law of offshore wind power until recent years as that technology was in the test and research phase. However, we have experienced some developments of law. In 2016, Port and Harbour Act²⁷ was revised to install offshore wind power in port and harbour area. The permission for the kind of construction work in port area was expanded to the installation of offshore wind power (Article 37-3). And further to expand the installation in the other sea area, the Diet enacted the Act on Promoting the Utilization of Sea Areas for the Development of Marine Renewable Energy Power Generation Facilities (Marine Renewable Energy Utilization Act, 2019²⁸).

When Port and Harbour Act is applied to install offshore wind power, a port management body (local government) designates sea areas for offshore wind power site (Figure 12²⁹). And it shall implement a public tender for occupancy of the waters. The Act allows a bidder to use the site for up to 20 years.

On the other hand, recently, Marine Renewable Energy Utilization Act is expected to be a main legal basis for permission of building offshore wind power. According to Article 8, promotion zones for the marine renewable energy power generation are designated by the Minister of Economy, Trade and Industry and the Minister of Land, Infrastructure, Transport and Tourism (Figure 13³⁰). Inside that zone, these Ministers implement a public tender for exclusive occupancy of waters where businesses can build and operate offshore wind power (Article 14). The Act allows a bidder to use the site for up to 30 years (Article 13).

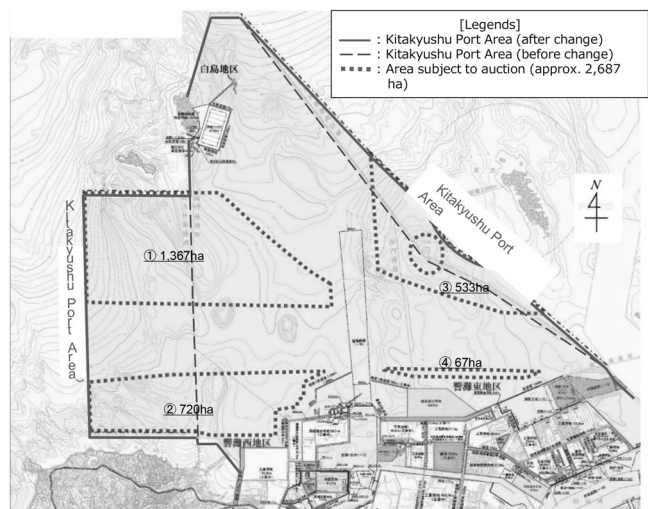


Figure 12 Kitakyushu Port Areas for Offshore Wind Power Site (Agency for Natural Resources and Energy and Ministry of Economy, Trade and Industry, 2016)

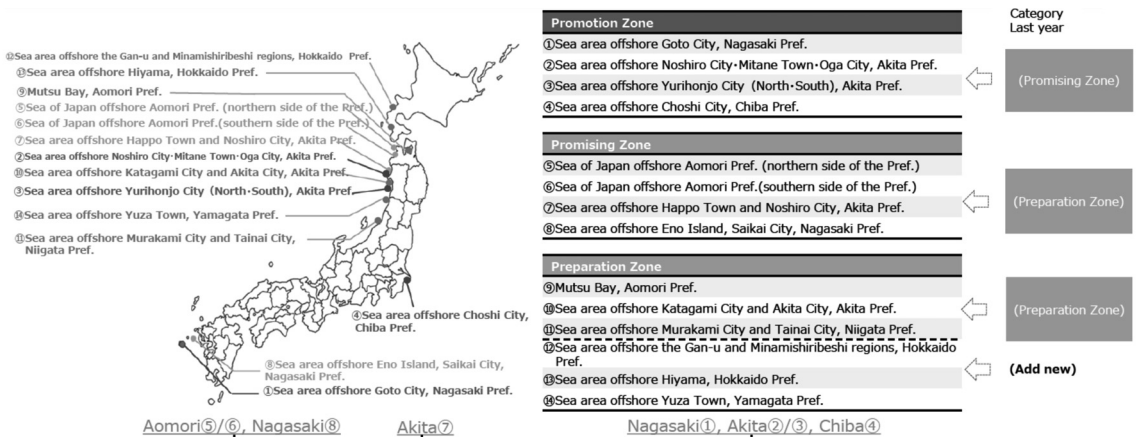


Figure 13 Promotion Zones for the Marine Renewable Energy Power Generation

7. The Procedure of Offshore Wind Installation in Marine Renewable Energy Utilization Act.

The public decisions to install offshore wind influence so many areas and interested parties that due process is sought in decision-making. First, before the designation of promotion zones, the Act assumes the establishment of a council where public and private sectors in local areas discuss the issues, where to designate that zone or how to operate offshore wind (Article 9). And after the investigation of candidate sea areas and discussion in the council, the Act requires that the government generally publish notice and provide opportunity for public comment before adopting a designation plan (Article 9 (3)- (4)).

Second, before public tender, the Act requires that the government shall establish the guidelines for implementation of public tender process and exclusive occupancy (Article 13), which not only stipulate the forum of application for public bidding, but also include standards for the selection of operator. Then, when the government intend to select an appointed business operator, opinions of academic experts shall be heard in advance (Article 15 (4)).

Finally, the plan is subject to the Environmental Impact Assessment (EIA) as Environmental Impact Assessment Act and Electricity Business Act require EIA on electric facilities prior to the approval of construction. During the scoping stage, an opportunity to express concerns and opinions is given to concerned governments and the public. Then after EIA, its documents shall be public and available for public inspection, and then the interested person or governments can submit opinions to the project.

8. Avoidance of Conflicts in Using Sea and Land Areas.

Unlike revised Port and Harbour Act that arranges the area to install offshore wind only within port areas, Marine Renewable Energy Utilization Act seeks installment zones in much wider zones. It means that the Act can conflict with other laws regulating sea areas. To avoid norm conflict, the Article 8 stipulates some

provisions in designating promote zone. 1) the zones shall not hinder fisheries (it means the prohibition of overlapping fishery zones set by the Fishery Act), the zones shall not overlap 2) a fishing port area that is designated on the Act on Development of Fishing Ports and Grounds, 3) the coastal preservation zone that is designated on the Coast Act, 4) the low tide level zone on the Act on the Preservation of Low Tide Levels and Development of Infrastructure to Preserve and Facilitate Use of Exclusive Economic Zones and the Continental Shelf, or so on.

And further, even in promotion zones legally designated pursuant to article 8, building site is limited additionally. The guidelines for use of sea (Article 13), as stated above, include matters concerning coordination between the person operating the marine renewable energy power generation business and local governments (Article 13 (2) (xiv)). In result, local councils (established pursuant to Article 9) can limit the site in the aspect of fishery, marine traffic, mining and so on.

9. Some Instructions from the Viewpoint of Comparative Law.

So far, I make a short survey of laws about offshore wind on both countries. While Japan is on the early stage in installing offshore wind and regulating it, Germany has some experiences. We have something to learn from Germany. I pick up the following: 1) integrated planning, 2) the procedure and 3) legal relief.

1) The idea of integrated planning is significant for the development of the coastal and marine area. The plan of installing offshore wind, which have impact on wide areas, makes the idea all the more important. In Japan, as seen above in 8, Marine Renewable Energy Utilization Act has a provision to adjust the conflicting zones (Article 8). When designating promote zone of offshore wind, existing zones set by other Acts must not be overlapped. But this provision makes just minimum adjustment. It does not deserve to be a holistic approach for conservation and use of coastal and marine resources. And, further, there are some problems on the phase of the selection of operator and certification of the use plan. Based on Article 13 (2) (xiv), local councils can regulate building-site of facilities in practice. It is not only an ad-hoc approach, but also against rule of law. Because it means local councils have planning power without delegation by the law. It also lacks transparency and foreseeability of plan.

In Germany, as above seen, the plan of installing offshore wind is integrated into total territory planning. Based on ROG, each State can make own regional plan. It is a legal binding plan with principles and maps that totally regulate uses and preservations of land and coastal-marine area. The planning of offshore wind is subject to regional plan as superior one. Comparing to such German planning, our sporadic plans are not integrative enough to achieve sustainable development in coastal and marine areas.

2) the procedure of decision to install offshore wind should be participated by various interested parties and be subject to a careful EIA at the earlier stage. In Japan, local council has a core role in decision making as it consists of Transport and Tourism, the Minister of Agriculture, Forestry and Fisheries, the relevant prefectural governors, the mayors of the relevant municipalities, fishery cooperative, academic experts (Marine Renewable Energy Utilization Act Article 9). However, the organization does not represent all the parties. Local residents living in the concerning coastal areas may be worry about an adverse impact on the local landscape. And the environmental association is also not involved in the council. And further, in practice, academic experts in the council often mean only ones in technology. In Germany, when the site development plan is drawn up, the authorities whose fields of responsibility are affected, those responsible for public

interests, the transmission system operators and the environmental associations shall be invited to the hearing by BHS (WindSeeG Section 6). In the viewpoint of cooperativeness, openness and transparency, the hearing practice in Germany seems to be superior to Japanese council system, which often functions as behind-the-scenes negotiations.

About EIA, we have the more serious problem. Japanese EIA on Environmental Impact Assessment Act, which is adapted to the plan of offshore wind, is not a Strategic Environmental Assessment. Japanese EIA is required at the stage of the implementation of a project (Environmental Impact Assessment Act Article 2) unless otherwise provided in individual planning laws. As Marine Renewable Energy Utilization Act has no special clause of EIA in the designation of promotion zones, EIA is required not here, but just at the stage of the approval of construction. In contrast, WindSeeG in Germany obviously adopts the policy of Strategic Environmental Assessment (Section 4). The site development plan is subject to EIA (Section 6). And the hearings for site development plan includes that of EIA. And, finally, another EIA is required at the stage of planning approval of constructing and operating the facilities (section 47).

3) legal relief against the offshore wind is important as the constructs and operations could suffer a wide range of persons and do damage to nature. Litigation should be available in the earlier stage of tiered decision framework and for a wide range of those interested. In that point, as above seen, there are two legal problems; the subject matter of the dispute and standing. In Japan, the public plan itself is not the subject matter of the dispute. According to Administrative Case Litigation Act Article 3 (1), the subject matter of the dispute is limited to the exercise of public authority by an administrative agency, which the court interprets as “the action that confers the right to citizen or places the obligation upon them directly” (Supreme Court, Judgement, October 29, 1964; 18 Minshu 1809 [1964]). Thus, citizen cannot contend against the plan itself in court, whether it is marine use plan such as the designation of promote zone or the land-use plan (Supreme Court, Judgement, April 22, 1982; 36 Minshu 705 [1982]). In Germany, the site development plan cannot be subject to judicial review as well as designation of promote zone in Japan. However, it is possible to contend against the detail urban land-use plan which includes cable routes.

About standing, in Japan, Administrative Case Litigation Act Article 9 limits standing to those who must have suffered or imminently will suffer injury—an invasion of “a legally protected interest”. There is no room for environmental litigation. In contrast, German legal system allows citizen group to bring environmental cases into court. When a group is recognized as environmental association pursuant to Environmental Appeals Act, it is conferred litigation rights over environmental problems without their having to show that their own rights are affected. As such a group is also guaranteed the right of participation of decision-making, it can also argue against some failures in the process of decision.

10. Conclusion

While we are pushed to promote the renewable energy to fight climate change, we should be careful to develop land and marine areas to install electric generating facilities. Such a preventive approach is necessary for offshore wind as its installation influences a lot of persons and a wide range of nature. In Japan, Marine Renewable Energy Utilization Act has a central role to promote offshore wind. The Act seems to be, comparing to WindSeeG in Germany, less careful for those interested and less systematic enough to practice Integrated Coastal Zone Management. To resolve the problems, we should not only revise the Act, but also

reconsider the whole system of Japanese laws over 1) regional planning, 2) Environmental Impact Assessment and 3) litigation. First, our various plans in coastal and marine area should be integrated into superior one that includes the offshore wind plan. Second, we need the Strategic Environmental Assessment to protect the marine environment. Finally, litigation should be available in the earlier stage of decisions for installing offshore wind and be open for a wide range of interested parties, including environmental associations.

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