

## Legal Update – March 2023

# Royal Decree 150/2023, of February 28, 2023 approving the maritime spatial management plans of the five Spanish marine demarcations



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The Royal Decree 150/2023, of February 28, 2023 approving the maritime spatial management plans of the five Spanish marine demarcations, was published in the Official State Gazette on March 4, 2023 ("RD").

The approval of the RD is a relevant step in the implementation of offshore wind energy in Spain.

The RD complies with the instruction contained in Royal Decree 363/2017, of April 8, which establishes a framework for maritime spatial planning and ordered the approval of five maritime space management plans, one for each of the Spanish marine demarcations. These plans should serve to ensure the sustainability of human activities at sea, while facilitating the development of maritime sectors, and the achievement of the objectives set for those sectors.

## POEMs and offshore wind energy in Spain

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The Marine Area Management Plans ("POEMs") establish a general framework for the development of the affected areas, which seeks the sustainable development of maritime sectors: fisheries, aquaculture, tourism, historical heritage, maritime transport, and energy and raw material uses at sea, without prejudice to conservation, protection and enhancement of the marine environment, including resilience to the effects of climate change. The approach of the POEMs is therefore general (ecosystemic) and seeks the coexistence of relevant activities and uses and the socially equitable sharing of access to such uses.

The POEMs are also referred to in the Route Map for offshore wind and other marine energies, and they are considered an essential tool to sustainably achieve 1 to 3 GW of installed offshore capacity by 2030.

The POEMs are especially relevant from the point of view of the energy sector as they are a previous step to the development of offshore wind energy in Spain, still in a very early stage.

Regulatorily, despite the early approval of a regulation on this type of development (Royal Decree 1028/2007, of July 20, which establishes the administrative procedure for the processing of applications for authorization of electricity generation facilities in the territorial sea, RD 1028/2007) the truth is that there have been hardly any projects in our country (almost all in addition to innovative or test type).

From the technological point of view, the depth of the continental platform on the Spanish coast has made it impossible to implement the type of fixed-foundation offshore wind farms that are common in other jurisdictions, which need to be anchored to the seabed.

However, the development of technology now makes it possible to build floating wind farms.

If we add to this the Spanish industrial leadership (in wind technology in particular) and the existing synergies with areas like naval construction and shipyards, auxiliary marine industry, ports, general construction and steel, together with the opportunities derived from the size and characteristics of the Spanish coast, we can understand the interest generated in the sector by the approval of the POEMs.

The POEMs have a 6 year period of validity, and therefore will remain in force until 31 December 2027.

## **Simplified authorization procedures for renewable projects**

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There are 5 approved POEMs, corresponding to these demarcations:

- ▶ North Atlantic Marine Demarcation
- ▶ South Atlantic Marine Demarcation
- ▶ Marine Demarcation of the Gibraltar Strait and Alborán
- ▶ Levantine-Balearic Marine Demarcation
- ▶ Canary Islands Marine Demarcation

The RD develops the POEMs through a general part, which is applicable to all, and specific regulations for each of the five marine demarcations. The general framework is structured in four parts: I (context and scope of application), II (guiding principles and objectives of planning), IV (maritime spatial planning) and V (application, evaluation and monitoring of the plans) and also includes the cartographic representation of the scope of application and zoning of the plans. The specific part of each of the five marine demarcations is contained in part III, and it is only published on the website of the Ministry for the Ecological Transition and the Demographic Challenge (MITECO).

The content of the POEMs is very detailed. Just to highlight some of the main aspects, Part IV (maritime spatial planning) takes the coexistence of uses in maritime space as the starting point of the planning exercise. Within the zones, specific areas of "priority use" are defined. These priority use areas are intended to achieve the general interest management objectives set for the corresponding demarcation. These general interest uses are pre-existing uses (except in the case of sand deposits for coastal protection).

Next, "high potential areas" have been established for different uses and activities, ranging from diversity protection to marine aquaculture activities. Among these activities for which high potential areas are defined are those destined to offshore wind energy (ZAPER, section 4.5). These are areas that meet the technical criteria of wind depth and resource defined in the POEM and that are also not in areas identified as incompatible, or under a prohibition of installing wind (whether pivoted or floating) has been established according to the criteria proposed by the Directorate General of Biodiversity, Forests and Desertification of the MITECO. After evaluating the impacts and interactions corresponding to other uses and values, the delimitation of specific final polygons is reached for maritime demarcation.

Part V includes, among other elements, the process of environmental assessment, consultations and analysis of measures that has been carried out for the preparation of the plans. Especially with regard to wind energy, the RD highlights the interaction that has existed with the fishing sector, noting that efforts have been made to minimize the impact on the fishing sector in the definition of areas of high potential, even acknowledging that this impact will exist and cannot be eliminated in its entirety. The real and quantifiable impact will not be possible to know until the environmental assessment of the specific projects that are finally presented in each of the areas is carried out.

## Next Steps

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After this first step in the deployment of offshore wind, new issues need to be tackled, among others the authorization regime, the definition of the subsidies or support measures (possible through auctions) and access and connection to the grid.

The third additional provision of Royal Decree-Law 12/2021, of June 24, provides for the replacement of the authorization regime provided for in RD 1028/2007, whose application it suspends. It is therefore necessary to approve a new authorisation procedure for this type of installation.

This new authorization procedure must be accompanied by the regulation of the auction or competition regime that is articulated for the allocation of exploitation areas within each ZAPER.

Likewise, it would probably be necessary to introduce specific provisions for this type of facilities in Royal Decree 1183/2020, of December 29, on access and connection to electricity transmission and distribution networks.

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