

Planning and Integration of Ocean Renewable Energy in French Law

La regulación del uso del mar
Facultad de derecho Universidad de Chile

8 de marzo 2017

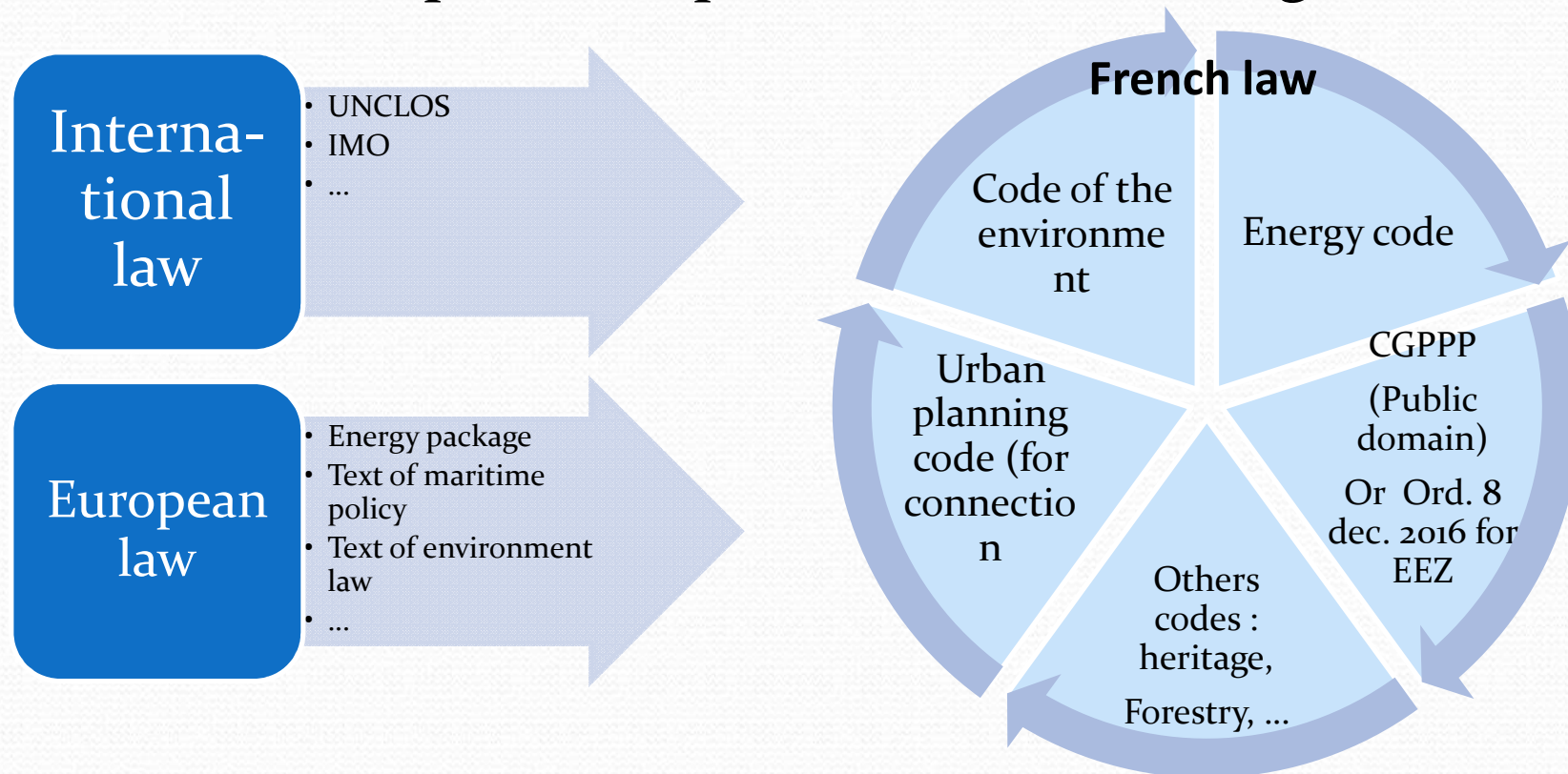
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Introduction

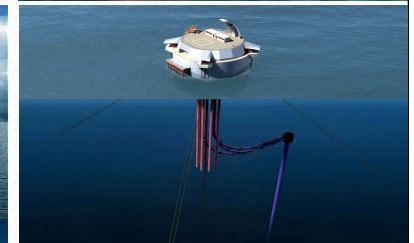
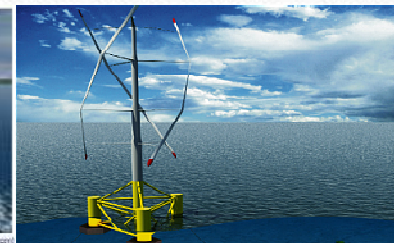
- Ocean renewable energy (ORE) development is a result of different policies: Energy policy / climate change policy / Maritime policy / Environmental policy
- ORE development depends on different legislations



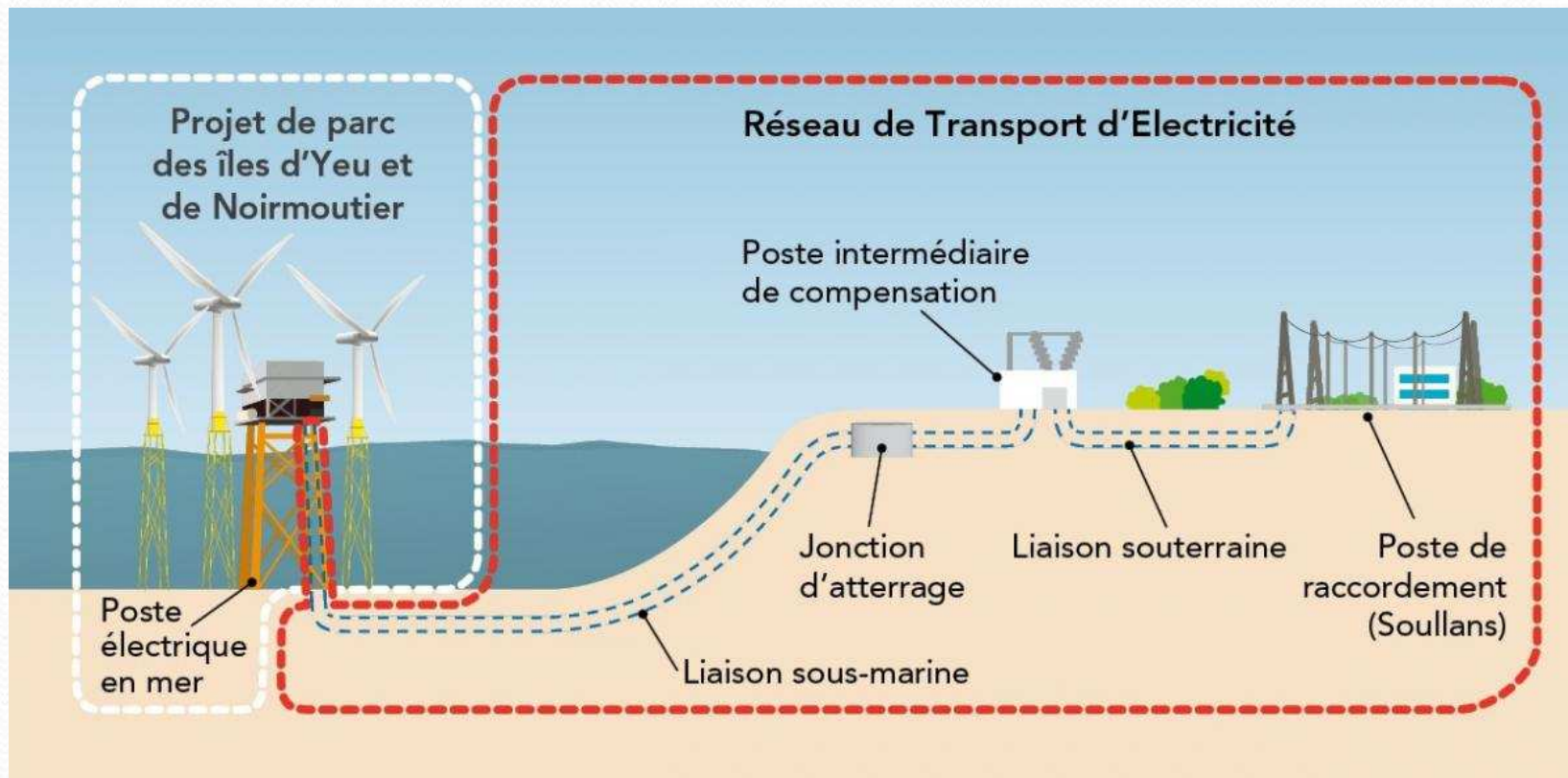
ORE in marine space

- Energies and technologies
 - Offshore wind farm
 - Floating wind farm
 - Tidal energy
 - Wave energy
 - Ocean thermal energy
 - ...
- Installations
 - Demonstrator
 - Pilot farm
 - Commercial farm /large array

= different footprints in marine space



Two projects in one: the farm and the connection various spaces concerned / various consent process



Issues rised by ORE development in marine space

- Conflicts with others marine uses
 - Navigation and shipping
 - Fishing
 - Submarine cables
 - Oil and gaz
 - Aggregates
 - Recreational activities and tourism
- Exclusion of uses or compatibility
- Environmental impacts by construction and exploitation
 - Marine environmental damage (wildlife, habitats)
 - Damage to Landscapes aesthetics
 - Risks of pollution

Questions for ORE development

What

- ORE development depends on **programming** by government (under Energy code)
- Kinds of energies/technologies
- Quantity

Where

- A **planning** concern
- A need for a determination of favorable areas
- Links with marine spatial planning
- Links with electricity grid concerns (in land)
- Development conditions varied in fonction of maritime zones
- Internal waters / territorial sea/ EEZ

How

- Actors and stakeholders
- Government/ Administration /Energy companies / developers / marine services companies / turbines contractors companies/ Local administrations /Marine users / Fishermen /Public
- Several **administrative authorizations** needed
- **Environmental integration** considered : environmental impact assessment / public participation

Energy programming

- Objectives of energy policy (L 101-1 à L 101-4 C éner.)
- Multi-year Programming of Energy PPE (*in french*) (L 141-3 and next C. éner. / Décret n°2016-1442, 27th october 2016)
 - PPE replaces former Pluriannual Programming of Investments (electricity) in accordance with 2015 Act

2009- 2020 PPI e : 6000 MW Offshore wind farm

2016-2018 PPE = OWF : 3000MW installed in 2023 and between 500 and 6000 MW more depending on different conditions like feedback

= Floating wind, tidal, etc.. : 100 MW installed in 2023 and between 200 and 2000 MW more depending on different conditions..

= Tide energy rely with the shore : possibility but no quantified

= Too vague

The link between programming and spatial planning

- According to the PPI, before deciding a call of tender or, in the future, a competitive dialogue, the Government asks regional state authorities to organize a planning process (sectoral planning).
- Sectoral planning is not a procedure provided for by law.

Sectoral planning experiences

1) 2009-2011, decided by a letter from Minister of ecology to define favorable areas for OWF with concertation.

2) 2013, roadmap for floating wind

Sectoral planning to find suitable area for a « call of expression of interest »

3) 2014-2015 Two instructions from Minister, July and November 2014. Aim : identify « macro zones » favorable for OWF even floating wind

Process of ORE planning (ex:2014, OWF)

1) Government decides a sectoral planning (in respect with PPE adopted under Energy code)

2) State authorities at regional level (prefects) organizes the sectoral planning in coordination with maritime prefect

- CEREMA sets up the analysis criteria
- In association RTE plans best area for electricity connection
- Concertation with stakeholders / concertation in Maritime Council (conseil maritime de façade) / concertation with public

3) Government chooses selected areas to launch a call for tender (or now a competitive dialogue)

Example of multi-criteria study

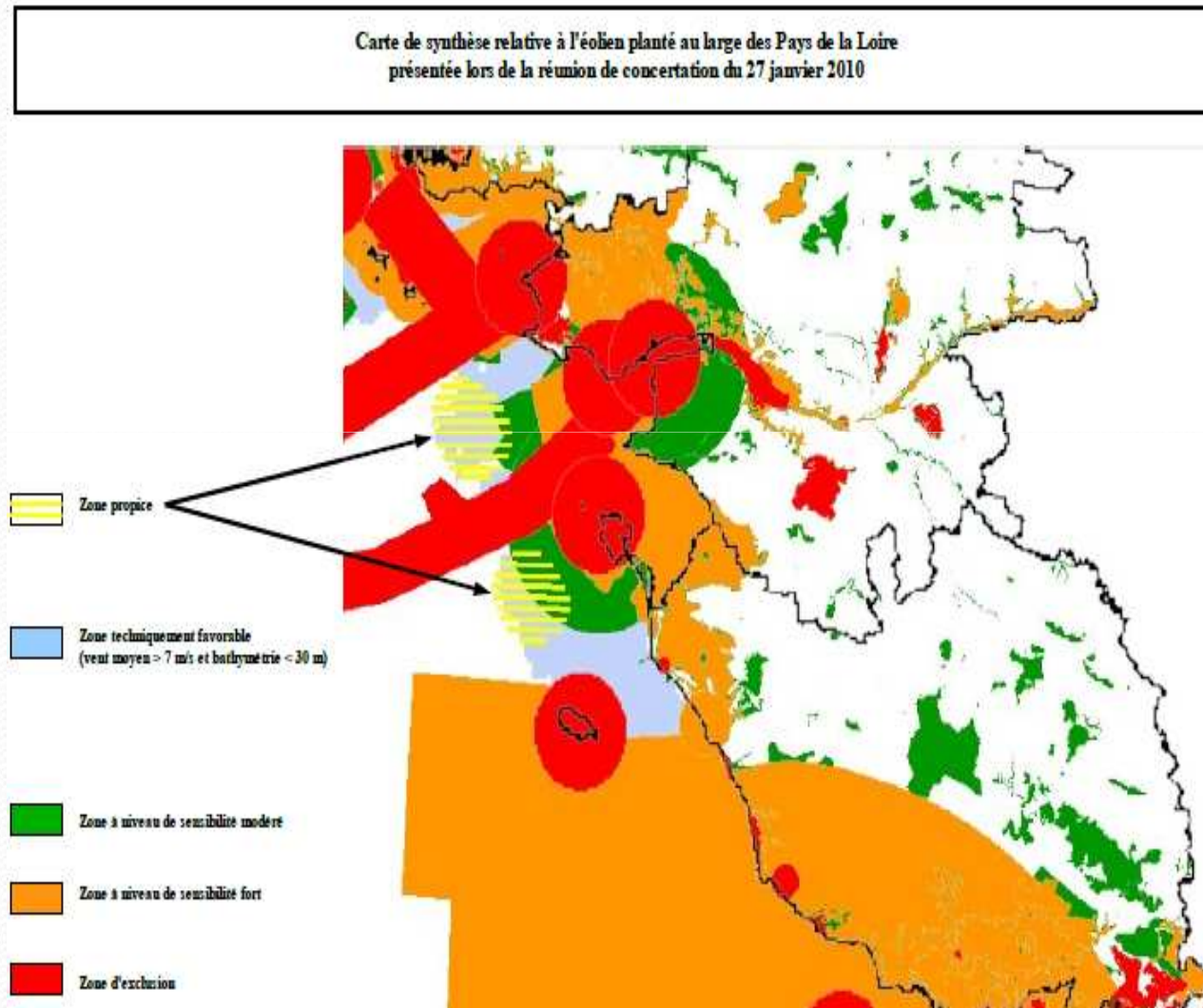
Heritage,
environment
and landscape
issues

Navigation and
security issues

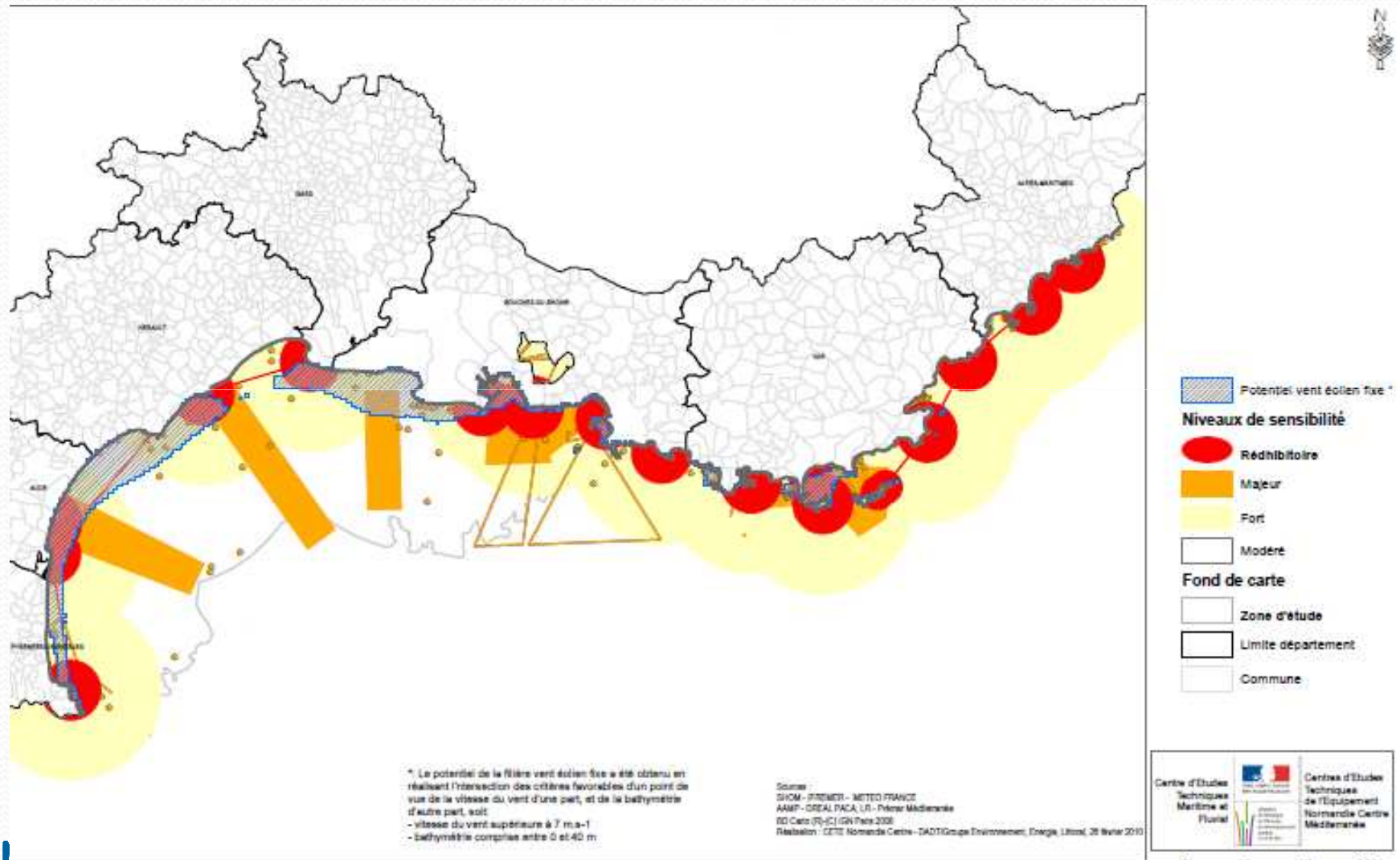
ENJEUX	MODERE	FORT	EXCLUSION
ENJEUX PATRIMOINE – ENVIRONNEMENT – PAYSAGE			
réserves naturelles			
Arrêté biotope			
Conservatoire du littoral, espaces remarquables			
parcs naturels			
Zones d'inventaires			
Protection réglementaire (Europe) : aires marines protégées (hors Natura 2000 « Habitats »)			
Natura 2000 « Habitats »			
Sites classés			
Sites inscrits			
Maëri			
Rejets en mer (émissaires)			
Immersion en mer			
Récifs artificiels			
ENJEUX NAVIGATION – SECURITE			
Zones militaires			
Zones de tirs			
Aérodrome militaire			
Zone largage			
Plageage			
Dépôt de mines			
Sémaphores (zones de protection)			
Sémaphores (zones de coordination)			
Routes de navigation (Rail d'Ouessant, ...)			
Trafic maritime (chenaux et zones d'attente)			
Trafic maritime (inter-îles et cabotage)			
Trafic maritime (grandes routes commerciales)			
Epaves			
Radars (ports, CROSS, ...) : zone de protection			
Radars (ports, CROSS, ...) : zone de coordination			

Example of
exclusion criteri
radar

Example of map :
Synthesis map concerning offshore wind farm in the seaboard of Pays de la Loire in 2010



Example of map for mediterranean sea



To conclude on sectoral planning

- The process was improved :
 - technical and economic analysis / concertation.
- But several problems can be highlighted:
 - Lack of scientific data
 - No strategic environmental assessment => lack of environmental assessment about the knowledge of marine environment and about the impacts of ORE projects at this stage.
 - No flexibility in the shape of a zone (but recent evolution).

Which links with planning in land ?

- The Integrated coastal zone management (ICZM) should be a tool for ORE development. However, in France ICZM tools planning were not implemented for this purpose.
- ORE excluded from urban legislation = urban planning documents are not relevant for ORE. Nevertheless, urban plans are still relevant for the construction of the grid connection.
- In the future, regions could interfere in ORE with a new planning document in preparation : Regional Scheme of planning sustainable development and territorial equality (SRADDET, 2014 NOTRe Act)

What about marine spatial planning ?

- Maritime spatial planning Directive 2014/89/EU : a process to do plans
- In french law : provisions of MSP are at art. L 219-1 Environment Code since 2010 with Grenelle II Act.
 - First level : **National Strategy for the Sea and the Coast** (SNML in french / décret 2017-222 du 23 février 2017)
 - Second level : 4 regional documents : **Strategic Document of Seaboard**
- + **Action plans for marine environment** (MFSD 2008/56/EU), already adopted / strategy for marine environment / aim : good environmental status for marine waters
- As of today, MSP is not totally implemented yet.
- So, planning process in the framework of MSP cannot be used for ORE.

Integration of ORE in marine spatial planning

- **Dir. 2014/89/EU Art 5. 2** « Through their maritime spatial plans, Member States shall aim to contribute to the sustainable development of energy sectors at sea... ».
- Art 8. 1 « Member States shall set up maritime spatial plans which identify the spatial and temporal distribution of relevant existing and future activities and uses in their marine waters”
- Art 8. 2 “Without prejudice to Member States’ competences, possible activities and uses and interests may include: ...
- installations and infrastructures ... for the production of energy from renewable sources
- = an obligation to integrate ORE in maritime spatial plans of Member States

To sum up the French situation of marine spatial planning

Action plans (MFSD)	Adopted / 2 ^e cycle	Not real reference to ORE
National strategy for the sea and the coast	Adopted in 2016	Too general and vague to be a good guidance
Strategic Document of Seaboard	Not yet implemented	An obligation and an opportunity to give operational guidance and graphic plans applicable for ORE



Means and procedures for ORE environmental Integration

Valuation note of environmental impact according to the specifications of competitive process (CfT or CD)

Information on environmental issues during the public debate (art. L 121-8 C. éner). Hold after competitive process and before EIA.

The environmental impact assessment (EIA, art. L 122-1 C. env)

The environmental Authority opinion on the EIA

Incidence assessment of Natura 2000 (if a Natura 2000 area is concerned, art. L 414-4 C. env)

Content of the water legislation authorization (art L 121-8 / R 122-1 C. env)
: prescriptions concerning designs, construction and exploitation

Content of the grant of public domain or the grant in the EEZ

Informations about environment for the public enquiry

About environmental integration during competitive process

- Competitive process and marine environment (example of 2011 and 2014 calls of tender)
 - The competitive process and the establishment of specifications take into account the environment issues
 - But at this stage the environmental legislation is not yet relevant (no EIA).
 - So we can identify lacks of environmental assessment concerning the environmental state and the impacts on marine environment.

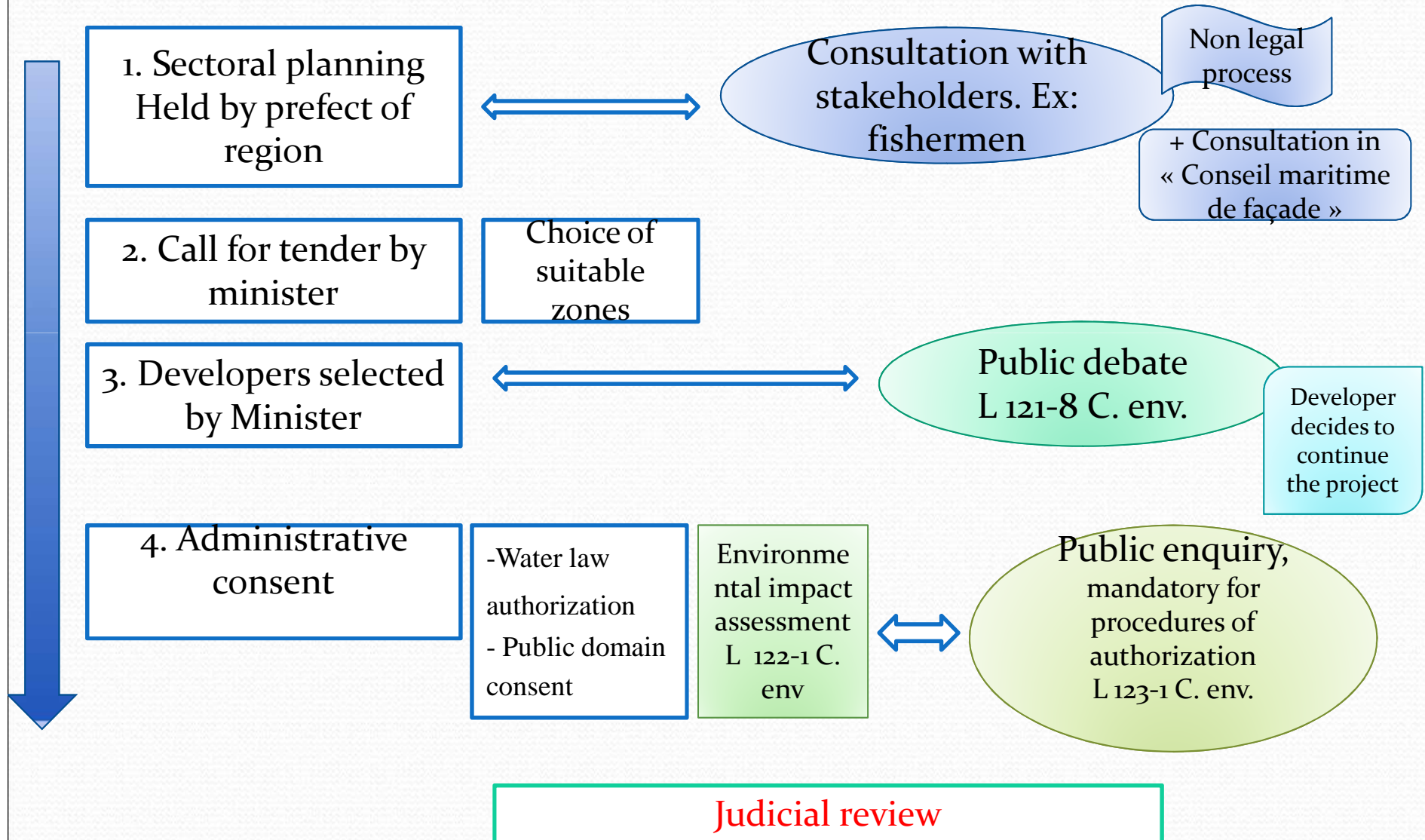
Environmental integration in the concession to occupy maritime public domain (L 2124-2 CGPPP, R 2124-2 CGPPP)

- The application of concession
 - 7° Proposed modalities, based on the initial state of the sites, the monitoring of the project and their impact on the environment and natural resources
 - 8° Rehabilitation operations planned
 - Obligation to give the EIA
- The grant
 - Operation of general interest (or public service concerning the connection) / outside of the administrative limits of the harbour / duration :40 years
 - Definition of others possible uses inside or outside the zone
 - Obligation of information about construction
 - Maintenance obligation
 - Option for rehabilitation and restoration of the site

Environmental impact assessment

- EIA is needed to obtain different licence and grant
- A great complexity as regard as knowledge of marine environment and novelty of ORE
- For ongoing project :
 - a lack of specific guidance (*New* : Specific guidance for offshore wind farm 2017).
 - a lack of reflexion on the less impact zone (area is already defined)
 - a lack of scoping (préparation with administration)
- Aims of the EIA : Avoiding, reduicing or compensing impacts. *Example : choice of a technic for protect mamals when treshing piles*

Schematic diagram of participation in ORE



Regulation of activities in and around a ORE space

- Regulation is decided by maritime prefect in compliance with international law / Décret de 2004
 - Definition of fishing opportunities
- Maritime prefecture hold a concertation with users (fishermen) and developer.
- A Great Nautic Commission is consulted concerning navigation (representatives of the fisheries also) décret n°86-606 du 14 mars 1986

Public enquiry (at the end of the consent process)

- For OWF call of tender 2011 : an unique public enquiry for the water authorization and the grant.
- May be the most important step for participation. Because at this stage the complete project is well known, informations like EIA and different opinions are given with the public (that's mean everybody can give his opinion).
- A commission must give conclusions and an opinion (favorable or not / recommendations)
- Administration and undertaker do memories in respons

Conclusion

- Importance of the competitive process under energy law
- A special planning process for ORE : an administrative procedure but not enough links for ICZM, maritime spatial planning and strategic environmental assessment
- Environmental issues (IAE) and participation issues (public inquiry) are relevant particularly at the end of the consent process.

I don't see any
turbines on the
horizon.



GRACIAS