

The rise of a special legal framework for ocean renewable energies in France

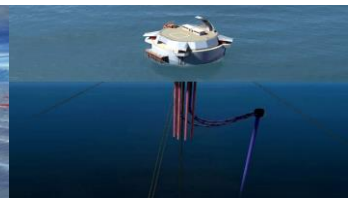
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La regulación del uso del mar
Universidad de Chile- Facultad de Derecho
8 De Marzo 2017

Introduction

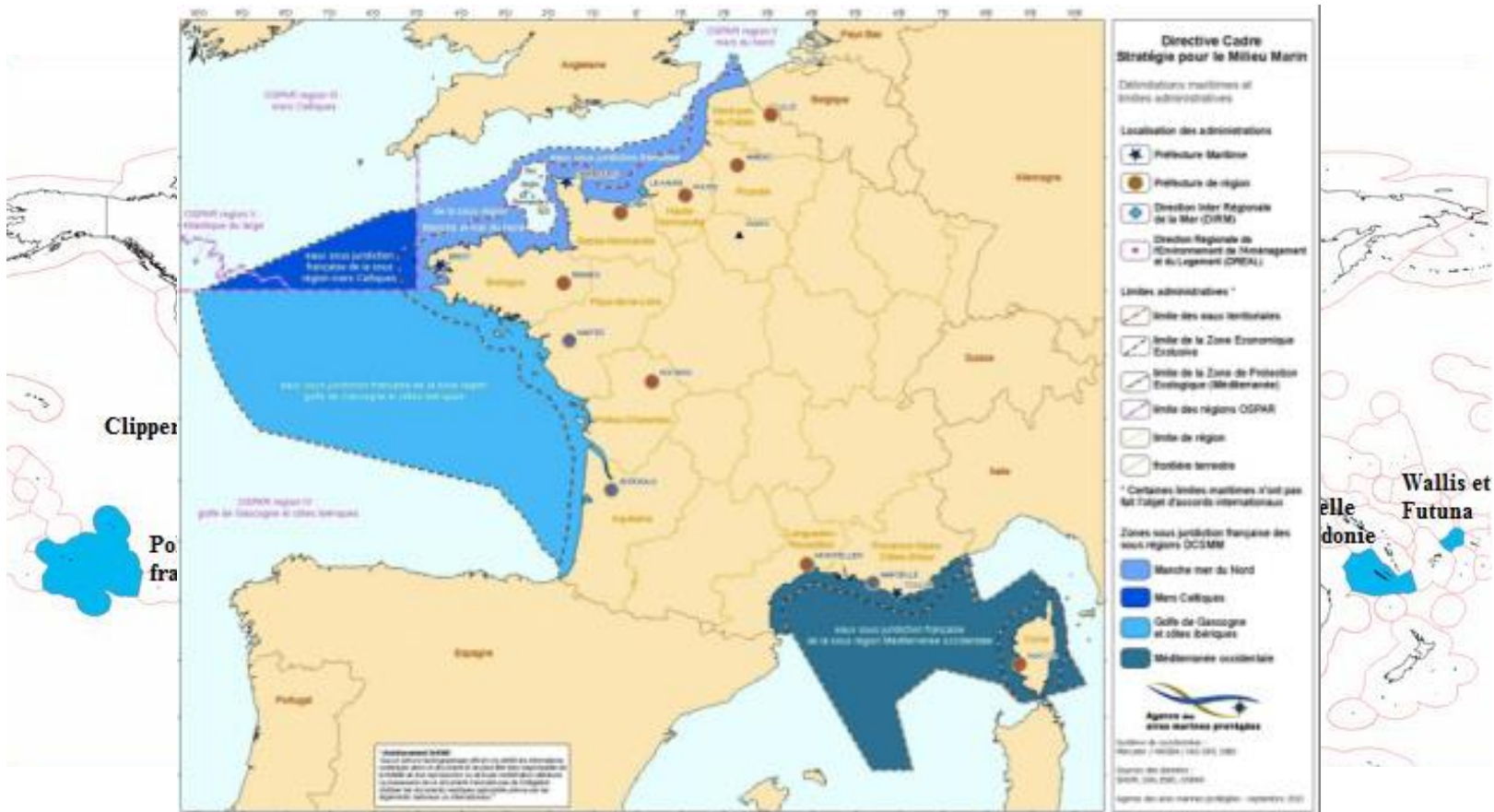
A need for renewable energy

- **Energy Transition for Green Growth Act of August 17th 2015**
- **Ambitious targets :**
 - ✓ 32% ren. / energy consumption
 - ✓ 40% ren./ electricity production by 2030
- **OREs participate in this effort.**



France

- First EEZ in Europe
- Second in the world



11 035 000 Km2

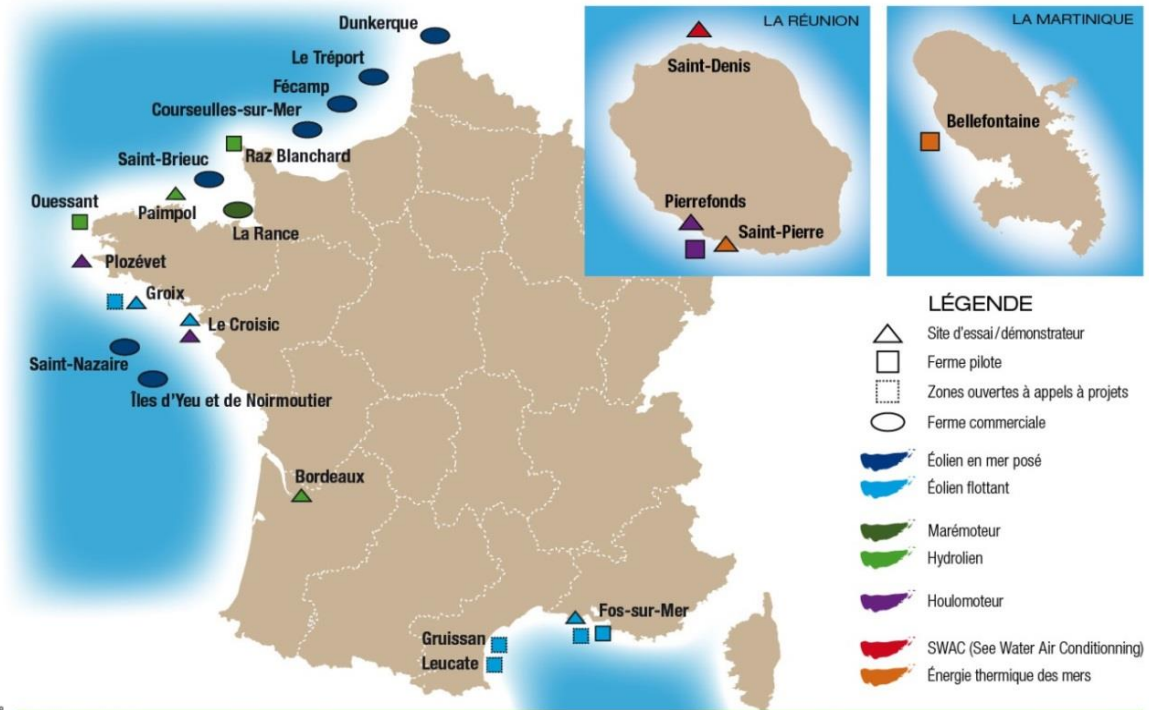
OREs in France

Objectives for 2023

✓ 6000 MW offshore wind

✓ 100 MW tidal energy and other ocean energies

LES ÉNERGIES RENOUVELABLES EN MER EN FRANCE : PANORAMA DES PROJETS LES PLUS AVANCÉS



DCEM - BUREAU VERITAS 2023.2 - Mai 2016

DÉFINITIONS

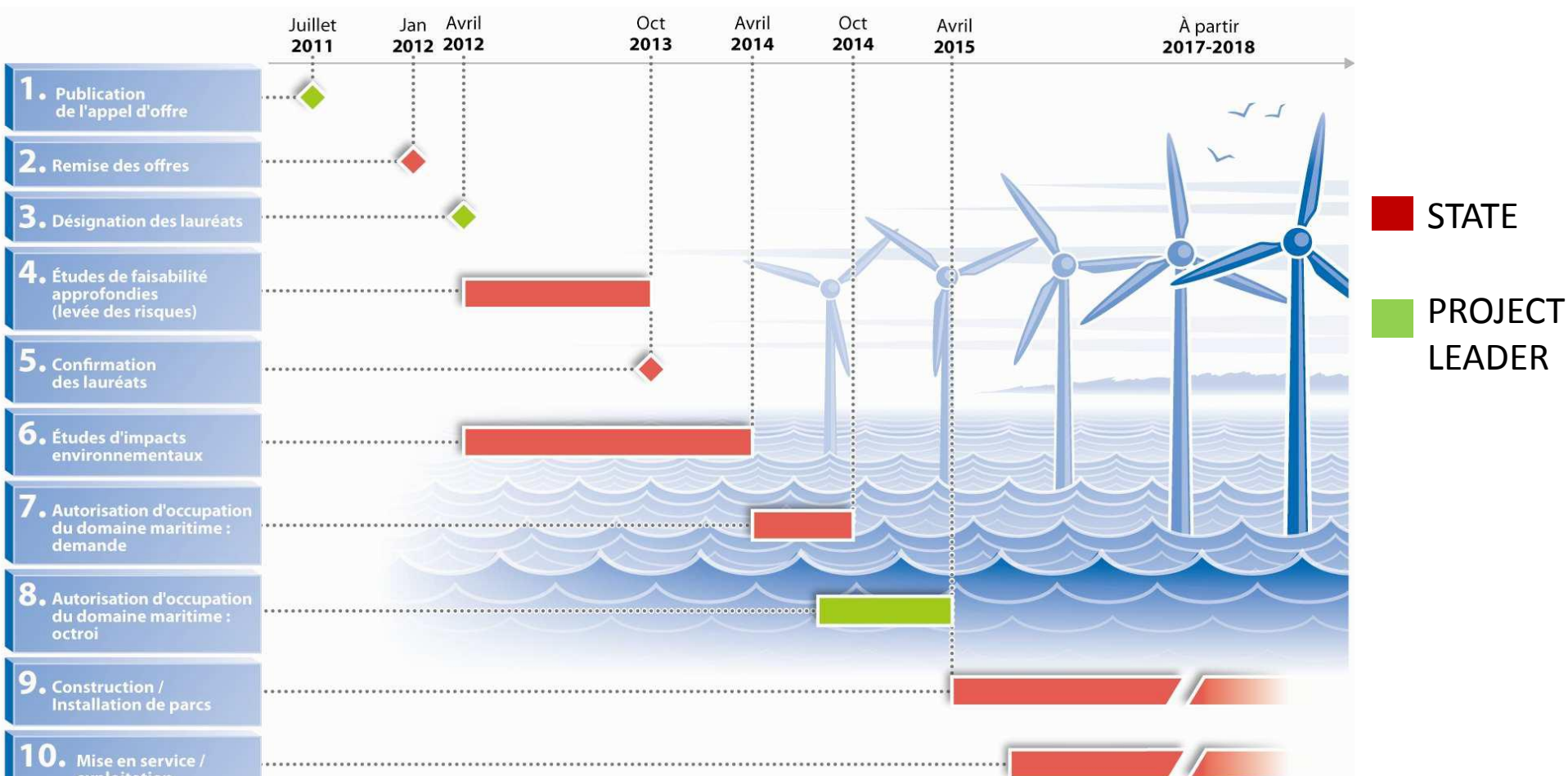
• **Site d'essai / démonstrateur** : il s'agit de tester un prototype ou une machine dite « première de série » à l'échelle réelle, afin de valider ou de modifier le design et/ou les procédés d'installation et d'intervention en mer. Ces tests sont réalisés pendant une période assez courte (quelques mois).

• **Ferme pilote** : permet le test de plusieurs machines simultanément, afin de valider ou de rectifier leur installation et leur fonctionnement en tant qu'unités de production électrique dans des conditions semblables à celles de futures fermes commerciales. Une ferme pilote peut fonctionner de 2 à 20 ans.

• **Ferme commerciale** : exploitation commerciale à grande échelle, pour une durée de 20 ans environ.

Lengthy and complex procedures

The first tender in 10 steps and ≈ 30 authorizations





Too many legal and financial uncertainties

- Hurdles to their development
- Increase the risk of litigation

- ✓ Environmental impacts of the projects
- ✓ Social acceptability
- ✓ Coordination with other uses of the sea
- ✓ Costs

- ✓ Complexity of the procedures
- ✓ Legal uncertainties



The initial legal framework (Offshore wind farms)

✓ **Call For Tender**

✓ **Administrative Consents**



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Administrative consent for space implementation	Environmental procedures	Energy law procedures
<ul style="list-style-type: none">- Public domain consent (30 years)- Urban planning rules at sea : Building permits	<ul style="list-style-type: none">- The installations classified for the environmental- Protection Water Law authorization- Areas of special interests- Natura 2000	<ul style="list-style-type: none">- Authorization to conduct ocean energies facilities- Certificate giving entitlement to the purchase obligation

Judicial review and appeal

✓ **Commissioning**



The evolution of the legal framework

The Goal

- Define a special legal framework adapted to the challenges and specificities of OREs

The Way

- The promotion of participatory governance around OREs projects
- The simplification and consolidation of the legal framework
- The improvement of the legal and financial security of OREs projects



Promotion of participatory governance around OREs projects

Colossal investments (about **2.5 billion euros for a wind farm** of 62 wind turbines installed in the bay of Saint-Brieuc power 500 MW)

French State

- ✓ Owner of the maritime areas
- ✓ Guarantor of the security of France's energy supplies, whose sources must be diversified and greened up

Stakeholders

- ✓ **Project leaders**
Financial capacity and technical skills
- ✓ **The third parties** (citizens, associations, town councils)

Two tools created in 2016

- ✓ **The establishment of a competitive dialogue with applicants**
- ✓ **Opening of a claims procedures for the third parties after the commissioning**



The establishment of a competitive dialogue with applicants

Order 2016-1059 of August 3th and Decree No. 2016-1129 of August 17th

- A new procedure aims at alleviating the disadvantages observed in the tendering procedure implemented twice

Call for tender

The Minister selected the most economically advantageous tender without negotiation on the basis of an objective criteria previously communicated to the candidates

The new competition procedure with competitive dialogue

The Minister for Energy discusses with the candidates admitted to participate in the procedure in order to define or develop solutions adapted to their needs and which will allow the development of more realistic specifications.

- First competitive dialogue for an offshore wind project in the North sea in December 2016

Opening of a claims procedure for the third parties after the commissioning

Decree n° 2016-9 January 8th

AIM

- Reassure the third parties and reduce preventive appeals

WAY

- Possibility for third parties to file a complaint with the state representative (prefect) from the start of the work or commissioning of the project.
- Two months to give a reasoned reply and lay down additional requirements

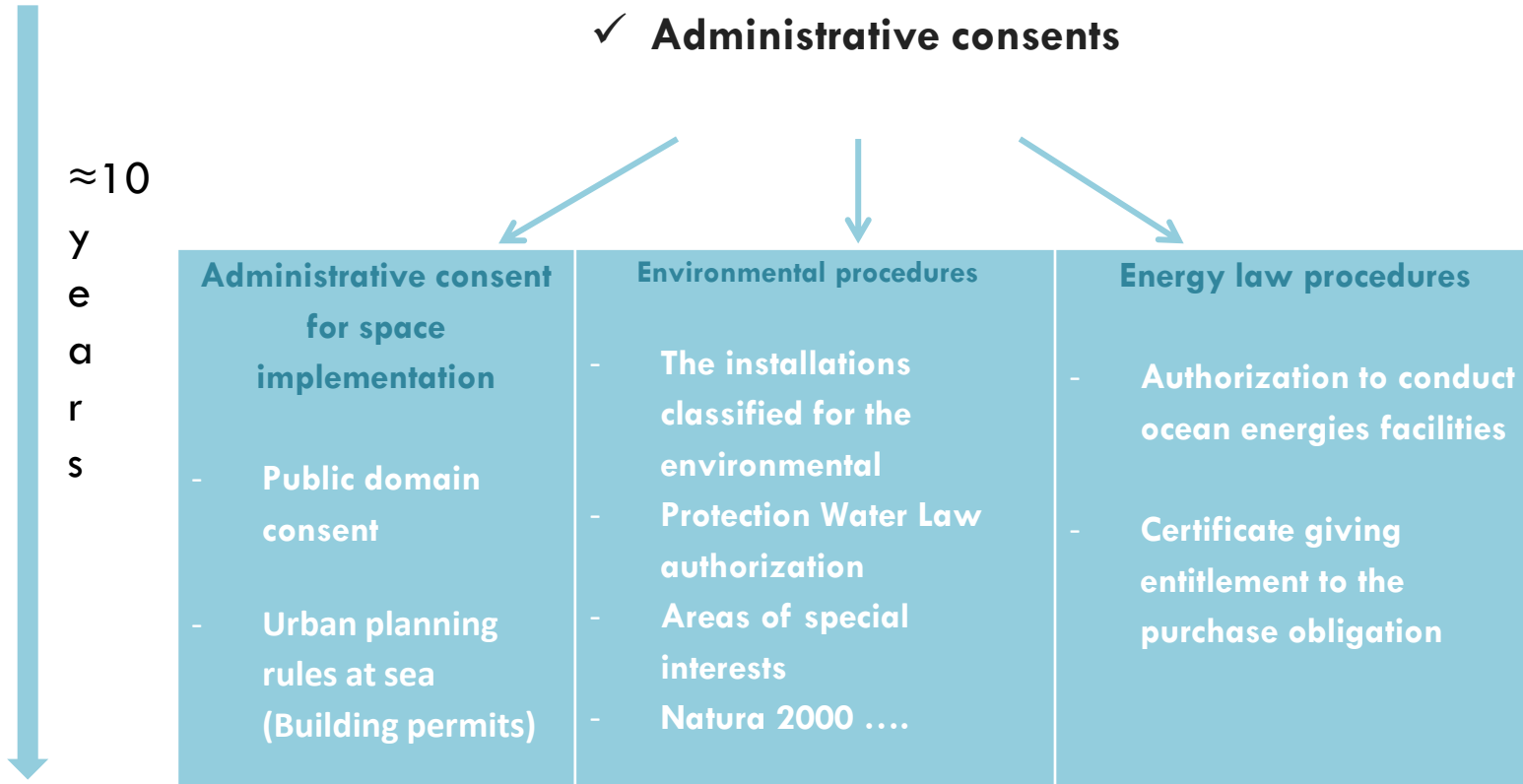
INTENDED OUTCOMES

- Contribute to a constant adaptation to environmental requirements after commissioning

Evolution to promote participatory governance around OREs projects

✓ **Competition procedure with competitive dialogue**

✓ **Administrative consents**



Judicial review and appeal

✓ **Commissioning**

Opening of a claims procedure for the third parties after the commissioning

Simplification and consolidation of the legal framework

- Different sources of law: energy law, environmental law, marine law
- Several authorizations needed for a project: consent, licence, etc.. / Installations and arrays (at sea) grid
- A simplification and coordination overhaul of the legal system for OREs so as to increase efficiency and legal certainty



Measures of simplification since 2010

- Neutralization of the installations classified for the environmental protection rules (2011)
- Exclusion of urban planning rules at sea (2012)
- Coordination of environmental procedures giving the state representative for the region the implementation of the administrative process (2011 et 2013)
- Removal of the certificate giving entitlement to the purchase obligation (2016)
- Generalization of the single environmental authorization (2017)



Evolution to Simplify and consolidate the legal framework

✓ **Competition procedure with competitive dialogue**



✓ **Commissioning**

Opening of a claims procedure for the third parties after the commissioning

Improving the legal and financial security of OREs' projects

GOAL

Define a secure and less complex legal framework, without sacrificing the demands of environmental protection and public involvement

METHODS

The creation of a special litigation

Financial security to enhance the attractiveness and profitability of OREs' projects

The creation of a special litigation

- **A single judge since February 1st 2016**
- **Shorter deadlines of judgement**
- **Shorter deadlines for appeals**
- **Special procedures rules for Ores litigation**
 - The crystallization of the arguments
 - Notification of the appeals



Financial security to enhance the attractiveness and profitability of OREs projects

Intended outcomes

- ✓ Reassure the promoters of projects which have hypothetical and deferred profitability and are the subject of several litigation procedures

Methods

- ✓ Adaptation of financial support plans
- ✓ Increasing the validity period of occupation permit on the public maritime domain
- ✓ Increasing the validity period of the authorization to conduct the ocean energies facilities

Evolution to Improve the legal and financial security

✓ **Competition procedure with competitive dialogue**

✓ **Administrative Consents**



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Administrative consent for space implementation -Public domain consent 40 years	Environmental procedures -The single environmental authorization	Energy law procedures - authorization to conduct the ocean energies facilities (ten years for a renewable duration of three years twice)
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Judicial review and appeal

Creation of a special litigation :

- **A single judge**
- **Shorter deadlines of judgment and appeals**
- **Special procedures rules for Ores' litigation**

✓ **Commissioning**

Opening of a claims procedure for the third parties after the commissioning



Conclusion



- Initially : an ad hoc tender relayed by a non-specific consent process
- A gradual reform and adaptation in order **to accelerate its implementation**
- The appeals lodged following the first two tenders :
 - ☹️ weakened projects
 - ☹️ undermined confidence for the developers.

Reassuring

investors and the public seem to be the key word of the measures adopted.

富嶽三十六景
神奈川沖
波裏



Thank you !
GRACIAS !