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Japan Offshore Wind Market

Asia Wind Energy Association 4th Asia Offshore Wind Day, Taipei, 18 September 2018)

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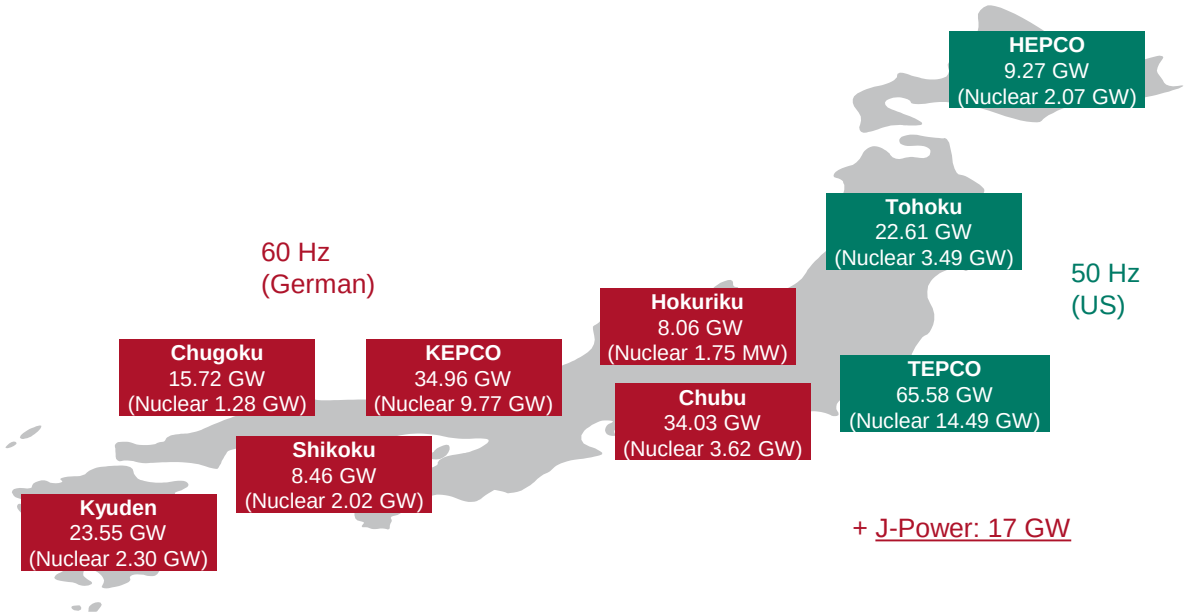
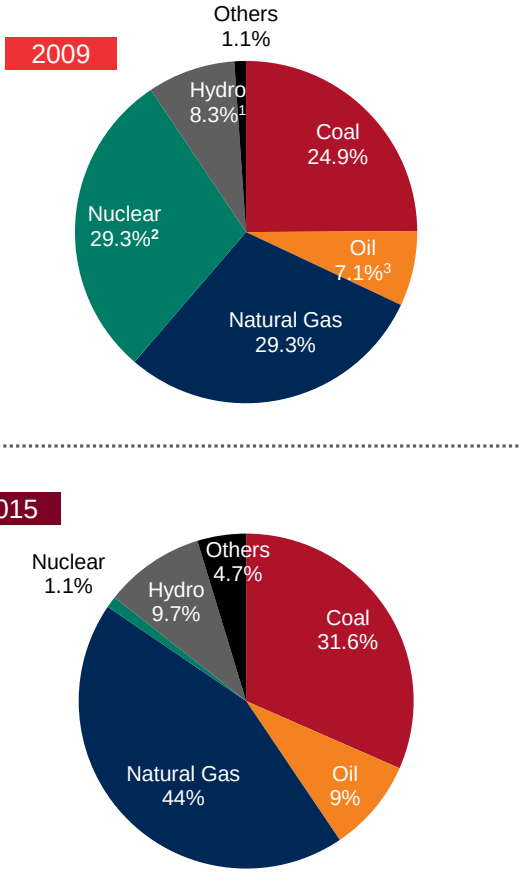
1 Japan's Electricity Sector and Foreign Investment Landscape

Japan's utilities and power mix

Japan's Regional Utilities (2012)



Power Mix



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Japan – foreign investment landscape

- Japan's power sector is generally open to foreign investment subject to:
  - BOJ notification requirement;
  - Agricultural land ownership restrictions;
  - Construction and Electricity Business Act license requirements;
  - Detailed prefectural level project approval requirements
- Japanese bank project financing also generally available to foreign sponsors
- Challenges for foreign investors:
  - language and cultural barriers;
  - high costs (and tax rates)
  - staffing challenges
  - perceived over regulation and over engineering issues
- But, many foreign companies have succeeded despite the challenges.

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2 Japan's Offshore Wind Power Laws

Snapshot of Japanese Offshore Wind Power

- Introduction Stage, 8 sites, 65 MW only
- Experimental Stage at Fukushima semi-sub floating
- Feed in Tariff JPY 36 (US ¢ 32.7)/kwh (excluding VAT) and 20 year PPA period, for both fixed and floating types

7 MW Semi-Sub Photo Credit: Fukushima FORWARD

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Floating Case

- Commercial Operation by Goto City of 2 MW at Goto Island Nagasaki Prefecture, floating spar type
- Toda Corporation provides O&M services
- FIT at JPY 36/kwh
- Green Bond Finance at JPY 10 billion (USD 90.9 million)
- To be expanded to 11 turbines and 22 MW by 2021

Goto Island 2 MW Hitachi

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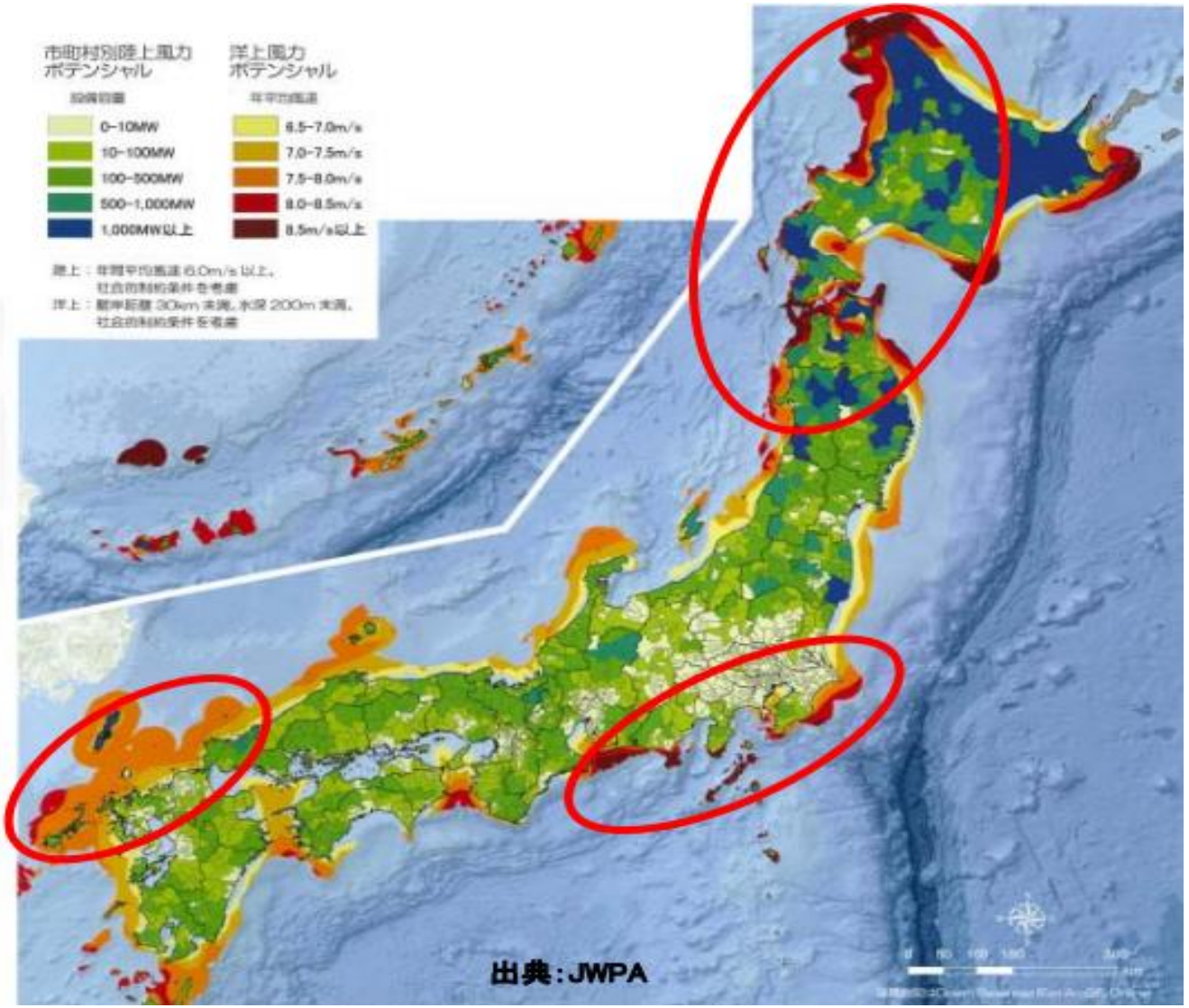
Bright Future

100m high
Wind condition map



Source：Japan Wind Power Association

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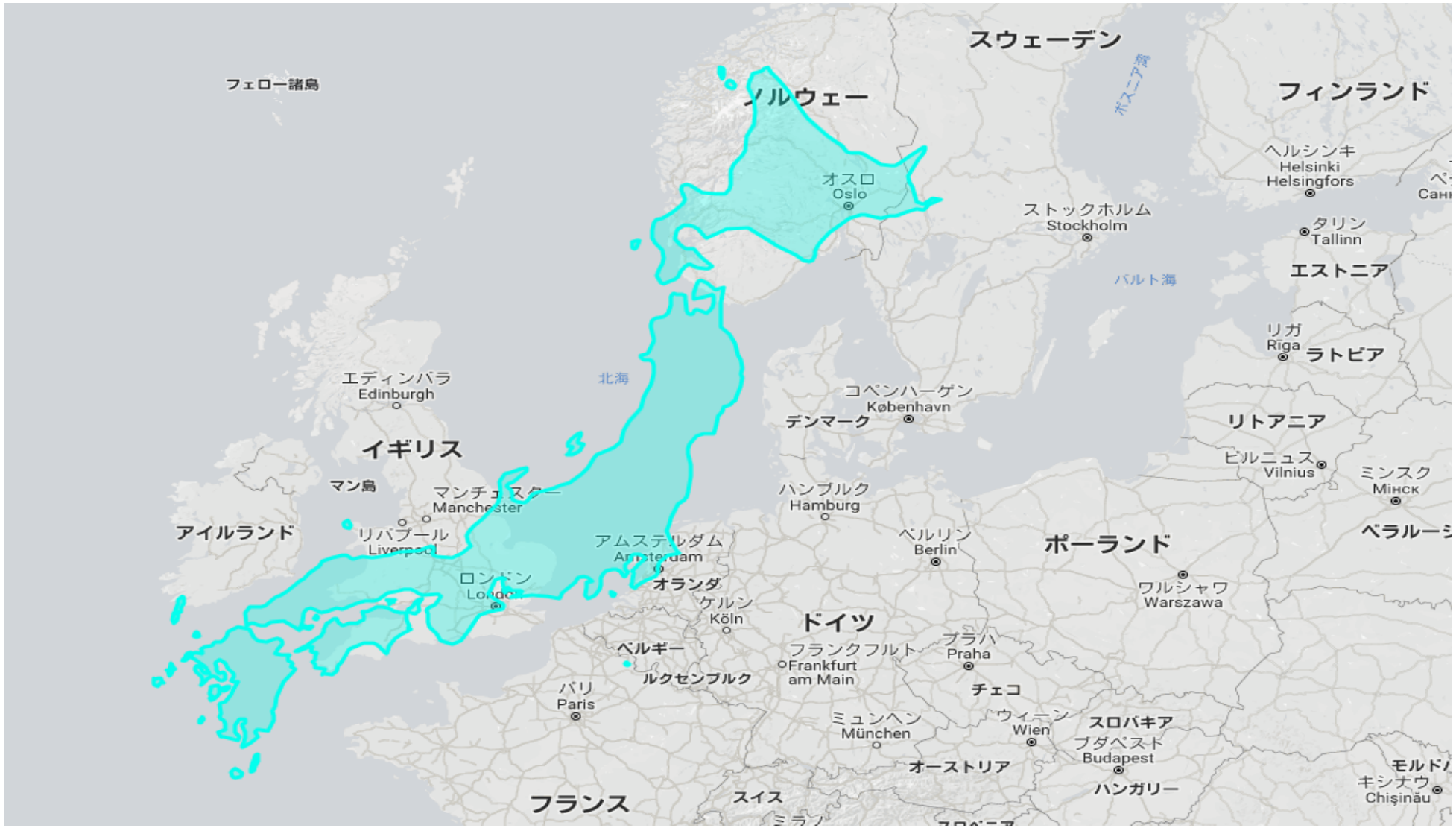
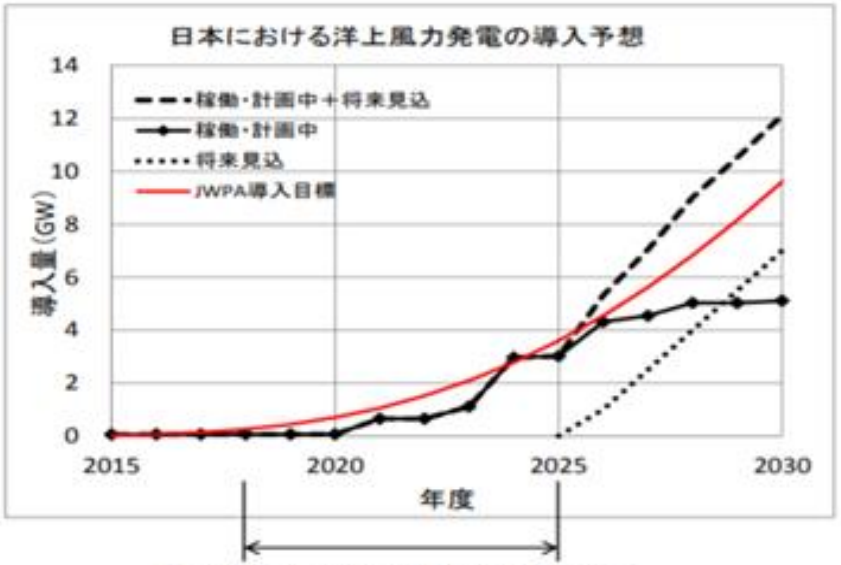
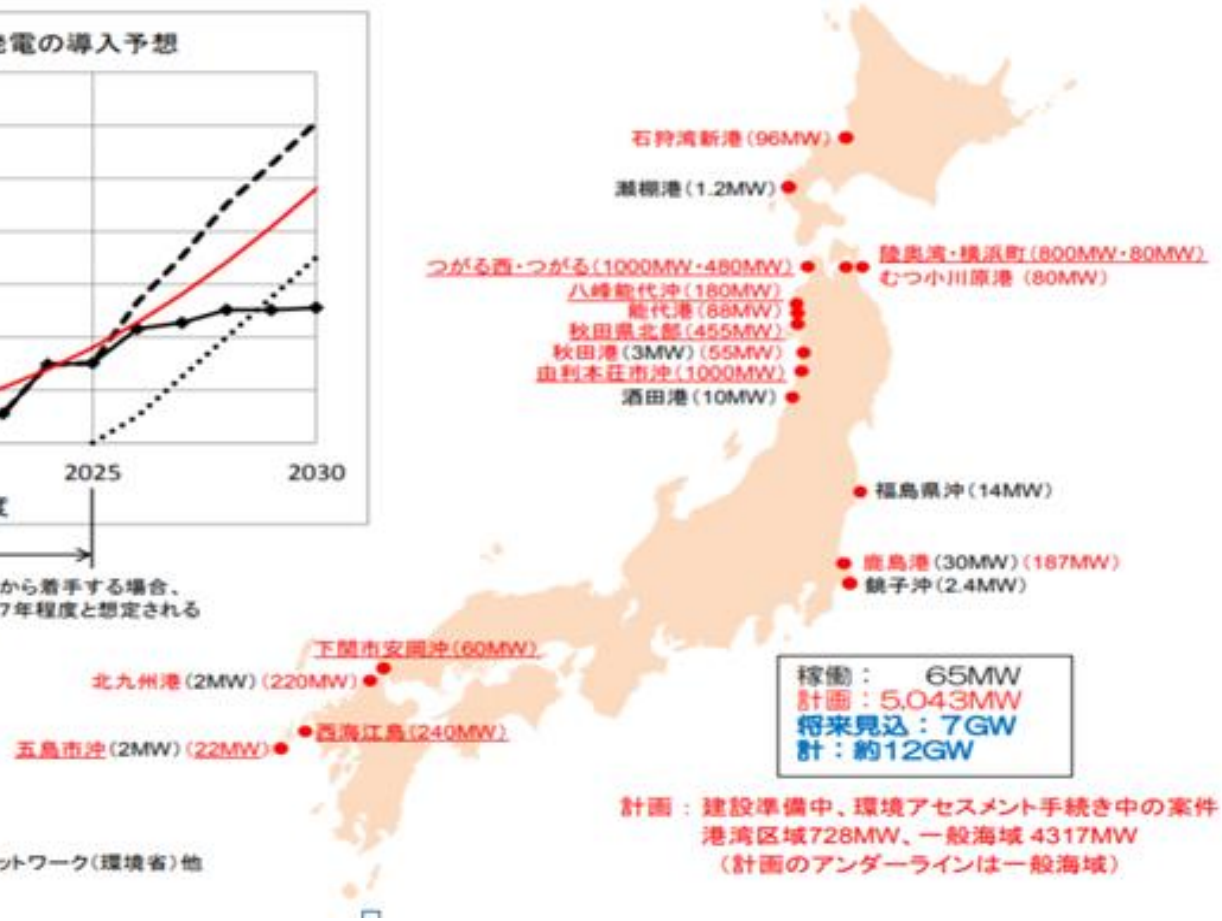
Size of Japan



Potential Cases: JWPA targets 10 GW by 2030
EIA: 5GW, Grid Application: 7GW

現在、建設準備中、環境アセスメント手続き中の案件は約5GW、一般海域利用のルール化によりさらに7GW程度（1～1.5GW/年）の運転開始が見込まれ、2030年10GWの目標は達成可能と想定





出典：環境影響評価情報支援ネットワーク（環境省）他

JWPA 一般社団法人 日本風力発電協会

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New Bill for Offshore Renewable Promotion Law

- Bill was cancelled due to time limit of the Diet in July 2018
- Second try: Cabinet Resolution would be in early October 2018
- METI has appointed advisors to research offshore wind power auctions, taking into account overseas auction cases and Japanese PPP/PFI auctions such as airport PPP auctions
- Extra-Ordinary Diet session will be convened in late October 2018
- The bill would pass in November 2018
- The law would be in force by February 2019
- FIT committee will discuss the auction process from February 2019 at the earliest, but more practically, in Summer 2019
- Offshore wind power auction would start during Q4 2019 to Q2 2020

7 MW Semi-Sub Photo Credit: Fukushima FORWARD

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General Sea Area 30 year Use Right–Award Process

- ✓ 30 year period covers Construction, Operation and Decommission
- ✓ Detail of the Procedure will be determined by the FIT Committee in 2019

Procedure

① Central Government will implement Basic Policy which promotes the use of the General Sea Area for Renewable Power Project Facilities （The Prime Minister will prepare the draft and the Cabinet will resolve it）

② The Ministers of METI and MLIT will designate the Promotion Area after hearing the opinion of Councils (*Kyogikai*) etc. to be organized in each regional area and prepare Public Bid Occupation Direction for long term use of the area (*Kobo Senyo Shishin*)

③ Developers will submit Public Bid Documents including a Business Plan (*Kobo Senyo Keikaku*) and Power Generation Plan (*Hatsuden Jigyo Keikaku*) to the Minister of METI and MLIT

④ The Ministers of METI and MLIT will select the bidder which submits the most economically advantageous tender and approve their Business Plan (*Kobo Senyo Keikaku*) A selection committee of academia and lawyer would be formed

⑤ Preferred Bidder will apply for a FIT approval based on power generation plan ⇒ The Minister of METI will approve the bid price under the FIT Law

⑥ Preferred Bidder will apply for an occupation license under the approved business plan ⇒ The Minister of MLIT will approve the occupation for 30 year at the longest

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How to designate Promotion Area

- Bottom up Process through regional Council (Similar to Airport Privatization)
- Important to obtain support from local stakeholders
- The Governor has right to request the formation of a Council (Art 9.3)
- Criteria of Designation: project will not disturb fishing business（Art 8.1.5）
- If the Council is formed, the Ministers should listen the Council's opinion (Art 8.5)
- Member of the Council（Art 9.2）

  ①Minister of METI and MLIT and relevant Governor②Minister of MAFF and relevant Mayor ③ Organization of related fishermen and other interested stakeholders and Academia and Specialist
- If a consensus is formed, the Council members must honor the discussion result (Art 9.6) What is "consensus is formed"？ Should not be unanimous.
- Related fishermen's consensus must be obtained by the commencement of the Project (draft of Public Bid for the long term use of the area)

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How to designate Promotion Area (cont.)

- KPI in the explanation of the Bill states "*5 areas by 2030 based on the understanding of regional related stakeholders*". However, this is just a KPI and it was confirmed that these 5 areas would not be a cap at the LDP Renewable Promotion Committee of the Members of Parliament (MP Masatoshi Akimoto confirmed on 22 February 2018)
- Japan needs a Government Milestone Target for Offshore Wind Power Development like the Netherlands and Taiwan.
- Otherwise no investors will commit human resources, finance and materials. For example the government should pledge 5 GW of offshore wind power by 2025 and 10 GW by 2030

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Ports Act (20 years)

New Bill (30 years)

Recommendation by Port Authority	→	Recommendation by the Regional Government
ABC Port Council for Implementation of Renewable Energy	→	ABC General Sea Council for Implementation of Renewable Energy
Selection of Appropriate Area		Selection of Appropriate Area
Recognition in the Port Plan	→	Designation of Offshore Renewable Promotion Area
Administrative Body and related Parties	→	Related Ministers, Governors, Mayors, related Fishermen's organization , related stakeholders and academia
Preparation of Bid Criteria by Port Authority	→	Preparation of Public Bid for long term use of area by the Ministers of METI and MLIT

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“Wind Power Development at Port” – Manual ver. 1 for Cooperation between a Wind Firm and Port Authority

- Manual P27 Establishment of Council
- Manual P29 Rule of the Council
- Manual P55 Arrangement with local fishery industry
- Recommendation for cooperation between Offshore Wind Power and Fishery Industry ≪Ver. 2≫ June 2015 Research Institute for Ocean Economics
- Example of a Council: Kita-Kyushu City Port Authority organized a “*Council for Appropriate Site Selection*” Before implementation of Public Bid for long term use of Port, the Council narrowed down an appropriate site by consultation with local stakeholders including fishermen. Before the issuance of Public Bid for long term use of Port, it was not easy to determine the concrete location and type of wind turbine. The Council did not go into detail, rather it determined area based on general consensus. Listed up issues and shared issues among stakeholders and decided area and proceeded. The issues will be taken care of by the winning bidder under the Business Plan and actual project development.
- Mr Koichi Iwamoto “Specific Points on Offshore Wind in Japan in the view point of formation of Offshore Industry Concentrated District at Kita-Kyushu Hibikinada Port Area” Research Institute of Economy, Trade and Industry (2017)

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Treatment of Existing Offshore Wind Development

- Grandfather Arrangement (Art 10) If a developer has already developed a general sea area for offshore wind power based on the regional government law (*Johrei*) at the time of designation of the Promotion Area, deemed approval is granted based on the same period of occupation and other conditions under the regional government law (3–5 years)
- After the enforcement of the Offshore Wind Promotion Law, is it possible to develop offshore wind power in a general sea area which is not designated as promotional area? Will the offshore wind power business plan under the FIT Law be approved? Yes, it is possible but only for a period of 3–5 years under the regional government law.
- FIT Committee may introduce reverse auction for the general sea area other than Promotional Area, too.
- If you would like to secure 30 year use right, you need to bid under the New Law
- An Existing Developer should make sure through the Council procedure that his effort of development is recognized in the evaluation of the selection process under the New Law (13.2.15)

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Selection Criteria (Art 15)

- When the government sets the Selection Criteria, it must listen to the opinions of the relevant Governor and Academics (Art 13.2.15 and 13.5)
- Selection Criteria is set out in the description of Public Bid Business Plan（14.2）
  - Formation and capability for arrangements with relevant authorities and relevant regional government
  - Financial Plan and Revenue and Expenditure Plan
- Most economically advantageous Public Bid Business Plan shall be selected for the purpose of long term, stable and efficient implementation of offshore wind power stations（Art 15.3）
- When selecting a Preferred Bidder, it is necessary to listen to Academics opinions in advance (Art 15.4)　⇒ Cheaper Purchase Price and Stable Business Plan
- Please refer to Kita-Kyushu Port Offshore Wind Power Selection Criteria

http://www.city.kitakyushu.lg.jp/kou-ku/30300004.html

http://www.city.kitakyushu.lg.jp/files/000747919.pdf

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Other Issues

- 30 years must be prescribed in the occupation period (Art 10.4) and 30 years must be secured in the METI Ordinance and in the Public Bid Occupation Direction (Art 13.2.13)
- Conditions can be attached to the Occupation License. It is important to make sure that the full decommissioning should not be requested (Art 10.5 and 13.2.12). Sea bed cutting should be allowed.
- Prohibited Conduct in Art 12 should include the passage of ships between turbines. If it is not prohibited in the Law, the Council should decide that ships should not make passage and should not anchor between the turbines and these rules should be followed by stakeholders including fishermen's organizations (Art 9.6)

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Other Issues

- The Developer requires the consent of the Ministers of METI and MLIT to transfer the "status" of the Project Company (Art 20)
- How about a transfer of shares in the Project Company?
- Port Law Operation Guideline Ver. 1, 5-1-1 states that when the largest shareholder would like to transfer its shares in the Project Company, it must obtain consent from the Ministers of METI and MLIT
- If the Guidelines for the Offshore Renewable Promotion Law have the same concept as the Port Law, the largest shareholder must obtain the consent of the Ministers of METI and MLIT when they sell shares in the Project Company.
- The New Law is silent of the criteria of consent. If a purchaser has the same capability and financial condition, consent must be granted. This criteria should be described in a guideline or in a basic agreement with the Preferred Bidder.

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Cabotage Restriction

- Ship Act Art 3: A vessel shall not call at "closed ports" in Japan or carry out transportation of cargo or passengers between "ports" in Japan unless the vessel is registered as a Japan-flag vessel.
- Exception is when a special permission of the Minister of MLIT is obtained.
- A construction site for an offshore wind farm would fall under one of "closed ports" or "ports" There are 85 open ports out of 3000 ports in Japan.
- Therefore a foreign-flag vessel calling at an offshore wind farm construction site within Japanese territory (up to 12 nautical miles offshore) would be regulated by Japanese Cabotage Regulation.
- Criterial for Special Permission: Marine transportation by a relevant vessel will not cause any hindrance to (i)the ensuring of stable marine transportation and (ii)the transportation of cargos or passengers carried out by marine transport operators in Japan
- It may be relatively easy for a foreign-flag vessel to satisfy such criteria given the current situation where Japan-flag vessels for offshore work do not prevail in Japanese waters. Question: Can special permission be obtained 2 years in advance for the actual construction?
- So far no permission granted for the purpose of offshore wind farm construction.

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Today's Take Aways

- Nick is the same age as Tom
- 10 GW of Offshore Wind Power is waiting for you in Japan
- Forget Japan Not!
- Mission is Possible!

勿忘草 Forget-me-not

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Thank you for your attention.

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Naoaki “Nick” Eguchi is the co-head of the Baker McKenzie’s Banking & Finance Practice Group in Tokyo, and is a member of the Asia Pacific Banking & Finance Group steering committee. He has been recognized for his work on Goldman Sachs' TOB of Universal Studios Japan, which was named the Debt Market Deal of the Year at the 2010 ALB Law Awards and on Fukushima Soma LNG power project finance of 1180 MW with USD 1.2 billon, which was named the Projects, Energy and Infrastructure Deal of the Year at the 2018 ALB Law Award. He has been a member of the Japan Wind Power Association since 2006 and has been serving as a member of Offshore Wind Power Task Force of the Association since 2017. He has followed the development of Japan’s renewable energy law closely and has issued regular Renewable Energy Client Alerts since 2011 (36 alerts in total).

Mr. Eguchi focuses his practice on project finance, renewable energy (solar, wind, biomass, geothermal, water) infrastructure PPP (including Sendai Airport, Kansai Airport, Fukuoka Airport, Hokkaido 7 Airports and Kumamoto Airport), PFI (including work for Taipei city government for their construction of 1300 residential units under PFI model), international procurement and acquisition finance — including MBO, TOB and LBO. He has worked on more that 150 solar power project financings totaling more than 2,000 MW and more than 16 wind power project finance totaling more than 280 MW.

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Since the introduction of the Japanese renewable energy feed-in tariff regime in 2012, he has acted for numerous foreign renewable energy project investors to acquire and develop renewable energy projects in Japan. His experience includes the negotiation of EPC contracts and subcontracts for renewable energy projects in Japan and financing for such projects. He has also assisted Japanese utilities, trading houses and energy companies investing in power projects in countries such as Thailand, Australia, Indonesia, Malaysia and other jurisdictions.

Prior to joining the Baker & McKenzie Tokyo office, Mr. Mac Pherson worked for the litigation and arbitration practice group at Baker & McKenzie’s Bangkok office between 1995 and 1998 and the major projects/corporate practice group at Baker & McKenzie Sydney’s office between 1999 and 2003.