Legal Opinion on Offshore Wind Energy

English Translation

I. EXECUTIVE SUMMARY

1. The development of the offshore wind energy market in Brazil takes place in a regulatory environment that is still incomplete. Although Law No. 15,097/2025 established the legal framework for offshore energy potential exploitation and regulated the use of maritime areas of the Union, the full operationalization of this market depends on infralegal regulation, currently being developed within the Offshore Wind Working Group, coordinated by the Ministry of Mines and Energy.

2. This complementary regulation must define the essential operational parameters of the new regime, including the granting and management of maritime areas and technical and environmental requirements, while the legal regime applicable to vessels and navigation operations involved in the implementation, operation, and decommissioning of offshore wind farms still lacks specific regulation.

3. Although the legal framework is predominantly directed at the electricity sector, the practical viability of offshore wind energy projects depends on an adequate maritime legal regime for vessels employed in offshore wind farm operations. The implementation of these projects requires consistent integration with the navigation legal regime, covering vessel classification, chartering and flag rules, as well as safety standards and maritime regulation. Such matters are not addressed by Law No. 15,097/2025, being subject to the navigation regulatory framework originally structured for other offshore industry segments.

4. Maritime regulation affects the sector in three structural layers:

Law No. 9432/1997 Regulation of Waterway Transport	**ANTAQ Regulation** Regulatory and Supervisory Body	**Brazilian Navy** Maritime Authority
Central regulatory framework that defines navigation concepts, chartering rules by EBN, and flag criteria. All vessels classified in Law No. 9,432/1997 must comply with its requirements.	Regulatory body and supervisor of waterway transport, navigation, and ports, acting on, among other aspects, EBN authorization, chartering control, and application of circulation and BR at Sea rules.	Authority responsible for navigation safety, having the competence to authorize works at sea, discipline interference with navigation routes, and apply the Maritime Authority Standards (NORMAM).

5. In the absence of specific classification for offshore wind activities, an administrative understanding has been consolidated within the National Waterway Transport Agency ("ANTAQ") to classify and categorize vessels employed in these operations as maritime support navigation, by analogy to the regime applicable to the oil and gas exploration and production sector ("O&G"). This classification extends to the new segment the rules relating to chartering, circulation, and national fleet priority, according to the regulatory guidance currently adopted by the Agency.

6. However, the technical analysis present in this Opinion evidences a relevant distinction between maritime support vessels and engineering vessels used for highly specialized offshore wind operations (such as WTIVs, heavy lift vessels, cable laying vessels, jack-ups, for example), whose operational and contractual nature does not unequivocally fit the traditional concept of maritime support. The adoption of the regime designed for the O&G sector tends, therefore, to generate regulatory misalignments in a market characterized by specialized assets and limited global availability.

7. This scenario generates relevant legal and regulatory uncertainties regarding the possible mandatory contracting, by a Brazilian Navigation Company ("EBN"), of vessels and maritime support services, the incidence of the circulation procedure, the possibility of blocking by vessels of national flag, eligibility for the Brazilian Special Registry ("REB"), and the degree of flexibility admissible for engineering vessels. The lack of definition of these aspects directly affects the economic-financial modeling of projects, implementation schedules, contractual structure, effective operation, and international competitiveness.

8. A structural point of regulatory integration is also identified: the offshore wind framework regulates the granting and management of energy potential under the logic of the electricity sector, while the execution of projects falls under the navigation legal regime. Thus, the granting of areas does not eliminate the need to comply with the rules and requirements of maritime law and navigation regulation applicable to operations and vessels involved. The formal articulation between these regimes is not yet fully defined in current legal instruments.

9. In the fiscal sphere, the sector does not have a structured regime equivalent to REPETRO, widely used in the O&G sector. Although existing instruments such as REIDI, REB, ex-tariff, and temporary admissions can be applied partially, there is no specific fiscal policy aimed at the types of vessels and specific equipment necessary for offshore wind energy generation operations. The most economically effective measure that can be adopted at the moment consists of including these vessels in the exceptions to the Temporary Admission for Economic Use regime.

10. In practical terms, even if an area were granted today under the offshore wind energy sector regime provided for in Law 15,097/2025, the effective execution of the project would depend on the definition and coordination of all regulatory requirements applicable to maritime activities. An offshore wind energy project is conceived within the scope of the electricity sector, but its implementation materializes in the maritime environment.

11. Thus, the legal framework for offshore wind energy generation activities will only become fully functional when there is:

Regulatory Integration *between the energy sector regime and maritime regime*	**Regulatory Consolidation** *for vessels and operations of offshore wind farms*	**Predictability** *on chartering rules, flag, and national fleet protection*	**Fiscal Definition** *tailored for vessels and assets employed in offshore wind operations*

12. Until such definitions are structured, the sector will remain dependent on extensive administrative and legal interpretations, with direct effects on legal certainty and investment attractiveness.

13. In this context, the following recommendations are intended to address, in a systematic way, the regulatory and fiscal gaps identified, through the proposal of measures capable of conferring greater legal certainty, operational predictability, and economic competitiveness to the sector. This is a coordinated agenda for legislative, regulatory, and tax improvement, essential for the consolidation of the offshore wind energy generation market in Brazil.

14. RECOMMENDATIONS FOR MARITIME REGULATION

(i) Legal classification of maritime support activities for offshore wind: amendment of Law No. 9,432/1997, especially in the Definitions section, to expressly include logistical and operational support activities linked to offshore wind energy exploitation in the concept of maritime support navigation, with the objective of eliminating dependence on analogy with the O&G sector and conferring legal certainty.

(ii) Regulatory (or legal) classification of specialized engineering vessels for offshore wind activities: determine, from the regulatory agency's point of view – or even within federal legislation on the subject, if the GT so understands –, whether specialized offshore wind engineering vessels fall under the maritime support navigation rules or not, in order to define, for such vessels, appropriate discipline for chartering, circulation, and blocking, with the purpose of overcoming the current regulatory gray zone and reducing case-by-case analyses.

(iii) Maritime safety rules and authorization for traffic and permanence (update of maritime safety standards): Update of NORMAM's/DPC No. 01 and 08 for express inclusion of Offshore Wind activities in the provisions for maritime safety and authorization for traffic and permanence in Brazilian Jurisdictional Waters under the Navy's competence.

(iv) Address interpretative doubts and regulatory gaps not yet consolidated by specific normative act applicable to the Offshore Wind sector: preparation of a technical-regulatory diagnosis within the GT to clarify the applicability of navigation rules to specialized vessels operating in offshore wind operations, with the purpose of mitigating uncertainties until possible legislative amendment.

15. RECOMMENDATIONS FOR FISCAL REGULATION

(i) Structured tax relief for importation of specialized offshore wind vessels: Expansion of §4 of art. 56 of Normative Instruction No. 1,600/15 to include vessels employed in offshore wind activities and their parts (spare parts) in the applicable regime, a measure to be implemented by the Federal Revenue Service of Brazil, through institutional coordination, similar to Repetro, aiming to include offshore wind vessels in the exceptions to the temporary admission regime, waiving proportional collection of taxes on importation during their stay in Brazil.

(ii) Inter-institutional coordination for sectoral fiscal policy: Joint action of institutions involved in the GT with the Federal Revenue Service to enable the normative amendment, with the objective of structuring a permanent institutional coordination channel for prioritization, monitoring, and implementation of fiscal measures necessary for the development of the offshore wind sector.

IX. CONCLUSION

324. The current Brazilian maritime, fiscal, and regulatory legislative framework aimed at Maritime Support Navigation has been applied, whether by analogy, extension, or regulatory deliberation, to maritime support activities for offshore wind energy, but this framework is not sufficient, presenting various operational and regulatory gaps and risks that must be resolved not only with the issuance of the Offshore Wind Decree but also with legislative amendments, such as the necessary amendment of Law No. 9432/1997.

325. The transposition of the O&G regulatory framework to the Offshore Wind Energy sector proves functional as a starting point for installation and operation projects of its activities. However, the high technical requirement of the new sector requires regulatory coherence that goes beyond mere interpretative application and by analogy of O&G regulation.

326. The vessels used during the life cycle of Offshore Wind farms are not sufficiently covered and regulated in the currently applicable legal framework, requiring a specific regulatory definition to confer legal certainty to their operating regime.

327. The application of this normative set to the Offshore Wind Energy sector evidences the absence of specific legal provisions and, consequently, the law's limitation in offering clear classification parameters for subsequent economic uses of maritime space.

328. The Offshore Wind Decree under preparation to be proposed cannot fully include new provisions on vessels employed in the life cycle of offshore wind projects, nor can it address possible amendments to Law No. 9,432/1997, with direct amendment of the aforementioned law through proper channels being necessary, as detailed in item 292 – Table 1, of this Opinion.

329. Regarding investment possibilities for the expansion of the Offshore Wind Energy sector in Brazil, the coordinated mobilization of instruments such as FMM, BNDES lines, Climate Fund, green bonds, and international climate funds proves to be a central element for the economic-financial structuring of the sector. In the Brazilian context, where regulatory consolidation and production chain formation are still at an initial stage, public and climate financing tends to play a structuring role, creating conditions for the progressive entry of long-term private capital.

330. Regarding current fiscal regimes and their implications for the cost of importing vessels typically employed in the Operational Phases of Offshore Wind, their applicability proves viable, but conditioned to the adaptation of such regimes to the particularities of the activities in question.

331. Such adaptation proves fundamental for conferring legal certainty and predictability to operations, especially in the post-tax reform context – a moment when efforts should be concentrated, considering that the changes are already in the implementation phase, with the beginning of the transition from one regime to another starting this year.

332. As noted, the regimes in force that are understood as applicable to the activities now analyzed were maintained within the tax reform, including REIDI and REPORTO.

333. Regarding REPORTO, it is worth reiterating that the regime has the possibility of reaching port support vessels, but not maritime support vessels proper, so that its potential to effectively

contribute to vessels that support Offshore Wind operations proves quite residual. The feasibility of a possible amendment to expand the NCMs to which the regime applies proves low, precisely because it is a regime whose purpose is the modernization and expansion of port infrastructure.

334. Thus, there are incentives already applicable, both at the federal level, as already pointed out in this work, and at the state level, depending on the affected State, but only partial coverage of such operations is verified, so that, although the State provides collateral incentive to the performance of the activity, there is no consolidated strategy and structure for strengthening the sector from the perspective of Brazilian fiscal policy.

335. Based on these current regimes, we understand that the amendment that will most contribute to the tax relief of the importation of vessels employed in the Operational Phases of Offshore Wind is the one referring to the Temporary Admission Regime, as detailed in item 276 – "Table 2".

323. In summary, the legal framework for Offshore Wind will only achieve full functionality when:

(i) there is formal and structured integration between the energy legal regime and the maritime regime, overcoming the current regulatory fragmentation;

(ii) ANTAQ consolidates specific and stable understanding regarding the classification of engineering vessels, including reflections on offshore activities beyond the O&G sector, contemplating those employed in offshore wind and moving away from exclusive dependence on analogies with the first sector; and

(iii) there is express predictability in law regarding flag rules, chartering, blocking, and other operational conditions to be applied to the Offshore Wind sector, especially to more specialized vessels, in order to guarantee legal certainty and economic-financial viability to the projects.