



The Offshore Wind Farm Round-Up

Created by the JCTA

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LEGAL ACTIONS & INVESTIGATIONS

■ Everyone seems to have same questions about the latest legal actions initiated by Save LBI and others, the outcome of a similar lawsuit filed in Massachusetts and an investigation by a government agency about recent whale deaths.

Below is NJ Spotlight News’ summary of activity around these points of interest. It was included in the June 16 evening e-newsletter and it provides a succinct starting point for many topics about which people have questions. *All the bullet points in the original summary are included below and highlighted like this.* Underneath each bullet point, we have added links to other sources of information so you can see more details, if you wish to do so.

- *Groups that have been at the forefront of the effort to halt plans for hundreds of electricity-generating wind turbines in the Atlantic Ocean have taken their campaign to court.*
 - *The groups — Save LBI, Defend Brigantine Beach and Protect Our Coast NJ — say state officials ignored evidence the massive structures will harm the offshore environment in their approvals.*

- *The legal action — naming the state Department of Environmental Protection and company developing the offshore wind project — was filed with the state Appellate Division, the normal venue for challenging the decision of a state agency.*

From The Sandpaper June 21, 2023: “[Last month these groups] filed papers with the New Jersey Appellate Division, saying that Ocean Wind 1 turbines ‘will be fully visible from New Jersey beaches and will crush and destroy the seabed, each tower weighting up to five million pounds,’ according to a June 16 joint statement.”

From the same article: “The legal action stems from the DEP [NJ Department of Environmental Protection] issuing a federal consistence determination for the project, saying Ocean Wind 1 plans are consistent with New Jersey’s Coastal Zone Management Program, according to Bob Stern of Save LBI. The DEP issued the determination in April.”

Access the full June 21 article in The Sandpaper by clicking on this link:

<https://www.thesandpaper.net/articles/save-lbi-among-groups-challenging-njdep-offshore-wind-determination/>

Access the full June 19 article in the Asbury Park Press by clicking on this link:

<https://www.app.com/story/news/local/land-environment/2023/06/19/nj-groups-sue-to-stop-offshore-wind-construction/70334409007/>

- *A lawsuit filed by wind-power opponents was rejected by a federal judge earlier this year.*

The lawsuit was filed in August 2021 to challenge the approvals of the Vineyard Wind project off the Massachusetts shore. The plaintiffs Nantucket Residents Against Turbines and its founding member filed suit against the Bureau of Ocean Energy Management (BOEM) and the National Marine Fisheries Service (NMFS).

On May 17, 2023, a judge in the U.S. District Court for the District of Massachusetts denied claims seeking to invalidate two of the project’s key federal approvals on the grounds that they did not adequately consider impacts on the North Atlantic right whale in violation of the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA). The court found that the federal government did not violate the ESA or NEPA when issuing the challenged approvals.

Two articles explain the court’s decision:

From Bracewell’s website posted May 22:¹

¹ *Bracewell is an international law firm. From its website: “Our award-winning teams lead the market in transactions and litigation, regulatory matters and government relations. Bracewell’s strength has made it the firm of choice for many of the world’s most successful companies, financial institutions, private funds and municipal entities.”*

<https://bracewell.com/insights/offshore-wind-litigation-court-denies-challenge-major-offshore-wind-project>

From The Energy Law Blog on Liskow's website posted May 24²

<https://www.theenergylawblog.com/2023/05/articles/energy/court-dismisses-permitting-challenges-to-the-u-s-s-first-major-offshore-wind-project/>

Read the court's full decision by clicking on this link:

https://www.govinfo.gov/app/details/USCOURTS-mad-1_21-cv-11390/USCOURTS-mad-1_21-cv-11390-1/context

- *Meanwhile, U.S. Rep. Chris Smith (R-4) said that the Government Accountability Office told him it had agreed to investigate the potential role preliminary work on the offshore wind project might be playing in numerous marine mammal deaths.*

From The Associated Press June 15 under the headline "Congressional watchdog agency to probe offshore wind impacts": "The independent watchdog agency of Congress agreed Thursday to look into the impacts that offshore wind development could have on the environment, fishing industry and other areas.

In a letter to U.S. Rep. Chris Smith (R-NJ), the U.S. Government Accountability Office said it would 'review matters relating to the potential impacts of offshore wind energy development' in the northern Atlantic area between Maine and New Jersey. It said the review would include impacts on "infrastructure and vessel traffic."

Access the full AP article by clicking on this link:

<https://apnews.com/article/offshore-wind-government-accountability-office-whales-ocean-c6c207ca5f0b00204959cc9213b3e727>

Click on the following link to go to the NJ Spotlight News website:

<https://www.njspotlightnews.org/>

■ Of additional interest might be this article with the headline "Feds Commit \$82 Million to Protect The North Atlantic Right Whale" in the June 14 edition of *The Sandpaper*.

Access the full article by clicking on this link:

<https://www.thesandpaper.net/articles/feds-commit-82-million-to-protect-north-atlantic-right-whale/>

² *From Liskow's website: "Liskow is a full-service law firm providing regulatory advice, transactional counsel, and handling high-stakes litigation for regional and national companies. Liskow lawyers are strategically located across the gulf coast region and serve clients in the energy, environmental, and maritime sectors, as well as local and regional businesses in virtually all industries."*

LBT ASKS FOR ADDITIONAL TIME TO REVIEW THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

Long Beach Township Mayor Mancini has requested an extension of 90 – 135 days beyond the previously announced 45-day comment period in order to ensure that there is sufficient time to review and appropriately comment on the Draft Environmental Impact Statement (“DEIS”) for the Atlantic Shores project. Citing the length of the DEIS as the reason for his request, Mayor Mancini said that the document is over 6,200 pages.

Access the full June 21 article in The Sandpaper by clicking on this link:

<https://www.thesandpaper.net/articles/lbt-wants-more-time-to-review-environmental-impact-of-offshore-wind/>

WHY ARE SO MANY WHALES DYING?

■ Answers to that question were compiled and reported in a recent article that appeared in the *New York Post* on June 13, 2023.

Click on the following link to access the complete New York Post article:

https://nypost.com/2023/06/13/why-are-the-whales-dying-sea-mammal-deaths-hit-record-in-new-york-and-new-jersey/amp/-amp_tf=From%251%24s&aoh=16866768555629&csi=1&referrer=https%3A%2F%2Fwww.google.com

■ Sources mentioned in the article include the following agencies and organizations:

- National Oceanic and Atmospheric Administration (“NOAA”) & NOAA Fisheries <https://www.noaa.gov/> & <https://www.fisheries.noaa.gov/>
- The Port Authority of New York and New Jersey <https://www.panynj.gov/port-authority/en/index.html>
- Gotham Whale, a NYC-based research and advocacy group <https://gothamwhale.org/>
- The Nature Conservancy <https://www.nature.org/en-us/>
- Atlantic Marine Conservation Society based in Hampton Bays Long Island <https://www.amseas.org/>
- Greenpeace <https://www.greenpeace.org/usa/>
- Allied Whale, a marine mammal laboratory at the College of the Atlantic in Bar Harbor ME <https://www.coa.edu/allied-whale/>



SONAR, WHALES & DOPHINS

■ *From The Verge*³ published July 18, 2016: “[Three days ago] the Ninth US Circuit Court of Appeals in California found that a 2012 regulation that allowed the Navy to use a low-frequency active sonar for training and testing violates the Marine Mammal Protection Act. . . .


The Navy had been authorized to use the high-intensity long-range sonar — called low-frequency active sonar, or LFA — for five years across more than 70 percent of the world’s oceans, in areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea. The NMFS [National Marine Fisheries Service] has to set certain limits to activities, like military training, that could harm marine mammals. The goal is to reduce the impact on marine life to its lowest possible level.

The Navy uses LFA to detect quiet foreign submarines. . . . In 2005, 34 whales became stranded and died off in North Carolina because of nearby offshore Navy sonar training, according to [a June 10, 2009 response to a question in] *Scientific American*.”

■ Subsequently, the Navy applied for authorization and in 2019 was approved to use SURTASS⁴ low frequency active sonar [LFA] for training and testing activities in the western and central North Pacific and eastern Indian oceans, after preparing Supplemental Environmental Impact Statements as required by the National Environmental Policy Act and Executive Order 12114.

From the U.S. Navy NEPA Projects website: “National Marine Fisheries Service (“NMFS”) determined that the Navy’s planned use of SURTASS [low frequency active sonar] for training and testing activities is not likely to jeopardize the continued existence of threatened and endangered species under NMFS’s jurisdiction and is not likely to destroy or adversely modify designated critical habitat from August 2019 into the reasonably foreseeable future.”

Access the SURTASS LFA section of the U.S. Navy NEPA Project website by clicking on this link: <https://www.nepa.navy.mil/surtass-lfa/>



³ *From the website of The Verge:* “The Verge is about technology and how it makes us feel. Founded in 2011, we offer our audience everything from breaking news to reviews to award-winning features and investigations, on our site, in video, and in podcasts.

Our original editorial insight was that technology had migrated from the far fringes of the culture to the absolute center as mobile technology created a new generation of digital consumers. Now, we live in a dazzling world of screens that has ushered in revolutions in media, transportation, and science. The future is arriving faster than ever.” <https://www.theverge.com/>

⁴ *Surveillance Towed Array Sensor System*

BLADE TROUBLES

Some people noted that a company that manufactures wind turbines had last month reported significant problems with the blades and those readers wondered if that will affect the Atlantic Shores project.

On October 6, 2022, Atlantic Shores announced that it intends to purchase and install offshore wind turbines produced by Vestas⁵, specifically its model V236-15.0 MW. Our research did not uncover any change in that plan nor did it uncover any recent announcements about problems with Vestas' wind turbine blades. We did, however, discover that Siemens Gamesa, a Vestas competitor located in Spain, has recently been very public about its problems with blades and bearings on some of its onshore turbine models.

From The Maritime Executive June 23, 2023: "The quality problems go well beyond what had been known hitherto, in particular in onshore," said Siemens Gamesa CEO Jochen Eickholt at a press conference Friday . . . The firm's Spanish (Gamesa) unit has discovered significant problems with rotor blades and bearings in some of its onshore turbine models, and there are issues facing older 'legacy' installations as well, the firm said."

Access the complete report by clicking on the following link:

<https://maritime-executive.com/article/siemens-gamesa-uncovers-deep-flaws-in-legacy-wind-turbine-fleet>

This Offshore Wind Farm Round-Up was prepared by a group of writers and researchers from Long Beach Island, New Jersey.

Round-Ups endeavor to periodically provide a review of recent research efforts in which the effects of offshore wind farms have been studied. In addition, they occasionally offer factual, clarifying information, in response to readers' suggestions.

Research included in Round-Ups points you in the direction of the science and assumes no point of view one way or the other about the presence of offshore wind farms off our shore. Likewise, clarifications are provided without editorial comment; they are there for you to consider so you can draw your own conclusions.

Questions about the content of Round-Ups and suggestions for future topics can be directed to RoundUpLBI@gmail.com. The Round-Up research and writing team welcomes questions and comments.

Round-Ups are distributed to the voting representatives of the eleven member organizations of the Joint Council of Taxpayers Associations of LBI (JCTA). Each taxpayer and property owners

⁵ Vestas, based in Denmark, is the largest manufacturer of wind turbines in the world.

association then distributes this information to its members and the community via its regular communication methods, e.g., through newsletters; posted on websites; social media.

