



# The Offshore Wind Farm Round-Up

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## ORSTED PULLS OUT OF OCEAN WIND 1 & 2

On October 31, 2023, numerous news sources reported Ørsted’s decision to cancel the Ocean Wind 1 and Ocean Wind 2 projects off the coast of southern New Jersey.

*From The Philadelphia Inquirer:*

“Ørsted said economic factors had taken too sharp a turn in recent months, including delays in construction of a needed vessel. The company still, however, retains its New Jersey lease on the seabed and will ‘consider the best options as part of the ongoing portfolio review.’

“Ørsted stands to lose a \$100 million guarantee it posted with New Jersey earlier this month that it would build Ocean Wind I by the end of 2025, according to the Associated Press. That money could be returned to ratepayers.”

*In addition, from The Associated Press:*

“[Governor Murphy] noted that Ørsted was required to put up an additional \$200 million to benefit the state’s offshore wind industry, and said he would make sure the company abides by that obligation.”

*Access the full article from The Philadelphia Inquirer by clicking on this link*  
<https://www.inquirer.com/science/orsted-new-jersey-offshore-wind-ocean-wind-20231031.html>

Access the full article from The Associated Press by clicking on this link  
<https://apnews.com/article/offshore-wind-orsted-new-jersey-cancelled-b30049502ac14ca6b46e2d3386a350fd>

The New York Times reported that, in total, Ørsted stands to lose \$5.6 billion:

“Ørsted is writing off 28.4 billion krone, or about \$4 billion, now. The company estimates that it may take another charge of up to 11 billion krone<sup>1</sup> later in the year. . . .

The write-offs will include investments the company has already made in building the project, payments to suppliers for goods already ordered or delivered and penalties for walking away from contracts.”

Access the full article from The New York Times by clicking on this link  
<https://www.nytimes.com/2023/11/01/business/energy-environment/offshore-wind-farm-new-jersey.html?searchResultPosition=1>

Politico reported that Ørsted has not canceled other projects, specifically Revolution Wind, a project off the coast of Connecticut and Rhode Island, and construction continues on South Fork Wind located 35 miles east of Montauk Point in New York.

Access the full article from Politico by clicking on this link  
<https://www.politico.com/news/2023/10/31/offshore-wind-new-jersey-orsted-00124661>



## UPDATE ON SAVE LBI VS. THE U.S. DEPARTMENT OF THE INTERIOR

■ **Background:** On January 10, 2022, Save LBI and Bob Stern filed a complaint in federal court<sup>2</sup> against several defendants, including the U.S. Department of the Interior.

Save LBI and Bob Stern are the plaintiffs in this matter.

The plaintiffs took that action in an effort to reverse and set aside the Bureau of Ocean Energy Management’s (“BOEM”) decision about where the wind energy areas would be located in the NY Bight, of which the area off the coast of LBI is a part. The plaintiffs declared that decision to be “arbitrary, capricious, and otherwise not in accordance with the law” specifically in accordance with the National Environmental Policy Act and the Endangered Species Act.

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<sup>1</sup> About \$1.54 billion

<sup>2</sup> United States District Court for the District of Columbia

The Court dismissed the lawsuit on March 9, 2023 saying it was unripe (i.e., not appropriate yet), explaining that the lawsuit was filed too early in the leasing and approval process. The court left the case open, however, and allowed Save LBI to file an amended complaint within 30 days. If no such action were to be filed, the Court would dismiss this case in full without prejudice<sup>3</sup> and close the case.

*Click on the link below to access the Court's March 9, 2023 opinion*  
[https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2022cv0055-29](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2022cv0055-29)

■ **Recent developments:** Plaintiffs Save LBI and Bob Stern returned to the court with an amended complaint in early August 2023.

In response, on September 25, 2023, the defendants filed a motion to dismiss the entire case. The government's motion to dismiss stated that the amendments presented do not change the fundamental situation identified by the court in its March ruling:

Regarding the National Environmental Policy Act, the government's motion to dismiss said that the complaint remains "unripe" (not appropriate yet) because BOEM still has neither approved a construction and operations plan for the NY Bight nor made an irreversible and irretrievable commitment of resources to develop any wind energy project in that area.

Regarding the Endangered Species Act claim, the government's motion to dismiss said that the complaint is also still unripe because BOEM has not taken any action that could affect endangered species covered under the Act and/or designated critical habitat.

■ **Case closed without prejudice:**<sup>2</sup> Before the judge could rule on the government's motion to dismiss, plaintiffs Save LBI and Bob Stern filed a voluntary dismissal of action. Voluntary dismissal of action is a request by the plaintiffs who originally filed the lawsuit, on their own volition, to terminate the lawsuit.

On October 4, 2023, the judge ordered the case closed, in light of the plaintiffs' voluntary dismissal of action, thus rendering moot the government's motion to dismiss because Save LBI's request to dismiss the case preceded a ruling on the government's motion.

Here is the full docket text from the U.S. District Court, District of Columbia:

MINUTE ORDER dismissing this case without prejudice in light of the plaintiffs' [42] Voluntary Dismissal of Action. *See* Fed. R. Civ. P. 41(a). The Clerk of Court is directed

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<sup>3</sup> A case dismissed "without prejudice" is only dismissed temporarily. This temporary dismissal means that the plaintiff is allowed to re-file charges, alter the claim, or bring the case to another court. A case dismissed "with prejudice" is dismissed permanently,

to close this case. Further, the defendants' [41] Motion to Dismiss is DENIED as moot. So Ordered by Judge Dabney L. Friedrich on October 4, 2023. (lcldf2)

■ **You can access all the legal filings in this case** through PACER (a subscription is required) and other online resources. The case is Save Long Beach Island et al. v. U.S. Department of the Interior et al., case number 1:22-cv-00055 in the U.S. District Court for the District of Columbia.



## CAUSES OF RECENT MINKE WHALE DEATHS

Last month, two minke whales became stranded along the New Jersey coast and ultimately perished.

■ **On October 6, the Asbury Park Press reported the death of a minke whale** that had twice stranded in Barnegat Bay earlier that week. Click on the following link to access the full report:

<https://www.app.com/story/news/local/animals/2023/10/06/barnegat-bay-minke-whale-stranded-marine-mammal-stranding-center-sea-tow/71074700007/>

On October 9, Patch reported that, according to the Marine Mammal Stranding Center, the initial necropsy had been completed.

*From the Patch report:* “The necropsy revealed that the whale had froth in the lungs and ‘a heavy parasite load’ in the gastrointestinal tract. No signs of trauma were observed, according to the stranding center.”

*Access the full October 9, 2023 article by clicking on the link*

<https://patch.com/new-jersey/berkeley-nj/necropsy-results-barnegat-bay-minke-whale-revealed>

■ **On October 18, the body of a second minke whale was retrieved** from Leonardo State Marina in Middletown. On October 20, the Asbury Park Press reported that the necropsy results, shared by the Marine Mammal Stranding Center, found that the whale had “multiple signs of illness.”

*Access the full October 20, 2023 article by clicking on the link*

<https://www.app.com/story/news/local/land-environment/2023/10/20/marine-experts-reveal-minke-whale-cause-of-death-middletown-new-jersey>

■ **Additional tissue samples collected from both whales** will be sent for histopathologic analysis<sup>4</sup> and results will be shared on the Marine Mammal Stranding Center website when available.

The Marine Mammal Stranding Center (“the Center”) posts necropsy information (including histopathology results) from December 2022 to the present for whales, dolphins and other cetaceans.

1) To see the full report, click on this link to the Center’s website

<https://mmsc.org/stranding-statistics>

2) Next press the down arrow once or twice until you see this button:

**view cetacean stranding data**

3) Next scroll down past the two graphs until you see Necropsy Data. Below that is the report mentioned above. You can read the report on the website, but it is much easier to see if you download the PDF and read it from there.



## NEW YORK STATE REJECTS REQUESTS FOR RATE INCREASE FROM PROJECTS’ DEVELOPERS

■ **What happened:** Members of the New York State Public Service Commission (“the Commission”) unanimously ruled last month that developers who are planning to build three offshore wind farms off the coast of Long Island must abide by their existing contracts.

■ **Who is involved and why:** Developers Ørsted A/S and Equinor ASA and their projects’ partners were seeking an increase in the rates they initially agreed to accept<sup>5</sup> when they signed the original agreements in October 2019 and January 2022, respectively.

The firms were seeking an increase in rates to offset additional costs resulting from inflation, higher-than-expected prices for materials and global supply-chain disruptions. The firms also said that lengthy permitting delays and unexpected interconnection costs exacerbated the situation.

■ **One project is in the NY Bight:** Empire Wind, located in the NY Bight, is 15 miles south of Jones Beach and 20 miles east of Long Branch NJ. The others, Sunrise Wind and Beacon Wind, are located 31 miles and 60 miles east of Montauk Point, respectively.

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<sup>4</sup> Histopathology is the study of changes in tissue caused by disease. Histopathologists study organs, tissues, cells and genetics to help provide a diagnosis.

<sup>5</sup> The rate a company initially agreed to accept is also known as the contracted offtake price.

■ **Why did the Commission reject these requests?** Basically, for three reasons: 1) approving the developers' request would have led to significant cost increases for utility customers; 2) it would not be fair to developers who managed to dodge the worst effects of inflation or who were losing money due to their own delays or calculated low bids; and 3) doing so would send a signal to developers that they could underprice their bids in future auctions because they could receive a price adjustment later, if needed.

■ **What happens now?** In the absence of statements from the companies involved, next steps are unclear.

In an October 12<sup>th</sup> communication to clients, however, ClearView Energy Partners,<sup>6</sup> an independent research firm based on Washington D.C., suggested that most of the project developers are likely to cancel the contracts and rebid them in future solicitations. “The projects' advanced stages of development could give them an advantage over other potential bidders” provided their bids, resubmitted at higher prices, are “just and reasonable.”

*Access the full Bloomberg article “New York Rejects Offshore Wind Request to Raise Rates” published October 12, 2023 by clicking on this link*

<https://www.bloomberg.com/news/articles/2023-10-12/new-york-unanimously-rejects-rate-relief-request-in-blow-to-wind?leadSource=verify-wall>

■ **Update November 1<sup>st</sup> reported by *The New York Times*.** Note that BP has a 50% stake in the Equinor project.

“On Tuesday, BP, the London-based energy giant, said it would write down \$540 million on three planned wind projects off New York, after the state authorities declined to renegotiate their terms. BP says it is assessing future plans for the projects in light of the decision.”

*Access the full New York Times article by clicking on this link*

<https://www.nytimes.com/2023/11/01/business/energy-environment/offshore-wind-farm-new-jersey.html?searchResultPosition=1>



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<sup>6</sup> From the website of ClearView Energy Partners: “Since 2009, we have identified and quantified non-fundamental energy risks for financial investors and corporate strategists. Our team of specialists relies on firsthand experience and proprietary models to examine the actors, criteria and inputs behind investment-altering outcomes. . . . We are analysts, not lobbyists. We do not represent corporate or partisan interests in any fashion. . . .” <https://site.cvenergy.com/>



## JUDGE RULES IN VINEYARD 1 CASES

■ **What happened:** The U.S. District Court for the District of Massachusetts found in favor of the defendants, rejecting claims filed in 2021 and 2022 by multiple fishing groups and other aligned organizations.

■ **Who is involved and why:** These groups, the plaintiffs, challenged permits obtained by the Vinelands 1 project, alleging violations of the Administrative Procedure Act under the Endangered Species Act, the National Environmental Protection Act and three other federal acts.

■ **Location of the project:** Vineyard Wind is under construction in an area 15 miles south of Martha's Vineyard and 35 miles from the mainland of Massachusetts. With 62 offshore wind turbines, it will be the first commercial-scale offshore wind energy project completed in the United States. It is expected to become operational next year.

■ **Summary of the rulings:** Regarding allegations pertaining to three of the five federal acts cited in the complaint, the judge ruled that the plaintiffs had no standing.<sup>7</sup>

Regarding the other two, the judge ruled that the Army Corps of Engineers, BOEM and other agencies and individuals had conducted themselves in compliance with the law.

*Access Bracewell's October 18, 2023 report<sup>8</sup> about the ruling by clicking on this link*  
<https://bracewell.com/insights/offshore-wind-litigation-court-denies-fishing-groups-challenge-major-offshore-wind-project>

■ **You can access all the legal filings in these cases** through PACER (a subscription is required) and other online resources. The matter is docketed under two case numbers because the two lawsuits, originally filed separately, were combined and considered together:

Seafreeze Shoreside, Inc., et al. v. The United States Department of the Interior, et al.  
and Vineyard Wind 1, LLC, No. 1:22-cv-11091-IT

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<sup>7</sup> Parties bringing the lawsuit must have enough cause to “stand” before the court and advocate for their position. To have standing, parties must show an “injury in fact” to their own legal interests. Parties must actually suffer the injury to have standing and if they cannot show harm, they do not have standing. “Injuries in fact” must be real and of some kind that the law recognizes, not an injury that might occur or something about which the parties are concerned.

<sup>8</sup> Bracewell is an international law firm with 34 different practice areas across multiple industries. From the Bracewell website: “We excel where collaboration and deep sector knowledge provide the edge, particularly in energy, infrastructure, finance and technology.” <https://bracewell.com/about>

Responsible Offshore Development Alliance<sup>9</sup> v. United States Department of the Interior, et al. and Vineyard 1, LLC, No. 1:22-cv-11172-IT

*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](mailto: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 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.*

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<sup>9</sup> The Responsible Offshore Development Alliance is more familiarly known as RODA. *From RODA's website:* "We are a broad membership-based coalition of fishing industry associations improving the compatibility of new offshore development with their businesses." <https://rodafisheries.org/>