

The Ever-Expanding Evidentiary Scope of Offshore Wind Litigation and the Growing Need for Independent Expert Opinion

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The future of offshore wind development on the east coast of the US is being judicially determined in real time. To illustrate that fact, we have attached a compilation of the nine currently pending offshore wind litigation matters presently before several federal courts. The continuing progress and development, indeed the entire fate, of these significant generation projects, with over 4 GW of generating capacity already under construction and 20 GW more that have been proposed is being litigated. The completion and operation of these nine projects will be ultimately subject to the outcome of these nine cases.

Creating this powerful dynamic are two very recent major federal court decisions that will significantly affect the conduct of these matters by significantly enlarging the potential scope of inquiry for all nine of these cases. These two critical decisions by (1) the US Supreme Court in *Loper Bright Enterprises v. Raimondo*¹ (“*Loper Bright*”) and (2) the First Circuit Court of Appeals in *Marin Audubon Society v. Federal Aviation Administration*² (“*Marin Audubon*”), now allow the trial courts in these offshore wind cases, at the discretion of each court, to consider and evaluate a substantially widened scope of inquiry and evidence in litigating these cases than was previously allowed under the now overruled Chevron Deferment.³

For offshore wind cases, the principal effect of *Loper Bright* in overturning Chevron Deferment is that the decisions made by the Department of Interior’s Bureau of Ocean Energy Management (“BOEM”) are no longer presumed to be binding on trial courts even if reasonably decided. The change imposed on these offshore wind cases by *Marin Audubon*⁴ is that the rulemaking procedures that were used by BOEM to promulgate its regulations can now be challenged. The BOEM administrative decision-making process, which strongly embraced procedural rulemaking guidance from the Council on Environmental Quality (“CEQ”), can be challenged on procedural grounds.⁵ The combination of these two matters may significantly expand the litigation strategy of the parties in these offshore wind cases.

¹ *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2258 (2024).

² *Marin Audubon Society v. FAA*, No. 23-1067 (D.C. Cir. 2024).

³ *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984).

⁴ *Marin Audubon Society v. FAA*, No. 23-1067 (D.C. Cir. 2024)

⁵ BOEM made extensive use of the CEQ recommended rulemaking procedures.

The overall result of these groundbreaking federal court decisions is that the potential scope of judicial inquiry in these offshore wind project cases can now be expanded to include expanded inquiry into existing issues as well as additional issues that are presented in new substantive pleadings. Those expanded and new issues that the trial court determines to be germane may be subject to substantial adjudication. In other words, under *Loper Bright*, while the trial court may consider the determinations made by BOEM in its decision-making process in granting construction permits for an offshore wind project, the court no longer has a duty to defer to reasonable BOEM regulatory decisions. Pursuant to *Marin Audubon* the litigants can also challenge the entire administrative proceeding conducted by BOEM in the decision to grant the construction permit. Hence, the courts are now free to consider evidence and arguments formerly outside the trial court's general jurisdiction and substitute its judgment for that of BOEM based on arguments and evidence presented at trial.

Plaintiffs in the Coastal Virginia Offshore Wind (CVOW) matter pending in the DC federal court have already made it clear in their Motion for Summary Judgment that, in their opinion, the jurisdiction of the federal courts has been vastly broadened to the extent that the Court is now free to completely substitute its judgment for that of the relevant administrative agencies that have issued the project's construction permits on virtually any issues they raise and the court allows.⁶

“Because “the interpretation of the meaning of statutes” is “**exclusively a judicial function**,”⁹⁹ courts must overturn agency action where “the agency has misconceived the law.”¹⁰⁰

⁹⁹ *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2258 (2024) (quoting *United States v. Am. Trucking Ass'ns*, 310 U.S. 534, 544 (1940)). (emphasis added)

¹⁰⁰ *Maine Lobstermen's Ass'n v. Nat'l Marine Fisheries Serv.*, 70 F.4th 582, 597 (D.C. Cir. 2023) (internal citations and quotation omitted).

The question now is “how far can the judicial scope of inquiry be broadened?” The Plaintiffs in the CVOW case are openly requesting the Court to substitute its judgment for BOEM's judgement. The Plaintiffs here are advocating for broader scope of inquiry and rulings instead of the narrow scope that the Chevron Deference would have previously allowed. The same can be expected in other offshore wind cases. It is worth considering that this strategy may arise in many other energy project permitting cases where different electric generation technologies may be being litigated.⁷ When the court's scope of inquiry

⁶ Plaintiffs' Memorandum in Support of Motion for Summary Judgment, *Committee for a Constructive Tomorrow, et al., v. United States Department of the Interior, et al.*, 24-cv-00744, D.C. Circuit, p.21

⁷ While we are concentrating on offshore wind matters, it can be anticipated that the evidentiary scope in litigating many federal administrative decisions, even outside the permitting sphere and for cases employing different generation technologies, may be similarly challenged in litigation.

is made larger, the scope of expert evidence considered by the court will also expand and with it the need for competent independent expert opinion.

The Effects of Upcoming Changes in Regulatory Actions and Executive Branch Direction

It is equally important to recognize that the drift of the court's jurisdiction may manifest itself in both directions. The pattern of the nine cases cited here is that of a plaintiff seeking to limit or stop an offshore wind project from being constructed or to modify its construction plan by challenging a BOEM grant of a construction permit. In the new judicial paradigm, a developer may now go to court seeking to reverse a decision by BOEM that limited or denied its authority to go forward with an offshore wind project. This is new territory.

Another concern is that the new administration that has so far voiced objections to offshore wind projects is moving into the executive suites of the US government, including into the leadership of the Department of the Interior. It is important to recognize that long-standing and well-established judicial precedents, including strong procedural safeguards against significant revision or rescission of existing BOEM decisions, are in place. These precedents remain intact and are both substantial and difficult to overcome.⁸ The courts are unlikely to allow an agency to make wholesale revision of administratively determined policies regarding the deployment of offshore wind project permit requirements without undertaking cumbersome, multiyear rulemaking proceedings. As a result, judicial decisions going either for the plaintiff or defendant in offshore wind matters will require independent expert input that the developers and their opponents will have to provide to the court. The real point here is that none of the interested parties in the development of offshore wind, including that of the new administration, will be "home free" in this litigious evidentiary arena.

The Potential Issues and Expert Evidentiary Inquiry: The New Frontier

As previously discussed, prior to these important new federal court decisions, the trial court in offshore wind litigation was empowered only to determine whether the decisions made by BOEM were reasonably made and if so, defer to BOEM's judgment. Now the court, in responding to pleadings by any of the litigating parties, is free to enlarge the scope of inquiry in these matters far more broadly. While the court may decide to defer to the agency's decisions (which the court may do under *Loper Bright*), there is no longer a presumption that if BOEM examined the relevant evidence and made a reasonable decision based on that evidence, that its decision should stand.

In order to illustrate some of the areas of inquiry that may now be adjudicated even after BOEM's determination to issue the construction permit, we examined all of the complaints filed in all nine cases that are outlined in the attachment. Presuming the allegations made in the complaints may be

⁸ Nicholas Bagley, Musk and Ramaswamy are Making a Big Mistake, *The Atlantic*, December 3, 2024, <https://www.businessinsider.com/elon-musk-ramaswamy-doge-spending-cuts-chevron-doctrine-scotus-trump-2024-12>

representative of the full breadth of the issues that the court may now deem germane and fully litigate at trial in each specific case, we have compiled a representative list of the more troublesome issues that, as a result of *Loper Bright* and *Marin Audubon*, may be confronted by the courts, the plaintiffs and the defendants at trial.

Of course, the range of issues that may be successfully pleaded and litigated may be far broader than what is included here. The complaints we reviewed were likely filed before *Loper Bright* and *Marin Audubon* were handed down. As a result, it can be assumed that those complaints may not have included all of the potential issues that could be pleaded that would be in the best interests of the plaintiffs. Post *Loper Bright*, the plaintiffs, if allowed, may now amend their complaints to assert many more objections and significantly enlarge the spectrum of issues, evidence and arguments that may be litigated at trial.

Prevalent Issues from Filed Complaints That May Require Evidentiary Expert Litigation

1. Environmental Impact

The projects are accused of threatening marine ecosystems, particularly endangered species like the North Atlantic Right Whale. Plaintiffs argue that environmental impact assessments were inadequate and failed to consider cumulative effects of multiple projects.

2. Energy Costs and Economic Impacts

There are concerns that offshore wind projects may adversely affect energy costs for ratepayers, potentially increasing electricity prices in affected areas. Additionally, some plaintiffs argue that the economic benefits of these projects have been overstated, while the potential negative impacts on local economies, particularly tourism-dependent ones, have been underestimated.

3. Tourism and Property Value Concerns

Many cases cite potential negative impacts on coastal tourism due to visual disturbances and changes to the marine environment. There are also concerns about decreasing property values in coastal areas due to altered ocean views.

4. Inadequate Review Process

Plaintiffs frequently allege that environmental review processes were rushed or incomplete, violating various federal statutes. They argue that agencies failed to take a "hard look" at environmental consequences as required by law.

5. Noise Pollution

Several cases raise concerns about noise pollution from construction and operation of wind turbines, potentially violating local ordinances and causing health issues for nearby residents. Plaintiffs have questioned the effectiveness of noise mitigation measures.

6. Cultural and Historical Preservation

Some plaintiffs argue that offshore wind projects threaten to damage historical heritage, particularly in areas like Nantucket, which could impact tourism and local businesses. This issue intersects with concerns about visual impacts and the potential degradation of culturally significant coastal landscapes.

7. Fishing Industry Disruption

Offshore wind farms are alleged to interfere with commercial and recreational fishing activities, potentially causing economic harm to local fishing industries. Plaintiffs claim that the projects will lead to the abandonment of fishing grounds and create navigational hazards.

8. Navigation and Aviation Safety

Offshore wind farms are alleged to create navigational hazards for both maritime vessels and aircraft, potentially interfering with established shipping routes and flight paths. This issue raises concerns about transportation safety and efficiency, as well as potential economic impacts on shipping and aviation industries.

9. Water Quality Concerns

Some complaints mention potential degradation of water quality due to construction activities and long-term operation of offshore wind farms. This issue ties into broader environmental concerns and could have implications for marine ecosystems, tourism, and local water-dependent industries.

10. Adequacy of Mitigation Measures

Plaintiffs often question the effectiveness of proposed mitigation measures for protecting endangered species and minimizing environmental impacts. This issue highlights the uncertainty surrounding the long-term effects of offshore wind development and the ability to mitigate potential harm.

11. Compensation for Easements and Land Use

Some cases raise concerns about the adequacy of compensation for easements granted to wind farm developers, questioning whether they represent a fair return to the United States as required by law. This issue touches on broader questions of resource management and the balance between private development and public interest.

12. Post-Construction Removal and Site Restoration

There are concerns about the feasibility and commitment to removing offshore wind structures after their operational life, potentially leaving permanent alterations to the marine environment. This issue raises questions about long-term environmental impacts and the responsibilities of developers and government agencies in ensuring proper site restoration.

It is important to bear in mind that a significant array of additional issues, not presented in the complaints that were analyzed, may be asserted in these and other offshore wind project cases. Some or all of these cases may evolve into a new cost-benefit analysis of the entire project balancing the arguments and expert evidence presented by the parties. As such, the strength of the evidence presented will likely carry the day.

Conclusion

When the courts in these offshore wind project cases are confronted with the larger spectrum of issues that are likely to arise in these cases as result of the judicially imposed diminution of agency authority, they will generally aim to strike a balance between risk and benefits. The arguments will likely challenge the balance between (1) promoting the wider benefits involving regional economic development and the need for new cleaner electric generation capacity weighing the societal and economic benefits that are claimed and argued against (2) the value of preservation of the status quo in the community character and quality of life and the current constellation of the benefits of that status quo. The courts may defer to local governments' judgments on these matters, provided the local decisions are not arbitrary or capricious. However, strong arguments for promoting wider aspects of regional economic development benefits that will accrue beyond local concerns may sway the courts as well.

Ultimately, courts have generally recognized that these decisions involve complex policy considerations and typically give substantial weight to the determinations of federal and state agencies and local planning authorities as long as the arguments are supported by reasonable and independent evidence that adhere to proper procedures. In this new frontier, it will be the parties that can support their arguments with competent, well-presented independent expert evidence that will most likely prevail.

The Vista Consulting Group has experience in providing expert reports and expert testimony in significant litigation that addresses the important details of offshore wind project matters. We have carried out detailed analysis of the costs and benefits of offshore wind electric generation projects. We are prepared to bring our extensive expertise and experience to these matters as we have done in successfully presenting competent, independent evidence in numerous energy-related cases over the last twenty years to support your clients litigation.

Appendix:

Current Status of Offshore Wind Litigation and Potential Post-Chevron Issues

12/10/2024

Atlantic Shores Offshore Wind 3:24-cv-09377 NJ

Defendant must answer complaint by 12/15/2024

1. Noise Pollution and Ordinance Violations:

- The complaint argues that the project's noise levels will exceed local noise ordinances, specifically citing the City of Brigantine Code § 198-127(D)(2), Borough of Beach Haven Code § 134-11, and Long Beach Township Code § 123-5. The plaintiffs claim that noise from pile driving and turbine operations will exceed permissible levels, causing substantial disruptions to residents' health and comfort (Page 3-4).

2. Health Impacts:

- The complaint asserts that the noise levels from the project will cause adverse health effects, including sleep disturbances and other health issues due to both audible noise and low-frequency infrasound. Expert certifications by Dr. Jerry Punch and Xi Engineering support these claims, noting that noise levels could reach up to 55 dBA during certain phases of construction (Page 10-11).

3. Lack of Noise Assessment:

- The plaintiffs argue that Atlantic Shores failed to include an In-Air Noise Assessment in its Construction and Operations Plan as required by regulatory standards (30 CFR § 585.621(d)). This omission allegedly prevents a full understanding of the project's impact on natural resources and human health (Page 5).

4. Environmental Concerns:

- Concerns are raised about the project's potential to cause irretrievable loss of marine environments due to inadequate plans for removal of turbine structures post-construction. The complaint highlights the absence of feasibility studies or cost estimates for dismantling these structures (Page 4-5).

5. Technical Feasibility and Economic Incentives:

- The plaintiffs question the technical feasibility of removing turbine foundations and argue that there are no economic incentives or regulatory mechanisms in place to ensure their removal, potentially leaving them as permanent fixtures in the marine environment (Page 4).

6. Private Nuisance Claims:

- The complaint includes claims of private nuisance, arguing that the project will substantially interfere with the use and enjoyment of plaintiffs' properties due to noise pollution and its associated health impacts (Page 3-4).

Coastal Virginia Offshore Wind (CVOW) – 1:24-cv-774 DDC

Pending Ruling on Motion for Summary Judgement

1. Inadequate analysis of cumulative impacts

The complaint argues that BOEM failed to adequately analyze the combined impacts of the 30 planned offshore wind projects on the North Atlantic right whale (NARW). Paragraph 13

2. Reliance on unproven mitigation measures

The Environmental Impact Statement (EIS) assumes that unproven and insufficient mitigation measures will protect NARW from significant impacts. Paragraph 13

3. Deficient Biological Opinion (BiOp)

The BiOp failed to analyze the combined effects of the CVOW project with previously-approved offshore wind projects on NARW.

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Paragraph 15

4. Unlawful segmentation of analysis

The BiOp unlawfully segments the analysis of the federal offshore wind program's impacts on NARW, resulting in underreporting of impacts. Paragraph 16

5. Failure to use best available science

The BiOp failed to use the "best scientific and commercial information available" when assessing the project's noise impacts on NARW. Paragraph 17

6. Inadequate analysis of operational impacts

The BiOp failed to examine how the project's operation will alter water mixing patterns and disperse zooplankton that NARW need for feeding. Paragraph 17

7. Threat to NARW survival

The combined effects of multiple offshore wind projects along the Atlantic coast may push the NARW to or beyond the brink of extinction. Paragraphs 11-12

8. Violation of the Endangered Species Act (ESA)

By issuing and accepting a legally defective BiOp, NMFS and BOEM violated the ESA. Paragraph 18

9. Violation of the National Environmental Policy Act (NEPA)

BOEM failed to take a "hard look" at the project's specific and cumulative impacts on environmental resources, including NARW. Paragraphs 13-14

10. Potential increase in energy costs

The project may adversely affect Dominion ratepayers by increasing energy costs in Virginia. Paragraphs 24-25

South Fork Wind & Revolution Wind - 1:24-cv-00141 DDC

Pending Motion to Dismiss

1. Failure to comply with environmental laws and regulations

Location: Paragraph 1 of the "Complaint to Reverse and Set Aside Final Agency Action" section

The complaint alleges that the United States has "shortcut the statutory and regulatory requirements that were enacted to protect our Nation's environmental and natural resources, its industries, and its people."

2. Violation of multiple federal statutes

Location: Last paragraph of the "Complaint to Reverse and Set Aside Final Agency Action" section

The complaint lists several statutes that the defendants allegedly failed to comply with, including the Administrative Procedure Act, National Environmental Policy Act, Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, Coastal Zone Management Act, National Historic Preservation Act, Outer Continental Shelf Lands Act, and Clean Water Act.

3. Threat to marine ecosystems and biodiversity

Location: Paragraph 1 of the description of Plaintiff Green Oceans (numbered paragraph 1)

The complaint mentions the "imminent threats, including the impact of offshore wind on the marine ecosystem" and the potential for "irreversible damage to the marine ecosystem."

4. Rushed environmental review process

Location: Paragraph 1 of the description of Plaintiff Green Oceans (numbered paragraph 1)

The complaint states that "Green Oceans believes that the Federal Government's rushed environmental review process is sacrificing the health of our nation's oceans, biodiversity, and local economies."

5. Impact on commercial fishing industry

Location: Description of Plaintiff Responsible Offshore Development Alliance (numbered paragraph 2)

The complaint highlights concerns about "conflicts with existing traditional and historical fishing" and the need for a "fair, equitable, and effective fisheries mitigation framework addressing potential direct and indirect fisheries impacts."

6. Threat to endangered species, particularly the North Atlantic right whale

Location: Description of Plaintiff Save Right Whales Coalition (numbered paragraph 3)

The complaint mentions the coalition's work to "protect the North Atlantic right whale and other marine life from the industrialization of the ocean habitat through large-scale offshore wind energy development."

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7. Impact on recreational activities and ocean views

Location: Description of Plaintiff Benjamin Riggs (numbered paragraph 14)

The complaint states that Mr. Riggs "is worried that his view of the ocean and the recreational activities he engages in that relate to the ocean will be significantly degraded by the Revolution Wind and South Fork Wind Projects."

8. Potential harm to historic properties and districts

Location: Numbered paragraphs 16-21

The complaint lists several plaintiffs who own properties within historic districts or properties eligible for the National Register, implying concerns about the projects' impact on these historic areas.

9. Inadequate consideration of alternatives and cumulative impacts

Location: Not explicitly stated in the excerpt provided but implied throughout the complaint's emphasis on the rushed and inadequate review process.

Revolution Wind 1:24-cv-00141 DDC

Pending Motion to Dismiss

1. Impact on Commercial Fishing:

The complaint argues that the projects will negatively affect Rhode Island's commercial fishing industry, which is a significant part of the state's economy. Commercial fishing contributes \$128.9 million to Rhode Island's GDP and provides numerous jobs. The projects are seen as a threat to this vital industry. (Paragraphs 37-38)

2. Disruption of Ocean-Dependent Economy:

Rhode Island's economy heavily relies on ocean-related activities. The complaint cites a 2020 report showing that \$2.8 billion of Rhode Island's GDP and 45,494 jobs are related to the ocean, including commercial fishing, tourism, transportation, and other industries. The wind projects are perceived as potentially disrupting these economic activities. (Paragraph 38)

3. Threat to Tourism and Recreation:

The complaint highlights that \$1.7 billion of Rhode Island's ocean-related GDP comes from tourism and recreation. The wind projects are seen as potentially harming these sectors by altering the coastal landscape and marine environment. (Paragraph 38)

4. Impact on Recreational Fishing and Boating:

Several plaintiffs, including recreational fishermen and sailors, argue that the projects will interfere with their activities, which are both personal interests and part of the local economy. (Paragraphs 7, 8, 10)

5. Harm to Whale Watching and Fishing Charters:

The complaint includes a plaintiff who operates whale watching and fishing trips, arguing that the projects could harm marine life and disrupt these tourism-based businesses. (Paragraph 15)

6. Potential Decrease in Property Values:

Multiple plaintiffs who own properties in historic districts near the coast are concerned about the visual impact of the wind farms, which could potentially decrease property values and affect tourism in these areas. (Paragraphs 16-21)

7. Inadequate Environmental Review:

The complaint alleges that the federal government's rushed environmental review process is "sacrificing the health of our nation's oceans, biodiversity, and local economies." This suggests that the economic impacts have not been adequately assessed. (Paragraph 1)

8. Conflict with Existing Ocean Uses:

The complaint argues that the projects fail to minimize conflicts with existing traditional and historical fishing, suggesting a lack of consideration for established economic activities. (Paragraph 2)

9. General Economic Objections:

These objections are primarily described in the early sections of the complaint, particularly in paragraphs 1-2 and 37-39. The specific plaintiff descriptions (paragraphs 7, 8, 10, 15-21) also provide context for individual economic concerns.

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South Fork Wind 1:23-cv-03510 DDC

Pending Motion to Dismiss

1. Impacts on fishing industry: The complaint alleges that the South Fork Wind Project will negatively affect commercial and recreational fishing activities in the area. This objection is best described in paragraphs 177-180 on pages 42-43 of the complaint.
2. Property value concerns: Some plaintiffs claim that the wind farm will decrease their property values due to visual impacts and other factors. This objection is mentioned in paragraphs 181-183 on page 43.
3. Tourism impacts: The complaint suggests that the wind farm could harm tourism in coastal areas, potentially affecting local businesses. This concern is briefly touched upon in paragraph 180 on page 43.
4. Inadequate economic analysis: The plaintiffs argue that the federal agencies failed to properly consider the economic impacts of the project on local communities and industries. This objection is discussed in paragraphs 177-183 on pages 42-43.
5. Interference with navigation: The complaint alleges that the wind farm could interfere with maritime navigation, potentially impacting shipping and other marine-based economic activities. This concern is mentioned in paragraph 179 on page 42.

Maryland Offshore Wind Project 1:24-cv-3111 MD

Matter Just Began

1. Tourism Decline: The project's 114 turbines, located 10.7 miles offshore, will deter tourists from visiting Ocean City and Fenwick Island. This will severely impact the local economy, which is heavily dependent on tourism. Paragraphs 1-2, Pages 2-5
2. Property Value Decrease: The project will adversely affect property values in Ocean City and nearby communities due to its impact on ocean views and the marine environment. Paragraph 7, Page 11
3. Commercial Fishing Disruption: The project will create navigational hazards, exclude commercial fisheries from popular fishing spots, and potentially harm the marine environment that supports the fishing industry. Paragraph 12, Page 15
4. Hospitality Industry Impact: Hotels, restaurants, and other tourism-related businesses will face serious financial hardship due to the expected decrease in visitors. Paragraphs 15-16, Pages 17-18
5. Marine Life: The project poses a threat to marine mammals, particularly the endangered North Atlantic Right Whale, as well as other marine species and their habitats. Paragraph 19, Page 21
6. Visual Impact: The turbines will destroy the pristine, unobstructed ocean views that are a major attraction for the area. Paragraphs 1-2, Pages 2-5
7. Water Quality: There are concerns about potential degradation of water quality, which could affect both marine life and tourism. Paragraph 2, Page 4
8. Rushed Approval Process: The complaint alleges that the government sacrificed a transparent approval process and shortcut statutory and regulatory requirements in its haste to approve the project. Introduction, Page 1
9. Regulatory Non-Compliance: The plaintiffs argue that the defendants failed to comply with numerous statutes and their implementing regulations, including the Administrative Procedure Act, National Environmental Policy Act, Endangered Species Act, and others. Introduction, Page 2

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Vineyard Wind 22-cv-11091MA On Appeal

1. Cessation of commercial fishing: The approval of the Vineyard Wind project will likely result in the permanent abandonment of commercial fishing in the entire project area, causing economic ruin to the plaintiffs. This objection is best described in paragraphs 3-4 (pages 2-3).
2. Violation of OCSLA: BOEM failed to protect existing "reasonable uses" of the Outer Continental Shelf, including commercial fishing, and to consider the impact of proposed leases on fishing and navigational uses. This is outlined in paragraphs 36-37 (pages 10-11).
3. Inadequate review process: BOEM's "Smart From The Start" policy streamlined the review process, removing opportunities for public comment and on-site evaluation of environmental impacts and existing uses prior to lease issuance. This is detailed in paragraph 37 (page 11).
4. Violation of ESA: Federal agencies failed to ensure that their actions would not jeopardize endangered species or their habitats. This is explained in paragraphs 38-41 (pages 11-12).
5. Violation of CWA: The Army Corps of Engineers may have improperly issued permits for discharging dredged and fill material, without adequately considering practicable alternatives or conducting a proper public interest review. This is described in paragraphs 42-44 (pages 12-13).
6. Violation of NEPA: Federal agencies failed to take a "hard look" at environmental consequences, including cumulative impacts and the severity of effects. This is outlined in paragraphs 46-51 (pages 13-14).
7. Violation of APA: The plaintiffs argue that the agency actions were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. This is mentioned in paragraph 52 (pages 14-15).

Vineyard Wind 1:22-cv-237 MA On Appeal

1. Failure to comply with statutory and regulatory requirements:
The complaint alleges that in approving the Vineyard Wind project, the defendants failed to comply with numerous statutes and regulations, including the Outer Continental Shelf Lands Act, Clean Water Act, Endangered Species Act, National Environmental Policy Act, Marine Mammal Protection Act, Merchant Marine Act of 1920, and Administrative Procedure Act. (Paragraph 1)
2. Inadequate review of commercial fishing impacts:
The Bureau of Ocean Energy Management (BOEM) made limited efforts to review commercial fishing impacts as part of its siting decision for the wind energy leases. The review focused almost solely on impacts to Massachusetts and the scallop fishery, despite other fisheries being more active in the lease areas. (Paragraph 21, Page 8)
3. Rushed environmental review process:
The complaint alleges that the environmental review process was rushed, with BOEM publishing the Final Environmental Impact Statement just nine days after resuming the NEPA process. (Paragraph 32, Page 13)
4. Incomplete consultation process:
The approval of the Construction and Operations Plan occurred despite an ongoing reinitiated Section 7 consultation process under the Endangered Species Act. (Paragraphs 33-38, Pages 13-15)
5. Underestimated vessel traffic and associated impacts:
The complaint argues that the project underestimates the increase in vessel traffic and its potential impacts on marine life and existing maritime activities. (Paragraphs 39-41, Pages 16-17)
6. Inadequate consideration of cumulative impacts:
The complaint suggests that the cumulative impacts of multiple offshore wind projects along the East Coast were not adequately considered. (Paragraph 41, Page 17)
7. Insufficient compensation for easement:

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The complaint notes that the cost of the easement granted to Vineyard Wind is only \$17,155 (approximately \$5/acre), which may not represent a fair return to the United States as required by law. (Paragraph 42, Page 17)

8. Inaccurate information in decision-making:

The Army Corps of Engineers issued a supplement to its decision, acknowledging that it had incorrect information when it made its decision to issue a Clean Water Act Section 404 permit. (Paragraph 43, Page 18)

9. Failure to protect fishing industry and marine environment:

The complaint alleges that the project, as approved, fails to adequately protect the fishing industry and the marine environment, despite comments and proposals from the Alliance to lessen adverse impacts. (Paragraph 46, Page 19)

Vineyard Wind 1:21-cv-11390 MA US Supreme Court Pending Writ of Certiorari

1. Impacts on Marine Life:

- The project threatens endangered species, particularly the North Atlantic Right Whale.
- Inadequate analysis of impacts on whales, other marine mammals, fish, and sea turtles.

Paragraphs 1, 4, 5

2. Inadequate Environmental Review:

- BOEM failed to take a "hard look" at the project's adverse impacts on various resource categories.
- The Environmental Impact Statement (EIS) and Supplement to the EIS (SEIS) were inadequate.

Paragraph 1

3. Cumulative Effects:

- BOEM initially failed to disclose that Vineyard Wind was part of a larger offshore wind program.
- Inadequate analysis of cumulative impacts.

Paragraphs 1, 4

4. Endangered Species Act (ESA) Violations:

- BOEM and NOAA/Fisheries failed to ensure the project would not jeopardize listed species.
- The Biological Opinion (BiOp) is analytically deficient and not supported by the best available data.

Paragraphs 3, 5

5. Tourism and Aesthetics:

- The project will impact the views from Nantucket's shores, potentially affecting tourism.

Paragraphs 13, 14

6. Cultural and Historical Heritage:

- The project threatens to damage the historical heritage of Nantucket, which could impact tourism and local businesses.

Paragraphs 13, 14

7. Fishing Industry (implied):

- While not explicitly stated, the concerns about impacts on marine life could have implications for the fishing industry in the area.

Inferred from Paragraphs 1, 4, 5

8. Growth and Development:

- The complaint mentions inadequate analysis of impacts on growth.

Paragraph 7

9. Navigation and Safety:

- Concerns about impacts on flight navigation and safety, which could affect transportation and commerce.

Paragraph 7