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RENEWABLE ENERGY

In reversal, Interior solicitor bolsters fishermen over wind

Heather Richards and Michael Doyle, E&E News reporters • Published: Tuesday, December 15, 2020



Interior Solicitor Daniel Jorjani has waded into a long-standing conflict between fishing companies and the offshore wind industry. Maryland Energy Administration

This story was updated at 1:54 p.m. EST.

Interior's top lawyer yesterday set a stricter standard for the department to follow when considering whether to permit offshore wind farms where they might "interfere" with fishermen and other ocean users.

Solicitor Daniel Jorjani inked the [opinion](#) at the request of Interior Secretary David Bernhardt, essentially adding weight to fishermen's arguments in a long-standing disagreement with offshore wind proponents over how impacts to fisheries should be weighed by the Bureau of Ocean Energy Management. The wind industry has often tangled with fishing groups that argue their nets and equipment could be damaged and fishing grounds disrupted by the new industry.

The opinion reverses the legal office's position from September, when BOEM's renewable shop had sought clarification on how to interpret federal law advising Interior to bar renewable energy development that would interfere with other ocean users.

The solicitor's office initially advised BOEM that Interior should act to prevent interference with the legal right of fishermen and other ocean users to operate on the outer continental shelf, a stance that Jorjani called "highly constrained."

However, Jorjani said the Interior secretary also couldn't take a strict textual reading of the law, which would bar most if not all interference. So Interior should err on the side of caution, he argued, "to prevent interference with reasonable uses in a way that errs on the side of less interference rather than more interference."

The solicitor added that this interpretation could still mean barring all interference deemed "unreasonable." He later stated that interference should be judged not in isolation, but with the cumulative impacts of other approved projects in mind.

Interior spokesman Ben Goldey said in an email that the department continued "to implement an all-of-the-above energy dominance agenda."

He added that Jorjani's opinion provides "legal clarity" so that some easements, leases and rights of way on the outer continental shelf are "carried out in a manner that prevents all but de minimis or reasonable interference" with other reasonable uses in federal waters.

Annie Hawkins, executive director of the fishermen's group Responsible Offshore Development Alliance, said the legal interpretation represented a "step in the right direction."

"The recognition that the threshold of what is unreasonable should be based on the perspective of the fishing user," she said in an email. "We of course have been saying for years that the best source of information on what the impacts will be, both to fishing operations and the environment, are fishermen themselves. This is great news (and wise)."

Vineyard Wind

The Jorjani opinion coincides with the administration's decision today to terminate the application for the first offshore wind farm in the United States.

The twice-delayed Vineyard Wind project had sought a pause on its permitting process that many had viewed as a bid for time, as it would have pushed the project onto the desk of President-elect Joe Biden. Today, the Trump administration said Vineyard would have to start from scratch.

Interior's relationship to offshore wind has at times been strained as the first offshore wind project developers try to push through projects championed by states and climate advocates.

The tensions have been exacerbated by the president's hostility to offshore wind, captured in repeated comments about its impacts on the environment and wildlife.

Meanwhile, a group of unofficial advisers for Biden have argued that offshore wind should be one of the incoming administration's top priorities.

The offshore wind sector is expected to boom, given demand from Northeastern states with ambitious climate targets for clean energy and few renewable energy options outside of offshore wind. BOEM estimates 2,000 turbines could be raised over 10 years.

BOEM was expected to release a final decision on the Vineyard project in mid-2019. That decision was punted at the eleventh hour by Bernhardt, who sought a cumulative impact study on the wider expected footprint of offshore wind.

Developers have defended their projects as able to coexist with the fishermen, and some have offered compromises in terms of how turbines will be organized, among other concessions.

The cumulative impact study for Vineyard was released in June, but BOEM has not advanced the project.

Its developers, Copenhagen Infrastructure Partners and Iberdrola's Avangrid, made the surprise move in early December to withdraw the project from consideration, a choice many construed as a chance to put the project in Biden's hands in the new year.

Today, the Interior Department published notice that it would not respect the temporary withdrawal, terminating the application.

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