

For immediate release:

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Save LBI, Inc. Files Lawsuit Against National Marine Fisheries Services for Violation of the Marine Mammal Protection Act (MMPA), National Environmental Policy Act (NEPA) and Administrative Protection Act (APA) in Approving Offshore Wind Vessel Surveys:

- **Unprecedented number of marine mammal deaths in NJ and NY since December 2022; Only one materially changed variable exists off both coasts: Multiple wind energy survey vessels emanating high magnitude underwater noise.**
- **Prior issuance of eleven ‘Incidental Take Authorizations’ (ITA’s) – and five pending ITA’s – underestimate the range from the vessels where elevated noise levels exists; Do not use up-to-date criteria for determining safety of marine mammals when encountering underwater noise or consider cumulative effect of multiple vessels operating in same area.**
- **Prompt dismissal of cause-and-effect relationship between survey vessels and marine mammal deaths by federal agencies not supported by available evidence and common sense.**

BEACH HAVEN, NJ, April 5, 2023 — Today, Save Long Beach Island, Inc. (Save LBI) filed their second lawsuit against the federal government, this suit for violation of the MMPA, NEPA and the APA. *“The guiding purpose of the MMPA, as established in 1972, is to prevent marine mammals from declining beyond the point where they cease to exist. However, somewhat paradoxically, the MMPA contains provisions which permit the ‘taking’ of marine mammals for certain periods of time, as long as that ‘taking’ is not intentional, but rather, only ‘incidental’ to another specific activity,”* said Dr. Robert Stern, president of Save long Beach Island, Inc. *“The term ‘take’ means ‘to harass, hunt, capture or kill -- or attempt to harass, hunt, capture or kill’ -- any marine mammal.”*

The federal government has defined two levels of ‘Takes.’ Level A is defined as having ‘the potential to injure a marine mammal or marine mammal stock in the wild,’ while Level B is defined as ‘having the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns including but not limited to migration, breathing, nursing, breeding, feeding, or sheltering.’ However, in the real marine mammal world there is little distinction between levels of ‘takes’ because disturbing marine mammal behavior can also result in injury and death:

- Whales will avoid underwater noise, potentially moving in an unsafe direction or location. In a migratory setting that could mean obstruction or blockage of migration. It could mean being driven toward the shore to seek relief and then stranding. It can also involve whale surfacing to seek a lower noise level at the surface and then being more vulnerable to vessel strikes.
- It can mean separation of mothers and calves due to the ‘masking’ of their normal communications by vessel device noise, and such separation can be fatal for the calf.
- It can also mean the loss of its navigational capability, cessation of feeding or mating, and the loss of the ability to detect predators or oncoming ships.
- Finally, because whales use sounds to communicate and determine the very nature of their surroundings, the effects may be much more profound than that.

Numerous wind energy development projects were authorized in 2022 for the coastal waters off New Jersey and New York. As a result, in total there are now eleven active ITA's issued by the National Marine Fisheries Services, which is overseen by the U.S. Department of Commerce. In addition, there are five pending ITA's. Those authorizations, for example, allow a total of 951 'takes' of Humpback whales out of a population size of 1,396 -- up to 68.1 percent. Regarding the critically endangered North Atlantic Right Whale, the ITAs allow total 'takes' of 411 whales out of a population size of less than 350 in the NJ/NY area -- up to 100 percent. Yes, 100 percent. *"And those are just two examples of what is being allowed,"* said Stern. *"Clearly, the devastating **cumulative impact** of these ITA's - both in terms of multiple vessels and the serious outcomes of Level B takes - is not being considered, and this must be immediately stopped and changed."*

"An alarming and dramatic increase in whale and dolphin deaths has occurred off the New Jersey and New York coasts since December. Specifically, we have lost 17 whales, and 22 dolphins in four months. That's a total of 39," Stern continued. *"The one and only materially changed variable off the New Jersey and New York coasts during that time is the characterization of the seabed being conducted by multiple survey vessels using high intensity noise devices in preparation for wind turbine construction. That undersea work is generating high levels of underwater noise for very long distances. At the same time, this activity is occurring directly in or near endangered whale migration corridors and it all must stop until it can be done safely,"* said Stern.

"Just looking at whales alone, the rate of recent whale deaths is unprecedented in New Jersey' history. The extrapolated number of whale deaths for 2023 based upon the recent rate would be 39, much larger than seen in the past 20 years. And further, the whale deaths we observe may only constitute 36 percent of the actual deaths as per a modeling study funded by the U.S. government. So, we are likely not seeing all the deaths that are occurring," said Thomas Stavola, Save LBI's attorney for this action.

Therefore, Save LBI, Inc's lawsuit calls for all these ITA's -- both those issued and those pending -- to be immediately reversed, and that a comprehensive environmental impact statement (EIS) be prepared in advance of any further underwater seabed characterization by survey vessels.

"Claims that there is no evidence of a connection between the vessel surveys and marine mammal injury, stranding or death are misleading," said Stern. Direct hearing damage from noise is not looked for in most post-mortem examinations of marine mammals. The post-mortem examinations also cannot show whether noise was the precipitating factor in a fatality that was caused by disturbing the whale's behavior and its ability to use sound. *"Rather that connection needs to be plausibly made through a thorough examination of vessel location, noise device use and power settings, and other factors at the times of the whale deaths. Claiming that there is no evidence of death caused by survey vessel noise based solely on post-mortem examinations when such evidence isn't looked for or cannot be found is clearly not helpful at a minimum."*

Wind energy proponents argue that these surveys must move ahead promptly to install turbines for climate change benefit, but then directly contradict those statements. For example, the EIS for the Vineyard Wind 1 project of Massachusetts literally states in Appendix A, Table A.8.1-1 that the project will have "no effect" on global climate change.

Under these circumstances, the available "evidence" and common sense calls for cessation of the underwater surveys while a thorough, independent investigation of the recent whale and dolphin deaths is conducted.

About Save LBI, Inc.

- As a result of mis-leading information and lack of public awareness regarding the proposed wind turbine complex planned to start nine and ten miles off the entire coast of Long Beach Island, NJ, Save LBI, Inc. was formed in February, 2021.
- The 501(c)3 non-profit is led by Beach Haven resident, Dr. Robert Stern, an engineer who previously managed the office that oversaw environmental reviews for U.S. Department of Energy programs and projects.
- The all-volunteer, non-partisan coalition comprises thousands of outraged LBI homeowners, business owners and visitors who care deeply about the future of their beautiful island. They are proponents of a sensible approach to wind energy and alternative/renewable energy solutions. However, they are opposed to the ill-informed location, scope, size and impact of the project as currently proposed by Atlantic Shores for the entire coast of LBI.
- For more information, go to SaveLBI.org or contact Save LBI, Inc. at Box 579, Ship Bottom, NJ 08008.

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