

RENEWABLE ENERGY:

Embattled offshore wind project violated NEPA, ESA -- judges

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A long-stalled offshore wind project is facing new hurdles after federal judges today ruled that the government's environmental approvals were unlawful.

The decision from the U.S. Court of Appeals for the District of Columbia Circuit marks a win for environmentalists challenging the Cape Wind offshore wind project planned for coastal Massachusetts. Permits for the project have been stalled in federal courts and agencies for more than a decade.

The court battle now promises to slog on even longer. A three-judge panel on the D.C. Circuit ruled today that the Bureau of Land Management violated the National Environmental Policy Act when it issued a lease to the project, and that the Fish and Wildlife Service violated the Endangered Species Act by failing to properly consider measures to minimize harm to migrating birds.

The ruling, penned by Senior Judge A. Raymond Randolph, a Republican appointee, sends the case back to a lower court for further action. Randolph was joined by two Democratic appointees, Judges Patricia Millett and Robert Wilkins.

The case, *Public Employees for Environmental Responsibility v. Abigail Ross Hopper*, was argued in February ([Greenwire](#), Feb. 11).

BLM violated NEPA by relying on inadequate data about the seafloor and subsurface hazards, the court found. Challengers warned that without adequate surveys, BLM couldn't ensure that the seafloor could support wind turbines.

However, the court noted, "that does not necessarily mean that the project must be halted or that Cape Wind must redo the regulatory approval process."

The judges said they would require BLM to supplement its impact statement with adequate geological surveys before construction begins, but would not vacate Cape Wind's lease.

Fish and Wildlife Service officials also erred in their decision to disregard certain submissions before issuing an "incidental take statement" assessing the impact on endangered species, the judges said. The court vacated the FWS statement, saying it was "arbitrary and capricious."

The court affirmed a lower court's ruling dismissing challengers' remaining claims.

[Click here](#) to read the opinion.

