

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

GREEN OCEANS et al.

Plaintiffs,

v.

U.S. DEPARTMENT OF THE INTERIOR et
al.

Defendants,

and

REVOLUTION WIND, LLC

Defendant-Intervenor.

Case No. 1:24-cv-00141-RCL

Hon. Royce C. Lamberth

Dated: May 28, 2024

**CLIMATE ACTION RHODE ISLAND MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF IN OPPOSITION TO THE PLAINTIFFS'
MOTION FOR AN ADMINISTRATIVE STAY OR PRELIMINARY INJUNCTION**

Climate Action Rhode Island (“CARI”) respectfully moves for leave to file the attached brief as amicus curiae in opposition to Plaintiffs’ motion for an administrative stay or preliminary injunction. CARI is an independent, nonpartisan group of residents of Rhode Island. A copy of the proposed brief and a proposed order granting leave to file are attached to this motion. Defendant-Intervenor does not oppose the motion, Defendants take no position as to CARI’s participation as amicus curiae, and Plaintiffs do not consent to CARI’s participation as amicus curiae.

Movant’s participation is desirable because of the depth of its “relevant expertise and . . . stated concern for the issues at stake in this case,” *District of Columbia v. Potomac Elec. Power Co.*, 826 F. Supp. 2d 227, 237 (D.D.C. 2011); *see also Ellsworth Assocs., Inc. v. United States*, 917

F. Supp. 841, 846 (D.D.C. 1996) (“Generally, a court may grant leave to appear as an amicus if the information offered is timely and useful.” (internal quotation marks omitted)).

Movant’s brief focuses on the substantial public interest implicated by the dispute in this case, and thus speaks directly to the fourth prong of the test for assessing a motion for a stay or preliminary injunction. Movant is particularly well qualified to help the Court understand this aspect of Plaintiff’s motion because of its seven-year history of advocacy concerning the impact of climate change on Rhode Island and the ways in which renewable energy can reduce those impacts. Movant also has a special concern for the issues at stake in this case because climate change will impact its members as residents of the area in which Revolution Wind will be constructed.

CONCLUSION

For the foregoing reasons, movant’s motion for leave to file a brief as amicus curiae in opposition to Plaintiffs’ motion for an administrative stay or preliminary injunction should be granted.

Dated: May 28, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Josh C. Toll, hereby certify that on this date, May 28, 2024, I filed the foregoing with the Clerk of the Court via the Court's electronic filing system, which will provide electronic mail notice to all counsel of record.

/s/ Josh C. Toll
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**[PROPOSED] AMICUS CURIAE BRIEF OF CLIMATE ACTION RHODE ISLAND
IN OPPOSITION TO THE PLAINTIFFS' MOTION FOR AN ADMINISTRATIVE STAY
OR PRELIMINARY INJUNCTION**

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INTEREST OF AMICUS

Climate Action Rhode Island (“CARI”) files this amicus brief in opposition to the requested stay of administrative action or preliminary injunction. CARI is an independent, nonpartisan group of residents of Rhode Island. It is particularly well qualified to help the Court understand the significant public interest at risk if the Court were to grant the motion and thereby enjoin construction. CARI has extensive experience with advocacy concerning the impact of climate change, both globally and in Rhode Island where many of CARI’s members reside, and has advocated for the importance of the renewable energy projects that are urgently needed to avoid the worst impacts of climate change. A description of CARI is included in the motion for leave to file this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Revolution Wind project (the “Project”) is a significant offshore wind development off the coast of Rhode Island, undertaken by Ørsted in partnership with Eversource (a New England-based electric utility company). The Project will be constructed in federal waters approximately 15 miles south of the Rhode Island coastline. It is expected to generate enough electricity to power hundreds of thousands of homes, while reducing reliance on fossil fuel-based electricity and lowering greenhouse gas emissions. The Project will bring economic benefits to the region and significantly contribute to the achievement of the state’s renewable energy goals.

Green Oceans is a relative newcomer to the climate change debate. It came onto the scene in 2022, and has published a series of materials with a singular goal: to oppose the installation of offshore wind turbines, specifically the proposed Revolution Wind project. In 2023, Brown University’s Climate and Development Lab (“CDL”) published a report highlighting the many

fallacies contained in Green Oceans' publications.¹ CDL evaluated Green Oceans' publications using two peer-reviewed frameworks,² and concluded that Green Oceans' arguments "repeatedly overemphasize the granular effects of wind turbines while completely obscuring and failing to contextualize the impacts of climate change..."³ CDL also concluded that "Green Oceans misrepresents the impacts of offshore wind and fails to acknowledge information published by developers and regulators that describes their efforts to minimize infrastructure impacts on marine ecosystems."⁴

Green Oceans and the other plaintiffs in this case seek to have this Court grant the extraordinary remedy of preliminary relief to (1) stay the effective dates of the approvals and authorizations in the August 21, 2023 Record of Decision for the Revolution Wind Project; and (2) prohibit Revolution Wind, LLC from beginning or performing any pile driving or other construction work or making any other irretrievable commitment of resources as authorized by the August 21, 2023 Record of Decision or the October 20, 2023 Incidental Take Regulation until further Court order.

The stay or preliminary injunction that Plaintiffs seek is disproportionate to Plaintiffs' purported goals and poses an existential threat to the viability of the Project. Enjoining the progress of the project would harm the broader public given the urgent need to develop renewable energy sources to slow the irreversible effects of climate change, and it would impede the State of Rhode Island's ability to achieve its statutory climate change prevention goals. In contrast, granting the

¹ *Discourses of Climate Delay in the Campaign Against Offshore Wind: A Case Study from Rhode Island*, Climate and Development Lab (Apr. 2023), https://ecori.org/wp-content/uploads/2023/04/delay_and_misinformation_tactics_in_anti_osw_campaigns-ri_case_study_4-10-23.pdf.

² *Id.* at 2.

³ *Id.* at 4.

⁴ *Id.* at 10.

request for a stay or preliminary injunction would not serve the public interest in any tangible way, as there are already sufficient statutory and regulatory safeguards in place.

For the reasons set out in this submission, the public interest weighs strongly against Plaintiffs' request for an administrative stay or preliminary injunction.

LEGAL STANDARD

“[T]he standard for a stay at the agency level is the same as the standard for a stay at the judicial level” and follows the well-known “four-part preliminary injunction test applied in this Circuit.” *Sierra Club v. Jackson*, 833 F. Supp. 2d 11, 30 (D.D.C. 2012). The party requesting a stay “bears the burden of showing that the circumstances justify an exercise of that discretion.” *Nken v. Holder*, 556 U.S. 418 (2009). A stay is not a matter of right, even if irreparable injury might otherwise result. *Virginian Ry. Co. v. United States*, 272 U.S. 658 (1926).

“A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The four factors that a party seeking a preliminary injunction must establish are: (1) that it “is likely to succeed on the merits”; (2) that it “is likely to suffer irreparable harm in the absence of preliminary relief”; (3) “that the balance of the equities tips in [its] favor”; and (4) “that an injunction is in the public interest.” *Id.* at 20; *see also Cuomo v. U.S. Nuclear Regul. Comm’n*, 772 F.2d 972, 974 (D.C. Cir. 1985) (applying same four factors to a motion for a stay).

“In exercising their sound discretion, courts of equity should [have] particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008).

Additionally, “[a]lthough allowing challenged conduct to persist certainly may be harmful to a plaintiff and the public, harm can also flow from enjoining an activity, and the public may

benefit most from permitting it to continue.” *Sierra Club v. United States Army Corps of Engineers*, 990 F. Supp. 2d 9, 41 (D.D.C. 2013). Finally, when the government is the party opposing the injunction, the balance of equities and public interest factors effectively merge “because the government’s interest is the public interest.” *Parham v. District of Columbia*, 648 F. Supp. 3d 99, 115 (D.D.C. 2022) (citations omitted); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009).

ARGUMENT AND AUTHORITIES

A. The Climate Change Crisis Poses an Existential Threat

The year 2023 was the planet’s hottest year on record.⁵ According to the Intergovernmental Panel on Climate Change, global warming is causing weather and climate extremes in every region across the globe, including floods, droughts, and wildfires.⁶ These climate abnormalities have had widespread adverse effects on human health and mortality, food and water security, ecosystem health, species mortality rates, and the economy.

Climate change has increased the risk of life-threatening diseases such as cholera, malaria, and dengue – threatening decades of progress in global health. The World Health Organization found that between 2030 and 2050 climate change is expected to cause approximately 250,000 additional deaths a year globally due to malnutrition, disease, and extreme heat alone.⁷

⁵ *2023 was the warmest year in the modern temperature record*, NOAA National Centers for Environmental Information (Jan. 17, 2024), [https://www.climate.gov/news-features/featured-images/2023-was-warmest-year-modern-temperature-record#:~:text=The%20year%202023%20was%20the,decade%20\(2014%E2%80%932023\)](https://www.climate.gov/news-features/featured-images/2023-was-warmest-year-modern-temperature-record#:~:text=The%20year%202023%20was%20the,decade%20(2014%E2%80%932023).).

⁶ *Climate Change 2023: Synthesis Report*, Intergovernmental Panel on Climate Change (2023), https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf.

⁷ *Climate Change (2024)*, World Health Organization, https://www.who.int/health-topics/climate-change#tab=tab_1 (last visited Apr. 24, 2024).

Climate change also threatens numerous animal species, including marine species like the North Atlantic Right Whale. A 2023 study from U.S. Marine Mammal Commission researchers found that “climate change appears to have driven the change in foraging distribution, leading to both the spike in numbers and the unanticipated locations of right whale carcasses in 2017 and 2019.”⁸ The study concluded that “such an increase in mortality is a serious threat to species survival.”⁹ As the Project’s final Environmental Impact Statement (July 2023) (“FEIS”) correctly notes, “[g]lobal climate change is an ongoing risk to marine mammals” and an “ongoing potential risk to sea turtles.”¹⁰

While climate change impacts everyone, Rhode Island is a coastal State that is particularly at risk from climate change and the rising sea levels associated with climate change. According to the Rhode Island state government, “The impacts of climate change upon Rhode Island’s built and natural environments are wide-ranging, discernible and documented, and, in many cases growing in severity.”¹¹ Rhode Island has been severely affected by rising sea levels, flooding, and extreme heat. Known as the “Ocean State,” Rhode Island is particularly vulnerable to rising sea levels. In Newport, sea levels have risen more than 9 inches since 1930 and levels are projected to increase

⁸ Frances M.D. Gulland, Jason D. Baker, Marian Howe, et al., *A Review of Climate Change Effects on Marine Mammals in United States Waters: Past Predictions, Observed Impacts, Current Research and Conservation Imperatives*, *Climate Change Ecology* (Dec. 2022), <https://www.sciencedirect.com/science/article/pii/S2666900522000077#sec0023>.

⁹ *Id.*

¹⁰ Revolution Wind Farm and Revolution Wind Export Cable Project Final Environmental Impact Statement, Bureau of Ocean Energy Management (BOEM) Office of Renewable Energy Programs, U.S. Department of the Interior (“FEIS”), at 3.15-17, 3.19-16 (July 2023), https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Revolution_Wind_FEIS_Vol1-and-2.pdf.

¹¹ *Introduction to Climate Change*, State of Rhode Island: Climate Change, <https://climatechange.ri.gov/climate-sciences> (last visited Aug. 24, 2023).

by 1 to 4 feet by 2100. Rising sea levels are expected to increase coastal flooding and erosion.¹² Annual precipitation in Rhode Island has increased by 6 to 11 percent since 1970, and the “frequency and magnitude of extreme precipitation events has increased,”¹³ causing devastating damage to the state’s infrastructure, businesses, and homes.

Based on data compiled by the Environmental Protection Agency, Rhode Island’s temperature has risen more than 3 degrees Fahrenheit since the year 1900 – more than double the increase across the rest of the contiguous 48 states in the United States.¹⁴ The water temperature in Narragansett Bay is rising, and the surface temperature of the Bay has increased from 2.5-2.9 degrees Fahrenheit between 1960 to 2010.¹⁵ Narragansett Bay is New England’s largest estuary.¹⁶ Home to approximately 887,863 Rhode Island residents, it contributes \$100 million annually to the local recreational fishing economy, and supports tens of thousands of tourism-related jobs.¹⁷ Rising temperatures negatively impact the ecosystem of Narragansett Bay, threatening a core contributor to Rhode Island’s economy and one of region’s most treasured natural resources. Rising temperatures are also disrupting the daily lives of Rhode Island residents. Last summer,

¹² Jennifer Runkle and Kenneth E. Runkle, *State Summaries: Rhode Island*, NOAA National Centers for Environmental Information, <https://climatechange.ri.gov/sites/g/files/xkgbur481/files/documents/noaa-climate-rhode-island-state-summary.pdf> (last visited Apr. 24, 2024).

¹³ *RIEC⁴ Annual Report*, Rhode Island Executive Climate Change Coordinating Council (Aug. 2017), <https://climatechange.ri.gov/sites/g/files/xkgbur481/files/documents/ec4ar17.pdf>.

¹⁴ *What Climate Change Means for Rhode Island*, U.S. Environmental Protection Agency (Aug. 2016), <https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-ri.pdf>.

¹⁵ *Supra* note 11.

¹⁶ *Science in Action: Striving for Balance in the Narragansett Bay Watershed: EPA’s Triple Value Simulation (3VS) Model*, U.S. Environmental Protection Agency, <https://www.epa.gov/sites/default/files/2013-12/documents/3vs-tool-nutrient-mgt-narr-bay.pdf> (last visited Apr. 24, 2024); *Vital Narragansett Bay Statistics*, Save the Bay, https://savebay.org/bay_issues/facts-figures/ (last visited Apr. 24, 2024).

¹⁷ *Id.*

the state experienced such extreme heat that many towns and cities across the state, including Providence, were forced to shut down schools.¹⁸

The residents of Rhode Island are also vulnerable to the health-related impacts of climate change. Almost ten years ago, the Rhode Island Department of Health commissioned a study of the long-term public health consequences of climate change, which concluded that “Rhode Island residents are likely to face increased health risks from climate-related hazards over the coming decades, including extreme heat advisories, extended allergy seasons, and increased incidence of Lyme disease and West Nile Virus.”¹⁹ In addition, a 2015 report by the Rhode Island Department of Health found that rising water temperatures due to climate change will increase the growth of bacteria, leading to gastroenteritis from consuming polluted water and higher densities of vibrio species in Rhode Island’s coastal waters which pose a great risk of food-borne illness and threaten the state’s shellfish industry.²⁰

More recent studies confirm that the public health threats are real. For example, the incidence of Lyme disease, the major vector-borne disease in Rhode Island, has risen, a development that has been exacerbated by climate change.²¹

¹⁸ Jack Perry, *Heat wave in RI could bring the hottest temperatures we’ve seen; schools announce closures*, The Providence Journal (Sept. 6, 2023), <https://www.providencejournal.com/story/news/local/2023/09/06/ri-weather-september-heat-advisory-could-send-temps-above-90-for-first-time/70774337007/>.

¹⁹ *Future Health Impacts from Climate Change in Rhode Island: Evidence from Climate Models*, Tetra Tech, at 27 (Oct. 25, 2013), <https://health.ri.gov/materialbyothers/FutureHealthImpactsFromClimateChangeInRhodeIslandEvidenceFromClimateModels.pdf>.

²⁰ *2015 Climate Change and Health Resiliency Report*, Rhode Island Department of Health Climate Change Program, at 41-45, 51-57 (2015), <https://health.ri.gov/publications/reports/ClimateChangeAndHealthResiliency.pdf>.

²¹ Howard S. Ginsberg, Janelle Couret, Jason Garrett, Thomas N. Mather and Roger A. Lebrun, *Potential effects of climate change on tick-borne diseases in Rhode Island*, Rhode Island Medical Journal p. 30 (Nov. 1, 2021), <https://pubmed.ncbi.nlm.nih.gov/34705904>.

In addition to contributing to climate change, fossil fuel combustion is harmful to public health because it emits particulate matter (PM_{2.5}). Epidemiological studies link long-term exposure to particulate matter PM_{2.5} to an increased risk of premature mortality; scientists have estimated some 10.2 million global excess deaths in 2012 due to PM_{2.5} due to fossil fuels.²² Within the United States, the public health hazards from air and water pollution fall disproportionately on minority and poor communities.²³

To tackle the effects of climate change, Rhode Island has committed to 100 percent renewable electricity by 2030.²⁴ Offshore wind energy projects are vital to achieving this goal.²⁵ The Revolution Wind project is expected to add 400 MW of offshore wind capacity to Rhode Island (with another 304 MW for Connecticut)²⁶; together with other existing renewable energy programs and sources of generation, Revolution Wind will allow the state to meet 40 percent of

²² Karn Vohra, Alina Vodonos, Joel Schwartz, Eloise A. Marais, Melissa P. Sulprizio, and Loretta J. Mickley, *Global Mortality from Outdoor Fine Particle Pollution Generated by Fossil Fuel Combustion: Results from GEOS-Chem*, Environmental Research (Apr. 2021), <https://www.sciencedirect.com/science/article/pii/S0013935121000487?via%3Dihub>.

²³ *Climate Change and Social Vulnerability in the United States*, U.S. Environmental Protection Agency (Sept. 2021), https://www.epa.gov/system/files/documents/2021-09/climate-vulnerability_september-2021_508.pdf; Spencer Banzhaf, Lala Ma, Christopher Timmins, *Environmental justice: The Economics of Race, Place, and Pollution*, Journal of Economic Perspectives (Winter 2019), <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.33.1.185>.

²⁴ *100 Percent Renewable Electricity by 2030*, State of Rhode Island Office of Energy Resources, <https://energy.ri.gov/renewable-energy/100-percent-renewable-electricity-2030> (last visited Apr. 24, 2024).

²⁵ The Brattle Group, *The Road to 100% Renewable Electricity*, Rhode Island Office of Energy Resources (Dec. 2020), <https://energy.ri.gov/sites/g/files/xkgbur741/files/documents/renewable/The-Road-to-100-Percent-Renewable-Electricity---Brattle-04Feb2021.pdf>.

²⁶ *Revolution Wind*, Tethys Engineering, <https://tethys.pnnl.gov/wind-project-sites/revolution-wind> (last visited Apr. 24, 2024).

the state’s projected 2030 electricity demand through renewable sources, setting the state well on its way to meeting the 100% renewable energy target.²⁷

B. Renewable Energy Projects, Including Offshore Wind, Are Necessary for the United States (and Rhode Island) to Combat Climate Change

There is now “nearly complete consensus that minimizing the risk of catastrophic effects related to climate change requires advanced economies around the world to greatly decarbonize by mid-century[.]”²⁸ a goal which is recognized in the Paris Agreement. “Many countries and U.S. states, including all of the New England states, have committed to doing so through a mix of mandates, targets, and goals that typically require economy-wide reductions in greenhouse gas emissions of at least 80% relative to a 1990 baseline.”²⁹ Fossil fuels are the largest contributor to global climate change, accounting for over 75 percent of global greenhouse emissions and almost 90 percent of all carbon dioxide emissions.³⁰ Naturally, the clean energy transition “requires largely replacing oil and natural gas currently used in transportation and buildings with carbon-free alternatives.”³¹

²⁷ The Brattle Group, *The Road to 100% Renewable Electricity by 2030 in Rhode Island* (Dec. 2020), <https://energy.ri.gov/sites/g/files/xkgbur741/files/documents/renewable/The-Road-to-100-Percent-Renewable-Electricity---Brattle-04Feb2021.pdf>; *Supra* note 26.

²⁸ The Brattle Group, *Achieving 80% GHG Reduction in New England by 2050: Why the region needs to keep its foot on the clean energy accelerator*, Coalition for Community Solar Access (Sept. 2019), https://www.brattle.com/wp-content/uploads/2021/05/17233_achieving_80_percent_ghg_reduction_in_new_england_by_20150_september_2019.pdf.

²⁹ *Id.*

³⁰ *Causes and Effects of Climate Change*, United Nations, <https://www.un.org/en/climatechange/science/causes-effects-climate-change> (last visited Apr. 24, 2024)

³¹ *Supra* note 28.

To achieve this goal, it is widely considered necessary to engage in an extensive and rapid expansion of wind power globally.³² Currently, wind power is the second largest source of renewable energy generation (next to hydropower) and wind generation and capacity are growing substantially in the United States and globally.³³ The United States has recognized that meeting its commitments under the Paris Agreement to reduce U.S. emissions by 50 to 52 percent below 2005 levels by 2030 will require renewable energy development,³⁴ and has set a goal of deploying 30 GW of offshore wind generation by 2030.³⁵ However, the United States lags behind its peers in renewable energy development and wind power in the United States has grown much more slowly than globally, making support of wind power projects even more important.³⁶

According to the *Fifth National Climate Assessment*, the United States will need to expand its renewable energy capacity, including wind, “faster than ever before” to reach its climate

³² *Renewables 2022: Analysis and Forecast to 2027*, International Energy Agency (rev. Jan. 2023), <https://iea.blob.core.windows.net/assets/ada7af90-e280-46c4-a577-df2e4fb44254/Renewables2022.pdf>.

³³ Wind Energy, International Renewable Energy Agency (2022), <https://www.irena.org/wind>; .

³⁴ *Fact Sheet: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies*, The White House (Apr. 22, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>.

³⁵ *Fact Sheet: Biden-Harris Administration Continues to Advance American Offshore Wind Opportunities*, The White House (Mar. 29, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/29/fact-sheet-biden-harris-administration-continues-to-advance-american-offshore-wind-opportunities>.

³⁶ David Vetter, *U.S. Lagging Far Behind Europe on Renewables, New Report Shows*, Forbes (Mar. 9, 2020), <https://www.forbes.com/sites/davidrvetter/2020/03/09/us-lagging-far-behind-europe-on-renewables-new-report-shows/?sh=14de374533f4>; Lori Bird and Joseph Womble, *State of the US Clean Energy Transition: Recent Progress, and What Comes Next*, World Resources Institute (Feb. 7, 2024), <https://www.wri.org/insights/clean-energy-progress-united-states>.

targets.³⁷ Between 2019 and 2020, electricity from wind grew by 12%. To stay on the net zero path, the increase must be an average 18% per year between the 2021–2030 period.³⁸ Without urgent action, the United States will not meet its national and international obligations on climate change, and the effects of global warming will continue to intensify.

As the Brattle Group determined in a 2019 study on Achieving 80% GHG Reduction in New England by 2050, “if New England wants to make good on their greenhouse gas emissions reduction goals, they will need to keep their foot on the clean electricity development accelerator over the next critical decades to 2050. The current pace of adding more solar PV, onshore and offshore wind, battery storage, etc., is simply insufficient.”³⁹ This is true of Rhode Island, along with New England as a whole. In fact, Rhode Island’s power plant emissions went up last year, when they need to be going down.⁴⁰ Offshore wind projects like Revolution Wind would help make that possible.

C. Plaintiffs’ Proposed Stay or Preliminary Injunction Would Undermine the Public Interest

Consistent with Green Oceans’ modus operandi of “repeatedly overemphasiz[ing] the granular effects of wind turbines while completely obscuring...the impacts of climate change,” Plaintiffs exaggerate environmental risks at the expense of the overall viability of the Revolution Wind project and the urgent need to address climate change. The preliminary relief that Plaintiffs seek is disproportionate to Plaintiffs’ purported goals and could pose an existential threat to the

³⁷ *The Fifth National Climate Assessment*, U.S. Global Change Research Program, <https://nca2023.globalchange.gov/> (last visited Apr. 24, 2024).

³⁸ *World Energy Outlook 2021*, International Energy Agency, (Oct. 2021), <https://www.iea.org/reports/world-energy-outlook-2021>.

³⁹ *Supra* note 28.

⁴⁰ Rob Smith, *R.I. Sees Rise in Greenhouse Gas Emissions from Power Plants*, ecoRI (Mar. 4, 2024), <https://ecori.org/r-i-sees-rise-in-greenhouse-gas-emissions-from-power-plants/>.

viability of the Project. The proposed stay or preliminary injunction is contrary to the public's overriding interest in promoting renewable energy development and would undermine efforts to combat climate change, improve public health, and promote social and economic development for Rhode Island residents.

1. The Development of Offshore Wind Reduces the Environmental Impacts of Climate Change

Offshore wind projects like the Revolution Wind project would substantially contribute to Rhode Island's ability to meet its climate change goals, which would serve the public interest. According to Brown University researchers,

The Revolution Wind project will enhance Rhode Island's ability to meet its emissions reductions goals and help neighboring states do the same. Rising to the challenge of climate change and transitioning to renewables is also an opportunity for Rhode Island to gain financially from tax and energy export revenues, and to reduce the billions of dollars the state spends each year on imported natural gas, gasoline, and other fossil fuels.⁴¹

The Record of Decision for Revolution Wind further supports this assessment, explaining that

After subtracting the annual estimated CO₂ emissions caused by the project, it is estimated that the construction of Revolution Wind would result in a net avoidance of 1,378,102 tons of carbon dioxide emissions annually, which is equivalent to taking 278,206 cars off

⁴¹ *Supra* note 1, at 11.

the road each year. Over the lifetime of the project (35 years) the FEIS anticipates that avoided CO2 emissions will total 48,233,570 tons.⁴²

These emissions reductions would help mitigate the impacts of climate change, including impacts to marine species like the North Atlantic Right Whale.

The disproportionately broad emergency relief that Plaintiffs seek could prevent the development of the Revolution Wind project at a time when “New England [] need[s] to accelerate annual deployments [of renewable energy sources, like wind] 4- to 8-fold compared to what is planned for the coming decade[,]” not slow it down.⁴³ There is therefore an urgent need and public interest in denying the broad relief Plaintiffs seek.

2. The Development of Offshore Wind Benefits Public Health

Fossil fuels have long had a significant, negative impact on public health in the United States, including in Rhode Island.⁴⁴ In fact, climate change promises to pose the greatest public health threat of this century, impacting health in myriad ways, ranging from increased air pollution to water and food insecurity. There already is evidence that renewable energy effectively reduces the health-related impacts of climate change.

⁴² *Record of Decision: Revolution Wind Farm and Revolution Wind Export Cable Project Construction and Operations Plan*, Bureau of Ocean Energy Management, at 54 (Aug. 21, 2023) <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Revolution-Wind-Record-of-Decision-OCS-A-0486.pdf>.

⁴³ *Supra* note 28.

⁴⁴ Dara O’Rourke and Sarah Connolly, *Just Oil? The Distribution of Environmental and Social Impacts of Oil Production and Consumption*, Annual Review of Environment and Resources (Aug. 14, 2003), <https://www.annualreviews.org/doi/abs/10.1146/annurev.energy.28.050302.105617>

Renewable energy projects like Revolution Wind play an important role in mitigating the health-related harms caused by climate change and fossil fuel combustion. In 2019, a leading group of researchers from Brown University and the Stockholm Environmental Institute published a study (“Brown-SEI Study”) confirming that there are “major health benefits to decarbonizing [Rhode Island’s] energy system, such as reducing contamination risks, asthma, and other cardio-pulmonary suffering for thousands of Rhode Islanders who live near energy facilities and highways.”⁴⁵

Researchers from the Harvard T.H. Chan School of Public Health and other institutes analyzed the benefits of offshore wind on public health and the climate based on simulations, and concluded that even a single offshore wind facility benefits public health, most importantly from the reduction of sulfur dioxide and carbon monoxide.⁴⁶ That study concluded that the annual health benefit of each offshore wind facility ranged from \$75 million for the smallest installation to \$690 million for the largest installation.⁴⁷

3. The Development of Offshore Wind Creates Regional Economic Development and Employment Opportunities in Rhode Island

Major energy projects are economic drivers that benefit the public at large because the development, construction, and ongoing operation of energy projects require a skilled workforce.

⁴⁵ *Deeper Decarbonization in the Ocean State: The 2019 Rhode Island Greenhouse Gas Reduction Study*, Stockholm Environment Institute, at 4 (Sept. 12, 2019), <https://www.sei.org/wp-content/uploads/2019/09/deeper-decarbonization-in-the-ocean-state.pdf>.

⁴⁶ Jonathan J. Buonocore, Patrick Luckow, Jeremy Fisher, Willett Kempton, and Jonathan I. Levy, *Health and Climate Benefits of Offshore Wind Facilities in the Mid-Atlantic United States*, Environmental Research Letters (2016), <https://iopscience.iop.org/article/10.1088/1748-9326/11/7/074019/pdf>.

⁴⁷ *Id.*

This leads to job opportunities in various sectors, including engineering, manufacturing, installation, maintenance, and project management. These jobs contribute to local economies and provide employment opportunities for individuals in the surrounding communities. The Revolution Wind project is no different.

The FEIS provides detailed analysis on estimated jobs, earnings, economic output, and added value to the economies of Rhode Island and Connecticut.⁴⁸ The FEIS estimates that as many as 4,976 jobs will be created over the span of the project's three-year preparation and construction phase, including jobs directly linked to the project and jobs indirectly induced by the project. Most of the direct jobs would be engineering and construction jobs building the offshore energy facilities; the indirect jobs would involve wind energy fabrication, storage and transportation in Rhode Island and Connecticut. The employment opportunities stemming from the Project were classified as "beneficial" to those communities (as opposed "negligible", or "adverse").

The long-term economic benefits of this Project and other offshore wind projects like it in the region are substantial. Cornell University's Worker Institute, in collaboration with Climate Jobs Rhode Island and other partners, estimates that if Rhode Island installs 3,000 MW of offshore wind power by 2040, then 33,425 direct jobs can be created over the next seventeen years.⁴⁹ Allowing the Project to proceed as scheduled by denying the preliminary relief the Plaintiffs seek serves the public interest because it allows the anticipated economic (and other) benefits to flow to the local job markets and industries as intended.

⁴⁸ *Supra* note 10, at Table 3.11-10, p. 444.

⁴⁹ See Lara Skinner, J. Mijin Cha, Avalon Hoek Spaans, Hunter Moskowitz, and Anita Raman, *Building a Just Transition for a Resilient Future: A Climate Jobs Program for Rhode Island*, Cornell University ILR Worker Institute, at 51 (Jan. 2022), <https://www.cjnrc.org/wp-content/uploads/2022/02/Rhode-Island-Report-Final-2.3-Compressed.pdf>.

Finally, the Project will help Rhode Island reach greater energy self-sufficiency:

Since the state produces none of its own gas, oil or coal, nearly all of the over \$3 billion [Rhode Island] spend[s] each year buying these products (about 5 percent of Rhode Island GDP) pours out of the state's economy. With an energy system built largely on local sources, with a much smarter grid, and with significant local battery storage, the state could be far more resilient in the face of weather disasters, terrorist attacks, or routine outages.⁵⁰

This is a significant public benefit of developing wind energy off the coast of Rhode Island.

4. The Development of Offshore Wind and the Conservation of the North Atlantic Right Whales Can Be Pursued at the Same Time

Plaintiffs attempt to pit whale conservation against offshore wind development. This is a false choice, and it is based on at least four misleading arguments and omissions.

First, plaintiffs imply without evidence that recent whale deaths are related to offshore wind development. This is pure speculation. Studies have shown that entanglement in fishing gear and vessel strikes are the predominant causes of death and injury of the right whales.⁵¹ It is disingenuous for Plaintiffs to describe the increase in the deaths of the right whales as “unexplained” and then suggest that offshore wind development might have caused them.

⁵⁰ *Supra* note 46.

⁵¹ *Effects of Climate Change on Marine Mammal Distribution*, Marine Mammal Commission, <https://www.mmc.gov/wp-content/uploads/Climate-Change-Distribution-Shift-Factsheet-2.1.23.pdf> ; *North Atlantic Right Whale*, Marine Mammal Commission, at <https://www.mmc.gov/priority-topics/species-of-concern/north-atlantic-right-whale/> ; See also Defendant-Intervenor Revolution Wind's *Opposition* dated May 21, 2024, pages 19 to 21; BOEM and NOAA Fisheries North Atlantic Right Whale and Offshore Wind Strategy, page 8, https://www.boem.gov/sites/default/files/documents/environment/BOEM_NMFS_NARW_OSW_0.pdf; Meyer-Gutbrod, E.L., C.H. Greene, K.T.A. Davies, and D.G. Johns. 2021. *Ocean regime shift is driving collapse of the North Atlantic right whale population*. *Oceanography* 34(3):22–31, https://tos.org/oceanography/assets/docs/34-3_meyer-gutbrod.pdf

Second, Plaintiffs repeatedly—and misleadingly—suggest that the takes authorized for this project and other offshore wind projects pose a threat to the survival of right whales. In fact, as they admit in a footnote, the takes at issue would constitute level B harassment (i.e., annoyance), which does not even pose a risk of injury, much less death. As reported by Revolution Wind in its Opposition, the *actual* field data collected during the construction of the South Fork Wind, which closely resembles the Revolution Wind Project in terms of construction methods and marine mammal mitigation, shows that actual take was far lower than authorized take.⁵²

Third, Plaintiffs entirely ignore the threat that climate change poses to whales. Climate change is affecting every aspect of the North Atlantic right whales’s survival.⁵³ Oceanographic changes in the Northwest Atlantic caused by climate change are key factors contributing to reduced reproduction and higher susceptibility of the right whales.⁵⁴ Climate-driven changes in ocean circulation have altered the foraging environment and habitat use of right whales, reducing the population’s calving rate and exposing them to greater mortality risks from ship strikes and fishing gear entanglement.⁵⁵ North Atlantic right whales could face increased risk of extinction as a consequence of climate change.⁵⁶

Fourth, Plaintiffs misleadingly argue that the public interest in climate change mitigation will not be affected by the outcome of this motion. To support this conclusion, they grab a quote from cultural resources section of the FEIS, in which BOEM found that offshore wind development will have “negligible” (i.e., unmeasurable) contributions to climate change impacts

⁵² Defendant-Intervenor Revolution Wind’s *Opposition* dated May 21, 2024, page 28.

⁵³ *Supra* note 46.

⁵⁴ North Atlantic Right Whales, at [North Atlantic Right Whale | NOAA Fisheries](#)

⁵⁵ Meyer-Gutbrod, E.L., C.H. Greene, K.T.A. Davies, and D.G. Johns. 2021. *Ocean regime shift is driving collapse of the North Atlantic right whale population*. *Oceanography* 34(3):22–31, at https://tos.org/oceanography/assets/docs/34-3_meyer-gutbrod.pdf

⁵⁶ *Supra* note 10, at 3.15-17.

on *cultural resources*. However, BOEM clearly states in the same section the “[t]he contribution of offshore wind energy projects on slowing or arresting global warming and climate change–related impacts could help reduce these climate change impacts and be beneficial to marine cultural resources.”⁵⁷ Offshore wind development is one piece of a larger strategy to avoid climate change, and while the impact of the individual components of this strategy may be difficult to measure, they do add up.⁵⁸

CONCLUSION

For the foregoing reasons, the public interest weighs strongly against Plaintiffs’ motion for an administrative stay or preliminary injunction.

Dated: May 28, 2024

Respectfully submitted,

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⁵⁷ *Supra* note 10, at 3.10-25.

⁵⁸ The Intergovernmental Panel on Climate Change has found that limiting global warming to 1.5 degrees Celsius by achieving net-zero emissions by 2050—which offshore wind development would help to accomplish—would have major ecological and economic impacts. *See* IPCC, *Special Report: Global Warming of 1.5°C, Summary for Policymakers*, <https://www.ipcc.ch/sr15/chapter/spm/>.

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CERTIFICATE OF SERVICE

I, Josh C. Toll, hereby certify that on this date, May 28, 2024, I filed the foregoing with the Clerk of the Court via the Court's electronic filing system, which will provide electronic mail notice to all counsel of record.

/s/ Josh C. Toll
Josh C. Toll

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

GREEN OCEANS et al.

Plaintiffs,

v.

U.S. DEPARTMENT OF THE INTERIOR et
al.

Defendants,

and

REVOLUTION WIND, LLC

Defendant-Intervenor.

Case No. 1:24-cv-00141-RCL

Hon. Royce C. Lamberth

Dated: May 28, 2024

CORPORATE DISCLOSURE STATEMENT

Pursuant to Local Civil Rule 7(o), amici curiae CARI states that it is a non-profit Rhode Island corporation that is a registered independent local group within the 350.org network of local groups. CARI is exempt from taxation under section 501(c)(4) of the Internal Revenue Code, and 350.org is exempt from taxation under section 501(c)(3) of the Internal Revenue Code. Neither CARI nor 350.org has issued shares or securities. No publicly traded corporations have an ownership interest in CARI or 350.org.

Dated: May 28, 2024

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/s/ Josh C. Toll
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Hon. Royce C. Lamberth

**[PROPOSED] ORDER GRANTING CLIMATE ACTION RHODE ISLAND MOTION
FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN OPPOSITION TO THE
PLAINTIFFS' MOTION FOR AN ADMINISTRATIVE STAY OR PRELIMINARY
INJUNCTION**

THIS CAUSE having come before the Court on Climate Action Rhode Island's Motion for Leave to File Amicus Curiae Brief in Opposition to the Plaintiffs' Motion for an Administrative Stay or Preliminary Injunction ("Motion"), and the Court having considered the Motion and being otherwise fully advised in the premises, it is

ORDERED and **ADJUDGED** that:

Climate Action Rhode Island's Motion is GRANTED and the Amicus Curiae Brief in Opposition to the Plaintiffs' Motion for an Administrative Stay or Preliminary Injunction is deemed filed as of the date of this Order.

DATED this ____ day of _____, 2024

United States District Judge