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**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

SAVE LONG BEACH ISLAND, INC.;  
ROBERT STERN, PHD.; SAVE THE  
EAST COAST, INC.; PROTECT OUR  
COAST – LINY; TRISHA DEVOE;

*Plaintiffs,*

v.

U.S. DEPARTMENT OF COMMERCE;  
HOWARD LUTNICK, in his official  
capacity as Secretary of Commerce;  
NATIONAL MARINE FISHERIES  
SERVICE; and EUGENIO PIÑEIRO  
SOLER, in his official capacity as  
Assistant Administrator, National Marine  
Fisheries Service; BUREAU OF OCEAN  
ENERGY MANAGEMENT; WALTER  
CRUICKSHANK in his official capacity  
as the Director of the Bureau of Ocean  
Energy Management; US DEPARTMENT

Case No.

Judge

OF INTERIOR, DOUG BURGUM,  
Secretary of the Interior;

*Defendants*

**Complaint For Declaratory And Injunctive Relief to Set Aside Final Agency  
Action**

Plaintiffs SAVE LONG BEACH ISLAND, INC., ROBERT STERN, PH.D., SAVE THE EAST COAST, INC., PROTECT OUR COAST – NY, INC., TRISHA DEVOE, (“Plaintiffs”) by its attorneys file this Complaint against Defendants UNITED STATES DEPARTMENT OF COMMERCE; UNITED STATES SECRETARY OF COMMERCE HOWARD LUTNICK; NATIONAL MARINE FISHERIES SERVICE; DIRECTOR OF THE NATIONAL MARINE FISHERIES SERVICE, EUGENIO PIÑEIRO SOLER; BUREAU OF OCEAN ENERGY MANAGEMENT; DIRECTOR OF THE BUREAU OF OCEAN ENERGY MANAGEMENT WALTER CRUICKSHANK; and, US DEPARTMENT OF INTERIOR; SECRETARY OF THE INTERIOR DOUG BURGUM, and allege the following.

### **Nature of the Action**

1. This is an action for declaratory and injunctive relief, challenging the failure of the National Marine Fisheries Service (“NMFS”) and Bureau of Ocean Energy Management’s (“BOEM”) to comply with the Marine Mammal Protection Act (“MMPA”) and its implementing regulations, the National Environmental Policy Act (“NEPA”) and its implementing regulations, and the Administrative Procedures Act (“APA”). Plaintiffs seek orders vacating and setting aside as unlawful the Incidental Take Authorization/Letter of Authorization<sup>1</sup> (hereinafter, “ITA”) issued by NMFS for Empire Offshore Wind, LLC, EW1 and 2, (hereinafter, “Empire Wind”) on 2/22/2024. The NMFS’ approval of this ITA was arbitrary and capricious for the reasons delineated *infra*.

2. In this suit, Plaintiffs ask this Court to invalidate the putative MMPA ITA approval of the Empire Offshore Wind Project until and unless the Federal Government complies with the relevant statutes and regulations.

### **Jurisdiction and Venue**

3. This Court has jurisdiction over the subject matter of this action

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<sup>1</sup> <https://www.fisheries.noaa.gov/action/incidental-take-authorization-empire-offshore-wind-llc-construction-empire-wind-project-ew1>

pursuant to 28 U.S.C. § 1331 (federal questions), 28 U.S.C. § 1346 (United States as defendant), 16 U.S.C § 1361 et seq. (MMPA), 42 USCS § 4321 et seq. (NEPA), 28 U.S.C. § 2201 (declaratory judgment), 28 U.S.C. § 2202 (injunctive relief) and 5 U.S.C. § 701 through 706 (APA).

4. Final agency decisions are subject to judicial review. Plaintiffs have met all applicable statute of limitations, namely, the six-year statute of limitations, pursuant to 28 U.S.C. § 2401, and the two-year statute of limitations for FAST-41 Act, set forth at 42 USCS § 4370m-6(a)(1)(A).

5. For all claims brought under the APA, Plaintiffs have exhausted all administrative remedies available to them.

6. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this jurisdiction. The Empire Wind Project, which is the subject of the federal actions challenged herein, is to be constructed and operated in waters off the coast of Monmouth County, New Jersey and will cause environmental and marine mammal impacts in New Jersey's waters.

### **Parties**

7. Plaintiff SAVE LONG BEACH ISLAND is a 501(c)(3)non-profit corporation, of over 10,000 supporters, organized under the laws of New Jersey, and created to guard human and natural resources. These resources include, for example:

marine mammals, fish, and other species that inhabit, use, or migrate off the New Jersey and New York coasts; the aesthetic elements of Long Beach Island and the New York Bight; economic interests strongly tied to the maintenance of the environmental features comprising Long Beach Island and the New York Bight, *inter alia*. These resources, in particular, the marine mammals off the NJ and NY coasts, are being harmed, harassed, and killed, in large part by the activities authorized by NMFS and BOEM in the waters of the NJ/NY Bight. These marine mammals, not only are exceptionally important to the oceanic ecosystems, but they also impart carbon dioxide mitigatory effects. Save Long Beach Island supporters have a legally protected interest in preserving the marine mammals, some of which, like the North Atlantic Right Whale, are critically endangered species. Save Long Beach Island, Inc. recently submitted a Critical Habitat Petition to NOAA, requesting, *inter alia*, designation of critical habitat throughout the migratory corridor of the North Atlantic Right Whale, and the prohibition of offshore wind turbine construction within same. Such a request demonstrates a redoubtable interest in protecting marine mammals, not only east of LBI, but throughout the migratory corridor of the North Atlantic Right Whale. This broader geographical concern for marine mammal protection directly affects Dr. Bob Stern, the president of Save Long Beach Island Inc. Dr. Stern personally observes whales and dolphins from the coast of LBI and derives aesthetic and recreational enjoyment therefrom. Empire Wind's

impacts on the migratory corridor of the North Atlantic Right Whale farther north, and also the northern coastal migratory bottlenose dolphin (which propagates north and south in areas overlapping with the migration corridor of the North Atlantic Right Whale) will negatively impair Dr. Stern's ability to view dolphins and whales and derive aesthetic/recreational enjoyment therefrom. This is because disturbance, behavioral impacts, and death, to the North Atlantic Right Whale and northern coastal migratory bottlenose dolphin populations farther north in the Empire Wind region will invariably have negative impacts on observing these species near LBI. Dr. Stern's present enjoyment and future concrete plans to observe these species east of LBI will be impeded due to Empire Wind. This is harm ascribed to Empire Wind would be favorably redressed by Court action.

8. Plaintiff ROBERT STERN PHD, is the president of Save Long Beach Island, Inc. Dr. Stern personally observes whales and dolphins from the coast of LBI and derives aesthetic and recreational enjoyment therefrom. On September 6th, he departed for an excursion into the NJ/NY Bight, in which he sought to observe whales in the waters of that region. Furthermore, he has plans for future excursions into the NJ/NY Bight for further whale watching and dolphin observations. Empire Wind's impacts on the migratory corridor of the North Atlantic Right Whale farther north, and also the northern coastal migratory bottlenose dolphin (which propagates north and south in areas overlapping with the migration corridor of the North

Atlantic Right Whale) will negatively impair Dr. Stern's ability to view dolphins and whales and derive aesthetic/recreational enjoyment therefrom. This is because disturbance, behavioral impacts, and death, to the North Atlantic Right Whale and northern coastal migratory bottlenose dolphin populations farther north in the Empire Wind region will invariably have negative impacts on observing these species near LBI. Dr. Stern's present enjoyment and future concrete plans to observe these species east of LBI will be impeded due to Empire Wind. This harm ascribed to Empire Wind would be favorably redressed by Court action. Plaintiff Stern is thus a person for whom the aesthetic and recreational values of the area is and will be lessened due to Empire Wind's offshore activities.

9. Plaintiff SAVE THE EAST COAST, INC., is a 501(c)(4) nonprofit ocean environmental advocacy group based in New Jersey. Their mission is to protect the ocean and the diverse life it sustains, along with the coastal ecosystems and communities from the harms and costs of offshore wind and ocean industrialization.

10. Plaintiff PROTECT OUR COAST LONG ISLAND NEW YORK is an organization formed to protect the environment in all of Long Island's coastal waters. They are committed to protecting every inch of Long Island's coasts, be it the ocean or the sound as well as the natural communities and neighborhoods that surround them. The group seeks to identify, and mitigate or avoid, any adverse

impacts that could result from the transmission line cables, substation(s) and other infrastructure. The group also seeks to conserve the natural environments on land and in the sea; preserve natural habitats; protect human health and welfare; and, preserve the community character through orderly development. The group opposes the inappropriate industrialization of Long Island's remaining natural environment.

11. Plaintiff TRISHA DEVOE leads the naturalist/education department for Miss Belmar. She holds a master's degree in Conservation Biology from Columbia University and is the founder of Save Our Whales Now.org which is an educational program about whales and why it's important to protect them. Trisha also collects and contributes data from their trips to the NYC Humpback Whale Catalog. She is passionate about dolphins and whales and loves to share her knowledge about them with our guests. Trisha knows that if people fall in love with the ocean and marine life in it, they will be more inclined to protect it. She finds great joy in spreading the love for whales and dolphins knowing this is one way to protect them into the future. Plaintiff DEVOE regularly observes dolphins and whales in the waters wherein Empire Wind will be constructed, and has concrete plans for future observations of same in that region. Therefore, she is a person for whom the aesthetic and recreational values of the area is and will be lessened due to the allowance of the ITA which will disturb dolphins (including the northern coastal migratory bottlenose dolphin) negatively impacting and impairing Plaintiff



DEVOE's ability to personally observe the dolphins and whales. And thus, this ITA approval has and will continue to impair her ability to derive aesthetic and recreational enjoyment from observing the dolphins and whales. Moreover, Plaintiff DEVOE will be economically harmed via Empire Wind has her business (Miss Belmar) relies heavily upon tours of marine mammals in the Empire Wind area, marine mammals which are likely to be disturbed through Empire's offshore activities, impairing clients' ability to view marine mammals. As such, Plaintiff DEVOE will suffer aesthetical, recreational and economic harms. A favorable Court decision will redress this harm caused by Empire Wind.

12. Defendant NMFS is an agency of the federal government, within the United States Department of Commerce's National Oceanic and Atmospheric Administration. "NOAA Fisheries, also known as the National Marine Fisheries Service, is responsible for the management, conservation, and protection of living marine resources within about 200 miles of the U.S. coast."<sup>2</sup>

13. Defendant EUGENIO PIÑEIRO SOLER is the director of the NMFS.

14. Defendant HOWARD LUTNICK is the Secretary of the United States Department of Commerce.

15. Defendant BOEM is a federal agency within the U.S. Department of

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<sup>2</sup> <https://www.usa.gov/agencies/noaa-fisheries#:~:text=NOAA%20Fisheries%2C%20also%20known%20as,miles%20of%20the%20U.S.%20coast.>

Interior, tasked with managing the “development of U.S. Outer Continental Shelf (OCS) energy, mineral, and geological resources in an environmentally and economically responsible way.”<sup>3</sup>

16. Defendant U.S. Department of Interior is an executive department of the U.S. federal government responsible for the management and conservation of most federal lands and natural resources.

17. Defendant DOUG BURGUM is the Secretary of the Department of Interior.

18. Defendant WALTER CRUICKSHANK is the Director of BOEM.

19. Defendant U.S. DEPARTMENT OF COMMERCE is an executive department of the U.S. federal government.

## **FIRST CAUSE OF ACTION**

### **[Violations Of The Marine Mammal Protection Act and the Administrative Procedures Act]**

20. Plaintiffs reallege and incorporate by reference all of their previous allegations and further allege as follows:

21. This cause of action challenges significant legal deficiencies, in the MMPA Incidental Take Statement for Empire Wind.

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<sup>3</sup> <https://www.boem.gov/about-boem>

22. Pursuant to 16 USC 1373(a), the MMPA stipulates that, “the Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, shall prescribe such regulations with respect to the taking and importing of animals from each species of marine mammal . . .” The best scientific evidence available was not utilized in the agencies’ analysis in the BiOp, Incidental Take Statement or MMPA.

23. The primary purpose of the MMPA was to “establish a national policy to prevent marine mammal species and population stocks from declining beyond the point where they ceased to be significant functioning elements of the ecosystems of which they are a part.”<sup>4</sup>

24. The MMPA at 16 USC 1371(a) provides, “There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this chapter, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases . . .”

25. The MMPA permits an exception to this general proscription, “upon request therefor by citizens of the United States who engage in a specified activity

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<sup>4</sup> <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-policies-guidance-and-regulations>

(other than commercial fishing) within a specified geographical region, the Secretary **shall allow**, during periods of not more than five consecutive years each, **the incidental**, but not intentional, **taking** by citizens while engaging in that activity within that region **of small numbers of marine mammals** of a species or population if the Secretary finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock [emphasis added].” 16 USC 1371(a)(5)(A).

26. As such, even within the exception, the MMPA countenances only the taking of ‘small numbers’ of marine mammals. “Take” within the meaning of the MMPA can mean Level A or Level B takes.

27. Level A harassment is defined as, “has the potential to injure a marine mammal or marine mammal stock in the wild.” 16 USCS § 1362(18)(A)(i), 50 CFR 216.3.

28. Level B harassment is defined as, “has 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.” 16 USCS § 1362(18)(A)(ii), 50 CFR 216.3.

29. Empire Wind’s approved Incidental Take Authorization<sup>5</sup> requests the take of an impermissibly high number of marine mammals, specifically the northern

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<sup>5</sup> <https://www.fisheries.noaa.gov/s3/2024-02/EmpireWind-2024LOA-OPR1.pdf>

migratory coastal bottlenose dolphins.

**Table 1 – Maximum Annual and 5-year Total Take Authorized For the Empire Wind Project Incidental to All Specified Activities**

Common Name	Scientific Name	Stock	Maximum Annual Take		5-year Total Take	
			Level A Harassment	Level B Harassment	Level A Harassment	Level B Harassment
Atlantic white-sided dolphin	<i>Lagenorhynchus acutus</i>	Western North Atlantic	0	747	0	1,840
Bottlenose dolphin	<i>Tursiops truncatus</i>	Western North Atlantic - Offshore	0	1,800 (pile driving only)	0	2,565 (pile driving only)
		Northern Migratory Coastal	0	1,185 (pile driving only)	0	1,455 (pile driving only)
		Northern Migratory Coastal and Western North Atlantic - Offshore	0	2,865 (HRG survey)	0	8,730

30. The ITA requests the taking of 1,185 Bottlenose dolphins (Northern Migratory Coastal Stock) by way of Level B take. This take specified as occurring in connection with the pile driving phase of Empire Wind, which is scheduled to initiate in May 2025.

31. The population of the Northern Migratory Coastal Bottlenose Dolphin

stock is presently estimated at 6,639 as per NOAA Fisheries.<sup>6</sup>

32. As such, 1185/6639 constitutes 17.9% of the population. However, the National Marine Fisheries Service (“NMFS”) explains in the Empire Wind ITA that they anticipate 930 additional annual takes by way of high-resolution geophysical surveys (“HRG”). This yields a total annual taking of 31.9% of the Northern Migratory Coastal Bottlenose Dolphin stock. The magnitude of this taking is explicitly conceded by the NMFS in the Empire Wind final ITA:

“For purposes of this analysis, NMFS has conservatively assumed that every day during summer months (July and August; as identified in Hayes *et al.*, 2021) when it is most likely this stock could occur in the Project Area, one average group size per day could be taken by harassment incidental to HRG surveys. That is, harassment could occur to the coastal stock on approximately 62 days, noting these 62 days could be spread out over a longer time period ( *e.g.*, June through September) when waters are warm enough to host this stock. These assumptions equate to 930 takes ( *i.e.*, 62 days × 15 dolphins per day) from HRG surveys. Combined with the take authorized incidental to pile driving ( *i.e.*, 1,185 takes), the maximum total take authorized in a given year is 2,115. **If one assumes that all takes are of a different individual, this equates to 31.9 percent of the population [emphasis added].**”<sup>7</sup>

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<sup>6</sup> [https://media.fisheries.noaa.gov/2021-07/f2020\\_AtlGmexSARs\\_NmigBottlenoseDolphin.pdf?null](https://media.fisheries.noaa.gov/2021-07/f2020_AtlGmexSARs_NmigBottlenoseDolphin.pdf?null)

<sup>7</sup> <https://www.federalregister.gov/documents/2024/02/14/2024-01363/takes-of-marine-mammals-incidental-to-specified-activities-taking-marine-mammals-incidental-to-the>

33. Therefore, the authorized annual percentage take of the Northern Migratory Coastal Bottlenose Dolphin is 31.9%. The pile driving requested take of 17.9% is violative of the “small numbers” provision of the MMPA and the combined total annual take, including HRG surveying of 31.9% constitutes an even more egregious violation of the MMPA.

34. An additional 270 Level B takes of the Northern Migratory Coastal Bottlenose Dolphin are authorized in the subsequent year, and as the ITA documents indicate, HRG surveys continue for the entire 5-year period.<sup>8</sup> Conservatively presuming 50% of the year-1 930 HRG induced takes, yields 465 HRG takes for the subsequent 4 years. Thus, the total 5-year take is 4,245 Level B takes (1,455 total pile driving and 930 + 465 + 465 + 465 + 465 HRG takes) of 64% of the total population. This is an egregious violation of the MMPA small numbers provision.

35. Jurisprudence has elucidated that “small numbers” cannot possibly constitute a proportion greater than 10.6% and certainly not as much as 12% (annually and over the project period).

36. The NFMS is not entitled to deference regarding their small numbers interpretation, in view of the overturning of Chevron. As such, the Court must

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<sup>8</sup> <https://www.federalregister.gov/documents/2024/02/14/2024-01363/takes-of-marine-mammals-incident-to-specified-activities-taking-marine-mammals-incident-to-the>

employ an independent assessment, which objectively, should yield a small numbers interpretation as described herein.

37. Furthermore, even considering these highly violative requested takes, the actual number of Level A and B takes is very likely greater than indicated by the NMFS.

38. There are various sources of noise underestimation, as pointed out in plaintiff SLBI's prior comments on the Atlantic Shores project EIS and ITA that used the same calculation methods including: a) use of a dubious, unproven auditory weighting function in lieu of a more current scientifically sound function, b) improperly low noise source magnitude, c) improper reduction of noise source magnitude, and d) unexplained and very high noise transmission loss magnitudes.

39. Furthermore, the data demonstrably indicates that a statistically significant increase in dolphin mortality events occurred coterminous with heightened offshore wind activity in the NY/NJ Bight. This correlation is statistically significant at the p-value alpha level of 0.01 (1%). The control group indicates that this statistically significant increase in dolphin mortalities cannot be explained by general vessel traffic.

40. In view of the robust spatiotemporal correlation between offshore wind activity and materially increased dolphin deaths; the statistically significant correlation between offshore wind vessel activity and marine mammals absent any



other etiology; and, the material underestimates of noise exposure on marine mammals, the NMFS arbitrarily and capriciously underestimated Level A and Level B takes of dolphins, including northern coastal migratory bottlenose dolphins.

41. Moreover, beyond underestimates of takes, the NMFS engaged in arbitrary and capricious determinations through their failure to stratify impact to marine mammals as a function of the type of take (Level A or B) and listed status (endangered or not endangered). The scientifically reasonable approach adopted by Wood, Southall and Tollit<sup>9</sup> bifurcate the magnitude marine mammal impact into Level A and B, and endangered / unlisted. This impact categorization is the reasonable, scientifically sound approach as it acknowledges the heightened sensitivity of the endangered species (through use of the potential biological removal level) and degree of impact. See below figure:

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<sup>9</sup> Wood, J., Southall, B.L. and Tollit, D.J. (2012) PG&E offshore 3-D Seismic Survey Project EIR – Marine Mammal Technical Draft Report. SMRU Ltd. <https://www.coastal.ca.gov/energy/seismic/mm-technical-report-EIR.pdf>

Table 3.3 Descriptions of the levels within four intensity components used to rate severity

*Geographical Extent:*

<b>State-wide</b>	Effects extend outside regional boundary, but within state setting.
<b>Regional</b>	Effects likely to extend outside of project boundary to regional setting.
<b>Local</b>	Effects likely to be limited within project boundary.

*Magnitude (Mortality/Injury/Level 'A' take):*

<b>High</b>	>100% of stock population residual PBR affected
<b>Moderate</b>	50-100% of stock population residual PBR affected
<b>Low</b>	10-50% of stock population residual PBR affected
<b>Negligible</b>	<10% of stock population residual PBR affected

*Magnitude (Disturbance/Level 'B' take):*

<b>High</b>	>25% of regional non-listed species minimum population / >2.5% ESA-listed regional minimum population
<b>Moderate</b>	15-25% of regional non-listed species minimum population / 1.25-2.5% of ESA-listed regional minimum population
<b>Low</b>	5-15% of regional non-listed species minimum population / 1 ESA-listed animal and <1.25% of ESA listed minimum population
<b>Negligible</b>	<5% of regional minimum population / <1 ESA listed animal

*Duration:*

<b>Long-term</b>	refers to more permanent effects that may last for more than 3 months (a season) to years and from which the affected animals or resource never revert back to a "normal" condition
<b>Moderate-term</b>	refers to a temporary effect that lasts 1 to 3 months and the affected animals or resource may revert back to a "normal" condition.
<b>Short-term</b>	refers to a temporary effect that lasts from days to one month and the affected animals or resource revert back to a "normal" condition.

*Frequency:*

<b>Continuous</b>	Effects continuous.
<b>Intermittent</b>	Effects intermittent, but repeated.
<b>Isolated</b>	Effects confined to one or two periods.

Intensity component levels, once established, were used to determine a severity rating using a matrix approach depicted below in Table 3.4. Severity ratings were described as High, Medium, Low or Negligible.

42. As such, based upon that well-established scientific research, the NMFS authorized a “high” magnitude (greater than 25% of population) of Level B take for the northern coastal migratory bottlenose dolphin. The NMFS failure to use the Southall approach which appreciates the true magnitude of impact to marine mammals is arbitrary and capricious.

43. As such, the determinations of NMFS with its MMPA final rule (Incidental Take Authorization), violate the MMPA and APA for the aforesaid reasons. And as such, Plaintiffs Robert Stern PHD, Save Long Beach Island, and Trisha Devoe have been harmed through violation of MMPA.

## **SECOND CAUSE OF ACTION**

### **[Violations Of The National Environmental Policy Act and the Administrative Procedures Act]**

44. Plaintiffs reallege and incorporate by reference all of their previous allegations and further allege as follows:

45. Plaintiff Save Long Beach Island, Inc., participated in the administrative process by submitting a public comment on the New York Bight

programmatic EIS, related to Empire Wind’s environmental impacts.<sup>10</sup>

46. Pursuant to NEPA, 42 USCS § 4332(2)(C), and as interpreted by case precedent, “In deciding whether a major federal action will ‘significantly’ affect the quality of the human environment, under § 102(2)(C) of the National Environmental Policy Act, the agency in charge, although vested with broad discretion, should normally be required to review the proposed action in the light of at least two relevant factors: (1) the extent to which the action will cause adverse environmental effects in excess of those created by existing uses in the area affected by it, and (2) the absolute quantitative adverse environmental effects of the action itself, including the cumulative harm that results from its contribution to existing adverse conditions or uses in the affected area.”<sup>11</sup>

47. Moreover, in NEPA 42 USCS § 4332(H), it stipulates that all agencies shall, “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.”

48. Further, in 42 USCS § 4332(F), NEPA demands [that agencies] “consistent with the provisions of this chapter, study, develop, and describe technically and economically feasible alternatives.”

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<sup>10</sup>Document (BOEM-2021-0033-0001):

<https://www.regulations.gov/comment/BOEM-2021-0033-0054>

<sup>11</sup> Hanly v. Kleindienst, 471 F.2d 823 (2d Cir. 1972).

49. NEPA also requires, in 42 USCS § 4332(C)(iii), for major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on, “a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal.”

50. BOEM concedes, in the Final Environmental Impact Statement for Empire Offshore Wind, that this the undertaking of Empire Wind is indeed a “major federal action” within the meaning of NEPA.<sup>12</sup>

51. Pursuant to Council on Environmental Quality (“CEQ”) regulations at 40 CFR §1502.14(a), agencies shall, “**Rigorously explore and objectively evaluate** reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination. The agency need not consider every conceivable alternative to a proposed action; rather, it shall consider a reasonable range of alternatives that will foster informed decision making [emphasis added].” And in subsection (b), “(b) Discuss each alternative considered in detail, including the proposed action, so

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<sup>12</sup> [https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Empire\\_Wind\\_FEIS\\_Vol1\\_0.pdf](https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Empire_Wind_FEIS_Vol1_0.pdf)

that reviewers may evaluate their comparative merits.”

52. BOEM abdicated its duty to “rigorously explore and objectively evaluate” the reasonable alternatives, including the no action alternative throughout its entire decision-making process. In the project FEIS, it offers minor alterations of the proposal as “alternatives” but these are not real alternatives in the NEPA sense because their environmental impact is the same. It offers a legally inadequate explanation for elimination of alternatives (including the no action alternative), lack of objective evaluation, and inadequate consideration of cumulative impacts.

53. Prior to the EIS at the most environmentally impacting lease area award decision, the BOEM did not provide any EIS review of alternative lease areas and projects, promising such, but deferring its review to the project decision. But subsequent to that, it altered its policy and recommended no consideration of alternative areas or projects in the project EIS. Consequently, at no point in its entire decision-making process has the BOEM offered the public an alternative EIS review of the environmentally significant factors such as project location, turbine number, turbine power and gear drive. Its approach has in fact been directly counter to the alternative requirements of the NEPA cited above.

54. Moreover, BOEM stated in the FEIS Volume 1, “Under the No Action Alternative, the environmental and socioeconomic impacts and benefits of the action alternatives would not occur.” Under 40 CFR §1502.14(a), BOEM failed to comply

with the stipulation to “foster informed decision making” by arbitrarily overstating the benefits of the alternatives and arbitrarily understating the benefits of the no action alternative.<sup>13</sup> BOEM erroneously predicates its rejection of the no action alternative on the following: “The No Action Alternative was not selected in this ROD because it would not allow for the development of DOI-managed resources and would not meet the purpose and need.” But this is vague and the FEIS stated no substantive purpose and need for the project to compare to, only the stated need for BOEM to approve or disapprove it. Therefore, no rigorous exploration or objective evaluation of the no action alternative was ever conducted, which is antithetical to the *raison d’être* of NEPA, and thus arbitrary and capricious.

55. Finally, not only did BOEM fail to adequately analyze alternatives objectives such that stakeholders can make informed decision(s), it failed to

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<sup>13</sup> BOEM, in its ROD of Empire Wind, erroneously concludes that the no action alternative will lead to long term adverse impacts. *“Nonetheless, the No Action Alternative would likely result in moderate, long-term, adverse impacts on regional air quality because other energy generation facilities would be needed to meet future power demands. These facilities might be fueled with natural gas, oil, or coal, which would emit more pollutants than wind turbines and would have more adverse impacts on air quality and contribute greenhouse gases that cause climatic change. Adverse impacts on air quality also tend to disproportionately impact environmental justice communities, which often include low-income and minority populations. These air quality impacts might be compounded by other impacts because selection of the No Action Alternative could negatively impact future investment in U.S. offshore wind energy facilities, which in turn could result in the loss of beneficial cumulative impacts, such as increased employment . . .”* <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Empire%20Wind%20OCA-A%200512%20ROD%20signed.pdf>

undertake a sufficient cumulative analysis of the environmental, ecological, oceanic impacts of the agency action (approving Empire Wind) and the impacts of other adjacent proposed and existing offshore wind projects in the New York Bight.

56. In October 2022, BOEM and NOAA issued a draft document titled BOEM and NOAA Fisheries North Atlantic Right Whale and Offshore Wind Strategy (the “NARW and OSW Strategy”),<sup>14</sup> which admits that BOEM’s Atlantic OSW program, when viewed in its entirety, has the potential to harm NARW and cause population scale impacts to the species. Key statements from the NARW and OSW Strategy include the following:

- “In March 2021, in response to Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, the Departments of Interior, Energy, and Commerce announced a national goal to deploy 30 gigawatts of OSW by 2030, while protecting biodiversity and promoting ocean co-use.” (p. 1.)
- “BOEM and the National Oceanic and Atmospheric Administration’s (NOAA’s) National Marine Fisheries Service (NOAA Fisheries) recognize [OSW] development (from siting to decommissioning) must

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[https://www.boem.gov/sites/default/files/documents/environment/BOEM\\_NMFS\\_NARW\\_OSW\\_0.pdf](https://www.boem.gov/sites/default/files/documents/environment/BOEM_NMFS_NARW_OSW_0.pdf)



be undertaken responsibly including managing and mitigating the impacts to endangered species like the North Atlantic right whale. The NARW population is currently in decline, mainly due to vessel strikes and entanglement in fishing gear, necessitating precaution to ensure that OSW development is carried out in a way that minimizes the potential for adverse effects to the species and the ecosystems on which it depends.” (p. 1.)

- “The agencies are working to understand the effects of OSW development on NARWs and their ecosystem, and to develop strategies to mitigate and monitor impacts to NARWs from OSW development.”
- “BOEM and NOAA Fisheries initiated development of this shared draft North Atlantic Right Whale and Offshore Wind Strategy (hereinafter called “Strategy”) to focus and integrate past, present, and future efforts related to NARW and OSW development. In response to Executive Order 14008, both agencies share a common vision to protect and promote the recovery of North Atlantic right whales while responsibly developing offshore wind energy. This vision reflects the combined legislative mandates of the two agencies and commitment to the Administration’s goal of developing OSW while protecting biodiversity and promoting ocean co-use.” (pp. 1-2.)

- “As of September 2022, there were 27 renewable energy lease areas in the Atlantic Outer Continental Shelf (OCS) and there are 42 megawatts of installed OSW capacity. The OCS is the area of the continental shelf that begins at the edge of state marine boundaries (typically 3 nautical miles offshore except 9 miles for Texas and the west coast of Florida) and extends to 200 nautical miles, and more in some places.” (p. 3.)
- “Additional lease sales are expected to be held in the Gulf of Maine and the Central Atlantic. In total, the area in existing leases and being considered for leasing in planning areas in the Atlantic OCS covers 22.237 million acres (about 8% of the Atlantic OCS). The OSW infrastructure currently proposed for installation by 2030 would be located on about 2.349 million acres, use fixed turbine technologies, and include 3,441 turbines and foundations and 9,874 miles of export and inter-array submarine cables.” (p. 3.)
- “In addition, the Biden-Harris Administration has announced the goal of 15 gigawatts of floating OSW capacity by 2035. These metrics of development will change over time; but for purposes of this Strategy, the metrics demonstrate the large-scale nature of the development planned and underway.” (p. 3.)

- “Due to the declining status of NARWs, the resilience of this population to stressors affecting their distribution, abundance, and reproductive potential is low. The species faces a high risk of extinction, and the population is small enough that the death of even some individuals can have a measurable effect on its population status, trend, and population dynamics. Further, the loss of even one individual a year may reduce the likelihood of recovery and the species achieving optimum sustainable population.” (pp. 6-7.)
- “NOAA Fisheries’ North Atlantic Right Whale Priority Action Plan for 2021-2025 identifies the need to improve our knowledge of factors that may limit NARW recovery, such as OSW development (NOAA Fisheries 2021).” (p. 7.)
- “NARWs engage in migration, foraging, socializing, reproductive, calving, and resting behaviors critical to their survival (Leiter et al. 2017; Muirhead et al. 2018; Quintana-Rizzo et al. 2021; Zoidis et al. 2021). The overlap between OSW development (planned, leased, and permitted) and NARW habitat extends to corridors outside the immediate development sites, where vessel traffic between ports and offshore sites would further overlap with the distribution of NARW.” (p. 7.)

- “Effects to NARWs could result from exposure to a single project and may be compounded by exposure to multiple projects. It is important to recognize that NARW migrating along the U.S. Atlantic Coast travel through or nearby every proposed OSW development.” (p. 11 [Emphasis added].)

57. The Final EIS for Empire Wind does not assess the cumulative impacts of the project in relation to the above-quoted statements from the NARW and OSW Strategy.

58. The EIS must provide an accurate presentation of key facts and environmental impacts, as this is “necessary to ensure a well-informed and reasoned decision, both of which are procedural requirements under NEPA.” *Natural Resources Defense Council v. U.S. Forest Serv.*, 421 F.3d 797, 812 (9th Cir. 2005). An EIS that is incomplete or provides misleading information can “impair[] the agency’s consideration of the adverse environmental effects and . . . skew . . . the public’s evaluation of the proposed agency action.” *Id.*, at 811. For this reason, erroneous factual assumptions and misrepresentations of important facts can fatally undermine the information value of the EIS to the public and decision-makers. *Id.*, at 808.

59. An EIS must provide a detailed statement of: (1) the environmental impacts of the proposed action; (2) any adverse environmental effects that cannot be

avoided should the proposed action be implemented; (3) alternatives to the proposed action; (4) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitment of resources that would be involved in the action should it be implemented. 42 U.S.C. § 4332(C). An EIS must “inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 CFR § 1502.1. NEPA also requires federal agencies, such as BOEM, to analyze the direct, indirect, and cumulative impacts of the proposed action and to take a hard look at those impacts. 40 CFR §§ 1508.7, 1508.8. In addition, NEPA requires federal agencies to consider mitigation measures to minimize the environmental impacts of a proposed action. 40 CFR § 1502.14 (alternatives and mitigation measures); 40 CFR § 1502.16 (environmental consequences and mitigation measures).

60. The final EIS failed to provide impact information essential to make any reasoned decision on project approval or disapproval, including that for underwater noise from turbine operation, turbine removal and onshore processing, airborne noise from pile driving and turbine operation, on the right whale’s food source (copepods) and the humpback whale’s food source (menhaden), the cause of the recent whale and dolphin deaths, turbine component failures and consequences from normal operation and windstorms, the project’s effect on climate change,

greenhouse house gas emission changes on a regional (transmission grid) scale, protection of now submerged ancient archeologic artifacts, military radar interference, and business losses from higher electric rates.

61. For each of the reasons set forth above, BOEM's adoption of the ROD and Final EIS for Empire Wind project was arbitrary, capricious, and not in accordance with law as required by NEPA, its implementing regulations, and the APA. And as such, Plaintiffs Robert Stern PHD, Save Long Beach Island, and Trisha Devoe have been harmed through violation of NEPA.

### **Prayer for Relief**

62. Plaintiffs ask the Court for the following relief:

63. An order holding unlawful, vacating, and setting aside Defendants' February 2024, decision approving the Construction and Operations Plan for the Empire Wind Project, as arbitrary, capricious, and otherwise not in accordance with law;

64. An order holding unlawful, vacating, and setting aside Defendants' Nov. 21, 2023, decision approving the Empire Wind Record of Decision as arbitrary, capricious, and otherwise not in accordance with the law;

65. An order holding unlawful, vacating and setting aside Defendants' MMPA Incidental Take Authorization/Letter of Authorization;

66. Reasonable attorneys' fees and costs for bringing this suit; and,
67. Such other and further relief as the Court deems appropriate.

Dated: May 12, 2025

Respectfully submitted,

/s/ Thomas Stavola Jr. Esq.

Thomas Stavola Jr. Esq.

*Counsel for Plaintiffs*

NJ Bar ID number: 380012022

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732-539-7244

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

SAVE LONG BEACH ISLAND, INC.; ROBERT STERN, PHD.; SAVE THE EAST COAST, INC.; PROTECT OUR COAST – LINY; TRISHA DEVOE;

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Thomas Stavola Jr. Esq.  
Law Office of Thomas Stavola Jr. LLC  
209 County Road, 537, Colts Neck, NJ 07722; Phone:732-539-7244

## DEFENDANTS

U.S. DEPARTMENT OF COMMERCE; HOWARD LUTNICK, in his official capacity as Secretary of Commerce; NATIONAL MARINE FISHERIES SERVICE; and EUGENIO PINEIRO SOLER, in his official capacity as Assistant Administrator, National Marine Fisheries Service; BUREAU OF OCEAN ENERGY MANAGEMENT; WALTER CRUICKSHANK in his official capacity as the Director of the Bureau of Ocean Energy Management; US DEPARTMENT OF INTERIOR, DOUG BURGUM, Secretary of the Interior;

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>INTELLECTUAL PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input checked="" type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): MMPA, NEPA, APA

Brief description of cause: Challenge of final agency action under the described statutes

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions): Judge Robert Kirsch: 3:23-cv-01886  
Judge Robert Kirsch: 3:25-cv-00240  
JUDGE Judge Zahid Quraishi: 3:24-cv-09377

DOCKET NUMBER

DATE

5/12/2025

SIGNATURE OF ATTORNEY OF RECORD

/s/ Thomas Stavola Jr. Esq.

## FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE



**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.