Welcome to Clean Law from the Environmental and Energy Law Program at Harvard Law School. In this episode, EELP Executive Director Carrie Jenks talks with EELP Senior Attorney Erika Kranz about the Trump administration's efforts to stop or delay offshore wind development. They discuss the industry's complex permitting regulatory environment. The challenges the administration's actions have faced in court, and what's at stake for the future of clean energy. We hope you enjoy this episode.

Carrie Jenks:

Welcome to Clean Law. I'm Carrie Jenks, the executive director of the Environmental & Energy Law Program at Harvard Law School. And with me today is Erika Kranz, an attorney with us.

Erika Kranz:

So happy to be here, Carrie.

Carrie Jenks:

So today we're going to talk through the Trump administration's approach to offshore wind. The legal moves the Trump administration has tried, the responses by states, industry, and the courts. And with that context, understand what does this all mean for the different projects? Ranging from those that have been fully permitted and were under construction at the start of the administration to new projects that the administration is now deciding whether to approve. So to set the stage, Erika, can you start us off by explaining the range of legal authorities that come into play with these projects?

Erika Kranz:

Definitely. And I'll start by sort of framing up what we're going to be talking about today. We're talking about large-scale installations of wind turbines that are built on the outer continental shelf in federal waters. And these projects tend to have something like 50 to 200 turbines. And these turbines are big. They total up to about 800 feet at the top of the highest blade. And because they're so large, they can generate a lot of electricity. One single spin of a blade can power a home for a day or more. And they're built far offshore to take advantage of the strong, steady, prevailing ocean winds. So, for example, the Coastal Virginia Offshore Wind Project, which is the largest project under development now. It's expected to power something like 660,000 homes through its 176 turbines once completely constructed.

So there is an array of federal legal authorities involved. First, federal leasing, site assessment, and construction plans come under the authority of the Bureau of Ocean Energy Management, BOEM, which is part of the Department of Interior. And a lot of that is governed by the Outer Continental Shelf Lands Act, OCSLA. There's going to be a lot of acronyms today. Safety and Environmental Compliance are handled by the Bureau of Safety and Environmental Enforcement, BESI. BOEM and BESI, they're separate. They've been separate entities for about 15 years. But they've just been combined into the Marine Minerals Administration, which is a whole other podcast. But for today, we'll talk about BOEM as a separate entity, just out of force of habit.

The Army Corps of Engineers can be involved mostly related to cable placement. Cables that bring that power onshore. The Clean Water Act, Section 404, governs dredge and fill. You might need a permit for that. The Rivers and Harbors Act, Section 10 controls placing cables on the bed of navigable waters. The Federal Energy Regulatory Commission has a piece of this too because they oversee electricity markets and transmission.

And there are a range of other federal laws that sort of overlay here. The National Environmental Policy Act, NEPA. The Marine Mammal Protection Act and Endangered Species Act, Migratory Bird Treaty Act, all because of the critters that these projects can affect. And the National Historic Preservation Act can come into play when there are historic properties or tribes that might be affected. So that's sort of the federal overlay.

And then there's also state law. Even projects built in federal waters involve some state jurisdiction, including the submerged lands for those cables. They might need shoreline permits, water quality certifications, Coastal Zone Management Act considerations. And the other state angle is a lot of these states are proponents of these projects. They have goals that these projects will help them meet.

But the bottom line is this is a really complex regulatory environment. Lots for developers to navigate. Projects that make it through this puzzle have been very well studied. But because of that complexity, it also means there's lots of moving pieces that are susceptible to interference, as we've now seen.

Carrie Jenks:

So you mentioned all the federal agencies and President Trump has been vocal about offshore wind. So, can you take a step back and talk through what we saw on the first day in office from President Trump, in terms of energy and offshore wind in particular?

Erika Kranz:

On the very first day in office, President Trump declared an energy emergency, saying that the United States inadequate energy supply and infrastructure is causing high energy prices for Americans. And as part of that order, he directed heads of agencies to streamline energy leasing, production, transport. Look for exemptions that they can apply to help get projects moving. And you might think that sounds like it's probably good for offshore wind, but no. That energy emergency order explicitly did not include solar or wind projects.

And that is consistent with the president's many public statements that have made clear that he is personally not a fan of offshore wind in particular. What we've seen now through the first year and a half of the administration has reflected that day one energy emergency order. Preferential treatment for coal, oil, natural gas, and other sources on one hand. And on the other hand, sort of a range of efforts that have hampered solar and wind development, but especially offshore wind.

Part of that is another day one announcement from the president, which was a temporary withdrawal of all areas on the outer continental shelf from offshore wind leasing, which basically means no new leasing was going to occur for offshore wind. The withdrawal was temporary, but it still is in effect. And that means no new projects have entered into the queue.

There's obviously lots of steps to go from leasing to construction to operation, but leasing is obviously the first step. And also on that very first day, the president directed agencies to suspend issuing new or renewed approvals, rights away permits, leases, or loans for offshore wind projects while they did a comprehensive review of federal wind leasing.

Carrie Jenks:

So before we get into what actually happened in response to those executive orders, can you give our listeners a sense of what was the status of the industry? Where were things landing in terms of projects at the start of this administration?

Erika Kranz:

Well, at the start of the administration, there were projects in a range of different statuses. Some under construction, some at different places in the permitting process, and things were moving along. The last administration supported offshore wind, had promoted policies that made development easier. And that was, I think, a recognition that the United States has enormous offshore wind potential from a resource standpoint.

In 2023, the Department of Energy said the resource exists to provide three times the country's then energy demand. It had described offshore wind as having transformative potential that was critical to achieving the country's energy goals. It touted it as clean and reliable and a source of good jobs, and economically significant for coastal communities. So this new approach is really a big turn from that.

BOEM though still administers something like 35 offshore wind leases. And again, most are not yet permitted for construction, but if all of those leases were developed, that could be enough to power something like 23 million homes.

And as I said, states recognize the potential here. They're helping drive offshore wind development by committing to use offshore wind energy either through mandates or planning targets, although at this point it may be difficult for states to meet those. Meanwhile, there's also a whole industry around offshore wind. There are special ships to do the construction, fabrication plants, cables, onshore facilities. Lots of economic activity that's tied to these projects and this industry as a whole.

Carrie Jenks:

Okay. So you've signaled that there's a lot at stake here in terms of energy production and jobs. But you've hinted that this administration has thrown some of the planning into a disarray. Can you give a sense of what do you mean by that, just to kick us off?

Erika Kranz:

Sure. So these are expensive projects. They're logistically complex and they're legally complex as we've talked about, and that's made them sort of vulnerable for tinkering. As we'll talk about, there've been a lot of different federal actions that have slowed project approvals, threatened projects under construction, threatened projects that are even operating. And used federal funds to prevent projects from even being built.

All of that has, I think, raised some eyebrows across the political spectrum. Especially in the permitting debates that's happening now inside and outside of Congress. People are seeing how disruptive it can be when permitting is slowed or stopped even temporarily.

Carrie Jenks:

So let's try to get into some of these details. For context, there are a lot of different moving pieces and it's a lot to keep track of, and we certainly won't address every action from this administration. Our goal today is really to highlight some of the key points that have shifted investment decisions and talk through some of the unusual government actions that are affecting wind development and what does that mean going forward for the United States in terms of wind production. So you've talked a bit about the day one actions. Can you walk through what happened in response? How did agencies respond to those executive orders you mentioned?

Erika Kranz:

So one of those executive orders that came on the very first day of the administration was a direction that agencies pause issuing new or renewed approvals for wind. And agencies responded to that immediately. Most centrally, the Department of Interior, which includes BOEM, issued an order again on that first day suspending all authorizations of leases, rights away contracts, and other agreements that wind developers need to get their projects going.

Other agencies took similar steps also, issuing their own orders or announcements. And although these orders were on their face effective just for 60 days, in effect, that pause on authorizations continued well beyond that time. Agencies really didn't offer any explanation for the pause. They just cited the president's direction. And perhaps not surprisingly, that generated some legal challenges. 17 states and a clean energy intervener sued, claiming that the agencies' decisions violated the Administrative Procedure Act because they were arbitrary and capricious and contrary to law.

To bring a lawsuit, you have to show that you've been injured. And states talked about the lost tax revenues, and returns from their investments in wind development that they saw could be harmed by this. This interfered with their plans to derive energy from wind. And it also could sort of stymie their efforts to lower energy costs, and also reduce greenhouse gas emissions.

In December 2025, so about 11 months later, a federal district court agreed with the challengers. It said that those pause orders were illegal. The agencies had provided no reasonable explanation for their decision. And importantly, they couldn't just rely on the president's order. The court said the scant administrative record makes clear, and the agency defendants do not meaningfully dispute, that the agency defendants have not reasonably considered the relevant issues and reasonably explained their decision to implement the president's order. And the court also said that by not issuing or acting on authorizations related to wind projects, that also violated the requirement the agencies proceed in a reasonable time to act on requests before them.

And this was a big decision for wind, but also a big decision for administrative law of nerds. There's lots of good stuff in there about standing, and what decisions are challengeable. And critically the point that agencies can't just cite a president's direction. That was really significant. You can see that decision as an example of a court really demanding a real explanation and not accepting bear reliance on executive order. Really a vindication of the Administrative Procedure Act.

The United States initially docketed an appeal, but just last month they dismissed that appeal. So the district court's decision now will stand. As good as that decision is, it also demonstrates that sometimes the government can create uncertainty just by doing something, even if it later does not prevail. That pause was in effect for many months before the district court vacated it. So while the wind proponents won, there were no doubt some costs attached to it.

Carrie Jenks:

So I think as you mentioned, that case shows the impact that an administration can have even if they lose in the long run in the courts, the market can respond to that pause and that uncertainty that you mentioned. In addition to that pause, can you talk more about some of the other agency actions that have slowed or dis-incentivized offshore wind?

Erika Kranz:

For sure. We've also seen a whole suite of agency policies implemented that have made permitting just more onerous for wind developers. So in July 2025, President Trump directed the Secretary of the Interior to basically look at DOI's regulations, guidance, policies, and practices that were somehow giving preferential treatment to wind, and then eliminate those preferences. And a set of agency actions followed, not all of them from interior, but from other agencies that had similar flavor.

The first was a new requirement for high level Department of Interior review of decisions or actions related to wind. And you could think about this like a requirement that every decision you make will have to go to your boss, or maybe your boss' boss' boss. And you can imagine at a minimum that's going to slow things down. It also meant that political appointees may have now had hands on decisions that maybe previously they wouldn't have been concerned about.

Second, there was a Department of Interior order requiring it to permit only energy projects with the highest "capacity density." And that was going to tend to disfavor wind and solar also compared to non-renewable sources. The Army Corps of Engineers also had a similar capacity density new requirement. There was a new prohibition on the Fish and Wildlife Service authorizing incidental take permits to wind facilities under the Bald and Golden Eagle Protection Act. If you need a permit and you can't get it, that's going to keep your project from going forward.

There was an order preventing wind and solar developers from using the information for planning and consultation database. Developers use that to determine whether their projects will affect federally protected species. Can streamline your process, and if you can't use it's going to slow you down. Department of Interior adopted a new policy that it can't approve any wind development on the outer continental shelf if it may cause more than a de minimis interference with other activities.

And it was reevaluating permits on that basis. And there was an indication from the agency that it though this was going to be a pretty hard standard to meet. And there was at least allegedly a defacto halt of Department of Defense review of wind project impacts on military operations. This used to happen pretty quickly, and now these reviews and approvals really aren't happening at all and projects can't move forward without it.

Carrie Jenks:

So they're adding process, they're adding time, they're adding new metrics and new hurdles. How is the administration justifying those actions? And have courts reviewed some of those justifications?

Erika Kranz:

Yes. So the explanations in many cases have not been terribly deep. In many cases, agencies are just citing the President's Energy Emergency Declaration, and the directive that agencies reviewed their policies for preferential treatment. There are some other explanations. Interior explained its capacity. Density order was just based on common sense, arithmetic and physics. DOI's new policy about interference with other offshore uses, it says is now required because it has a new interpretation of the governing statute.

And the Department of Defense has said its pause on reviewed. It's really just, it needs more time to analyze evolving risks like radar interference. But opponents have pointed out that DOD has not really explained how these risks are new, or why it's changed its position from previous conclusions that wind energy development didn't cause significant impacts. S.

O yes, there have been legal challenges to all of the above. In one case which concerned most of what I just talked about other than the Department of Defense. A district court in April of this year entered a preliminary injunction holding that these actions either appeared to be arbitrary and capricious or a violation of substantive statutes. The federal government has appealed that preliminary injunction and we'll have to wait and see whether they pursue that appeal.

Separately, a group of wind industry and advocacy groups has challenged the Department of Defense defacto pause. And briefing on a preliminary injunction is ongoing in that case. So we will see where that one goes.

Carrie Jenks:

So courts are starting to push back in some cases, but again, it takes a long time to have that litigation proceed. Let's shift to something more targeted and talk about some of the specific projects. We've also seen the government target certain projects that were already under construction. Can you talk about some of those issues that got raised?

Erika Kranz:

Sure. So the first category that I'll talk about involves projects that were subject to litigation. Where challenges were filed against the federal government by groups or individuals that were opposed to offshore wind projects for whatever reason. Sometimes it's visual effects, maybe it's concerns about impacts on fishing or species. Now, typically when an administration changes and litigation is ongoing, most often the government will continue defending its decisions or approvals, even if those decisions were made during a prior administration. But the government can also change course.

And we've seen a couple instances of that in the offshore wind context. You could think of it as the government sort of acquiescing to challenges and agreeing to vacate their approvals of offshore wind developments. For last year, BOEM remanded its approval of the construction operations plan for the South Coast Wind Project. And that essentially means the approval is no longer legally effective and the government is taking another look at it. That's left the project in limbo.

The project proponent is still continuing to push forward to get other permits it needs. But until BOEM completes its review, it can't move forward. The government's used that same strategy for a couple other projects as well. But there have also been some instances where the government has continued to defend its decisions in litigation involving some other projects. So it's a little bit of a mixed bag there.

Carrie Jenks:

We also heard about stop work orders. Can you talk about what that is and where those stand?

Erika Kranz:

Definitely. So in December of last year, December 22nd specifically of 2025, the administration issued stop work orders to five utility scale offshore wind facilities off the East Coast. These are big projects, and they are the five big projects that are the farthest along now in construction. Stop work orders mean just what they sound like. The projects were under construction and they had to cease work. And some of them were partially operating and they had to stop operation as well.

Carrie Jenks:

And these projects had all their permits already in place, right?

Erika Kranz:

All ready to go. That's right. So BOEM said the stop work order was necessary because of "National security risks" that it had identified in recent classified reports. And it needed time to review those reports and find a solution. And just for flavor here, Vineyard Wind, for instance, was 95% complete at the time of the order, and part of the project was already delivering power.

Empire Wind, which had already been subject to a prior stop work order earlier in the year, that it said cost it $50 million a week. So that was its second time around on a stop work order. Same thing for Revolution Wind off the coast of Rhode Island. And there were two other projects as well. The project developers immediately sued. They explained that this was going to cost them incredible amounts of money. The Vineyard Wind developer estimated something like $2 million a day in cost because of the stop work order.

And it also explained that its timeline for construction was so carefully orchestrated that it really couldn't be extended. That these are really complex construction projects, and one thing happens before the next, before the next. And you can't just adjust all that on the fly.

In terms of the legal arguments, the developers argued that BOEM had not offered any reasonable basis for its decision, that this violated the laws that govern their leases, and also alleged due process violations. Within a matter of weeks, all five projects were back able to resume work after judges entered preliminary injunctions enjoining the stop work orders.

One judge in the Revolution Wind case said, "The failure to explain or apply its reasoning suggests that the stated national security reason may have been pretextual." So those stop work orders have now expired by their terms. The preliminary injunctions allowed construction to resume. And the government is now moving to dismiss those challenges.

Saying that because the orders have expired, the cases are moot. Challengers have argued that the courts should review the orders, because the government can basically do the same thing again.

There's an exception to moot and it's called capable of repetition yet evading review. So we'll see what happens with that litigation. But at a minimum, these stop work orders cost these developers a lot of money for developers that have sunk billions of dollars into these projects. And it's created a lot of uncertainty. I think there's probably some continuing concern that even though these orders were enjoined, that the government could try to do something like this again.

Carrie Jenks:

So those five projects have gone forward. They're under construction or delivering power. Let's step back. The Biden administration had put a lot of incentives in place in terms of tax incentives and others to try to drive the market and help the offshore wind industry get off. You've talked about how the Trump administration is undercutting that certainty, but what about those incentives that were in place for offshore wind?

Erika Kranz:

Sure. So the big one is the Inflation Reduction Act created tax credits that developers could use either for their investment in projects or for production. But the Big Beautiful Bill Act from 2025 limited those credits to projects that met this pretty strict timeline. So it really removed the ability for those tax credits to incentivize development.

Last year also in August, the Department of Transportation withdrew or terminated 679 million in funding for 12 port and infrastructure upgrades that were going to support offshore wind projects. It said that it wants to focus on maritime dominance and preventing waste. And that these projects are just too expensive, and they want to prioritize other more reliable and "traditional forms of energy." So that has been somewhere between difficult and existential for some projects.

Finally, tariffs. Last August, the Department of Commerce wrapped turbines into the category of imports that are subject to a 50% tariff. So it's a pretty substantial added cost for developers that already are seeing increased costs just because of inflation. And those costs may ultimately end up being passed on to consumers. So there's some concerns there.

Carrie Jenks:

So the government's both removed the incentives to help offshore wind development added costs into the formative tariffs as well as added costs in terms of delaying some of these projects or slowing down the development of them. But we're also seeing some more unusual tactics at play where the government is paying companies to walk away from some of their projects and wind leases. Can you talk through what those are about?

Erika Kranz:

Sure. And these have been pretty big in the news early this year, 2026. There's now been, by my count, nine deals where federal funds are being given to wind companies in exchange for their agreement to abandon their wind leases and invest in other energy projects. These agreements basically require companies to invest sometimes in unspecified oil and gas projects or upgrades, sometimes in specific projects like natural gas plants. They may be in other states, totally separate from where the wind energy projects might have occurred.

We're now looking at close to $3 billion in public funds that are being diverted to extinguish these leases. And mostly on the East Coast, but on the West Coast as well. I don't think we've ever seen anything like this before. It's not clear that it's lawful. A coalition of states has sued now, sued Department of Interior, BOEM and the Department of Justice, which was involved in reaching these settlement agreements.

And they've alleged that the first of these deals, which was with a company called Total Energies, that that agreement was unlawful. They say that the agencies, they haven't explained their decision. They haven't complied with NEPA or OCSLA, which requires sort of a process before lease cancellation.

And also importantly, they have argued that the agreement violates a statute called the Judgment Fund Act. Now, the judgment fund is a pool of money that exists to allow the government to pay judgments against the United States, or settlements that the United States makes. Where those judgements or settlements don't otherwise have a funding source. I think there are some serious questions about whether these are really valid settlements for purposes of the judgment fund. There were not any active lawsuits.

The agreements explain that perhaps if these developers tried to move their projects forward, the government might have had to pause or cancel them because of national security reasons. And then the developers might have had a claim against the United States, and the settlement is resolving that hypothetical claim. Yeah, we'll see.

Carrie Jenks:

So stepping back, we've seen the administration trying to undercut offshore wind through a variety of different mechanisms. And it's clearly a lot to keep track of understanding which ones are making the biggest difference. But how do you think about the overall effect? If you combine all these pieces together, what does this mean for offshore wind and the industry generally?

Erika Kranz:

Right. It is a lot. Lots of different tactics. They're targeting projects anywhere from something you can just imagine and might someday want to lease offshore land to develop all the way through construction and operation. And I think the overall theme here is that this has created a lot of uncertainty. We talked about earlier, even when the administration ultimately loses in court, sometimes the delay itself has the effect that perhaps they're looking for. And the uncertainty in this environment that is already very legally complex and these projects are very expensive. I think that is really disincentivizing developers. And perhaps helps explain why some developers were willing to take those lease buyouts.

We've seen some examples where it looks like this uncertainty really has led to projects being canceled. For example, the Atlantic Shores Wind Project. Last year, EPA took a voluntary remand of a Clean Air Act permit for that project, citing the need to reevaluate it in light of the president's direction to do so. And that wasn't the only factor, but that was one of several factors perhaps that led the developer to cancel that project a few months later.

This kind of uncertainty has also had economic effects on these companies, and then downstream effects on people who work for these companies. Ersted announced that it was going to cut about 2,000 jobs, which is about a quarter of its global workforce by 2027. And reporting has tied those cuts directly to the fallout from the uncertainty created by the stop work orders here. More generally, there are concerns that offshore wind has become a really risky business to be in, in the United States.

Carrie Jenks:

And what about consumers? How does this affect sort of people and their energy costs generally?

Erika Kranz:

Yeah, that's a great question. Well, grid operators have flagged that capacity and reliability concerns have arisen from these stop work orders. We think about the energy emergency order, this is happening at a time that we all know electricity demand is increasing, particularly because of data centers. People are worried about prices. Analysts have concluded that more offshore wind can mean lower prices for consumers. And at the same time, those taxpayer funds are being used to pay wind developers to not build electricity at a time when we need more.

And again, about the energy emergency. It's really kind of difficult to reconcile the things that the administration is doing here to hamper offshore wind. Trying to reconcile that for things they've said about the need to get more energy flowing to the grid.

Carrie Jenks:

And how does this fit into the broader, you mentioned at the beginning, the permitting debate, how does this fit into the permitting conversations that are happening on the hill?

Erika Kranz:

Yeah, I think the stop work orders in particular became like a figurehead for the permitting debate. They've highlighted this is maybe not the way we want our government to be making decisions. And it's sort of interesting to see the administration streamlining permitting for certain types of projects. And pushing for permitting reform to create more certainty for project proponents in some areas anyway. While also taking these actions that have created so much uncertainty for offshore wind.

Carrie Jenks:

So you've highlighted in our discussion all the different actors. You've got the administration, all the different agencies, you've got states, you've got the industry. You have the impact to consumers, and then what it means for energy reliability. You'll continue to track this on our website and write about what the courts are doing. I just want to thank you for sharing some of your insights today.

Erika Kranz:

So happy to chat with you, Carrie.