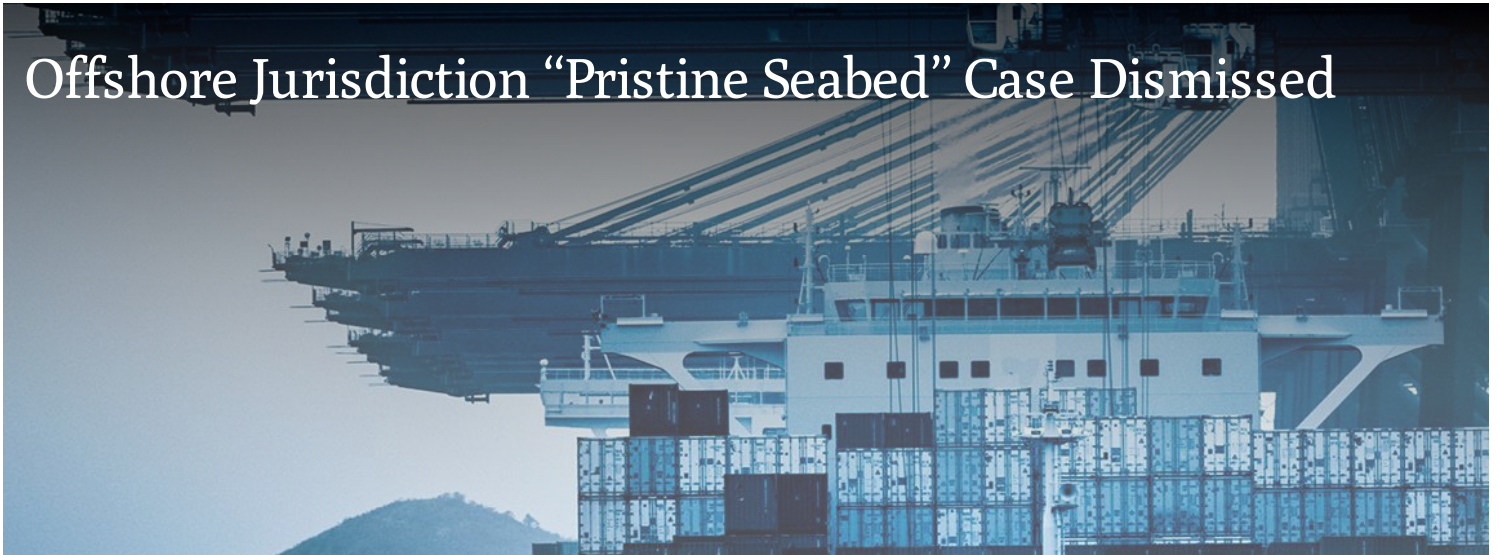


## Offshore Jurisdiction “Pristine Seabed” Case Dismissed



OCTOBER 18, 2023

On October 16, 2023, Judge Kenneth M. Hoyt of the U.S. District Court for the Southern District of Texas (Houston Division) granted the intervenor-defendant American Petroleum Institute’s (API) motion for summary judgment in the case of *Great Lakes Dredge & Dock Company, LLC v. Chris Magnus* (Civil Action No. 4:22-CV-02481). Winston & Strawn LLP represents API in this case.

The plaintiff in the case has been seeking to overturn the interpretation of U.S. Customs and Border Protection (CBP) that the Jones Act does not apply to places on the U.S. outer continental shelf (OCS) where there is nothing attached for the purpose of exploring for, developing, or producing “resources.”

The case stems from the beginning of the U.S. offshore renewable energy program with the enactment of the Energy Policy Act of 2005. That Act granted for the first-time express authority to the federal government to lease offshore areas on the U.S. OCS for the purpose of producing renewable energy such as offshore wind energy. That Act, however, did not amend the pre-existing portion of the Outer Continental Shelf Lands Act (OCSLA) relating to which laws apply on the U.S. OCS. That portion referenced “resources” without defining whether “resources” included the production of renewable energy. It was not until January 2021 that the U.S. Congress changed that OCSLA provision to add the words “non-mineral energy resources.”

CBP has interpreted OCSLA to mean that the Jones Act only applied to the U.S. OCS where an “installation or other device” was “permanently or temporarily attached to the seabed” “for the purpose of exploring for, developing, or producing resources.” Shortly after OCSLA was amended in January 2021, CBP issued a ruling in connection with the installation of scour protection for an offshore wind project. In the wake of the OCSLA amendment, that ruling was that no installation or other device need be present on the seabed for the Jones Act to potentially apply to placement of scour-protection rocks for offshore wind foundations. In March 2021, CBP modified its ruling consistent with prior interpretations of OCSLA.

After CBP denied an administrative appeal submitted by Great Lakes Dredge & Dock Company, LLC (the recipient of the scour protection rulings), that company sued CBP in Texas. Without reaching the merits of the claims, Judge Hoyt granted summary judgment against Great Lakes. Hoyt considered that the plaintiff “did not have a vessel capable of handling the Project [Vineyard I]” and its “claim is hypothetical as opposed to actual.” Judge Hoyt also

considered that the plaintiff did “not have a current contract to perform the Project.” Great Lakes Dredge and Dock filed a notice of appeal in the case on October 16 and so the case will continue.

2 Min Read

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