

RESTRICTING OIL AND GAS LEASES THROUGH WITHDRAWALS UNDER OCSLA: CAN A PRESIDENT RESCIND?

by Carol J. Miller

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President Donald Trump's executive orders make it clear that he will again prioritize oil and natural gas exploration and production over climate change considerations,¹ endangered species protections,² and other types of energy production. Central to that goal is the debate over access to or withdrawal of public lands and waters where key oil or gas reserves may exist.

On January 6, 2025, President Joseph Biden used Outer Continental Shelf Lands Act (OCSLA) §12(a) presidential authority to "withdraw" future oil and gas lease sales, protecting coastal waters on both coasts, much of the eastern Gulf of Mexico, and the Northern Bering Sea Climate Resilience Area.³ This was designated as a permanent withdrawal "without specific expiration." President Trump then issued an Executive Order rescinding President Biden's broad OCSLA withdrawal, despite the lack of specifically delegated authority to rescind prior withdrawals.⁴ These withdrawals have been challenged in two court cases.⁵

President Trump declared a "national energy emergency" on day one of his second term, ordering agencies to expedite oil and gas permitting.⁶ His January 20, 2025, Executive Order No. 14154, *Unleashing American Energy*, specifies that it is the policy of the Trump Administration "to encourage energy exploration and production on Federal lands and waters, including the Outer Continental Shelf," and it orders the immediate review of all agency actions that "Potentially Burden the Development

of Domestic Energy Resources."⁷ He also issued a temporary withdrawal of all of the outer continental shelf (OCS) from offshore wind leasing "for any new or renewed wind energy leasing for the purposes of generation of electricity."⁸ In response to President Trump's Executive Orders, BP announced that it is cutting renewable energy investment by \$5 billion and increasing oil and gas investment by \$10 billion annually.⁹

There is a deep inventory of exploration opportunities, especially in the Gulf of Mexico. Federal lands account for 24% of U.S. oil and gas production.¹⁰ Leasing activities generate more than \$7 billion in revenue per year, according to the American Petroleum Institute.¹¹ In supporting its prohibition on future lease sales, the Biden Administration noted that the oil and gas industry has stockpiled millions of acres of leases on public lands and waters:

- Offshore, of the more than 12 million acres of public waters under lease, more than 9.3 million (or 77%) of those acres are unused and nonproducing.
- Onshore, of the more than 26 million acres under lease to the oil and gas industry, nearly 13.9 million (or 53%) of those acres are unused and nonproducing.
- Onshore and offshore, the oil and gas industry is sitting on approximately 7,700 unused, approved permits to drill.¹²

1. Exec. Order No. 14162, *Putting America First in International Environmental Agreements*, 90 Fed. Reg. 8455 (Jan. 30, 2025).
2. Exec. Order No. 14256, §6(a), (c), *Declaring a National Energy Emergency*, 90 Fed. Reg. 8433 (Jan. 29, 2025).
3. Presidential Memorandum of Jan. 6, 2025, *Withdrawal of Certain Areas of the United States Outer Continental Shelf From Oil or Natural Gas Leasing*, 90 Fed. Reg. 6739 (Jan. 17, 2025); Presidential Memorandum of Jan. 6, 2025, *Withdrawal of Certain Areas of the United States Outer Continental Shelf From Oil or Natural Gas Leasing*, 90 Fed. Reg. 6743 (Jan. 17, 2025). See *infra* Figures 1 and 2.
4. Exec. Order No. 14148, §2, *Initial Rescissions of Harmful Executive Orders and Actions*, 90 Fed. Reg. 8237 (Jan. 28, 2025).
5. Complaint at 5, *Texas v. Biden*, No. 9:25-cv-00010 (E.D. Tex. filed Jan. 20, 2025); Complaint for Declaratory and Injunctive Relief at 24, *Louisiana v. Biden*, No. 2:25-cv-00071 (W.D. La. filed Jan. 17, 2025).
6. Exec. Order No. 14256, §6(a), (c), *Declaring a National Energy Emergency*, 90 Fed. Reg. 8433 (Jan. 29, 2025) (directing the U.S. Environmental Protection Agency (EPA) to minimize Endangered Species Act (ESA) obstacles to energy infrastructure).

7. Exec. Order No. 14154, §§2, 3, *Unleashing American Energy*, 90 Fed. Reg. 8353 (Jan. 29, 2025) (terminating disbursement of funds for electric vehicle charging stations).
8. Presidential Memorandum of Jan. 20, 2025, *Temporary Withdrawal of All Areas on the Outer Continental Shelf From Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects*, 90 Fed. Reg. 8363 (Jan. 29, 2025).
9. Arunima Kumar, *BP Cuts Renewable Investment and Boosts Oil and Gas in Strategy Shift*, REUTERS (Feb. 26, 2025), <https://www.reuters.com/markets/commodities/bp-ramps-up-oil-gas-spending-10-billion-ceo-rebuilds-confidence-2025-02-26/>.
10. Ben Cahill, *Biden Makes Sweeping Changes to Oil and Gas Policy*, CTR. FOR STRATEGIC & INT'L STUD. (Jan. 28, 2021), <https://www.csis.org/analysis/biden-makes-sweeping-changes-oil-and-gas-policy>.
11. Complaint for Declaratory and Injunctive Relief at 1, *Louisiana v. Biden*, No. 2:25-cv-00071 (W.D. La. filed Jan. 17, 2025).
12. Fact Sheet, U.S. Department of the Interior (DOI), *President Biden to Take Action to Uphold Commitment to Restore Balance on Public Lands and Waters, Invest in Clean Energy Future* (Jan. 27, 2021), <https://www.doi.gov>.

According to a 2021 Bureau of Ocean Energy Management (BOEM) report, the mean estimate of undiscovered technically recoverable natural gas resources is 229.03 trillion standard cubic feet of gas and of oil is 68.79 billion barrels of oil (Bbo), for a combined equivalent of 109.54 Bbo. The oil assessment results break down into 29.59 Bbo in the Gulf of Mexico, 10.20 Bbo in the Pacific, 4.31 Bbo in the Atlantic, and 24.69 Bbo in Alaskan waters.¹³

This Comment focuses on energy developments offshore. Part I recognizes OCSLA's purpose of balancing energy needs with protection of marine animals, coastal beaches, and wetlands. Part II discusses examples of presidential use of OCSLA §12(a) authority to protect (withdraw from leasing) portions of the OCS temporarily or permanently, including challenges to President Biden's recent withdrawal of the East Coast, West Coast, and part of the Gulf of Mexico and Bering Strait from future oil and gas leases. Part III explores limitations on OCSLA §12(a) presidential authority to rescind or modify prior presidents' withdrawals. Part IV details the need to protect marine mammals from impacts associated with oil and gas exploration, including seismic air gun blasting and sonar that significantly impairs hearing, communication, balance, feeding, and breeding. Part V examines the potential impact of President Trump's wind moratorium. Part VI provides context for President Trump's pro-energy/anti-environmental initiatives, and Part VII concludes.

I. OCSLA's Purposes

OCSLA requires balancing energy needs and the management of oil and gas exploration with protection for marine animals, coastal beaches, and wetlands.¹⁴ The Secretary of the Interior can suspend an operation, activity, or lease if there is "a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life)."¹⁵ The U.S. Court of Appeals for the Ninth Circuit recognized that where the "the risk to the marine environment outweighs the immediate national interest in exploring and drilling for oil and gas," the Secretary can suspend the leases.¹⁶ The 1972 Coastal Zone Management Act (CZMA) reinforced the need to "preserve, protect, develop, and where possible, to restore or enhance, the resources of the nation's coastal zone for this and succeeding generations."¹⁷

In response to the 1970s energy crisis, the 1978 amendments to the 1953 OCSLA addressed increasing demand for energy resources, and heightened the tension between

these goals.¹⁸ President Trump asserts that we have another "energy emergency," tilting that balance in favor of energy and away from species protection.¹⁹

In OCSLA §12(a), the U.S. Congress delegated the following authority: "The President of the United States may, from time to time, withdraw from disposition any of the unleased lands [waters] of the outer Continental Shelf."²⁰ The authority does not retroactively impede existing leases. There is no express delegation of authority for the president to revoke prior withdrawals of lands [waters] from leasing.²¹

Some of these "withdrawals" from future leasing have been designated as "temporary," while others have been designated "without specific expiration" (permanent). The first use of this presidential authority was by President Dwight Eisenhower to withdraw unleased land and waters of Key Largo Coral Reef Preserve.²² Areas designated as national marine sanctuaries under OCSLA, such as President George H.W. Bush's creation of the Monterey Bay National Marine Sanctuary,²³ are protected "without specific expiration" if they were designated by July 14, 2008.²⁴

Sometimes, a temporary pause in leasing is prudent when an area has experienced a unique stress, such as an oil spill, or the administration needs some time to develop a course of action. These temporary withdrawals have been rescinded or extended by the same or a subsequent president. For example, President George H.W. Bush supported a 10-year "moratorium" on leasing of certain OCS lands and the "delay" of leasing and development on other OCS lands on the East and West Coasts until after the year 2000,²⁵ but his son George W. Bush reopened OCS oceans and Alaskan lands for oil and gas exploration,²⁶ and modified a time-limited withdrawal of President William Clinton.²⁷

[gov/pressreleases/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands](https://www.boem.gov/pressreleases/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands).

13. BOEM, Assessment of Undiscovered Oil and Gas Resources of the Nation's Outer Continental Shelf, 2021 (2021), https://www.boem.gov/sites/default/files/documents/oil-gas-energy/resource-evaluation/2021%20Fact%20Sheet_0.pdf. According to the report, oil-equivalent gas is expressed as 5,620 cubic feet of gas as equivalent to one barrel of oil.

14. OCSLA, 43 U.S.C. §§1331-1356(b) (1953).

15. 43 U.S.C. §1340(a)(1), (g)(3) (1985).

16. *Gulf Oil Corp. v. Morton*, 493 F.2d 141, 144 (9th Cir. 1973).

17. 16 U.S.C. §1452.

18. Pub. L. No. 95-372, 92 Stat. 629 (1978); see U.S. COMMISSION ON OCEAN POLICY, REVIEW OF U.S. OCEAN AND COASTAL LAW: THE EVOLUTION OF OCEAN GOVERNANCE OVER THREE DECADES—APPENDIX 6 TO *AN OCEAN BLUEPRINT FOR THE 21ST CENTURY* (2004).

19. Exec. Order No. 14156, §6(c), Declaring a National Energy Emergency, 90 Fed. Reg. 8433 (Jan. 29, 2025).

20. 43 U.S.C. §1341(a).

21. *League of Conservation Voters v. Trump*, 363 F. Supp. 3d 1013, 1024 (D. Alaska 2019).

22. Proclamation No. 3339, Establishing the Key Largo Coral Reef Preserve, 25 Fed. Reg. 2352 (Mar. 19, 1960).

23. Statement on Outer Continental Shelf Oil and Gas Development, 26 WEEKLY COMP. PRES. DOC. 1006 (June 26, 1990).

24. BOEM, *Areas Under Restriction*, <https://www.boem.gov/oil-gas-energy/leasing/areas-under-restriction> (last visited Feb. 11, 2025).

25. Statement on Outer Continental Shelf Oil and Gas Development, *supra* note 23, at 1006 (President George H.W. Bush withdrew for 10 years areas off the coast of California, Oregon, Washington, the North Atlantic, and portions of the eastern Gulf of Mexico).

26. See Memorandum on Modification of the June 12, 1998, Withdrawal of Certain Areas of the United States Outer Continental Shelf From Leasing Disposition, 1 PUB. PAPERS 15-16 (Jan. 9, 2007).

27. Memorandum on Modification of the Withdrawal of Areas of the United States Outer Continental Shelf From Leasing Disposition, 44 WEEKLY COMP. PRES. DOC. 986 (July 14, 2008) (modifying President Clinton's Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf From Leasing Disposition, 34 WEEKLY COMP. PRES. DOC. 1111 (June 12, 1998)).

Figure 1. Biden OSC Planning Areas Withdrawn From Oil and Gas Leasing

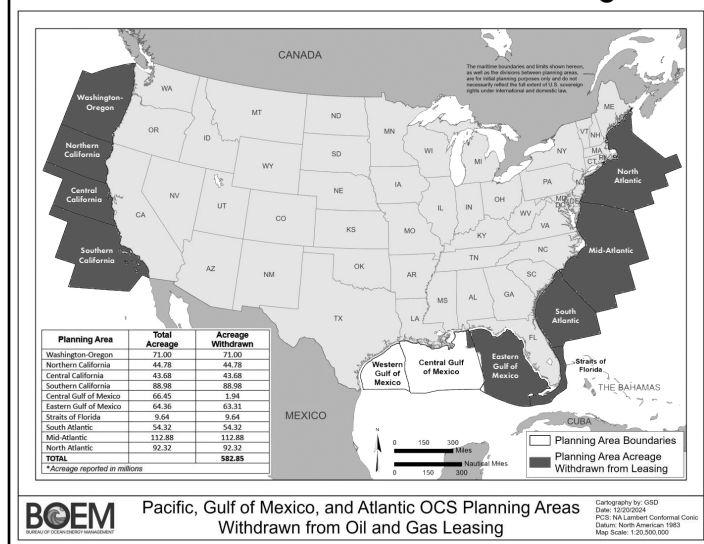
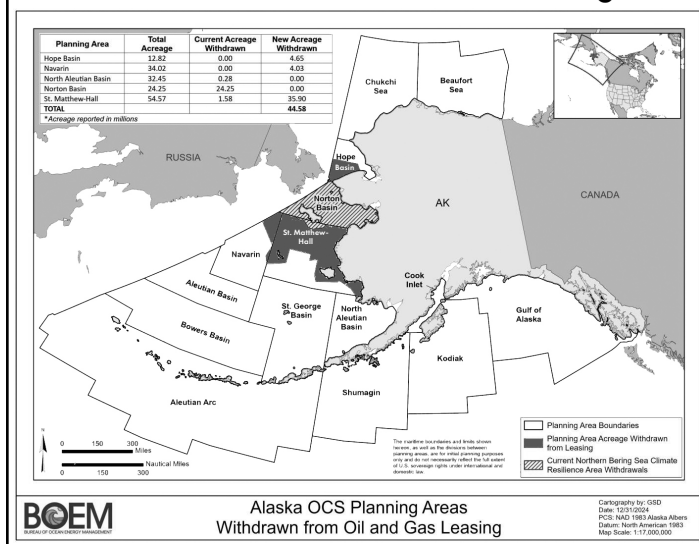


Figure 2. Biden Alaska OCS Planning Area Withdrawn From Oil and Gas Leasing



II. Recent Use of OCSLA §12(a) Presidential Authority

Large sectors of the Gulf of Mexico have been withdrawn from leasing by the 2006 congressional Gulf of Mexico Energy Security Act (GOMESA) moratorium. GOMESA established a moratorium on new oil and gas leases in three areas of the eastern Gulf of Mexico until June 30, 2022.²⁸ Surprisingly, President Trump's 2020 memorandum extended that moratorium on leasing for purposes of exploration, development, or production for an additional 10 years: "This withdrawal does not apply to leasing for environmental conservation purposes, including the purposes of shore protection, beach nourishment and restoration, wetlands restoration, and habitat protection."²⁹ Oil and gas companies generally are more interested in more lucrative deepwater oil exploration, rather than further investment in new leases in the Gulf.³⁰

With two January 6, 2025, memoranda, President Biden withdrew this eastern Gulf of Mexico GOMESA area permanently, in addition to waters off the East and West Coasts³¹ and the Northern Bering Sea Climate Resilience Area, from eligibility for new oil and natural gas leases (see

Figures 1 and 2).³² The withdrawals were intended to be permanent "without specific expiration." This affected 625 million acres of federal land.³³ This declaration does not affect preexisting leases. President Trump issued an Executive Order attempting to rescind those withdrawals.³⁴ Such withdrawals hinder President Trump's expansive energy extraction policy.

Two cases have been filed challenging the expansive Biden withdrawals. The complaint in the Texas case maintains that the vast scope of the area withdrawn from leasing (1) impairs coordination and consultation with the states,³⁵ and (2) violates the major questions doctrine because of the great political and economic significance of such a massive withdrawal.³⁶ Three Gulf states, Alaska, the American Petroleum Institute, and the Gulf Energy Alliance also filed a complaint challenging President Biden's withdrawal, seeking injunctive relief and declaratory judgment that Biden's withdrawal is ultra vires as a violation of separation of powers and the non-delegation doctrine.³⁷ They argue that Congress' authority under the U.S. Constitution's Property Clause is exclusive and cannot be delegated to another branch of government,³⁸ that the major questions doctrine applies,³⁹ and that the OCSLA §12(a) authority Congress

28. GOMESA, Pub. L. No. 109-432, §104(a), 120 Stat. 3001 (2006).

29. Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf From Leasing Disposition, 2020 Daily Comp. Pres. Doc. 659 (Sept. 8, 2020), <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-withdrawal-certain-areas-united-states-outer-continental-shelf-leasing-disposition/>.

30. See David S. Hilzenrath & Nicholas Pacifico, *Drilling Down: Big Oil's Bidding*, PROJECT ON GOV'T OVERSIGHT (Feb. 22, 2018), <https://www.pogo.org/investigation/2018/02/drilling-down-big-oils-bidding> [https://perma.cc/N7SV-643Q]; Richard Valdmanis, *Drillers Give Tepid Response to Record U.S. Offshore Lease Sale*, REUTERS (Mar. 21, 2018), <https://www.reuters.com/article/us-usa-drilling-gulfmexico/drillers-give-tepid-response-to-record-u-s-offshore-lease-sale-idUSKBN1GX18D> [https://perma.cc/RLD8-AVNB].

31. Presidential Memorandum of Jan. 6, 2025, Withdrawal of Certain Areas of the United States Outer Continental Shelf From Oil or Natural Gas Leasing, 90 Fed. Reg. 6743 (Jan. 17, 2025).

32. Presidential Memorandum of Jan. 6, 2025, Withdrawal of Certain Areas of the United States Outer Continental Shelf From Oil or Natural Gas Leasing, 90 Fed. Reg. 6739 (Jan. 17, 2025).

33. Zolan Kanno-Youngs et al., *Trump's Executive Orders: Reversing Biden's Policies and Attacking the "Deep State"*, N.Y. TIMES (Jan. 20, 2025), <https://www.nytimes.com/2025/01/20/us/politics/trump-executive-orders-list.html>.

34. Exec. Order No. 14148, §2, Initial Rescissions of Harmful Executive Orders and Actions, 90 Fed. Reg. 8237 (Jan. 28, 2025).

35. Complaint at 5, Texas v. Biden, No. 9:25-cv-00010 (E.D. Tex. filed Jan. 20, 2025).

36. *Id.* ¶¶ 28, 31.

37. Complaint for Declaratory and Injunctive Relief at 24, Louisiana v. Biden, No. 2:25-cv-00071 (W.D. La. filed Jan. 17, 2025).

38. *Id.* ¶¶ 8, 9; U.S. CONST. art. IV, §3, cl. 2.

39. *Louisiana v. Biden*, No. 2:25-cv-00071, ¶¶ 90-95.

delegated to the president is unconstitutionally broad and infringes on states' rights.

Both complaints assert that the tens of millions of dollars each state gets from oil lease revenue-sharing are at risk,⁴⁰ even though current leases would still be in effect. The 2005 Energy Policy Act amendments to OCSLA require part of the royalty receipts to go to the affected states.⁴¹ This challenge to the Biden withdrawals is pending in the same Western District of Louisiana court that previously held that “pausing” the leases by executive or secretarial order was beyond the authority of the president under OCSLA.⁴²

President Trump's Executive Order No. 14154, *Unleashing American Energy*, directs agencies “to encourage energy exploration and production on Federal lands and waters, including the Outer Continental Shelf.” It requires agency heads to review all regulations that unduly burden development of domestic energy resources and to implement action plans to suspend, revise, or rescind these regulations, especially those that burden oil, natural gas, coal, hydropower, biofuels, nuclear energy, and critical mineral resources.⁴³ In Executive Order No. 14148, President Trump specifically rescinded President Biden's two January 6, 2025, memoranda that withdrew most of the OSC from future oil and gas leasing.⁴⁴ The question remains whether he had statutory authority to do so.

During his first Administration, President Trump attempted to modify President Barack Obama's OCSLA withdrawal of certain Alaskan waters.⁴⁵ Pursuant to OCSLA §12(a) authority, President Obama issued three memoranda⁴⁶ and one Executive Order withdrawing from oil and mineral leasing certain areas of the OCS, thereby creating protective zones for the Beaufort and Chukchi

Seas of Alaska “without specific expiration,” with the intent to protect them from future reversal.⁴⁷ When protecting portions of the Arctic OCS in 2016, President Obama stated that doing so was

consistent with principles of responsible public stewardship entrusted to this office, with due consideration of (1) the important, irreplaceable values of the Chukchi Sea and portions of the Beaufort Sea for marine mammals, other wildlife, wildlife habitat, scientific research, and Alaska Native subsistence use; (2) the vulnerability of these ecosystems to an oil spill; and (3) the unique logistical, operational, safety, and scientific challenges and risks of oil extraction and spill response in these Arctic waters.⁴⁸

President Trump “modified” President Obama's orders, deleting this protected area withdrawal from the orders to foster his broader energy objectives.⁴⁹ In his first term, President Trump issued Executive Order No. 13783, *Promoting Energy Independence and Economic Growth*, prioritizing four energy sectors: oil, natural gas, coal, and nuclear. He called for reversal of environmental rules that created “regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.”⁵⁰ President Trump's first Secretary of the Interior, Ryan Zinke, hoped to open up 90% of the OCS for drilling.⁵¹ The Bureau of Safety and Environmental Enforcement (BSEE)⁵² issued a permit allowing Eni U.S. Operating Co. to drill exploratory wells in the Beaufort Sea,⁵³ the very area President Obama tried to protect.

40. *Id.* ¶¶ 50-52. Under OCSLA's revenue-sharing program, a state with one or more offshore federal leases within the first three miles from its seaward boundary receives 27% of the revenue generated from those leases. 43 U.S.C. §1337(g)(5)(A). GOMESA provides for sharing 37.5% of qualified OCS revenues among plaintiffs Alabama, Louisiana, and Mississippi to aid in coastal-restoration efforts. Texas received \$95.5 million in GOMESA payments in 2024. *Texas v. Biden*, No. 9:25-cv-00010, ¶ 20.

41. Pub. L. No. 109-58, §321, 119 Stat. 594 (2005); BOEM, *OCS Lands Act History*, <https://perma.cc/75VV-KZGT> (last visited Feb. 11, 2025); U.S. COMMISSION ON OCEAN POLICY, *supra* note 18, ch. 2.

42. *Louisiana v. Biden*, 622 F. Supp. 3d 267, 294 (W.D. La. 2022).

43. Exec. Order No. 14154, §2, 3, *Unleashing American Energy*, 90 Fed. Reg. 8353 (Jan. 29, 2025).

44. Exec. Order No. 14148, §2, *Initial Rescissions of Harmful Executive Orders and Actions*, 90 Fed. Reg. 8237 (Jan. 28, 2025).

45. Exec. Order No. 13795, *Implementing an America-First Offshore Energy Strategy*, 82 Fed. Reg. 20815 (Apr. 28, 2017) (modifying President Obama's 2015 and 2016 orders to ensure ongoing lease sales scheduled under the 2017-2022 OCS Oil and Gas Leasing Proposed Final Program proceed). See also Exec. Order No. 13783, §2, *Promoting Energy Independence and Economic Growth*, 82 Fed. Reg. 16093 (Mar. 31, 2017).

46. Exec. Order No. 13754, §3, *Northern Bering Sea Climate Resilience*, 81 Fed. Reg. 90669 (Dec. 9, 2016); Memorandum on Withdrawal of Certain Areas Off the Atlantic Coast on the Outer Continental Shelf From Mineral Leasing, DCPD201600861 (Dec. 20, 2016); Memorandum on Withdrawal of Certain Portions of the United States Arctic Outer Continental Shelf From Mineral Leasing, DCPD201600860 (Dec. 20, 2016); Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf Offshore Alaska From Leasing Disposition, DCPD201500059 (Jan. 27, 2015) (“This withdrawal prevents consideration of these areas for any future oil or gas leasing for purposes of exploration, development, or production.”).

47. *Withdrawal of Certain Areas of the United States Outer Continental Shelf Offshore Alaska From Leasing Disposition*, DCPD201500059 (Jan. 27, 2015).

48. *Withdrawal of Certain Areas Off Atlantic Coast on the Outer Continental Shelf From Mineral Leasing*, DCPD201600861 (Dec. 20, 2016).

49. Exec. Order No. 13795, §5, *Implementing an America-First Offshore Energy Strategy*, 82 Fed. Reg. 20815 (May 3, 2017); Nathan Rott & Merrit Kennedy, *Trump Signs Executive Order on Offshore Drilling and Marine Sanctuaries*, NPR (Apr. 27, 2017), <https://www.npr.org/sections/thetwo-way/2017/04/27/1525959808/trump-to-sign-executive-order-on-offshore-drilling-and-marine-sanctuaries> [<https://perma.cc/4S5U-2H37>].

50. Exec. Order No. 13783, §2, *Promoting Energy and Economic Growth*, 82 Fed. Reg. 16093 (Mar. 31, 2017). This Executive Order also rescinded several climate change directives of the Obama Administration, which impact marine species. See Carol Miller & Bonnie Persons, *Offshore Oil Leasing: Trump Administration's Environmentally Dangerous Energy Policy*, 43 WM. & MARY ENV'T L. & POL'Y REV. 329 (2019).

51. LAURA B. COMAY, CONGRESSIONAL RESEARCH SERVICE, R44692, *FIVE-YEAR OFFSHORE OIL AND GAS LEASING PROGRAM FOR 2019-2024: STATUS AND ISSUES IN BRIEF* (2019), <https://crsreports.congress.gov/product/pdf/R/R44692/17>.

52. BOEM, *supra* note 41. After the *Deepwater Horizon* Gulf oil spill, BSEE was created in 2011 to focus on enforcement of safety regulations and to provide the public with technical information about offshore drilling.

53. Press Release, BSEE, *BSEE Approves New Drilling Operations in Arctic* (Nov. 28, 2017), <https://www.bsee.gov/newsroom/latest-news/statements-and-releases/press-releases/bsee-approves-new-drilling-operations-in-> See Eni Gets Clearance to Drill Offshore Alaska, OFFSHORE (Nov. 30, 2017), <https://www.offshore-mag.com/drilling-completion/article/16800147/eni-gets-clearance-to-drill-offshore-alaska>; Chris D'Angelo, *Trump Administration Greenlights New Oil-Drilling Operations in Arctic Waters*, HUFFINGTON POST (Nov. 28, 2017), https://www.huffingtonpost.com/entry/spy-island-arctic-drilling_us_5a1dd740e4b0d724fed450bb. Royal Dutch Shell stopped drilling in the Chukchi Sea in 2015 after expending \$7 billion in unsuccessful oil exploration. Many competitors reached the same conclu-

The OCSLA 1978 amendments emphasized the need for cooperation with state and local governments.⁵⁴ In 2019, attorneys general from 12 states sent a letter to Interior Secretary Zinke, opposing the Trump Administration's plans to expand OCS exploration and drilling. They expressed their "deep concerns about and opposition to the Trump Department of the Interior's 2019-2024" offshore drilling plan, which "threatens these jobs and the economic prosperity of our states."⁵⁵ Similarly, 10 governors from East and West Coast states opposed the expansion of OCS exploration and drilling.⁵⁶ Several Gulf states, however, now challenge President Biden's protection of those OCS waters/lands from future leases.⁵⁷

BOEM is responsible for preparing the Five-Year OCS Oil and Gas Leasing Program and accompanying National Environmental Policy Act (NEPA) analyses.⁵⁸ Under the Five-Year Offshore Oil and Gas Leasing Program for 2024-2029, only three leases are scheduled for the Gulf region. Only one lease is scheduled off Alaska, in the Cook Inlet. No leases are scheduled for the OCS of the Atlantic or Pacific. No new offshore oil and gas lease sales have occurred in the Atlantic region since 1983 and none have occurred in the Pacific region since 1984, although both have active leases with production.⁵⁹

III. Can a President Rescind a Previous President's Withdrawal of Land/Water?

Can a president rescind a previous president's withdrawal of land/water under OCSLA §12(a) if the withdrawal was "without specific expiration"?⁶⁰ In OCSLA §12(a), Congress delegated the following authority: "The President of the United States may, from time to time, withdraw from disposition any of the unleased lands [waters] of the outer Continental Shelf."⁶¹

sion that drilling in the Arctic was not profitable and was too dangerous because of the cold, wind, and ice.

54. OCSLA Amendments §§101(5), 102(6); 43 U.S.C. §1311(a), Pub. L. No. 95-372, 92 Stat. 629 (1978).

55. Letter from Attorneys General of States and Commonwealths of North Carolina, California, Connecticut, Delaware, Maine, Massachusetts, Maryland, New Jersey, New York, Oregon, Rhode Island, and Virginia to Secretary Ryan Zinke, DOI, re: Initial Atlantic and Pacific State Comments on 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program (Feb. 1, 2018), https://www.marylandattorneygeneral.gov/news%20documents/Offshore_drilling_letter_February_1_2018.pdf [<https://perma.cc/5EXE-RUMS>]. See also Ledyard King, *More States Want to Be Exempted From Drilling*, USA TODAY (Jan. 11, 2017), <https://www.usatoday.com/story/news/politics/2018/01/10/after-trump-administration-excludes-florida-offshore-drilling-other-coastal-states-seek-similar-reli/1019966001> [<https://perma.cc/TTC4-MJTS>].

56. *Most Coastal Governors Oppose Trump Offshore Drilling Plan*, ASSOCIATED PRESS (Jan. 11, 2018), <https://www.apnews.com/6f2ebecb11aa4ed49b6a491596979c33> [<https://perma.cc/J9R9-GV6Z>].

57. *Texas v. Biden*, No. 9:25-cv-00010 (E.D. Tex. filed Jan. 20, 2025); *Louisiana v. Biden*, No. 2:25-cv-00071 (W.D. La. filed Jan. 17, 2025).

58. BOEM, *supra* note 41.

59. COMAY, *supra* note 51.

60. See discussion in Carol Miller, *Marine Mammals vs. Gas and Oil, Presidential Authority Under OCSLA*, 35 NAT. RES. & ENV'T 44 (2021), and Kevin Leske, "Un-Shelfing" Lands Under the Outer Continental Shelf Lands Act (OCSLA): Can a Prior Executive Withdrawal Under §12(a) Be Trumped by a Subsequent President?, 16 NYU ENV'T L.J. 1 (2017).

61. 43 U.S.C. §1341(a).

President Trump's Executive Order No. 13795, which "modified" President Obama's protection of these Alaskan waters, was particularly controversial because it was the first time a subsequent president had issued an order to delete a withdrawal that was intended to be permanent, "without specific expiration." The League of Conservation Voters, along with nine other nongovernmental organizations (NGOs), challenged President Trump's attempted rescission in the U.S. District Court for the District of Alaska.⁶² Judge Sharon Gleason observed that:

the statute's inclusion of the phrase "from time to time" renders the text of Section 12(a) ambiguous. On the one hand, the phrase could be interpreted simply to make clear the President's authority to make withdrawals at any time and for discrete periods of time, as well as make withdrawals that extend indefinitely into the future unless and until revoked by Congress. On the other hand, the phrase could be interpreted more broadly to accord to each President the authority to revoke or modify any prior withdrawal. The phrase "from time to time" appears to clarify the President's withdrawal authority by giving him the discretion to withdraw lands at any time and for discrete periods; the phrase does not specifically give the President the authority to revoke a prior withdrawal.⁶³

Judge Gleason strictly construed presidential power, holding that the president has the power to withdraw lands, but not the power to rescind a withdrawal that is "without specific expiration."⁶⁴ The court's ruling was supported by two basic premises: the Constitution vests primary authority in Congress regarding the disposition of U.S. property in Article IV, §3, clause 2, and congressional delegation of the authority to the president to create a designation does not automatically imply that he can revoke a prior designation. Therefore, it is within the authority of Congress to modify an area that a president has designated for protection/withdrawal, but it is not within the authority of a subsequent president to do so under current OCSLA authority. Judge Gleason thus vacated President Trump's Executive Order, restoring the Obama withdrawals in the Alaskan waters.⁶⁵

Because the district court granted summary judgment in favor of the NGOs in the *League of Conservation Voters* case, the Trump Administration delayed issuance of its 2019-2024 Five-Year Plan to open 90% of the OCS to oil and gas leasing, pending its appeal to the Ninth Circuit.⁶⁶ After President Biden restored President Obama's OCSLA protection,⁶⁷ the Ninth Circuit ruled that the case

62. *League of Conservation Voters v. Trump*, 363 F. Supp. 3d 1013 (D. Alaska 2019).

63. *Id.* at 1024.

64. *Id.* at 1021.

65. *Id.* at 1031 (Judge Gleason vacated President Trump's Executive Order No. 13795, §5). The order was vacated by the Ninth Circuit after President Biden restored President Obama's withdrawal protection.

66. COMAY, *supra* note 51.

67. Biden's Executive Order No. 13990, §4(b), 86 Fed. Reg. 737 (Jan. 25, 2021), revoked President Trump's Executive Order No. 13795, and Presi-

was moot and vacated the district court's judgment.⁶⁸ It is worth noting, however, that the Texas complaint challenging President Biden's OCSLA withdrawal cites this *League of Conservation Voters* case as authority.⁶⁹

Arguably, by not including express authority for a president to revoke designations, Congress intended to retain its authority to do so under both OCSLA and, by analogy, the Antiquities Act, which authorizes the president to designate national monuments for historical or scientific purposes.⁷⁰ There are five marine national monuments.⁷¹ Neither the text nor the legislative history of OCSLA or the Antiquities Act authorizes the president to revoke prior designations.⁷²

A 1938 Attorney General Opinion interpreting the Antiquities Act concluded that a president does not have a de facto right to revoke when the president is given express authority to create something; Congress needs to make the power to revoke explicit for it to exist.⁷³ Based on that interpretation, President Trump exceeded his authority in his first term when he attempted to downsize Antiquities Act designations of Bears Ears and Grand Staircase-Escalante to try to carve out land with mineral, oil, or gas potential resources. Cases brought against those actions argued that President Trump acted in an ultra vires, arbitrary, and capricious manner, violating separation of powers and the "Take Care" Clause of the Constitution.⁷⁴

President Trump may try to argue that a president has implicit authority to undo anything statutes authorize him to do. Alternatively, he may argue that he is only trying to "modify," not rescind, a previous withdrawal, citing President George W. Bush's 2008 unchallenged modification of a withdrawal.⁷⁵ There has been no court ruling on the validity of a modification. The modification argument is weakened with respect to the January 6, 2025, Biden withdrawals, however, because President Trump specifically listed the withdrawals among the executive actions he was

revoking in Executive Order No. 14148; he was not modifying Biden's orders.⁷⁶ Congress can compel action related to OCSLA leases, as it did when President Biden attempted to pause leases,⁷⁷ or amend OCSLA, but it is unlikely that the Congressional Review Act could be used to negate President Biden's withdrawal, because the president is not an "agency" for purposes of that Act.⁷⁸

IV. Protecting Aquatic Mammals From Harms of Oil and Gas Exploration and Extraction

Policies pursuant to OCSLA are supposed to balance energy needs and the management of oil and gas exploration with protection for marine animals, coastal beaches, and wetlands.⁷⁹

Seismic surveys, sonar, and blasting that are used to map geographic structures in the seabed to search for oil and natural gas reservoirs can cause significant hearing damage to marine mammals. Seismic air guns (and military sonar) emit explosive, repetitive sound waves that travel great distances, interfering with other sounds in the ocean, and the cumulative effect poses significant risks to marine life.⁸⁰ The persistent shock waves and rapid changes in pressure can cause tissue destruction and deafen marine mammals who are highly dependent on their key senses for survival. It affects their balance and ability to navigate, judge depths, communicate, feed, and breed. Changes in communication (calls) between whales and dolphins have been observed with reduced or increased vocal activities and change in pitch.⁸¹

Behavioral reactions include changes in duration of surfacing and diving, number of blows per surfacing, abandonment of preferred feeding grounds, and even strandings. Prey may also attempt to flee the area of the sound impact, disrupting schooling and further impairing feeding success. Reproduction and survival are jeopardized. These high-impact risks are widely recognized in Marine Mammal Protection Act "incidental take" applications.

dent Biden restored Obama's Executive Order No. 13754 and Obama's Dec. 16, 2016, memorandum that protected Arctic OCS waters and placed a temporary moratorium on all leasing in the Arctic National Wildlife Refuge (ANWR).

68. Order, *League of Conservation Voters v. Trump*, No. 19-35460 (9th Cir. Apr. 13, 2021), *vacated as moot* by 843 F. App'x 937 (9th Cir. 2021). The Ninth Circuit agreed with the parties that President Biden's revocation of President Trump's Executive Order rendered the case moot. The Ninth Circuit directed the district court to dismiss the case without prejudice.

69. Complaint at 3, *Texas v. Biden*, No. 9:25-cv-00010 (E.D. Tex. filed Jan. 20, 2025).

70. 54 U.S.C. §320301(a)-(b).

71. BOEM, *supra* note 24.

72. See Brief of Natural Resources Law Professors as Amicus Curiae in Support of *League of Conservation Voters* at 8-10, 14, *League of Conservation Voters*, No. 19-35460 (9th Cir. Feb. 20, 2020).

73. See Proposed Abolishment of Castle Pinckney National Monument, 39 Op. Att'y Gen. 185, 185 (1938) (interpreting Antiquities Act §2, 54 U.S.C. §320301(b)). Congress historically used the terms "withdrawal" and "reservation" interchangeably.

74. U.S. CONST. art. II, §3. See Complaint for Declaratory and Injunctive Relief at 55, *Diné Bikéyah v. Trump*, No. 1:17-cv-02605 (D.D.C. filed Dec. 6, 2017); Complaint for Injunctive and Declaratory Relief at 33-37, 50-57, *Wilderness Soc'y v. Trump*, No. 1:17-cv-02587 (D.D.C. filed Dec. 4, 2017).

75. ADAM VANN, CONGRESSIONAL RESEARCH SERVICE, LSB11259, BIDEN ADMINISTRATION WITHDRAWS OFFSHORE AREAS FROM OIL AND GAS LEASING: CAN A WITHDRAWAL BE WITHDRAWN? (2025).

76. Exec. Order No. 14148, §2, Initial Rescissions of Harmful Executive Orders and Actions, 90 Fed. Reg. 8237 (Jan. 28, 2025).

77. In *Louisiana v. Biden*, 622 F. Supp. 3d 267, 294 (W.D. La. 2022), Judge Terry Doughty vacated Executive Order No. 14008, which ordered the Secretary of the Interior to "pause" (stop) prescheduled lease sales. The 2022 Inflation Reduction Act (IRA) directed BOEM (DOI) to (1) conduct the three remaining lease sales from the 2017-2022 program that President Biden cancelled, and (2) issue the leases from Lease Sale 257.

78. VANN, *supra* note 75.

79. 43 U.S.C. §§1331-1356(b) (1953).

80. See MINERALS MANAGEMENT SERVICE, DOI, LEASING OIL AND NATURAL GAS RESOURCES: OUTER CONTINENTAL SHELF 13-15 (2005), <https://www.boem.gov/sites/default/files/boem-newsroom/Offshore-Stats-and-Facts/Atlantic-Region/GreenBook-LeasingDocument.pdf>; Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Oil and Gas Activities in Cook Inlet, Alaska, 84 Fed. Reg. 12330, 12332, 12352 (Apr. 1, 2019).

81. See Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Open Water Marine Seismic Survey in the Chukchi Sea, Alaska, 75 Fed. Reg. 32379, 32382 (June 8, 2010); see 84 Fed. Reg. 12330, 12332, 12346, 12352 (Apr. 1, 2019). See discussion in Miller & Persons, *supra* note 50.

On the Atlantic Coast, impacted marine mammals include the following endangered species: North Atlantic right whale, blue whale, fin whale, sei whale, humpback whale, and sperm whale.⁸² In addition, fishermen estimate that seismic noise may reduce their fish catch by 40%-80%, as Atlantic cod, haddock, rockfish, herring, sand eel, and blue whiting are also impacted.⁸³ So, increased oil revenues may pose an offsetting economic disadvantage for fishermen.

In addition to the risks posed by seismic blasting, marine mammals are subject to risks from drilling equipment noise, drilling discharges, seafloor disturbance, vessel and equipment noise, vessel traffic, aircraft traffic and noise, trash and debris, onshore support activities, and accidental fuel spills.⁸⁴

V. Wind Energy

The Office of Energy Efficiency and Renewable Energy implements the energy and infrastructure provisions of the Inflation Reduction Act of 2022 (IRA), including IRA tax credits for wind energy projects. The IRA placed some restrictions on wind energy leases. If there are not 60 million acres of oil or gas leases in a given year, BOEM cannot issue a lease for offshore wind development,⁸⁵ so the fact that there are only four oil and gas leases scheduled for the next five years impacts wind leases. President Trump's Executive Order No. 14154, *Unleashing American Energy*, repeals President Biden's Executive Order No. 14082 implementing the IRA.⁸⁶

Three states (New York, Rhode Island, and Virginia) have operational wind farms, and twelve other states have wind farms in the planning or permitting stages.⁸⁷ Rhode Island Block Island Wind Farm began the first offshore wind farm in December 2016.⁸⁸ Massachusetts' deal with Vineyard Wind 2 for a 1.2-gigawatt wind farm is now in jeopardy, as the company laid off 50 workers since President Trump issued his memorandum ordering a moratorium on wind projects,⁸⁹ stating that "To position our projects for

sustainable long-term success we have made the difficult decision to reduce our current team size in light of recent market uncertainties."⁹⁰

At least 23 U.S. factories planned to manufacture offshore wind components, but companies are not willing to build large manufacturing facilities when there is not a stable investment climate. Prysmain, an Italian company, secured permits and tax breaks to build a plant in Somerset, Massachusetts, to manufacture undersea cables for offshore wind farms, which would have created 150 American jobs, but it has scrapped those plans since it is unlikely that a lot of offshore wind projects will be built in the current political climate.⁹¹

Trump's wind moratorium does not apply to state permits on land-based wind projects, but does impact offshore projects requiring both state and federal approval. The majority of wind projects are not on federal lands or waters, but rather are on private lands.⁹² Those projects can continue, but tax credits and incentives may be in jeopardy.⁹³ President Trump's director of the Office of Management and Budget, Russell Vought, proposes using impoundment to withhold appropriated funds, such as IRA tax credits, and to delay appropriated expenditures, a questionable interpretation of the Impoundment Control Act.⁹⁴

In his first term, Trump issued Executive Order No. 13795, *Implementing an America-First Offshore Energy Strategy*, that included offshore energy generation from "wind, oil, natural gas, [and] methane hydrates."⁹⁵ A Yale University study published in 2017 revealed that 73% of Trump voters believed that the United States should use more renewable energy and 71% favored additional funding for clean energy research. Despite this, President Trump issued the January 20, 2025, memorandum to withdraw all of the OCS from offshore wind leasing "for any new or renewed wind energy leasing for the purposes of generation of electricity."⁹⁶ This memorandum ("Wind Moratorium

82. BOEM, ATLANTIC OCS PROPOSED GEOLOGICAL AND GEOPHYSICAL ACTIVITIES—MID-ATLANTIC AND SOUTH ATLANTIC PLANNING AREAS: FINAL PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT (2014).

83. OCEANA, OFFSHORE OIL & GAS EXPLORATION: SEISMIC AIRGUN BLASTING (2020), https://usa.oceana.org/wp-content/uploads/sites/4/662/seismic_fact_sheet_long_final_7-25_0.pdf.

84. BOEM, *supra* note 82.

85. See IRA, Pub. L. No. 117-169, §50265(b), 136 Stat. 1818 (2022). See the discussion in LAURA COMAY & CORRIE CLARK, CONGRESSIONAL RESEARCH SERVICE, IN11980, OFFSHORE WIND PROVISIONS IN THE INFLATION REDUCTION ACT (2024). The IRA tied offshore wind production to conventional leasing through 2032.

86. Exec. Order No. 14154, *Unleashing American Energy*, 90 Fed. Reg. 8353 (Jan. 29, 2025).

87. See Barbara Kates-Garnick, *Trump's Offshore Wind Energy Freeze: What States Lose If the Executive Order Remains in Place*, CONVERSATION (Feb. 6, 2025), <https://theconversation.com/trumps-offshore-wind-energy-freeze-what-states-lose-if-the-executive-order-remains-in-place-249125>.

88. See Tatiana Schlossberg, *America's First Offshore Wind Farm Spins to Life*, N.Y. TIMES (Dec. 14, 2016), <https://www.nytimes.com/2016/12/14/science/wind-power-block-island.html>.

89. Presidential Memorandum of Jan. 20, 2025, *Temporary Withdrawal of All Areas on the Outer Continental Shelf From Offshore Wind Leasing and*

Review of the Federal Government's Leasing and Permitting Practices for Wind Projects, 90 Fed. Reg. 8363 (Jan. 29, 2025).

90. *Vineyard Offshore Cuts 50 Jobs Amid Trump Uncertainty*, OCEAN ENERGY RES. (Feb. 22, 2025), <https://ocean-energyresources.com/2025/02/22/vineyard-offshore-cuts-50-jobs-amid-trump-uncertainty/>; Kates-Garnick, *supra* note 87.

91. Ben Berke, *Company Cancels Plans to Build Offshore Wind Industry Factory in Massachusetts*, NPR (Feb. 26, 2025), <https://www.npr.org/2025/02/26/nx-s1-5273818/company-cancels-plans-to-build-offshore-wind-industry-factory-in-massachusetts>.

92. *Id.*

93. Schlossberg, *supra* note 88.

94. U.S. Senate Committee on Appropriations, Senator Murray Grills OMB Nominee Russ Vought—Slamming Trump Executive Orders to Illegally Withhold Funding for Communities Across America (Jan. 22, 2025), <https://www.appropriations.senate.gov/news/minority/senator-murray-grills-omb-nominee-russ-voughtslamming-trump-executive-orders-to-illegally-withhold-funding-for-communities-across-america>.

95. Executive Order No. 13795, *Implementing an America-First Offshore Energy Strategy*, 82 Fed. Reg. 20815 (May 3, 2017), was rescinded by President Biden in §7(a) of Executive Order No. 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, 86 Fed. Reg. 7037 (Jan. 25, 2021). President Trump then rescinded Executive Order No. 13990 in §2 of Executive Order No. 14148, *Initial Rescissions of Harmful Executive Orders and Actions*, 90 Fed. Reg. 8237 (Jan. 28, 2025).

96. Presidential Memorandum of Jan. 20, 2025, *Temporary Withdrawal of All Areas on the Outer Continental Shelf From Offshore Wind Leasing and*

Memorandum”) is designated as “temporary,” so it can be revisited at a later date. Perhaps it is further evidence of the political divide, however, at a time when the nation needs to be utilizing a balance between energy resources while moving toward less dependence on oil.

The Wind Moratorium Memorandum directs the Secretaries of the Interior, Agriculture, and Energy and the U.S. Environmental Protection Agency (EPA) Administrator to not issue any “new or renewed approvals, right of way, permits, leases, or loans for onshore or offshore wind projects.”⁹⁷ Because of the renewal pause, existing offshore wind energy leases are in jeopardy. Since the U.S. Fish and Wildlife Service is part of the U.S. Department of the Interior (DOI), incidental take permits for bird casualties with wind projects may be halted. If there is a major federal action that triggers a NEPA finding of no significant impact or environmental impact statement, it is debatable whether these activities are covered by the Wind Moratorium Memorandum, since these are technically “statements” rather than “approvals” or “permits.”⁹⁸

It is uncertain the extent to which the Wind Moratorium Memorandum impacts other non-listed agencies. The Federal Energy Regulatory Commission (FERC) is not specifically listed and does not issue the types of approvals or permits referenced; most of the authorizations necessary for a wind project to sell electricity or obtain a market rate tariff become effective without affirmative action by FERC if FERC does not act *within sixty days*.⁹⁹ Solar and battery storage projects are not addressed in the Wind Moratorium Memorandum.

VI. Context for President Trump’s Pro-Energy/Anti-Environmental Initiatives

President Trump’s actions with OCSLA need to be put into context with numerous other actions that demonstrate his disdain for environmental regulatory protections.¹⁰⁰ President Trump declared a national energy emergency, ordering agencies to expedite oil and gas per-

mitting.¹⁰¹ This Executive Order also directs the creation of an Endangered Species Act (ESA) Committee to “convene to identify obstacles to domestic energy infrastructure specifically deriving from implementation of the ESA or the Marine Mammal Protection Act, to include regulatory reform efforts, species listings, and other related matters with the aim of developing procedural, regulatory, and interagency improvements.”¹⁰² This committee is ordered to facilitate exemption from obligations to ESA §7 consultation.¹⁰³ Further, the EPA Administrator is ordered to cooperate with emergency U.S. Army Corps of Engineers permitting provisions.¹⁰⁴

Opening up drilling on land in the Arctic National Wildlife Refuge (ANWR) was a priority of the first Trump Administration and is again a priority. The final version of the 2017 tax reform bill¹⁰⁵ included opening up 1.5 million acres of ANWR to oil drilling. The coastal plain of ANWR is the calving ground for caribou, the primary onshore denning habitat for polar bears, and the nesting grounds for migratory birds. Near the end of the first Trump Administration, DOI issued nine new leases for drilling in ANWR, but major oil companies decided not to bid on an ANWR lease.¹⁰⁶

President Biden directed DOI to outline steps to counter climate change, including a commitment to conserve at least 30% each of our lands and waters by 2030.¹⁰⁷ Pursuant to Biden’s Executive Order No. 14008,¹⁰⁸ Interior Secretary Deb Haaland issued a Secretarial Order temporarily halting oil and gas leasing in ANWR.¹⁰⁹ OCSLA contains a four-step process that the Secretary must follow in order to administer a leasing program that sells exploration interests in portions of the OCS to the highest bidder.¹¹⁰ The stat-

Review of the Federal Government’s Leasing and Permitting Practices for Wind Projects, 90 Fed. Reg. 8363 (Jan. 29, 2025).

97. *Id.* §2(a).

98. Megan P. Caldwell et al., *Trump Executive Actions Impacting Renewable Energy*, HUSCH BLACKWELL (Jan. 28, 2025), <https://www.huschblackwell.com/newsandinsights/trump-executive-actions-impacting-renewable-energy>.

99. *Id.*

100. See Andrew Feinberg, *Trump Demands California Voter ID Law for Wildfire Relief and Threatens FEMA Upon Arrival in North Carolina*, NEWSBREAK (Jan. 25, 2025), <https://www.newsbreak.com/news/3775808326845-trump-demands-california-voter-id-law-for-wildfire-relief-and-threatens-fema-upon-arrival-in-north-carolina>. President Trump stated that he might give California fire victims some federal funds if California would change its policies on water management, lighten up on its environmental regulations, and pass a voter identification law. He also intends to revamp or abolish the Federal Emergency Management Agency (FEMA), leaving it to individual states to deal with natural disasters. FEMA was created by President Jimmy Carter’s Executive Order in 1979, but was officially created as a federal agency by Congress in 1988 and made part of the Department of Homeland Security in 2002. Since FEMA was created by Congress, a president should not be able to abolish it by executive order.

101. Exec. Order No. 14256, Declaring a National Energy Emergency, 90 Fed. Reg. 8433 (Jan. 29, 2025).

102. *Id.* §6(c).

103. *Id.* §6(a).

104. *Id.* §4(c).

105. An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018 (Tax Cuts and Jobs Act), Pub. L. No. 115-97, §20001(b)(2)(A), (B), 131 Stat. 2236 (2017).

106. Tegan Hanlon & Nat Hertz, *Major Oil Companies Take a Pass on Controversial Lease Sale in Arctic Refuge*, NPR (Jan. 6, 2021), <https://www.npr.org/2021/01/06/953718234/major-oil-companies-take-a-pass-on-controversial-lease-sale-in-arctic-refuge>.

107. Fact Sheet, DOI, *supra* note 12.

108. Exec. Order No. 14008, §208, Tackling the Climate Crisis at Home and Abroad, 86 Fed. Reg. 7619 (Feb. 1, 2021).

109. Sec. Order No. 3401, Comprehensive Analysis and Temporary Halt on All Activities in the Arctic National Wildlife Refuge Relating to the Coastal Plain Oil and Gas Leasing Program (June 1, 2021), <https://www.doi.gov/document-library/secretary-order/so-3401-comprehensive-analysis-and-temporary-halt-all-activities>; see Andy McGlashen, *Biden Puts Arctic Refuge Oil Drilling Leases on Hold, Citing Legal Flaws*, AUDUBON (June 2, 2021), <https://www.audubon.org/news/biden-puts-arctic-refuge-oil-drilling-leases-hold-citing-legal-flaws>.

110. See Outer Continental Shelf Leasing Program, 43 U.S.C. §§1337, 1344(c)-(f), 1345(a). According to *Hornbeck Offshore Servs., L.L.C. v. Salazar*, 696 F. Supp. 2d 627, 632 (E.D. La. 2010), the Secretary must (1) create a Five-Year Leasing Program; (2) hold lease sales; (3) grant or deny exploration permits and plans; and (4) grant or deny final development and production plans. Requirements of NEPA and the ESA must be met before a lease sale can be held, as recognized in *Secretary of the Interior v. California*, 464 U.S. 312, 338 (1984).

ute also provides for when a lease can be suspended.¹¹¹ The Secretary also must follow the requirements of the Mineral Leasing Act (MLA).¹¹²

The U.S. District Court for the Western District of Louisiana equated the Biden Administration's "pause" of lease sales as really a "stop" of those sales, which Judge Terry Doughty ruled the Administration lacked authority to do under OCSLA and the MLA.¹¹³ He enjoined this "pause" in the lease sales, stating that the Executive Order failed to follow Administrative Procedure Act and statutory procedures.¹¹⁴

On the first day of his second term, President Trump rescinded many Biden Administration orders, including Executive Order No. 14008.¹¹⁵ He withdrew Secretarial Order No. 3401, which had placed a temporary halt on all activities in ANWR relating to the Coastal Plain Oil and Gas Leasing Program.¹¹⁶ President Trump's Executive Order No. 14153 rescinds the cancellation of any leases in ANWR and various Bureau of Land Management final rules.¹¹⁷ He ordered agencies to "expedite the permitting and leasing of energy and natural resource projects in Alaska."¹¹⁸

VII. Conclusion

The goal of OCSLA is to strike a balance between energy exploration and extraction, and protection of

species and their habitats along the coasts of the United States. Nothing about recent presidential actions does that. President Biden withdrew from future lease sales all of the East and West Coasts, eastern Gulf of Mexico, and the Bering Sea. President Trump declared an energy emergency to justify his desire to prioritize energy exploration and extraction, while circumventing or rescinding regulations and practices aimed at protection for species and their habitats on land and sea. The second Trump Administration exhibits total disregard for the impact of accelerated oil and gas production on climate change and the environment.

OCSLA expressly delegates authority to the president to withdraw (protect) from future leases OCS lands/waters, but it is silent on the question of whether there is de facto authority to rescind those withdrawals. Previously, the District Court of Alaska (in a decision vacated by the Ninth Circuit) held that the president lacked authority to rescind prior permanent withdrawals. Cases are pending in the courts concerning the recent withdrawals, but it is uncertain whether the current president will enforce a court ruling if it concludes that the president lacks authority to rescind OCSLA withdrawals. Congress could exercise its constitutional authority to amend OCSLA or modify the scope of the Biden withdrawals or the Trump wind moratorium.

111. Under 43 U.S.C. §1334(a)(1) the Secretary can suspend a lease for temporary prohibition of any operation or activity, including production, pursuant to any lease or permit (A) at the request of a lessee, in the national interest, to facilitate proper development of a lease or to allow for the construction or negotiation for use of transportation facilities, or (B) if there is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), or to the marine, coastal, or human environment, . . . no permit or lease shall be . . . extended when such suspension or prohibition is the result of gross negligence or willful violation of such lease or permit, or of regulations.

112. 30 U.S.C. §226(b)(1)(A).

113. *Louisiana v. Biden*, 622 F. Supp. 3d 267 (W.D. La. 2022).

114. *Id.*

115. Exec. Order No. 14148, §2, Initial Rescissions of Harmful Executive Orders and Actions, 90 Fed. Reg. 8237 (Jan. 28, 2025).

116. Exec. Order No. 14153, §3(b)(i), Unleashing Alaska's Extraordinary Resource Potential, 90 Fed. Reg. 8347 (Jan. 29, 2025) (withdrawing Sec. Order No. 3401 (June 1, 2021)).

117. *Id.* §3(b)(ii).

118. *Id.* §2(c).