



The Scope of Offshore Energy Withdrawals

January 13, 2026

The Outer Continental Shelf Lands Act (OCSLA) is the federal statute that governs development of natural resources on the U.S. Outer Continental Shelf (OCS), [defined](#) in statute as “all submerged lands lying seaward and outside of” areas subject to state control “and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control or within the exclusive economic zone of the United States.” The law sets terms for the leasing of areas in the OCS for oil and natural gas exploration and production, as well as for renewable energy production. Section 12(a) of the OCSLA [provides](#) that “the President of the United States may, from time to time, withdraw from disposition any of the unleased lands” of the OCS. There is no explicit statutory guidance on the exercise of this power or its limitations beyond this language, nor is there a directive for administrative guidance. Section 12(a) also does not expressly address whether or how the President may revoke or modify an earlier withdrawal. This Legal Sidebar considers recent presidential actions taken pursuant to Section 12(a) of the OCSLA as well as recent litigation regarding the President’s authority both to withdraw lands from the OCS for energy leasing and to revoke prior withdrawals.

This authority, sometimes referred to as the President’s “Section 12(a) authority,” was exercised sparingly for the first few decades after its enactment in 1953. The first substantial exercise of Section 12(a) authority came in 1990, when President George H. W. Bush issued an [executive memorandum](#) withdrawing a number of areas off the coasts of Florida and California until 2000. President Bill Clinton [extended](#) this moratorium in 1998. At the same time the moratorium was in effect, [appropriations legislation](#) barred the expenditure of funds by the Department of the Interior for leasing and related activities in certain areas in the OCS. However, in the last two decades following the [removal](#) of annual moratoria language from annual appropriations legislation, Presidents have exercised Section 12(a) authority [with more regularity](#), including as a partial revocation of the Bush/Clinton withdrawal memorandum in 2008 by George W. Bush, who revised his predecessors’ extended withdrawal to limit leasing only in areas designated as marine sanctuaries. Economic, environmental, and political developments led to multiple [executive actions](#) that purported to supersede or revoke previous Section 12(a) withdrawals. Legal challenges to these actions required federal courts to consider the scope and limitations of the President’s Section 12(a) authority for the first time.

As of the date of this Legal Sidebar, no federal court of appeals has ruled on the scope of the President’s authority to revoke earlier withdrawals, but two district courts have addressed the issue. In *League of Conservation Voters v. Trump*, the U.S. District Court for the District of Alaska held in 2019 that Section 5 of [Executive Order 13795](#), which purported to “modify” previous Section 12(a) withdrawals by

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LSB11388

reintroducing certain previously withdrawn offshore areas for potential energy leasing, was “unlawful and invalid.” The court [noted](#) that other statutory withdrawal provisions, including the authority to withdraw onshore federal parcels from leasing consideration under [Section 204\(a\)](#) of the Federal Land Policy and Management Act, include explicit grants of modification and revocation authorities and reasoned that Congress could have done the same in Section 12(a) of the OCSLA if it wished to do so. However, this district court decision was subsequently vacated by the U.S. Court of Appeals for the Ninth Circuit, which [concluded](#) that Section 7 of [Executive Order 13990](#), issued by President Joe Biden in 2021 and purporting to revoke Executive Order 13795, had mooted the underlying controversy.

A similar pattern emerged in early 2025, as President Biden issued two [executive memoranda](#) in the final days of his Administration withdrawing a number of offshore areas from leasing pursuant to Section 12(a) authority. Three days later, President Donald Trump issued [Executive Order 14148](#), which rescinded the executive memoranda issued days earlier by President Biden along with a number of other executive actions taken by the Biden Administration. Several environmental groups [filed suit](#) challenging this rescission order in the U.S. District Court for the District of Alaska, the federal court that issued the initial [League of Conservation Voters v. Trump](#) decision. The plaintiffs claimed that Executive Order 14148 exceeded the President’s statutory authority under Section 12(a) as well as his constitutional authority. That matter remains pending.

In a separate legal proceeding, *Louisiana v. Biden*, a plaintiff group comprising fossil-fuel-producing states and industry interest groups [filed a challenge](#) to President Biden’s two executive memoranda in the U.S. District Court for the Western District of Louisiana. In general, the plaintiffs assert that Section 12(a) of the OCSLA violates the non-delegation doctrine and the Property Clause and that the memoranda issued pursuant to Section 12(a) are therefore *ultra vires*. The plaintiffs also argue that the executive memoranda violate the major questions doctrine and thus exceeded President Biden’s authority under Section 12(a) of the OCSLA.

On October 2, 2025, the Louisiana district court [held](#) that President Biden’s executive memoranda exceeded his authority under Section 12(a) of the OCSLA. The court declined to rule on the constitutional challenges to the memoranda and to Section 12(a) but [found](#) that the Biden memoranda exceeded the authority granted to the President by Section 12(a). The Louisiana court read Section 12(a) differently than the Alaska court did, [interpreting](#) the statutory language specifying that the withdrawal authority is to be exercised “from time to time” as “establishing that withdrawals must be subject to reversal or modification.” In support of this claim, the court [cited](#) previous judicial opinions finding that “in the absence of a specific statutory limitation, an [executive actor] has the inherent authority to reconsider its decisions.” The court also [noted](#) that the Federal Land Policy Management Act and the National Forest Management Act include specific provisions “restricting the executive’s authority to modify or revoke land withdrawals,” which the court interpreted as supporting the notion of the inherent authority of the executive to reconsider decisions. The court ultimately [concluded](#), however, that because President Biden’s memoranda purported to apply indefinitely and were intended “to overcome the power of subsequent executives to revoke or modify their withdrawals,” they exceeded the President’s authority under Section 12(a).

This interpretation appears to be at odds with the conclusion of the Alaska District Court in [League of Conservation Voters v. Trump](#), as noted above. That court took a [more detailed look](#) at this potential ambiguity in Section 12(a), including a review of the legislative history and broad purposes of the OCSLA, and [concluded](#) that Congress did not intend for Section 12(a) to grant Presidents the authority to modify or revoke previous withdrawals. The Louisiana court’s decision did not address the Alaska’s court’s conclusions regarding the legislative history of the OCSLA and of Section 12(a), [noting](#) only that the proceeding had been vacated.

As a result, the scope of the President’s authority under Section 12(a) to both issue indefinite withdrawals and revoke prior withdrawals is unclear. As noted above, there is currently a matter pending in the same

Alaska district court that previously ruled that Section 12(a) does not grant modification and revocation authority. As offshore energy production expands into new areas of the OCS, further litigation is likely.

Congress may also step in to clarify the scope of Section 12(a) whether or not there are any further court rulings. New legislation could clarify the scope of Section 12(a), by either explicitly limiting a President's authority to issue modifications and revocations of previous withdrawals or explicitly granting that same authority. Legislation could also protect against any unwanted outcomes resulting from the dueling interpretations. As the court in *League of Conservation Voters v. Trump* noted regarding concerns that a future President might “permanently withdraw all of the unleased lands on the OCS, Congress could readily reverse such an action by either revoking the withdrawal itself or amending Section 12(a) to expressly provide that a future President could also revoke a prior presidential withdrawal.”

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