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Offshore Oil and Gas Development: Legal Framework

SUMMARY

The development of offshore oil, gas, and other mineral resources in the United States is affected by a number of interrelated legal regimes, including international, federal, and state laws. International law provides a framework for establishing national ownership or control of offshore areas, and domestic federal law mirrors and supplements these standards.

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Governance of offshore minerals and regulation of development activities are bifurcated between state and federal law. Generally, states have primary authority in the area extending three geographical miles from their coasts. The federal government and its comprehensive regulatory regime govern minerals located under federal waters, which extend from the states' offshore boundaries to at least 200 nautical miles from the shore. The basis for most federal regulation is the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. §§ 1331-1356c), which provides a system for offshore oil and gas exploration, leasing, and ultimate development. The OCSLA requires the U.S. Department of the Interior (DOI) to manage offshore energy development in accordance with regularly generated "Five Year Programs" generated by the agency in conjunction with other public and private stakeholders. The Programs are administered by the Bureau of Ocean Energy Management (BOEM), an agency within DOI that manages offshore leasehold auctions and promulgates regulations governing all aspects of the offshore oil and gas exploration and production process. Regulations run the gamut from health, safety, resource conservation, and environmental standards to requirements for production-based royalties and, in some cases, royalty relief and other development incentives. The collection and disbursement of royalties from offshore energy production continues to be a subject of interest to Congress.

A number of federal and state statutory and regulatory programs also affect offshore oil and gas exploration and production both directly and indirectly. Federal actions taken during the leasing and production process must comply with the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321-4370m-12). The leasing process and the offshore operations undertaken by the lessor must also comply with both regulations adopted by BOEM pursuant to the OCSLA and with broadly applicable statutes and regulations. These include environmental and species protection measures, as well as the procedural obligations mandated by the Administrative Procedure Act (APA) (5 U.S.C. §§ 551-559, 701-706).

The five-year program for offshore leasing for 2024–2029 adopted by BOEM scheduled three lease sales in the Gulf of Mexico (later renamed Gulf of America). However, the Trump Administration has initiated proceedings to develop a new five-year program that would supersede the 2024–2029 Program. Congress is also free to alter the scope of offshore oil and gas exploration and production contemplated by the Five-Year Programs via new legislation.

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The development of offshore oil, gas, and other mineral resources in the United States is shaped by a number of interrelated legal regimes, including international, federal, and state laws. International law provides a framework for establishing national ownership or control of offshore areas, and U.S. domestic law has, in substance, adopted these internationally recognized principles. U.S. domestic law further defines U.S. ocean resource jurisdiction and ownership of offshore minerals, dividing regulatory authority and ownership between the states and the federal government based on the resource's proximity to the shore. This report explains the nature of U.S. authority over offshore areas pursuant to international and domestic law. It also describes state and federal laws governing development of offshore oil and gas and litigation under these legal regimes. The report also discusses recent litigation, executive action, and legislative proposals concerning offshore oil and natural gas exploration and production.

Ocean Resource Jurisdiction

Under the United Nations Convention on the Law of the Sea (UNCLOS), coastal nations are entitled to exercise varying levels of authority over a series of adjacent offshore zones.[1] Nations may claim a twelve-nautical-mile *territorial sea*, over which they may exercise rights comparable to, in most significant respects, sovereignty. Nations may also claim an area, termed the *contiguous zone*, which extends twenty-four nautical miles from the coast (or baseline).[2] Coastal nations may regulate their contiguous zones, as necessary, to protect their territorial seas and to enforce their customs, fiscal, immigration, and sanitary laws.[3] Further, in the contiguous zone and an additional area, the *exclusive economic zone (EEZ)*, coastal nations have sovereign rights to explore, exploit, conserve, and manage marine resources and assert jurisdiction over

> i. the establishment and use of artificial islands, installations and structures;
>
> ii. marine scientific research; and
>
> iii. the protection and preservation of the marine environment.[4]

The EEZ extends 200 nautical miles from the baseline from which a nation's territorial sea is measured (usually near the coastline).[5] This area overlaps substantially with another offshore area designation: the *continental shelf*. International law defines a nation's continental shelf as the seabed and subsoil of the submarine areas that extend beyond either "the natural prolongation of [a coastal nation's] land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance."[6] In general, however, under UNCLOS, a nation's continental shelf cannot extend beyond 350 nautical miles from its recognized coastline, regardless of submarine geology.[7] In this area, as in the EEZ, a coastal nation may claim "sovereign rights" for the purpose of exploring and exploiting the natural resources of its continental shelf.[8]

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[1] UNCLOS, pt. III, *opened for signature* Dec. 10, 1982, 1833 U.N.T.S. 397 (entered into force Nov. 16, 1994). Part II of UNCLOS establishes rights and boundaries for territorial seas.

[2] *Id.* art. 33.

[3] *Id.*

[4] *Id.* art. 56.1.

[5] *Id.* art. 55.

[6] *Id.* art. 76.1.

[7] *Id.* arts. 76.4–76.7.

[8] *Id.* art. 77.1.

Federal Jurisdiction

While a signatory to UNCLOS, the United States has not ratified the treaty.[9] Regardless, many of its provisions are now generally accepted principles of customary international law and, through a series of executive orders, the United States has claimed offshore zones that are virtually identical to those described in the treaty.[10] In a series of related cases long before UNCLOS, the U.S. Supreme Court confirmed federal control of these offshore areas.[11] Federal statutes also refer to these areas and, in some instances, define them as well. Of particular relevance, the primary federal law governing offshore oil and gas development indicates that it applies to the "outer Continental Shelf," which it defines as "all submerged lands lying seaward and outside of the areas . . . [under 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 and adjacent to any territory of the United States."[12] Thus, the U.S. Outer Continental Shelf (OCS) would appear to comprise an area extending at least 200 nautical miles from the official U.S. coastline and possibly farther where the geological continental shelf extends beyond that point. The federal government's legal authority to provide for and to regulate offshore oil and gas development therefore applies to all areas under U.S. control except where U.S. waters have been placed under the primary jurisdiction of the states.

State Jurisdiction

In accordance with the federal Submerged Lands Act of 1953 (SLA),[13] coastal states are generally entitled to an area extending three geographical miles[14] from their officially recognized coast (or baseline).[15] In order to accommodate the claims of certain states, the SLA provides for an extended three-marine-league[16] seaward boundary in the Gulf of Mexico (later renamed Gulf of America)[17] if a state can show such a boundary was provided for by the state's "constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress."[18] After enactment of the SLA, the Supreme Court held that the Gulf

[9] *See* CRS In Focus IF12578, *Implementing Agreements Under the United Nations Convention on the Law of the Sea (UNCLOS)*, by Caitlin Keating-Bitonti and Matthew C. Weed (2026).

[10] Proclamation No. 2667, 10 Fed. Reg. 12303 (Sep. 28, 1945); Proclamation No. 5030, 48 Fed. Reg. 10605 (Mar. 14, 1983); Proclamation No. 5928, 54 Fed. Reg. 777 (Dec. 27, 1988); No. 7219, 64 Fed. Reg. 48701 (Aug. 2, 1999).

[11] *See* United States v. Texas, 339 U.S. 707 (1950), *superseded by statute*, Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §§ 1331–1356c, *as stated in*, Parker Drilling Mgmt. Servs., Ltd. v. Newton, 587 U.S. 601, 606 (2019); United States v. Louisiana, 339 U.S. 699 (1950), *superseded by statute*, OCSLA, 43 U.S.C. §§ 1331–1356c, *as stated in*, *Parker Drilling*, 587 U.S. at 606; United States v. California, 332 U.S. 19 (1947), *superseded by statute*, OCSLA, 43 U.S.C. §§ 1331–1356c, *as stated in*, *Parker Drilling*, 587 U.S. at 606. In accordance with the Submerged Lands Act, states generally own an offshore area extending three geographical miles from the shore. Florida (Gulf coast) and Texas, by virtue of their offshore boundaries prior to admission to the Union, have an extended, three-marine-league offshore boundary. *See* United States v. Louisiana, 363 U.S. 1, 36–64 (1960), *opinion supplemented*, 382 U.S. 288 (1965); United States v. Florida, 363 U.S. 121, 121–29 (1960).

[12] 43 U.S.C. § 1331(a).

[13] *Id.* §§ 1301–1356c.

[14] A geographical or nautical mile is equal to 6,080.20 feet, as opposed to a statute mile, which is equal to 5,280 feet.

[15] 43 U.S.C. § 1301(b).

[16] A marine league is equal to 18,228.3 feet.

[17] In February 2025, the U.S. Board on Geographic Names renamed the Gulf of Mexico as the Gulf of America, pursuant to Exec. Order No. 14,172, 90 Fed. Reg. 8629 (Jan. 20, 2025). For more information, see CRS In Focus IF12881, *Trump Administration Actions: Geographic Naming*, by Anna E. Normand and Mark K. DeSantis (2025).

[18] 43 U.S.C. §§ 1312, 1301(b).

Coast boundaries of Florida and Texas do extend to the three-marine-league limit; other Gulf Coast states were unsuccessful in their challenges.[19]

Within their offshore boundaries, coastal states have "(1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective states, and (2) the right and power to manage, administer, lease, develop and use the said lands and natural resources . . . ."[20] Accordingly, coastal states have the option of developing offshore oil and gas within their waters; if they choose to develop, they may regulate that development.

Coastal State Regulation

State laws governing oil and gas development in state waters vary significantly from jurisdiction to jurisdiction. In addition to state statutes and regulations aimed specifically at intrastate oil and gas development, a variety of federal laws and regulations could affect offshore development in state waters, such as environmental and wildlife protection laws and coastal zone management regulation. In states that authorize offshore oil and gas leasing, the states decide which offshore areas under their jurisdiction will be opened for development.

Federal Resources

The primary federal law governing development of oil and gas in federal waters is the Outer Continental Shelf Lands Act (OCSLA).[21] The OCSLA provides comprehensive regulation of the development of OCS oil and gas resources and has as its primary purpose "expeditious and orderly development [of OCS resources], subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs . . . ."[22] To effectuate this purpose, the OCSLA extends application of federal laws to certain structures and devices located on the OCS;[23] provides that the law of adjacent states applies to the OCS when it does not conflict with federal law;[24] and provides a comprehensive leasing process for certain OCS mineral resources and a system for collecting and distributing royalties from the sale of these federal mineral resources.[25]

Federal Offshore Energy Development Moratoria and Withdrawals

In general, the OCSLA requires the federal government to prepare, revise, and maintain an oil and gas leasing program. However, at various times some offshore areas have been withdrawn from disposition under the OCSLA. These withdrawals have usually fallen under three broad categories applicable to OCS oil and gas leasing: (1) those imposed directly by Congress, (2)

[19] United States v. Louisiana, 363 U.S. 1, 65 (1960) ("[P]ursuant to the Annexation Resolution of 1845, Texas' maritime boundary was established at three leagues from its coast for domestic purposes . . . . Accordingly, Texas is entitled to a grant of three leagues from her coast under the Submerged Lands Act."); United States v. Florida, 363 U.S. 121, 129 (1960) ("We hold that the Submerged Lands Act grants Florida a three-marine-league belt of land under the Gulf, seaward from its coastline, as described in Florida's 1868 Constitution.").

[20] 43 U.S.C. § 1311.

[21] *Id.* §§ 1331–1356.

[22] *Id.* § 1332(3).

[23] *Id.* § 1333. The provision also expressly makes the Longshore and Harbor Workers' Compensation Act, the National Labor Relations Act, and the Rivers and Harbors Act applicable on the OCS, although application is limited in some instances.

[24] *Id.*

[25] *Id.* §§ 1331(a), 1332, 1333(a)(1).

those imposed by the President under authority granted by the OCSLA,[26] and (3) other statutory or administrative protections intended to protect marine or coastal resources.

Legislative Moratoria

For several decades starting in 1982, annual Department of the Interior (DOI) appropriations included moratoria that limited offshore leasing options. The language of the appropriations legislation barred the expenditure of funds by the DOI for leasing and related activities in certain areas in the OCS.[27] Similar language appeared in every DOI appropriations law through FY2008. However, starting with FY2009, Congress has not included this language in appropriations legislation. As a result BOEM, the agency within DOI tasked with administering and regulating the OCS oil and gas leasing program as of the date of this report, has been free to use appropriated funds to fund all leasing, preleasing, and related activities in any OCS areas not withdrawn by other legislation or by executive order.[28] In the future, Congress may choose to include limitations on OCS leasing again. The nature and extent of any such restriction would depend on the language used.

The Gulf of Mexico Energy Security Act of 2006 (GOMESA), enacted as part of the Omnibus Tax Relief and Health Care Act of 2006, is another example of a legislative moratorium.[29] The Act created a new congressional moratorium on "leasing, preleasing or any related activity" in portions of the OCS.[30] The 2006 legislation explicitly permits oil and gas leasing in certain areas of the then-named Gulf of Mexico,[31] but established a new moratorium on preleasing, leasing, and related activity in the eastern Gulf that extended through June 30, 2022.[32] This moratorium was independent of any appropriations-based congressional moratorium. Prior to the expiration of this legislative moratorium, the area was withdrawn from leasing through September 2032 by President Trump pursuant to the presidential authority established in Section 12(a) of the OCSLA.[33]

OCSLA Section 12(a)

In addition to the congressional moratoria, Section 12(a) of the OCSLA authorizes the President to issue moratoria on offshore drilling in many areas.[34] The first withdrawal covering substantial

[26] *Id.* § 1341(a).

[27] Pub. L. No. 97-100, § 109, 95 Stat. 1391, 1404 (1981).

[28] BOEM, the Bureau of Safety and Environmental Enforcement (BSEE), and the Office of Natural Resources Revenue (ONRR) are successors to the agency formerly known the Minerals Management Service (MMS). MMS was renamed the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) pursuant to DOI Secretarial Order No. 3302 on June 18, 2010. The jurisdiction and responsibilities of BOEMRE were subsequently divided among the newly created BOEM, BSEE, and ONRR in a second reorganization phase completed on October 1, 2011. However, on April 3, 2026, the Department of the Interior announced a phased plan to eliminate BOEM and BSEE and consolidate their operations in a single agency, the newly created Marine Minerals Administration. *See* https://www.doi.gov/pressreleases/department-interior-begins-transition-marine-minerals-administration.

[29] Pub. L. No. 109-432, 120 Stat. 2922, 3000 (2006).

[30] *Id.* § 104(a).

[31] *Id.* § 103.

[32] *Id.* § 104(a).

[33] Memorandum on the Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition, 2020 DAILY COMP. PRES. DOC. 659 (Sep. 8, 2020).

[34] 43 U.S.C. § 1341(a).

offshore areas was issued by President George H. W. Bush on June 26, 1990.[35] This withdrawal, issued pursuant to the authority vested in the President under Section 12(a) of the OCSLA, placed under presidential moratoria those areas already under an appropriations-based moratorium pursuant to Pub. L. No. 105-83, the DOI appropriations legislation in place at that time.[36] That appropriations-based moratorium prohibited new "leasing and related activities" off the coasts of California, Oregon, and Washington; in the North Atlantic; and in certain portions of the eastern Gulf of Mexico.[37] The legislation further prohibited leasing, preleasing, and related activities in the North Aleutian basin, other areas of the eastern Gulf of Mexico, and the Mid- and South Atlantic.[38] The presidential moratorium was extended by President Bill Clinton by a memorandum dated June 12, 1998.[39]

On July 14, 2008, President George W. Bush issued an executive memorandum that rescinded the executive moratorium on offshore drilling created by President George H. W. Bush in 1990 and renewed by President Bill Clinton in 1998.[40] President George W. Bush's memorandum revised the language of the previous memorandum to withdraw from disposition only areas designated as marine sanctuaries.

President Barack Obama exercised the authority granted by Section 12(a) of the OCSLA to issue moratoria on exploration and production activities in certain areas off the coast of Alaska. On March 31, 2010, President Obama issued an executive memorandum pursuant to his Section 12(a) authority to "withdraw from disposition by leasing through June 30, 2017, the Bristol Bay area of the North Aleutian Basin in Alaska."[41] This withdrawal was superseded on December 16, 2014, by a broader withdrawal that withdrew "for a time period without specific expiration the area of the Outer Continental Shelf currently designated by the Bureau of Ocean Energy Management as the North Aleutian Basin Planning Area . . . including Bristol Bay."[42] A month later, President Obama once again exercised his authority under Section 12(a) of the OCSLA to withdraw certain areas in the Chukchi and Beaufort Seas off the coast of Alaska.[43] Finally, on December 16, 2016, President Obama issued two more withdrawals under Section 12(a) of the OCSLA. One of these withdrew from disposition the entirety of the designated Chukchi Sea and

[35] Statement on Outer Continental Shelf Oil and Gas Development, 26 WEEKLY COMP. PRES. DOC. 1006 (June 26, 1990). Previous orders pursuant to Section 12(a) covered areas of the Key Largo Coral Reef Preserve (Proclamation No. 3339, 25 Fed. Reg. 2352 (Mar. 19, 1960)) and the Santa Barbara Channel (Outer Continental Shelf Off California: Establishment of Santa Barbara Channel Ecological Preserve, 34 Fed. Reg. 5655 (Mar. 26, 1969)).

[36] 26 WEEKLY COMP. PRES. DOC. 1006.

[37] Department of the Interior and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-83, § 108, 111 Stat. 1543, 1561 (1997).

[38] *Id.*

[39] 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).

[40] Memorandum on Modification of the Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition, 44 WEEKLY COMP. PRES. DOC. 986 (July 14, 2008).

[41] Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition, 2010 DAILY COMP. PRES. DOC. 214 (Mar. 31, 2010).

[42] Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition, 2014 DAILY COMP. PRES. DOC. 934 (Dec. 16, 2014).

[43] Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf Offshore Alaska from Leasing Disposition, 2015 DAILY COMP. PRES. DOC. 59 (Jan. 27, 2015).

Beaufort Sea Planning areas;[44] the other withdrew from disposition areas "associated with 26 major canyons and canyon complexes offshore the Atlantic Coast."[45]

In 2017, President Trump issued Executive Order 13,795, which modified the July 2008, January 2015, and December 2016 withdrawals to reopen all of the areas withdrawn by those orders except "those areas of the Outer Continental Shelf designated as of July 14, 2008, as Marine Sanctuaries under the Marine Protection, Research and Sanctuaries Act of 1972."[46] As a result, only the North Aleutian Basin Planning Area and Bristol Bay, along with the aforementioned Marine Sanctuaries, are currently withdrawn from disposition pursuant to Section 12(a) of the OCSLA. President Trump also withdrew a number of offshore areas from energy leasing in the final months of his first term. On September 8, 2020, President Trump issued a memorandum withdrawing from disposition until 2032 the areas of the Eastern and Central Gulf of Mexico previously reserved under GOMESA, as well as certain areas of the Atlantic Ocean off the coast of the southeastern United States.[47]

On January 17, 2025, the Biden Administration published two presidential memoranda indefinitely withdrawing areas in the Atlantic and Pacific Oceans and the Gulf of Mexico as well as the northern Bering Sea from disposition pursuant to his authority under Section 12(a) of the OCSLA.[48] Three days later, newly inaugurated President Donald Trump issued Executive Order 14,148, which rescinded the executive memoranda issued days earlier by President Biden along with a number of other executive actions taken by the Biden Administration.[49] These dueling executive memoranda triggered new litigation about the scope and limitations of Section 12(a) of the OCSLA.

In *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, claiming the memoranda exceeded the President's Section 12(a) authority by imposing "indefinite" withdrawals and also that Section 12(a) was an unconstitutional delegation of legislative authority.[50] The court initially heard challenges based on mootness, as the memoranda were superseded by subsequent presidential actions (i.e., President Trump's rescission of the memoranda), but the court found that the case could continue because "[t]he challenged conduct was undertaken by a previous administration, concerning an issue that has been the subject of an apparent tug-of-war between administrations for more than a decade."[51] The court subsequently declined to rule on the constitutional challenges to the memoranda and to Section 12(a) itself, but found that the Biden memoranda exceeded the authority granted to the President by Section 12(a).[52] The Louisiana court

[44] Memorandum on Withdrawal of Certain Portions of the United States Arctic Outer Continental Shelf from Mineral Leasing, 2016 DAILY COMP. PRES. DOC. 860 (Dec. 20, 2016).

[45] Memorandum on Withdrawal of Certain Areas off the Atlantic Coast on the Outer Continental Shelf from Mineral Leasing, 2016 DAILY COMP. PRES. DOC. 861 (Dec. 20, 2016).

[46] Exec. Order No. 13,795, 82 Fed. Reg. 20815, 20816 (May 3, 2017). Although Presidents have reversed withdrawals in the past, it is not clear whether Section 12 of the OCSLA authorizes them to do so.

[47] Memorandum on Withdrawal of Certain Areas off the Atlantic Coast on the Outer Continental Shelf from Mineral Leasing, 2020 DAILY COMP. PRES. DOC. 659 (Sep. 8, 2020).

[48] Withdrawal of Certain Areas of the United States Outer Continental Shelf from Oil and Natural Gas Leasing, 90 Fed. Reg. 6739 (Jan. 17, 2025); Withdrawal of Certain Areas of the United States Outer Continental Shelf from Oil and Natural Gas Leasing, 90 Fed. Reg. 6743 (Jan. 17, 2025).

[49] Initial Rescissions of Harmful Executive Orders and Actions, 90 Fed. Reg. 8237 (Jan. 28, 2025).

[50] No. 2:25-CV-00071, 2025 WL 2808502 (W.D. La. Oct. 2, 2025).

[51] Louisiana v. Biden, 2025 WL 1550115, *3 (W.D. La. May 30, 2025).

[52] *Id.* at *6.

interpreted the language in Section 12(a) specifying that the withdrawal authority is to be exercised "from time to time" as "establish[ing] that withdrawals must be subject to reversal or modification."[53] In support of this interpretation, 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."[54] The court also noted that other federal statutes 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.[55] The court concluded 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).[56]

This opinion seems to be at odds with an opinion issued by a different federal district court five years earlier. In *League of Conservation Voters v. Trump*, the U.S. District Court for the District of Alaska held that Section 5 of Executive Order 13,795, which purported to "modif[y]" previous Section 12(a) withdrawals by reintroducing certain previously withdrawn offshore areas for potential energy leasing,[57] was "unlawful and invalid."[58] As with the Louisiana district court, the Alaska court noted that other statutory withdrawal provisions include explicit grants of modification and revocation authorities.[59] However, the Alaska court drew the opposite conclusion, reasoning that this explicit grant shows that Congress could have done the same in Section 12(a) of the OCSLA if it wished to do so.[60] The Alaska 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 13,990, issued by President Joe Biden in 2021 and purporting to revoke Executive Order 13,795, had mooted the underlying controversy.[61]

As noted above, Executive Order 14,148, issued by President Trump in 2025 to rescind Section 12(a) withdrawals by the previous administration along with other executive actions, is also the subject of ongoing litigation. In February 2025, a number of environmental organizations including the Northern Alaska Environmental Center filed a complaint in the U.S. District Court for the District of Alaska alleging that the Executive Order exceeded the scope of the President's authority under Section 12(a) of the OCSLA and was not authorized by any other statute.[62] The matter is currently pending before the court.

Other Statutory or Administrative Protections

While the OCSLA is the primary statute governing federal offshore energy exploration and production, other statutes play a role in determining what activities may take place in various

[53] *Id.*

[54] *Id.* (quoting Macktal v. Chao, 286 F.3d 822, 825–26 (5th Cir. 2002)).

[55] *Id.* (citing National Forest Management Act, Pub. L. No. 94-588, § 9, 90 Stat. 2949, 2957 (1976) (codified at 16 U.S.C. § 1609), and Federal Land Policy and Management Act, Pub. L. No. 94-579, § 204, 90 Stat. 2743 (1976) (codified at 43 U.S.C. § 1714)).

[56] *Id.*

[57] Exec. Order No. 13,795, 82 Fed. Reg. 20815, 20816 (May 3, 2017).

[58] League of Conservation Voters v. Trump, 363 F. Supp. 3d 1013 (D. Alaska 2019), *vacated and remanded sub nom.*, League of Conservation Voters v. Biden, 843 F. App'x 937 (9th Cir. 2021).

[59] *Id.* at 1027–28.

[60] *Id.*

[61] *League of Conservation Voters*, 843 Fed. App'x 937.

[62] Northern Alaska Environmental Center v. Trump, No. 3:25-cv-00038 (D. Alaska Feb. 19, 2025).

offshore areas. All offshore activity must comply with generally applicable federal laws, including those that protect the environment and public health. In addition, some statutes and administrative actions protect specific offshore regions from certain activities. For example, the National Marine Sanctuaries Act authorizes the Secretary of Commerce to "designate any discrete area of the marine environment as a national marine sanctuary" based on the criteria set forth in the Act.[63] It is unlawful to "destroy, cause the loss of, or injure any sanctuary resource,"[64] which effectively prohibits oil and natural gas exploration and production in the area, although as noted above these areas have also been withdrawn pursuant to Section 12 of the OCSLA. Similarly, Presidents have designated a handful of "marine national monuments" pursuant to their authority under the Antiquities Act.[65] Such designations may explicitly or implicitly prohibit oil and natural gas exploration and production.[66]

Leasing and Development

In 1978, the OCSLA was significantly amended to increase the role of coastal states in the leasing process.[67] The amendments also revised the bidding process and leasing procedures, set stricter criteria to guide the environmental review process, and established new safety and environmental standards to govern drilling operations.[68] The OCS leasing process consists of four distinct stages: (1) the five-year planning program;[69] (2) preleasing activity and the lease sale;[70] (3) exploration;[71] and (4) development and production.[72]

The Five-Year Program

Section 18 of the OCSLA directs the Secretary of the Interior to prepare a five-year leasing program that governs any offshore leasing that takes place during the period of coverage.[73] Each five-year program establishes a schedule of proposed lease sales, providing the timing, size, and general location of the leasing activities. This program is to be based on multiple considerations, including the Secretary's determination as to what will best meet national energy needs for the five-year period and the extent of potential economic, social, and environmental impacts associated with development.[74]

During the development of the program, the Secretary must solicit and consider comments from the governors of affected states, and at least sixty days prior to publication of the program in the

[63] 16 U.S.C. § 1433. Congress has also designated national marine sanctuaries through legislation. *See, e.g.*, Florida Keys National Marine Sanctuary and Protection Act, Pub. L. No. 101-605, 104 Stat. 3089 (1990); Hawaiian Islands National Marine Sanctuary and Protection Act, Pub. L. No. 102-587, 106 Stat. 5039, 5055 (1992).

[64] 16 U.S.C. § 1436(1).

[65] 54 U.S.C. § 320301. For further information on designation of national monuments pursuant to the Antiquities Act of 1906, see CRS Report R41330, *National Monuments and the Antiquities Act*, by Carol Hardy Vincent (2025).

[66] *See, e.g.*, Proclamation No. 8336, 74 Fed. Reg. 1565 (Jan. 12, 2009); Proclamation No. 8031, 71 Fed. Reg. 36441 (June 26, 2006).

[67] Outer Continental Shelf Lands Act Amendments of 1978, Pub. L. No. 95-372, 92 Stat. 629.

[68] *Id.*

[69] 43 U.S.C. § 1344.

[70] *Id.* §§ 1337, 1345.

[71] *Id.* § 1340.

[72] *Id.* § 1351.

[73] *Id.* § 1344(a), (e).

[74] *Id.*

Federal Register, the Secretary must submit the program to the governor of each affected state for further comments.[75] After publication, the Attorney General is also authorized to submit comments regarding potential effects on competition.[76] Subsequently, at least sixty days prior to its approval, the Secretary must submit the program to Congress and the President, along with any received comments and the reasons for rejecting any comment.[77] Once the program is approved by the Secretary, areas covered by the program become available for leasing, consistent with the terms of the program.[78] The OCSLA also requires the Secretary to "review the leasing program approved under this section at least once each year" and authorizes the Secretary to "revise and re-approve such program, at any time."[79] However, any "significant" revisions must comply with the requirements applicable to the original five-year program.[80]

The development of the five-year program is considered a major federal action significantly affecting the quality of the human environment and as such requires preparation of an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA).[81] Thus, the NEPA review process complements and informs the preparation of a five-year program under the OCSLA.[82]

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[75] "Affected state" is defined in the Act as any state:

> (1) the laws of which are declared, pursuant to section 1333(a)(2) of this title, to be the law of the United States for the portion of the outer Continental Shelf on which such activity is, or is proposed to be, conducted;
> (2) which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 1333(a)(1) of this title;
> (3) which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels;
> (4) which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the outer Continental Shelf; or
> (5) in which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oil spill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities . . . .

Id. § 1331(f).

[76] *Id.* § 1344(d).

[77] *Id.*

[78] *Id.*

[79] *Id.* § 1344(e).

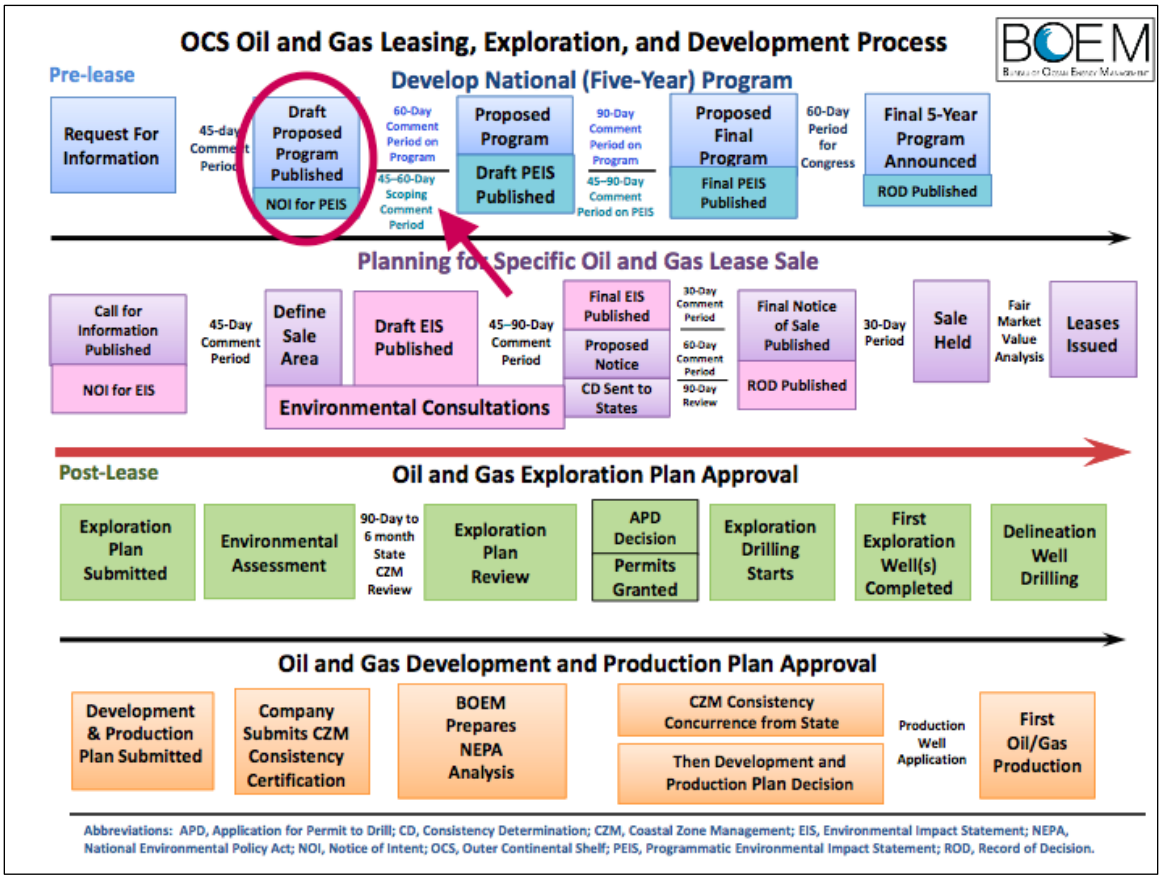
[80] *Id.*

[81] 42 U.S.C. § 4332(2)(C). In general, NEPA and the regulations that govern its administration require various levels of environmental analysis depending on the circumstances and the type of federal action contemplated. Certain actions that have been determined to have little or no environmental effect are exempted from preparation of NEPA documents entirely and are commonly referred to as "categorical exclusions." In situations where a categorical exclusion does not apply, an intermediate level of review, an environmental assessment (EA), may be required. If, based on the EA, the agency finds that an action will not have a significant effect on the environment, the agency issues a "finding of no significant impact" (FONSI), thus terminating the NEPA review process. On the other hand, major federal actions that are found to significantly affect the environment require the preparation of an environmental impact statement (EIS), a document offering detailed analysis of the project as proposed as well as other options, including taking no action at all. NEPA does not direct an agency to choose any particular course of action; the primary purpose of an EIS is to ensure that environmental consequences are considered.

[82] *See* Nat. Res. Def. Council v. Hodel, 865 F.2d 288, 310 (D.C. Cir. 1988).

The current 2024–2029 Five-Year Program contemplates three lease sales during the five-year period.[83] However, this schedule has been superseded in part by legislative mandate. Pub. L. No. 119-21, the FY2025 budget reconciliation law enacted in July 2025, requires additional offshore oil and gas lease sales beyond those scheduled in the five-year program, including a minimum of two lease sales per year through 2039.[84] In addition, the Trump Administration has proposed a superseding Five-Year Program, and published a Draft Proposed Program for 2026–2031 in November of 2025 (see **Figure 1**).[85]

Figure 1. Five-Year Program Planning Process



Source: *National OCS Oil and Gas Leasing Program: Development of the 11th National Program*, BOEM, https://www.boem.gov/National-OCS-Program/ https://perma.cc/B6N5-NU4Y (last visited Mar. 16, 2026).

[83] *See* Notice of Availability of the 10th National Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program and Final Environmental Impact Statement, 88 Fed. Reg. 67798 (Oct. 2, 2023).

[84] Act of July 4, 2025, Pub. L. No. 119-21, § 50102, 139 Stat. 72, 139 (codified at 43 U.S.C. § 1331 note).

[85] Notice of Availability of the 2024–2029 National Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program, 90 Fed. Reg. 52996 (Nov. 24, 2025). For more information about the proposed 2026–2031 Five-Year Program, see CRS Report R44692, *Five-Year Program for Federal Offshore Oil and Gas Leasing: Status and Issues in Brief*, by Laura B. Comay (2025).

Lease Sales

The lease sale process involves multiple steps as well. Leasing decisions are affected by a variety of federal laws; however, Section 8 of the OCSLA and its implementing regulations establish the mechanics of the leasing process.[86]

The process begins when the Director of BOEM publishes a call for information and nominations regarding potential lease areas. The Director is authorized to receive and consider these various expressions of interest in specific parcels and comments on which areas should receive special concern and analysis.[87] The Director then considers all available information and performs environmental analysis under NEPA to craft a list of areas recommended for leasing and any proposed lease stipulations.[88] BOEM submits the list to the Secretary of the Interior and, upon the Secretary's approval, publishes it in the *Federal Register* and submits it to the governors of potentially affected states.[89]

The OCSLA and its regulations authorize the governor of an affected state and the executive of any local government within an affected state to submit to the Secretary any recommendations concerning the size, time, or location[90] of a proposed lease sale within sixty days after notice of the lease sale.[91] The Secretary must accept the governor's recommendations (and has discretion to accept a local government executive's recommendations) if the Secretary determines that the recommendations reasonably balance the national interest and the well-being of the citizens of an affected state.[92]

The Director of BOEM publishes the approved list of lease sale offerings in the *Federal Register* (and other publications) at least thirty days prior to the date of the sale.[93] This notice must describe the areas subject to the sale and any stipulations, terms, and conditions of the sale.[94] The bidding is to occur under conditions described in the notice and must be consistent with certain baseline requirements established in the OCSLA.[95]

Although the statute establishes base requirements for the competitive bidding process and sets forth a variety of possible bid formats,[96] some of these requirements are subject to modification at the discretion of the Secretary.[97] Before the acceptance of bids, the Attorney General is also authorized to review proposed lease sales to analyze any potential effects on competition, and may subsequently recommend action to the Secretary of the Interior as may be necessary to

[86] 43 U.S.C. § 1337.

[87] 30 C.F.R. § 556.302 (2026).

[88] *Id.* § 556.304.

[89] *Id.*

[90] The OCSLA establishes certain minimum requirements applicable to these subjects. For instance, lease tracts are, in general, to be limited to 5,760 acres, unless the Secretary determines that a larger area is necessary to comprise a "reasonable economic production unit . . . ." 43 U.S.C. § 1337(b). The law and its implementing regulations also set the range of initial lease terms and baseline conditions for lease renewal.

[91] *Id.* § 1345(a).

[92] *Id.* § 1345(c).

[93] *Id.* § 1337(*l*).

[94] 30 C.F.R. § 556.308.

[95] *See* 43 U.S.C. § 1337.

[96] *Id.* § 1337(a)(1)(A)–(H). For example, bids may be on the basis of "cash bonus bid with a royalty at not less than 12 ½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold . . . ." *See also* 30 C.F.R. §§ 556.35-556.47 (2014).

[97] 43 U.S.C. §§ 1337(a)(1)–(3), (8)–(9).

prevent violation of antitrust laws.[98] The Secretary is not bound by the Attorney General's recommendation, and likewise, the antitrust review process does not affect private rights of action under antitrust laws or otherwise restrict the powers of the Attorney General or any other federal agency under other law.[99] Assuming compliance with these bidding requirements, the Secretary may grant a lease to the highest bidder, although deviation from this standard may occur under some circumstances.[100]

In addition, the OCSLA prescribes many minimum conditions that all lease instruments must contain. The statute supplies generally applicable minimum royalty or net profit share rates, as necessitated by the bidding format adopted, subject, under certain conditions, to secretarial modification.[101] Several provisions authorize royalty reductions or suspensions. Royalty rates or net profit shares may be reduced below the general minimums or eliminated to promote increased production.[102] For leases located in "the Western and Central Planning Areas of the Gulf of Mexico and the portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude and in the Planning Areas offshore Alaska," a broader authority is also provided, allowing the Secretary, with the lessee's consent, to make "other modifications" to royalty or profit share requirements to encourage increased production.[103] Royalties may also be suspended under certain conditions by BOEM pursuant to the Outer Continental Shelf Deep Water Royalty Relief Act.[104]

The OCSLA generally requires successful bidders to furnish a variety of up-front payments and performance bonds upon being granted a lease.[105] Additional provisions require that leases provide that a certain quantity of resources be sold to small or independent refiners. Further, leases must contain the conditions stated in the sale notice and provide for suspension or cancellation of the lease in certain circumstances.[106] Finally, the law indicates that a lease entitles the lessee to explore for, develop, and produce oil and gas, conditioned on applicable due diligence requirements and the approval of a development and production plan, discussed below.[107]

Exploration

Lessees planning exploration for oil and gas pursuant to an OCSLA lease must prepare and comply with an approved exploration plan.[108] Detailed information and analysis must accompany the submission of an exploration plan, and, upon receipt of a complete proposed plan, the relevant BOEM regional supervisor is required to submit the plan to the governor of an affected state and the state's Coastal Zone Management agency.[109]

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[98] *Id.* § 1337(c).

[99] *Id.* § 1337(c), (f).

[100] Restrictions include a statutory prohibition on issuance of a new lease to a bidder that is not meeting applicable due diligence requirements with respect to the bidder's other leases. *See id.* § 1337(d).

[101] *Id.* § 1337(a).

[102] *Id.* § 1337(a)(3).

[103] *Id.* § 1337(a)(3)(B).

[104] *See infra* note 146.

[105] 43 U.S.C. § 1337(a)(7); 30 C.F.R. §§ 556.900-556.907.

[106] 43 U.S.C. § 1337.

[107] *Id.* § 1337(b)(4).

[108] *Id.* § 1340(b), (c).

[109] 30 C.F.R. §§ 550.226, 550.227, 550.232, 550.235.

Under the Coastal Zone Management Act, federal actions and federally permitted projects, including those in federal waters, must be submitted for state review.[110] The purpose of this review is to ensure consistency with state coastal zone management programs as contemplated by the federal law. When a state determines that a lessee's plan is inconsistent with its coastal zone management program, the lessee must either reform its plan to accommodate those objections and resubmit it for BOEM and state approval or succeed in appealing the state's determination to the Secretary of Commerce.[111] Simultaneously, the BOEM regional supervisor is to analyze the environmental impacts of the proposed exploration activities under NEPA.[112] Environmental review at this stage may be constrained or rely heavily upon previously prepared NEPA documents.[113] If the regional supervisor disapproves the proposed exploration plan, the lessee is entitled to a list of necessary modifications and may resubmit the plan to address those issues.[114] Even after an exploration plan has been approved, drilling associated with exploration remains subject to further administrative review and approval obligations.[115] This approval hinges on a more detailed review of the specific drilling plan filed by the lessee.

Development and Production

While exploration often involves drilling wells, the scale of such activities is likely to increase significantly during the development and production phase. Additional regulatory review and environmental analysis are typically required before this stage begins.[116] Operators are required to submit a Development and Production Plan for areas where significant development has not occurred before[117] or a less extensive Development Operations Coordination Document for those areas, such as certain portions of the Western Gulf of America, where significant activities have already taken place.[118] The information required to accompany submission of these documents is similar to that required at the exploration phase, but must address the larger scale of operations.[119] As with the processes outlined above, the submission of these documents complements any environmental analysis required under NEPA. It may not always be necessary to prepare a new EIS at this stage, and environmental analysis may be tied to previously prepared NEPA documents.[120] In addition, affected states are allowed, under the OCSLA, to submit comments on proposed Development and Production Plans and to review these plans for consistency with state coastal zone management programs.[121] Also, if the drilling project involves "non-conventional production or completion technology, regardless of water depth," applicants might also submit a

[110] 16 U.S.C. § 1456(c).

[111] 30 C.F.R. § 550.235.

[112] *Id.* § 550.232.

[113] *Id.* § 550.232(c).

[114] *Id.* §§ 550.231–250.233.

[115] *Id.* §§ 550.241–250.273.

[116] 43 U.S.C. § 1351.

[117] 30 C.F.R. § 550.201.

[118] *Id.*

[119] *Id.* §§ 550.201–550.262.

[120] The regulations indicate that "at least once in each planning area (other than the western and central Gulf of Mexico planning areas) we [BOEM] will prepare an environmental impact statement (EIS) . . . ." *Id.* § 550.269.

[121] *Id.* § 550.267.

Deepwater Operations Plan (DWOP) and a Conceptual Plan.[122] This allows BOEM to review the engineering, safety, and environmental impacts associated with these technologies.[123]

As with the exploration stage, actual drilling requires approval of an Application for Permit to Drill (APD).[124] An APD focuses on the specifics of particular wells and associated machinery. Thus, an application must include a plat indicating the well's proposed location, information regarding the various design elements of the proposed well, and a drilling prognosis, among other things.[125]

Lease Suspension and Cancellation

The OCSLA authorizes the Secretary of the Interior to promulgate regulations on lease suspension and cancellation.[126] The Secretary's discretion over the use of these authorities is specifically limited to a set number of circumstances established by the OCSLA. These circumstances are described below.

Suspension of otherwise authorized OCS activities may generally occur at the request of a lessee or at the direction of the relevant BOEM Regional Supervisor, given appropriate justification.[127] Under the statute, a lease may be suspended (1) when it is in the national interest; (2) to facilitate proper development of a lease; (3) to allow for the construction or negotiation for use of transportation facilities; or (4) when 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 . . . ."[128] The regulations also indicate that leases may be suspended for other reasons, including (1) when necessary to comply with judicial decrees; (2) to allow for the installation of safety or environmental protection equipment; (3) to carry out NEPA or other environmental review requirements; or (4) to allow for "inordinate delays encountered in obtaining required permits or consents . . . ."[129] Whenever suspension occurs, the OCSLA generally requires that the term of an affected lease or permit be extended by a length of time equal to the period of suspension.[130] This extension requirement does not apply when the suspension results from a lessee's "gross negligence or willful violation of such lease or permit, or of regulations issued with respect to such lease or permit . . . ."[131]

If a suspension period reaches five years,[132] the Secretary may cancel a lease upon holding a hearing and finding that (1) continued activity pursuant to a lease or permit would "probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;" (2) "the threat of harm or damage will not disappear or decrease

[122] *Id.* §§ 250.286–250.295.

[123] *Id.*

[124] *Id.* §§ 250.410–250.469.

[125] *Id.* § 250.411.

[126] 43 U.S.C. § 1334.

[127] 30 C.F.R. §§ 250.168, 250.171–250.175.

[128] 43 U.S.C. § 1334(a)(1).

[129] 30 C.F.R. § 250.173–250.175.

[130] 43 U.S.C. § 1334(a)(1).

[131] *Id.*

[132] *Id.* § 1334(a)(2)(B). The requisite suspension period may be reduced upon the request of the lessee.

to an acceptable extent within a reasonable period of time;" and (3) "the advantages of cancellation outweigh the advantages of continuing such lease or permit force . . . ."[133]

Upon cancellation, the OCSLA entitles lessees to certain damages. The statute calculates damages at the lesser of (1) the fair value of the canceled rights on the date of cancellation[134] or (2) the excess of the consideration paid for the lease, plus all of the lessee's exploration- or development-related expenditures, plus interest, over the lessee's revenues from the lease.[135]

The OCSLA also indicates that the "continuance in effect" of any lease is subject to a lessee's compliance with the regulations issued pursuant to the OCSLA, and failure to comply with the provisions of the OCSLA, an applicable lease, or the regulations may authorize the Secretary to cancel a lease as well.[136] Under these circumstances, a nonproducing lease can be canceled if the Secretary sends notice by registered mail to the lease owner and the noncompliance with the lease or regulations continues for a period of thirty days after the mailing.[137] Similar noncompliance by the owner of a producing lease can result in cancellation after an appropriate proceeding in any U.S. district court with jurisdiction as provided for under the OCSLA.[138]

Lease Assignments and Transfers

The OCSLA also provides the framework for federal oversight of transfers of offshore oil and gas exploration and production leases. Section 5(b) of the OCSLA states that "[t]he issuance and continuance in effect of any lease, or of any assignment or other transfer of any lease, under the provisions of this Act shall be conditioned upon compliance with regulations issued under this Act."[139] The OCSLA further provides that "[n]o lease issued under this Act may be sold, exchanged, assigned, or otherwise transferred except with the approval of the Secretary [of the Interior, whose authority is exercised by BOEM]. Prior to any such approval, the Secretary shall consult with and give due consideration to the views of the Attorney General."[140] These two requirements—of continued compliance with the OCSLA and the regulations issued pursuant to it, and of obtaining BOEM approval prior to transfer—are the only restrictions placed upon transfers by the OCSLA.[141]

The terms of the lease itself create obligations for offshore oil and natural gas exploration and production lessees. BOEM employs a form lease, so all lessees are bound by virtually identical lease terms and conditions. With respect to transfers, Section 20 of the form lease provides that "[t]he lessee shall file for approval with the appropriate regional BOEM OCS office any

[133] *Id.* § 1334(a)(2)(A)(i)–(iii). For regulations implementing the cancellation provisions, see 30 C.F.R. §§ 550.180–550.185.

[134] The statute requires "fair value" to take account of "anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, in the case of an oil spill, and all other costs reasonably anticipated on the lease . . . ." 43 U.S.C. § 1334(a)(2)(C).

[135] Exceptions from this method of calculation are carved out for leases issued before September 18, 1978, and for joint leases that are canceled due to the failure of one or more partners to exercise due diligence. *Id.* § 1334(a)(2)(C)(ii)(I), (II).

[136] 43 U.S.C. § 1334(b).

[137] *Id*. § 1334(c).

[138] *Id*. § 1334(d).

[139] *Id*. § 1334(b).

[140] *Id*. § 1337(e).

[141] It is important to note that a secondary market for offshore oil and gas exploration and production leases has developed. Although lease transfers of this type need only comply with the OCSLA and BOEM provisions discussed in this section, transactions in a secondary market might come under the jurisdiction of other federal laws and agencies.

instrument of assignment or other transfer of any rights or ownership interest in this lease in accordance with applicable regulations."[142] This filing requirement is the only new restriction or condition placed on transfers by the terms of the lease. However, the regulations issued by the agency pursuant to its OCSLA authority set forth more detailed requirements applicable to transfers of all or part of the lease.[143]

Royalty Collection and Revenue Distribution

As noted above, most leases obligate the lessee to pay royalties based on the "amount or value of the production saved, removed, or sold" by the lessee.[144] Most leases obligate the lessee to pay a royalty rate of at least 12.5%,[145] although some leases are exempt from payment pursuant to a statutory or administratively determined exemption.[146] The Office of Natural Resources Revenue (ONRR) is the agency tasked with collection and disbursement of royalties from both onshore and offshore oil and gas production on federal lands.

Most of the revenue collected by the ONRR from royalty payments and any other payments associated with offshore oil and gas leases is "deposited in the Treasury of the United States and credited to miscellaneous receipts."[147] However, a few statutory provisions direct some revenue to state and local governments in an effort to offset the disparate impacts of some offshore oil and gas exploration and production activity borne by coastal states and localities.

Section 8(g) of the OCSLA addresses leasing details for "lands containing tracts wholly or partially within three nautical miles of the seaward boundary of any coastal State,"[148] that is, the first three nautical miles of federal waters that border on state waters and, in most cases, are within several miles of the state's shoreline. Under the terms of Section 8(g), all revenue from leases wholly within that three-nautical-mile range must be deposited in a dedicated account in the Treasury.[149] For leases partially within the three-nautical-mile range of state waters, a corresponding portion of the revenue from the lease must be deposited in the special account.[150] The Secretary then must transfer to the coastal state 27% of the revenues collected from leases near their coastal waters.[151] If the tract in question lies only partly within the first three nautical miles of federal waters, the disbursement to the coastal state is adjusted based on the percentage

[142] BOEM, Form BOEM-2005, Oil and Gas Lease of Submerged Lands Under the Outer Continental Shelf Lands Act 3 (Feb. 2017), https://www.boem.gov/sites/default/files/about-boem/Procurement-Business-Opportunities/BOEM-OCS-Operation-Forms/BOEM-2005.pdf https://perma.cc/8RZG-3EUP.

[143] *See* 30 C.F.R. §§ 556.700–556.810.

[144] 43 U.S.C. § 1337(a)(1).

[145] *Id*.

[146] The Deep Water Royalty Relief Act of 1995 provides for an exemption for certain deep-water leases issued during a specific time frame. Pub. L. No. 104-58, 109 Stat. 557, 563 (1995); *see infra* note 104. In addition, Section 8 of the OCSLA authorizes certain administrative exemptions to be issued at the discretion of BOEM. 43 U.S.C. § 1337. For further information on the various exemptions to royalty payment obligations, see *Royalty Relief*, DOI: BOEM, http://www.boem.gov/Royalty-Relief-Information/ https://perma.cc/Q4NM-X6F7 (last visited Mar. 16, 2026).

[147] 43 U.S.C. § 1338.

[148] *Id*. § 1337(g)(1).

[149] *Id*. § 1337(g)(2).

[150] *Id*.

[151] *Id*.

of the tract that lies within those three nautical miles.[152] The OCSLA also establishes a procedure for the resolution of boundary disputes.[153]

Certain revenue from certain leases in the Gulf of America is also diverted from the general treasury by operation of law. Under GOMESA, 50% of "qualified Outer Continental Shelf revenues" are to be deposited into a special account.[154] The Secretary then must disburse 75% of the revenue deposited in that special account (or 37.5% of the total revenue) to the "Gulf Producing States" in accordance with a formula based in part on each state's distance from the lease tract, including further allocation to political subdivisions within the states.[155] The states and political subdivisions are free to spend that money for any of the "authorized uses" set forth in GOMESA, including mitigation of various types of environmental harms that may result from offshore oil and gas exploration and production.[156] The remaining 25% of the revenue deposited in the special account (or 12.5% of the total revenue) is directed to the states for expenditure in accordance with Section 6 of the Land and Water Conservation Fund Act of 1965,[157] which provides for apportionment of funds to the states for purposes of land acquisition, planning, and development for recreational purposes.[158]

Judicial Review

Section 23 of the OCSLA establishes the framework for litigation related to the Act and the actions of DOI taken thereunder.[159] Section 23 authorizes parties "having a valid legal interest which is or may be adversely affected" by any alleged violation of OCSLA, the implementing regulations, or any permit or lease terms to initiate a civil action against any person—including the United States—to compel compliance with the OCSLA, or to allege a violation of the OCSLA or any regulation promulgated thereunder by a federal agency, or to enforce the terms of any permit or lease issued by DOI pursuant to the OCSLA.[160] Most litigation under this section is directed to the federal district court where the defendant is located or nearest the place where the cause of action arose.[161] However, Section 23(c) directs appeals of Five-Year Programs to the U.S. Court of Appeals for the District of Columbia Circuit.[162]

For example, a group of environmental conservation organizations challenged the current 2024–2029 Five-Year Program in the D.C. Circuit.[163] In *Healthy Gulf v. DOI*, the court held that the petitioners had brought a challenge in the correct court and alleged sufficient injury,[164] but rejected the substance of their claim that BOEM and DOI had not satisfied the requirements of Section 18 of the OCSLA when formulating the 2024–2029 Five-Year Program, which remains in

[152] *Id.*

[153] *Id.* § 1337(g)(5).

[154] Pub. L. No. 109-432, § 105(a)(2), 120 Stat. 2922, 3004 (2006) (codified as amended at 43 U.S.C. § 1331 note).

[155] *Id.* § 105(a)(2)(A), 105(b).

[156] *Id.* § 105(b).

[157] *Id.* § 105(a)(2)(B).

[158] 16 U.S.C. § 460*l*-8.

[159] 43 U.S.C. § 1349.

[160] *Id.* § 1349(a)(1).

[161] *Id.* § 1349(b)(1).

[162] *Id.* § 1349(c)(1). Note also that Section 23 of the OCSLA also directs appeals of decisions to "approve, require modification of, or disapprove any exploration plan or any development and production plan" directly to federal Courts of Appeal in any Circuit in which a state affected by the plan is located. *Id.* § 1349(c)(2).

[163] Healthy Gulf v. DOI, 152 F.4th 180 (D.C. Cir. 2025).

[164] *Id.* at 189–91.

place as of the date of publication of this report.[165] The court noted that BOEM and DOI's decsionmaking record "in parts raises eyebrows" but ultimately found that the agencies' evaluation of statutory factors, costs, and benefits met the threshold for reasoned decisionmaking.[166]

Other recent Five-Year Programs were also challenged in the D.C. Circuit. In *Center for Sustainable Economy v. Jewell*, the petitioners alleged that BOEM and DOI had failed to properly balance economic, social, and environmental factors as required by Section 18 of the OCSLA when formulating the 2012–2017 Five-Year Program.[167] The court found that the petitioners had standing but rejected their challenges as either unripe or failing on the merits.[168]

In contrast, challenges to executive branch actions that affect the Five-Year Program can be heard by federal district courts. For example, in *Louisiana v. Biden*, a number of states brought a challenge to an executive order placing a moratorium on new oil and gas leasing (including two leases previously scheduled in a Five-Year Program) in the U.S. District Court for the District of Louisiana.[169] Although the end result was a change to the lease sale schedule set by the Five-Year Program, the district court was able to hear the case because the challenge was to the executive order rather than the program itself. The court initially enjoined enforcement of the executive order, finding that "[b]y pausing the leasing, the agencies are in effect amending two Congressional statutes, OCSLA and [the Mineral Leasing Act, which governs onshore energy production on federal lands], which they do not have the authority to do. Neither OCSLA nor MLA gives the Agency Defendants authority to pause lease sales."[170] Following remand for clarification,[171] the court again enjoined the federal government from stopping a specific lease sale previously scheduled in the Five-Year Program.[172]

Issues for Congress

Federal offshore jurisdiction and boundaries are established through a combination of statutes, executive orders, and acquiescence to international convention. The OCSLA provides the system for oil and gas exploration, leasing, and ultimate development off the coast of the United States. Leasing is done in accordance with Five-Year, programs issued by BOEM in accordance with the requirements of Section 18 of the OCSLA.

The five-year program for offshore leasing for 2024–2029 adopted by the Bureau of Ocean Energy Management scheduled three lease sales in the Gulf of Mexico (later renamed Gulf of America). However, the Trump Administration has initiated proceedings to develop a new five-year program that would supersede the 2024–2029 Program. Congress also possesses the authority to direct or prohibit specific leasing and other activities on the OCS directly through legislation. For example, S. 109 would supersede the 2024-2029 Five Year Program and require at least twenty offshore lease sales over a ten-year period, including at least one auction on twenty

[165] *Id.* at 191–204.

[166] *Id.* at 186–87.

[167] 779 F.3d 588 (D.C. Cir. 2015).

[168] *Id.* at 593.

[169] 543 F. Supp. 3d 388 (W.D. La. 2021).

[170] *Id.* at 413.

[171] Louisiana v. Biden, 45 F.4th 841 (5th Cir. 2022).

[172] Louisiana v. Biden, 622 F. Supp. 3d 267 (W.D. La. 2022).

specific dates,[173] while S. 1486 would codify permanent prohibitions on leasing and development in the Atlantic Ocean and the Straits of Florida.[174]

Congress could also choose to clarify the scope of the President's authority to issue and revoke offshore withdrawals under Section 12(a) of the OCSLA, or to amend any of the other federal administrative review and compliance obligations that may affect offshore oil and gas exploration and production, including limited prohibitions to protection particular resources or amendments and exceptions to environmental protection statutes. Finally, Congress could choose to play a role in the ongoing restructuring efforts at Interior and the creation of the Marine Minerals Administration.

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[173] S. 109.

[174] S. 1486.