Land Grab

The Outer Continental Shelf Lands Act and Presidential Authority

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Abstract

On November 18, 2016, the Bureau of Ocean and Energy Management released the final version of the 2017-2022 Five-Year Oil and Gas Lease Program which excluded large areas of the Arctic and the Atlantic outer Continental shelf. In December 2016, President Obama issued an Executive Order withdrawing these lands for oil and gas exploration "for an indefinite period of time", citing power designated to the President in the Outer Continental Shelf Lands Act of 1953. On April 28, 2017, President Trump signed his own Executive Order, essentially revoking Obama's Executive Order and opening up previously withdrawn lands to oil and gas leasing. The ensuing controversy from the issuance of these orders brings up a debate over the intent of this decades-old law. This paper traces the origin of the Outer Continental Shelf Lands Act, it's historical relevance, and its intent as well as what actions the Trump Administration may take to most effectively and expeditiously achieve its energy goals in light of this law.

Background

The Outer Continental Shelf Lands Act was the result of a growing dispute between the federal government and the states over ownership of the natural resources of the United States' continental shelf. Exploration in the late nineteenth and early twentieth centuries led to the discovery that coastal lands (as compared to interior land) yielded the largest amount of oil and gas. The first oil was discovered off the coast of Santa Barbara in 1894 and California quickly claimed ownership thereof. Over time, as these resources became more abundant (and profitable), disputes over land ownership arose. The first half of the twentieth century also saw a rise in technology and American demand for oil and gas, with oil becoming the "second-largest revenue generator for the country, after income taxes" (boem.gov).

In 1945, President Truman declared that the "federal government – 'aware of the long-range world-wide need for new sources of petroleum and other minerals' – would try to encourage the development of those resources"[1] through the control and management of coastal lands (Meyer, 2016). In his official Proclamation, President Truman further stated:

> *Whereas* it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the

[1] 150 – Proclamation 2667 – Policy of the United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, September 28, 1945.

> shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying with the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources…[2]

The passage of the Outer Continental Shelf Lands Act[3] ("OCSLA") of 1953 realized Truman's vision by granting the federal government jurisdiction over the Outer Continental Shelf[4] and the Secretary of the Interior the authorization to lease the lands for mineral exploration and development. Also passed at this time, the U.S. Submerged Lands Act gave the federal government title to submerged lands three miles from the coastline[5] (boem.gov).

The Outer Continental Shelf Lands Act describes the outer Continental Shelf as "a vital natural resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs" (OCSLA). It grants the federal government jurisdiction over these lands while recognizing the need for state (and sometimes local) participation. OCSLA sets forth regulations on every aspect of exploration, development and resource production ranging from labor laws to environmental studies to limitations on the export of oil and gas. With regard to oil and gas activities, "OCSLA creates a four-stage process…: (1) developing a Five-Year Leasing Program, (2) holding the lease sales scheduled in that Program, (3) evaluating and permitting exploration activities, and (4) evaluation and permitting development and production activities" (Hartsig et. al, 2016). For the purpose of this paper, I will focus primarily on the development of the Five-Year Leasing Program.

The Five-Year Leasing Program ("Five-Year Program") is the instrument that effectuates the actual lease sales. Section 18 of the Outer Continental Shelf Lands Act instructs the Secretary of the Interior to "prepare and periodically revise, and maintain an oil and gas leasing program…which shall consist of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which he determine will best meet national energy needs for the five-year period following its approval or reapprove" (OCSLA).

The Five-Year Program is a three-step process that considers "economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental shelf" as well as any

[2] Proclamation 2667.
[3] 43 U.S.C. §§ 1331 et seq.
[4] The Outer Continental Shelf is defined as beginning three miles from the shore and extending to the 200-mile international waters boundary.
[5] Under the U.S. Submerged Lands Act, states were granted the rights to lease submerged land within three miles from the coastline.

potential impact on the environment. First, the Bureau of Ocean Energy Management ("BOEM") issues a "Draft Proposed Program" which identifies areas of consideration for exploration. Second, BOEM issues a Proposed Program which "may narrow the areas to be evaluated further based on balancing input and Section 18 factors." Last, after a 60-day review and approval by the Secretary of the Interior, a Proposed Final Program is implemented (Beaudreau and Bordoff, 2017).

The Secretary can remove any lands from consideration at any time during the process. This is made possible by Section 12(a) of OCSLA, which provides that "[the] President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf", allowing a President to remove outer Continental shelf lands for inclusion in a Five-Year Program (Beaudreau and Bordoff, 2017) (OCSLA).

Although OCSLA does not include a provision for Congress to approve or disapprove a Five-Year Program, Congress may shape a Program by "submitting public comments on a draft program during the formal comment periods and they may evaluate the program in committee oversight hearings. More directly, Members [of Congress] may introduce legislation to set or alter a program's terms" (Comay, 2017).

History of Withdrawal under Section 12 (a) of the Outer Continental Shelf Lands

This provision has been used by six Presidents over 65 years to withdraw areas as much as several hundred million acres at a time (NRDC, 2016). Some of these withdrawals have been temporary and some permanent:

- In 1960, President Eisenhower withdrew a 75-square-mile area off the Florida Keys from mineral exploration. "Eisenhower's order still stands—a testament to this authority—but it has also never been challenged in court" (Meyer, 2017) (NRDC, 2016).
- Secretary of the Interior, Walter Hickel withdrew 55,000 acres of Santa Barbara Channel for "scientific study, recreation, and other uses" in 1969 (NRDC, 2016).
- President George H.W. Bush withdrew areas of the outer Continental shelf off Florida, California, Washington and Oregon from 1990 through 2000 and permanently withdrew Monterey Bay Sanctuary (33.7 million acres) (NRDC, 2016).
- In 1998, President Clinton withdrew additional areas of the outer Continental shelf already under moratoria through 2012 in addition to a permanent withdrawal of land designated as marine sanctuaries, collectively totaling over 300 million acres (NRDC, 2016).
- President George W. Bush shortened Clinton's time limited withdrawal to conform to the Gulf of Mexico Energy Security Act, which required certain areas in Gulf to be leased. It should be noted that President Bush's modifications to President Clinton's prior withdrawal were a reaction to an act of Congress as opposed to a proactive use of

Section 12 (a) by a President to advance his own agenda. Additionally, President Bush did not alter Clinton's previous withdrawal of the portions of the outer Continental shelf that were not time-limited (NRDC, 2016).

- In March 2010, President Obama withdrew Bristol Bay (North Aleutian Basin) from consideration for leasing through 2017. In 2014, he extended this withdrawal "for a time period without specific expiration". These withdrawals were not particularly controversial due to lack of interest in exploration and the importance of the area as a fishery for indigenous peoples and the economy (Beaudreau and Bordoff, 2016).

The Obama Administration (Indefinite Withdrawal of Arctic and Atlantic OCS)

The Obama Administration oversaw the finalization of two Five-Year Programs under the OCSLA – the 2012-2017 Program and the 2017-2022 Program. The 2012-2017 Program included leases in the Gulf of Mexico and several areas off the coast of Alaska, all of which were active leases under the previous program. The 2012-2017 Program did not, however, include any Atlantic leases, due to "(1) the lack of current geological and geophysical (G&G) data to inform leasing decisions, including from modern seismic surveys, and (2) the need for further public input as well as the development of information concerning the infrastructure that would be necessary to support offshore oil and gas exploration, including emergency response, environmental concerns, and potential conflicts with existing uses on the Atlantic OCS, including in particular, naval and other military activity" (Beaudreau and Bordoff, 2017).

Between January 2015 and December 2016, President Obama withdrew approximately 9.8 million acres areas of the Chukchi and Beaufort Sea, Bering Sea and areas of the Atlantic OCS from New England to Virginia "for a time without specific expiration". He based these withdrawals on a number of considerations including the impact of exploration and drilling on the environment, marine life, native subsistence, state and local economies and even Department of Defense activities (Beaudreau and Bordoff, 2017). The last of these withdrawals[6] in December 2016 was issued in conjunction with Canadian's "five-year ban on all oil and gas drilling licensing in the Canadian Arctic" (DiChristopher, 2016) (Dlouhy and Wingrove, 2016).

In defense of his actions, Obama claimed that "[the withdrawals] reflect the scientific assessment that, even with the high safety standards that both [the United States and Canada] have put in place, the risks of an oil spill in this region are significant and our ability to clean up from a spill in the region's harsh conditions in limited." Further, these actions followed a year-long campaign by environmental groups and a letter from 74 congress members, urging President Obama to use his authority under Section 12 (a) of OCSLA to protect the Arctic Ocean from drilling. "Environmentalists have been laying

[6] Via White House Memorandum issued December 20, 2016.

the groundwork for Obama's decision by circulating memos on the legal strategy and highlighting how oil spills could devastate wildlife in the Arctic and tourism on the U.S. East Coast" (Dlouhy and Wingrove, 2016). Aside from obvious environmental concerns, these advocates cited the fact that "any oil production [in the Arctic] would be decades away and inconsistent with addressing climate change before it's too late", an opinion which the White House endorsed in its own policies (DiChristopher, 2016).

The Trump Administration (Reopening of OCS Lands for Leasing)

Despite declining oil prices and lack of interest in the Arctic outer Continental shelf, oil interests, such as the American Petroleum Institute, have vowed to challenge Obama's actions (DiChristopher, 2016). On April 28, 2017, President Trump made his first attempt to derail the withdrawal by signing executive order to rescind Obama's indefinite withdrawal of the Arctic and Atlantic OCS. Trump's executive order, aptly named, "Implementing an America-First Offshore Energy Strategy" ("AFOES")[7], stresses the need for American "energy security" as well as the need to "maintain global leadership in energy innovation, exploration, and production" (AFOES). Regarding lands of the outer Continental shelf, Section 3 (a) states:

> [the Secretary of the Interior shall] as appropriate and consistent with applicable law…in consultation with the Secretary of Defense, give full consideration to revising the schedule of proposed oil and gas lease sales, as described in that section, so that it includes, but is not limited to, annual lease sales, to the maximum extent permitted by law, in each of the following Outer Continental Shelf Planning Areas, as designated by the Bureau of Ocean Energy Management (BOEM)(Planning Areas): Western Gulf of Mexico, Central Gulf of Mexico, Chukchi Sea, Beaufort Sea, Cook Inlet, Mid-Atlantic, and South Atlantic (AFOES, 2017).

Additionally, Section 5 "purports to immediately revoke President Obama's withdrawals of offshore Arctic and Atlantic areas from oil and gas leasing under [OCLSA]" (Austin, 2017). On May 3, 2017, environmental groups, including the League of Conservation Voters, NRDC and Sierra Club, sued the administration in the US District Court of Alaska to prevent Interior Secretary, Ryan Zinke and Commerce Secretary, Wilbur Ross from executing Trump's order.

Legal Sustainability and Precedent of OCSLA Section 12(a)

There is no precedent for President Trump's recension in the history of withdrawals made under OCSLA 12 (a). Although past Presidents have modified a previous President's decision, no President has completely undone a previous President's withdrawal (NRDC, 2016). As previously mentioned, President Bill Clinton ordered a

[7] Executive Order 13795, April 29, 2017.

two-year extension of President George H.W. Bush's withdrawal of outer Continental shelf. In response to rising oil process, however, George W. Bush, cause the withdrawals to expire sooner (Dlouhy and Wingrove, 2016).

Even if a President wanted to reverse a prior President's withdrawal, there is no explicit language in OCSLA granting a President the power to do so. As there have been no federal court rulings on the offshore energy statute, the most comparable congressional delegation act is the Antiquities Act of 1906. The Antiquities Act was created in 1906 as a means of protecting Native American tribal land from looting and has been used by past Presidents to protect land from development through the designation of national monuments (Schlossberg, 2017). Through the creation of this act, Congress "delegates power to the President" to exclude federal lands from potential development (Austin, 2017). Specifically, the Antiquities Act states:

> (a) Presidential Declaration. - The President may, in the President's discretion, declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments.
>
> (b) Reservation of Land. - The President may reserve parcels of land as a part of the national monuments. The limits of the parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.[8]

Similar to OCSLA, there is no explicit language in the Antiquities Act granting a President power to rescind his own or his predecessors' designations. In the absence of explicit language (permitting the recension of previous orders) lies the argument that these acts are congressional delegations of power to the President to manage public land and can only be rescinded through act of Congress itself. In short, a President can only unilaterally withdraw land from disposition; only Congress can revoke a withdrawal. With regard to OCSLA, Robin Kundis Craig, a professor of law at the University of Utah and a leading expert in modern water law, opined, "I don't think those designations by President Obama are going to be that easily undone…President Trump couldn't just come in and unilaterally undo it, because it's a delegated authority from Congress to deal with federal property" (Meyer, 2017).

In other statutes concerning withdrawal of lands, Congress has included explicit language regarding the "undoing" or revocation of a withdrawal. The NRDC cites three such Acts - the Forest Service Organic Administration Act, the Federal Land Policy and Management Act and the Pickett Act, as cases where reversal language exists.

The opening language in the Forest Service Organic Administration Act of 1897 states:

> For the survey of the public lands that have

[8] Antiquities Act, 54 USC § 320301.

> been or may hereafter be designated as forest reserves by Executive proclamation, under section twenty-four of the Act of Congress approved March third, eighteen hundred and ninety-one, entitled "An act to repeal timber-culture laws, and for other purposes," and including public lands adjacent thereto, which may be designated for survey by the Secretary of the Interior, one hundred and fifty thousand dollars, to be immediately available: Provided, That to remove any doubt which may exist pertaining to the authority of the President thereunto, the President of the United States is hereby authorized and empowered to revoke, modify, or suspend any and all such Executive orders and proclamations, or any part thereof, from time to time as he shall deem best for the public interests[9]

Further, this Act states that, "[the President] may reduce the area or change the boundary lines or may vacate altogether any order creating a national forest". Here exists language granting the President explicit power to change or revoke an existing order for withdrawal of lands and in no uncertain terms.

Like the Forest Service Organic Administration Act, the Federal Land Policy and Management Act of 1967 ("FLPMA") gives the Secretary of the Interior the authorization to "make, modify extend or revoke withdrawals".[10] Additionally, although the FLPMA replaced many previous federal land statutes, it did not replace the Antiquities Act. This suggests that Congress was satisfied with the past usage of the Antiquities Act and therefore was not inclined to repeal or amend it. A House Report from the period during which the FLPMA was being enacted clearly states Congress' intent to maintain the exclusive right to change or rescind withdrawals created under the Antiquities Act (Bryner, 2017):

> With certain exceptions, [the bill] will repeal all existing law relating to executive authority to create, modify, and terminate withdrawals and reservations. It would reserve to the Congress the authority to create, modify, and terminate withdrawals for national parks, national forests, the Wilderness System, Indian reservations, certain defense withdrawals, and withdrawals for National Wild and Scenic Rivers, National Trails, and for other "national" recreation units, such as National Recreation Areas and National Seashores. It would also specifically

[9] Organic Act of 1897, 16. U.S.C. § 473

[10] Federal Land Policy and Management Act of 1967, 43 U.S.C. § 1714(a)

> reserve to the Congress the authority to modify and revoke withdrawals for national monuments created under the Antiquities Act and for modification and revocation of withdrawals adding lands to the National Wildlife Refuge System. These provisions will insure that the integrity of the great national resource management systems will remain under the control of the Congress.[11]

Simply put, Congress explicitly reserves the right to change or rescind withdrawals made under the Antiquities Act. The FLPMA also repealed the Pickett Act which authorized the President to "at his discretion, temporarily withdraw…any public lands of the United States…and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress"[12] (NRDC, 2016).

In that regard, if Congress intended for the President to have the power to revoke withdrawals under OCSLA, why was this delegation of power reclaimed in the repeal of the Pickett Act but not OCSLA?

In 1938, President Franklin Roosevelt attempted to revoke the designation of a Castle-Pinckney National Monument by President Calvin Coolidge under the Antiquities Act (Shankman, 2017). Roosevelt's efforts were unsuccessful and, in the resulting opinion, then United States Attorney General, Homer Cummings states, "If public lands are reserved by the President for a particular purpose under express authority of an act of Congress, the President is thereafter without authority to abolish such reservation…the reservation made by the President under the discretion vested in him by the statute was in effect a reservation by the Congress itself…the President thereafter was without power to revoke or rescind the reservation."[13] Although this opinion was written as a response to a challenge to the Antiquities Act, it is applicable to OCSLA as it addresses delegation of power to a President by Congress. This is based on the principle as stated in a previous court opinion (also quoted in the 1938 opinion) that "unless it be within the terms of the power conferred by that statute, the Executive can no more destroy his own authorized work, without some other legislative sanction, than any other person can"[14] (NRDC).

It is clear that the Obama Administration was hedging its bets on the lack of legal precedence for revoking a permanent withdrawal. A senior Obama Administration official was even quoted as saying, "No President has ever acted to reverse an indefinite withdrawal, and we believe there is a strong legal basis that these withdrawals…will go forward and will stand the test of time…There is no authority for subsequent Presidents to un-withdraw" (Wolfgang and Boyer, 2016).

[11] H. Rep. 94-1163, May 15, 1976, at 9.
[12] Pub. L. No. 61-303, Ch. 421, 36 Stat. 847 (1910).
[13] United States Attorney General, Proposed Abolishment of Castle Pinckney National Monument (39 U.S. Op. Atty. Gen. 185) (Sept. 26, 1938).
[14] Id.; See also Gorbach v. Reno, 219 F.3d 1087, 1095 (9th Cir. 2000) (en banc) ("There is no general principle that what one can do, one can undo").

Current Options for Reopening Withdrawn Areas of OCS

Defend America First Offshore Energy Strategy | There is no question of whether or not Obama had the authority to withdraw the lands pursuant to the language in section 12(a). The question is whether he had the authority to withdraw the lands on a permanent basis. President Trump could argue that the section 12(a) does not allow for an indefinite moratorium (Gardner, 2017). "First, it is axiomatic that, absent express Congressional authority, a President does not have the authority to bind his successors. OCSLA is devoid of language suggesting that Congress intended to affirmatively grant predecessor Presidents the power to bind their successors by making a withdrawal permanent" (Farber et. al, 2017). Thus, because of there is no explicit language allowing for permanent withdrawal of lands, it can be implied that the argument that section 12(a) withdrawal cannot be undone by future Presidents is tenuous at best" (Farber et. al, 2017). If one excepts that the Congress' intent was not to give a President the authority to make permanent withdrawals, one can then argue that the power to revoke is implied. It follows that "…because Congress did not indicate that any Presidential withdrawal under section 12(a) was permanent, it is subject to revocation by a future Administration" (Farber et al., 2017). This challenge would obviously be met by the fact that the indefinite withdrawals of offshore federal lands made by prior administrations still stand.

There have been some challenges based on the language contained in OCSLA which states, "[the outer Continental shelf] should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs" (OCSLA). A spokesperson for the Arctic Energy Center claimed that "the last administration's application of the rule conflicts with the Outer Continental Shelf Lands Act's wider specification to ensure the Outer Continental Shelf is 'available for expeditious and orderly development'" (Graeber, 2017). The problem with this argument is that opponents of AFOES could argue that that reopening the Arctic and Atlantic is not "consistent with the maintenance of competition and other national needs". By the time Obama issued the withdrawal, Shell had already abandoned its drilling program in the Chukchi Sea (Meyer, 2016). Further, with the country (at least under the Obama Administration) moving towards alternative sources of energy and oil prices at record lows, it would be difficult to argue a "national need" for these areas to be reopened. In fact, opponents of AFOES would likely argue that there is a national need for conservation and a shift away from environmentally harmful forms of energy.

The Trump Administration can also encourage stakeholders who support offshore drilling to "intervene in lawsuits brought by the environmental non-governmental organizations and other litigants" (Farber et al., 2017). There are some stakeholder's, however, that may be in favor of opening some lands while opposed to the opening of others, making a full recession of Obama's withdrawals complicated. "For example, while the State of Alaska likely would welcome rescission of President Obama's December 20, 2016, withdrawal of the Chukchi Sea and most of the Beaufort Sea Planning Areas, undoing the

future may be met with concern even in Alaska, including by Alaskan Natives" (Beaudreau and Bordoff, 2017). Notwithstanding legal precedent and stakeholder opposition, current and future lawsuits could be tied up in court for years and may outlast Trump's term in office.

Change the Current Five-Year Program | Another possible option would be for President Trump to jettison the current Five-Year Program which excludes the Arctic and Atlantic and develop a new plan for 2017-2022. AFOES calls for the Secretary of the Interior to "give full consideration to revising the schedule of proposed oil and gas lease sales" (AFOES). Under OCSLA rules, however, this would mean starting the entire process over again and no leases could be sold until the process is complete (Gardner, 2017). It would take two to three years for President Trump to complete a new Five-Year Program which would then be subject to public scrutiny and lawsuits from environmental groups (Farber et al., 2017). Additionally, "[either] during or after [BOEM's] review, Congress could affect the program by pursuing [current bills] or other measures. Alternatively, Congress could choose not to intervene and could let BOEM's review and any subsequent changes take their course" (Comay, 2017). It is unlikely that Congress would chose to not intervene as the current lease has bipartisan support in Congress.

Legislation | The most convincing (and permanent) solution to Trump's problem is legislation. Congress could amend OCSLA to allow for a sitting President to rescind previous withdrawals. Alternatively, Congress may simply pass legislation to allow lease sales of those areas blocked by the Obama Administration. Alaskan Senators Lisa Murkowski and Dan Sullivan introduced the "Offshore Production and Energizing National Security Alaska ('OPENS Alaska') Act" to allow drilling in the withdrawn areas of the Beaufort Sea and Chukchi Sea (Shankman, 2017) (Beaudreau and Bordoff, 2017).

This is not to say, however, that such legislation would not be met with opposition by environmental groups and members of Congress. Unless the Trump Administration can convince Senate Majority Leader, Mitch McConnell, to do away with the Filibuster Rule, the 54 Republicans in Congress will not be able to pass the law without some bi-partisan support. That being said, both Republican and Democratic senators do not appear to want to change this rule – at least for now (Roche et. al, 2017). There are also a number of bills in Congress which would "restrict leasing by establishing new moratoria or extending existing moratoria. Some of these bills would permanently prohibit leasing in large areas, such as in all of the Pacific region or throughout the extent of the OCS" (Comay, 2017).

In the Atlantic areas, specifically off the coast of Virginia, there is also the issue of the claims by the Department of Defense that mineral exploration would interfere with their activities. Section 1341 (d) of OCSLA states that the "Unites States reserves and retains the right to designate by and through the Secretary of Defense, with the approval of the President, as areas restricted from exploration and operation that part of the outer Continental Shelf needed for national defense..." (OCSLA). When developing the 2012-2017 Program, BOEM "cited a 2015 assessment by the Department of Defense (DOD) that identified 'much of the area offshore Virginia, as well as significant portions of the Program Area offshore North

Carolina' as places where oil and gas activity would be incompatible with DOD's activities" (Beaudreau and Bordoff, 2017).

Another consideration for this process is that allowing for lease auctions to occur through legislation "gives states an opportunity to negotiate for a bigger share of revenue from oil and gas production off their shores – an opportunity they do not have under the standard OCLSA process" (DiChristopher, 2017).

Finally, if the current law is amended to allow a President to rescind his predecessor's withdrawal altogether, this may result in each administration adding and withdrawing OCS lands as they come to power. This kind of uncertainty would certainly discourage oil and gas companies from any kind of meaningful commitment in the disputed areas.

Recommendation

Whatever path the Trump Administration decides to pursue, time is of the essence. With low approval ratings, legal woes and intense opposition, there is a good probability that President Trump will not be elected for a second term. Given the alternatives, passing legislation to specifically allow drilling in the areas that are truly critical to his agenda is the most viable and expeditions means of change. Legislation opening all lands withdrawn by the Obama Administration is unlikely to garner the bipartisan support that would be needed to pass in the Senate. Trump will have to reach across the aisle and make concessions based on environmental and economic concerns which will most likely result in limiting which lands he may reasonably open to lease sales. Through cooperation with stakeholders and members of congress, President Trump can reduce the amount of opposition to legislation to reopen more OCS lands to oil and gas leases and hope that his administration outlasts any remaining challenges.

Inference

As we await the outcomes of pending legislation and lawsuits, we must question the larger fate of OCSLA itself as it pertains to executive power. After remaining relatively inconsequential for more than sixty years, this law, along with the current challenges to power under the Antiquities Act, has brought forth a new debate over delegated authority and implicit power. With less than a year in office, and much like his predecessor, President Trump testing the limits of executive power. Perhaps it is time to question whether these decades-old laws continue to serve their original intent or do the current political, economic and social trends merit a change in how Congress delegates power to the President.

*The publication is approved by Hemant Batra, Expert Fellow & Leader at Goeman Bind HTO, Think Tank.

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