

MPA NEWS



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What impacts could Trump's proposed offshore drilling plan have on MPAs and other current closures in US waters? Here's a primer

In early January 2018, the US Bureau of Ocean Energy Management released a [draft five-year program](#) to guide leasing of the nation's Outer Continental Shelf (OCS) areas for oil and gas drilling, from 2019-2024. The draft, which reflects the views of the administration of President Donald Trump, is aggressive. It would make over 90% of the nation's total OCS area available to exploration and development. By comparison, the current five-year program puts 94% of the OCS *off-limits* to oil and gas exploration. (The current program covers the years 2017-2022 and will be replaced by the Trump administration's eventual final plan.)

As you might expect, a plan to open up nearly all waters of the continental US and Alaska to oil/gas exploration could have a significant impact on the nation's existing MPAs.

The draft program is [undergoing public comment now](#) – online, by mail, and in public meetings around the nation. The public comment period ends 9 March. According to the BOEM website, this draft is intended as the first of three proposals for 2019-2024.

Bearing in mind that the administration's vision for its five-year OCS program may change over time, MPA News provides a primer here on what the current draft plan means for US MPAs.

What does the draft OCS program say about opening MPAs to drilling?

President Trump initiated the development of the draft OCS plan with an [Executive Order in April 2017](#), which requested a new OCS leasing program to "put the energy needs of American families and businesses first." In addition to calling for a new, more expansive leasing program, the order directed a review of the energy production potential of all National Marine Sanctuaries and Marine National Monuments designated or expanded since 2007. (Department of Commerce Secretary Wilbur Ross has since delivered such a review to the administration, although the contents of that review have not yet been made public.) The Executive Order also revoked the 291,000-km² Northern Bering Sea Climate Resilience Area, which was [designated by former President Barack Obama](#) in December 2016 as off-limits to petroleum exploitation.

The draft OCS program states that the following currently protected areas would be exempt from petroleum exploitation from 2019-2024:

- Any National Marine Sanctuaries "designated as of July 14, 2008"
- Northeast Canyons and Seamounts Marine National Monument

Regarding the National Marine Sanctuaries, technically none of them have been *designated* since July 2008, suggesting they should be safe. However, a few of them – like the [Greater Farallones National Marine Sanctuary](#) in California – have been *expanded* since then, and it remains unclear whether the Trump administration would consider their expanded areas as exempt from leasing, too. Spokespeople with BOEM and the National Ocean Service (which oversees the Office of National Marine Sanctuaries) were unable to provide clarification on this to MPA News.

The 12,720-km² Northeast Canyons and Seamounts Marine National Monument, although given a reprieve from oil/gas exploitation in the draft OCS program, has been [recommended for reopening to commercial fishing](#) by US Department of Interior Secretary Ryan Zinke, and awaits a decision on that by President Trump. It is currently closed to all commercial resource extraction. (No other Marine National Monuments are mentioned in the draft OCS program. They are all in US Western Pacific waters – Hawaii and territories further west – which are believed to be low in petroleum resources and are not included in the draft OCS program.)

So does this mean that National Marine Sanctuaries and most Marine National Monuments would or would not be opened to drilling under this draft program?

This is unclear. MPA News co-hosted a [webinar panel discussion on the draft OCS program](#) on 7 February 2018, and panelists indicated they saw ways the Trump Administration could still open National Marine Sanctuaries and Marine National Monuments to drilling. (A recording of the panel discussion is at the link above.)

Panelist Richard Charter of the Ocean Foundation noted that the review by Commerce Secretary Ross could result in recommendations to rescind part or all of some sanctuaries in the name of petroleum exploitation. "The concern is that any National Marine Sanctuary that might be rescinded, or any part of one that might be rescinded, instantly finds itself up for OCS oil and gas leasing in this five-year program," said Charter.

Panelist Jay Austin of the Environmental Law Institute said the same could be the case for Northeast Canyons and Seamounts Marine National Monument. He cited President Trump's [plan to reduce the size of two terrestrial national monuments](#), as well as Secretary Zinke's recommendation to open up Northeast Canyons to commercial fishing. "The trend is definitely toward reducing areas and protections for these recently designated monument areas," said Austin.

Are there legal obstacles to opening these MPAs to drilling?

As discussed by our panelists, there are several legal obstacles. In the process of being designated, each National Marine Sanctuary underwent years of public hearings, US Congressional approval, and some state-level approval processes as well. National Marine Sanctuaries off the state of California, for example, all had to be found consistent under the state's Coastal Zone Management Act with the state's coastal plan. So undoing that would likely need to be found consistent as well, which seems unlikely. "I think there's probably six or seven layers of litigation there if something were to happen in terms of a rollback," said Charter.

Austin noted that the Antiquities Act of 1906, under which US Presidents can designate national monuments, remains unclear on whether future Presidents can undo or even downsize their predecessors' designations. "There's an issue about whether they can reduce the size or relax restrictions that were in the monument proclamations," he said. "That has been done in the past but the question of whether the Act actually authorizes it is still open." He noted that Trump's downsizing of the two terrestrial monuments has [already been challenged in court](#) by conservation groups and indigenous tribes. "Some of these questions are going to get tested for the first time. And that in turn may establish how far the administration is willing to try to go with the marine monuments." (Austin noted that Trump's revocation of Obama's Bering Sea closure is also [now being contested in court](#) by conservation groups.)

There is also the issue of state waters. In the US in most cases, the waters of individual states extend 3 nm from shore. So oil and gas drilled offshore in federal waters must typically transit state waters to get to onshore facilities and pipelines. States that are opposed to new offshore drilling off their coasts – like California, for example – could make things difficult for industry. "In California in the mid-1980s, 24 local communities adopted ordinances that either ban outright or put to a vote of the local people the construction of any onshore facilities for offshore oil and gas," said Charter. "Those were challenged in court by the oil industry and all of them survived."

On 7 February 2018, the California State Lands Commission [notified the Trump Administration](#) that the state would not approve new pipelines or allow the use of existing pipelines to transport oil from new leases ashore. The Commission chair said, "I am resolved that not a single drop from Trump's new oil plan ever makes landfall in California."

Does the petroleum industry want to drill in MPAs?

Panelist Tim Charters of the National Ocean Industries Association, which represents offshore energy producers and other sectors, said that the MPA subject is making the discussion more difficult. "I

would certainly prefer to spend a lot less time talking about Sanctuaries and focus instead on areas that have not obviously had the same level of protection, but which have resources that are available to benefit the American people," he said.

That being said, Charters acknowledges that California – which has four National Marine Sanctuaries – would be an attractive place for the petroleum industry to expand its drilling efforts: there are proven offshore petroleum reserves there, and existing infrastructure onshore. He says the state could save significant money by helping to produce more oil off its own coast rather than importing oil from overseas.

What are the next steps?

As noted above, a public comment process is now open on the draft OCS program. Following that process, two more drafts of the five-year OCS program are on their way. And after the final plan is released, there are likely to be lawsuits. "You can kick off the process with whatever kind of rhetoric you want," said Austin. "But ultimately the plan gets written, and then it gets reviewed in court."

[To comment on the draft OCS program](#)

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