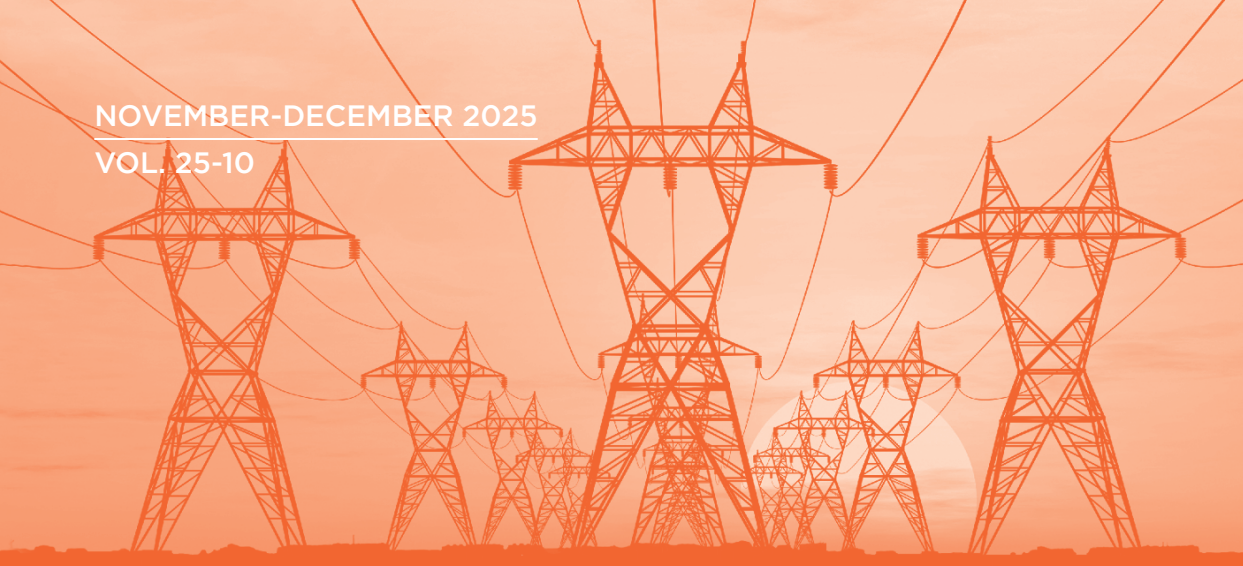
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More "Big Beautiful" Leasing in the Gulf of America

By Michael Palmer and L. Poe Leggette*

The One Big Beautiful Bill Act has expanded and expedited the schedule of Outer Continental Shelf (OCS) oil and gas lease sales in the Gulf of America. In this article, the authors summarize the changes made by the law and then highlight some issues regarding how the Department of the Interior will address compliance with the National Environmental Policy Act and the Endangered Species Act in light of the law's new mandates.

Section 50102 of the One Big Beautiful Bill Act (the OBBBA)[1] makes changes affecting what Section 18 of the OCS Lands Act calls the Five-Year Oil and Gas Leasing Program.[2] Although the program is accompanied by thousands of pages of analysis, it is a one-page list of lease sales to be held within the next five years after the program is approved. The program is to provide "as precisely as possible" the "size, timing, and location" of the sales. It is to offer those sales that "will best meet national energy needs"[3] for the next five years.[4]

Since Section 18 was enacted in 1978, the Department of the Interior (Department) has approved 11 leasing programs.[5] The most recent covers the years 2024-2029. Approved by the Biden administration, it is the smallest leasing program in history. It offers only one sale every two years in the Gulf of America, with no sale anywhere else. There has been concern over how so small a program could "best meet national energy needs." Production from the Gulf of America peaked in 2019 at 693 million barrels. It declined significantly in 2020-2021 and rose to 680 million barrels in 2023, but has since resumed its

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1 One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72 (2025).

2 The OBBBA also expands and expedites lease sales in the Cook Inlet Planning Area of the Alaska OCS. § 50102(a)(2)(A), 139 Stat. at 140. This article does not cover the Alaska sales.

3 43 U.S.C. § 1344(a).

4 There is an anomaly in the statute's wording here. It is extremely rare that a sale on the approved program will result in production from a new lease within the five-year period. The Department's analysis of national energy needs has always extended well beyond the five-year period.

5 See National OCS Oil and Gas Leasing Program, Bureau of Ocean Energy Mgmt., https://www.boem.gov/oil-gas-energy/national-program/national-ocs-oil-and-gas-leasing-program (last visited July 31, 2025).

decline.[6] In contrast, the U.S. Energy Information Administration reports that in 2024, the nation imported 2.4 billion barrels of crude oil,[7] almost four times the total Gulf of America annual production. There is demand for more OCS oil.

Believing the 2024-2029 program did not meet national energy needs, in April of this year Interior Secretary Doug Burgum reopened the process to revise the program. How he will revise the program will be influenced by Section 50102.

OBBBA SECTION 50102

Section 18 of the OCS Lands Act prohibits the Secretary from issuing a lease "unless it is for an area included in the approved leasing program[.]"[8] Nor may he issue a lease "unless it contains provisions consistent with the approved leasing program[.]"[9] How these two provisions would apply to President Joe Biden's leasing program is unclear. The program did not substantially alter the area in the Gulf available for leasing, but it did substantially limit the timing of the sales. To address the uncertainty presented by the two quoted provisions, Section 50102 moves the Biden program out of the way. It provides that "[n]otwithstanding" that program, the Secretary is to hold at least 30 "region-wide" sales in the Gulf of America under the new statute.[10] The Secretary must hold at least one sale no later than December 15, 2025. After that, he must hold at least two sales a year from 2026 through 2039, and at least one additional sale by March 15, 2040.[11]

In general, the Secretary is to offer tracts for lease under the same terms as were offered in the 2020 proposed Lease Sale 254. Those terms included 10 lease stipulations in the lease sale notice.[12] Six of the 10 must be included in

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[6] BSEE Oil and Gas Production by Calendar Year 2016-2025, https://www.data.bsee.gov/Production/OCSProduction/Default.aspx (last visited July 31, 2025).

[7] Petroleum & Other Liquids, Imports by Area of Entry, U.S. Energy Information Administration https://www.eia.gov/dnav/pet/pet_move_imp_dc_NUS-Z00_mbbl_a.htm (last visited August 1, 2025).

[8] 43 U.S.C. § 1344(d)(3).

[9] Id.

[10] Section 50102(a)(1)(A), 139 Stat. at 139-40. In fact, it goes one step further: The OBBBA prevails over any subsequent leasing program not consistent with the law. Id. ("Notwithstanding the 2024-2029 National Outer Continental Shelf Oil and Gas Leasing Program (and any successor leasing program that does not satisfy the requirements of this section). . . .").

[11] Section 50102(a)(1)(B), 139 Stat. at 140.

[12] See Gulf of Mexico Outer Continental Shelf (OCS), Oil and Gas Lease Sale 254, 85 Fed. Reg. 8017 (Feb. 12, 2020) (referencing Final Notice of Sale available on BOEM website).

future sales without modification. The remaining four may be modified "to reflect current conditions."[13]

FUTURE COMPLIANCE OF LEASE SALE DECISIONS WITH THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) AND THE ENDANGERED SPECIES ACT (ESA)

Section 50102 does not address how the agency is to comply with NEPA and ESA. Although the law directs the Secretary to act "notwithstanding" the Biden program, it does not give a similar direction to act "notwithstanding" other statutes. If the Department is averse to legal risk, it will continue to revise the five-year leasing program. The Bureau of Ocean Energy Management (BOEM) will continue, before lease sales, to consult with the National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service under the ESA. In the near term, of course, that consultation will be made easier by NMFS's recent completion of a "biological opinion" for oil and gas activities in the Gulf of America.[14] There will likely be some changes with respect to NEPA, however.

The heart of NEPA is an agency's duty to prepare reports on the environmental effects of proposed agency actions. Although this duty is subject to many nuanced requirements, two high-level restraints limit what may be required of an agency.

First is that an agency need only comply with NEPA "to the fullest extent possible." If compliance is not possible, NEPA does not apply. For example, the Supreme Court has addressed timing limitations on agency action. In *Flint Ridge Development Co. v. Scenic Rivers Association of Oklahoma*, the Court concluded that because the statute gave the agency only 30 days to review a filing, it was not possible for the agency to conduct the review "and simultaneously prepare impact statements on proposed developments."[15]

Second, if the law gives the agency no discretion or no authority to act on a particular topic, an environmental report is not required to analyze it. As the Supreme Court recently reiterated, "agencies are not required to analyze the effects of projects over which they do not exercise regulatory authority."[16]

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[13] Section 50102(b)(1)(B), 139 Stat. at 140.

[14] Endangered Species Conservation: Biological Opinions by the NOAA Fisheries' Office of Protected Resources, NOAA Fisheries, www.fisheries.noaa.gov/national/endangered-species-conservation/biological-opinions-noaa-fisheries-office-protected (last updated May 20, 2025).

[15] Flint Ridge Dev. Co. v. Scenic Rivers Ass'n of Okla., 426 U.S. 775, 791 (1976).

[16] Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo., 145 S. Ct. 1497, 1516 (2025) (internal quotation marks omitted) (quoting Dep't of Transp. v. Pub. Citizen, 541 U.S. 752, 770 (2004)).

As applied to Section 50102, some interesting legal issues may arise under NEPA. The Department is directed to hold a sale no later than this December 15. If a court believes BOEM has not produced a fully compliant environmental report on the sale by that date, that court would nevertheless seem powerless to enjoin it. Congress says "the show must go on." Similarly, for those six stipulations that are to be included in the lease without modification, it would seem BOEM is under no duty to analyze alternatives to those stipulations, for BOEM has no discretion to change them.

CONCLUSION

The OBBBA is an important step toward the national goal of increasing oil and gas production. Much remains to be done before the first sale this coming December.