

Judge says Trump can't re-open Arctic waters that Obama closed to drilling



Enlarge / United States, Alaska, Arctic National Wildlife Refuge, Kaktovik, frozen lagoon and sea, pack ice formation. Getty Images

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On Friday, a federal judge ruled that President Trump could not re-authorize drilling in Arctic waters after President Obama removed those waters from drilling in 2016.

If the Alaskan judge's ruling withstands appeal, it would mean

that the Trump Administration would have to seek approval from Congress to re-open federal waters north of Alaska to oil and gas drilling. Congress, currently divided with a Republican majority in the Senate and a Democratic majority in the House, would be unlikely to agree to such a request.

Why are these waters in question?

In December 2016, the outgoing Obama Administration invoked a 1953 law called the “Outer Continental Shelf Lands Act” (OCSLA) to remove about 125 million acres of Arctic waters north of Alaska from potential leasing to oil drilling operations. (This excluded roughly 3.2 million acres of lease-able waters adjacent to the coast, approximately 200,000 of which are currently under active leases to oil and gas companies.)

When OCSLA was passed by Congress, it made vast swaths of federal waters available to the Department of the Interior (DOI) to lease out to oil and gas companies. Section 12(a) of OCSLA wrote that sitting presidents would be permitted remove certain areas from the roster of available waters, but OCSLA did not specify that presidents could *add* to the list.

While presidents have used OCSLA to remove federal waters from potential leasing for periods of 10 or 20 years, Obama did not specify an end date for his decision to remove the Alaskan waters from potential drilling.

- Waters that were made off-limits by the Obama Administration.
Department of the Interior
- Northern Alaska geologic plays, proposed for leasing by the Trump Administration.
Bureau of Ocean Energy Management

In April 2017, Trump signed an executive order directing the

DOI to review the rules governing which waters were available for leasing to oil and gas companies. In January 2018, the DOI responded with a proposal to substantially expand federal oil and gas leasing, including in the off-limits Alaskan Outer Continental Shelf area.

The League of Conservation Voters sued President Trump, claiming that he didn't have the power to re-open federal waters that had been taken off limits without approval from Congress. On Friday, Judge Sharon Gleason agreed (PDF).

Gleason wrote on Friday that "Congress's silence in Section 12(a) as to according the President revocation authority was likely purposeful; had Congress intended to grant the President revocation authority, it could have done so explicitly, as it had previously done in several (but not all) of its previously enacted uplands laws."

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