

First Day Presidential Directives May Have Broad Implications for Wind Industry

WRITTEN BY

M. Benjamin Cowan | Andrea W. Wortzel | Josh Kaplowitz | Viktoriia De Las Casas | Morgan Gerard

Among President Donald Trump's directives issued on his first day in office was a [Presidential Memorandum](#) targeting wind energy, which has been a significant source of new electricity generation in the United States over the past decade, totaling around 10% of utility-scale generation. Among other things, the Memorandum "temporarily" withdraws the entire ocean off the United States from further offshore wind leasing, pauses the issuance of new approvals or loans for onshore and offshore wind projects pending a cross-government review of wind development's environmental and economic impacts, and encourages the Department of Justice to seek stays in any pending wind project litigation.

The Memorandum creates potential confusion for the wind industry regarding the president's [Executive Order](#), also issued on day one, that declared a national energy emergency; announced the need for immediate action to expand and secure the nation's energy infrastructure to ensure a reliable, diversified, and affordable energy supply; and required federal agencies to review permitting procedures that accelerate or hinder approvals, including those under the Endangered Species Act (ESA). The Executive Order also places a [freeze](#) on the issuance of new regulations, requires federal agencies to withdraw any rules submitted to the Office of the Federal Register that have not yet been published, and directs federal agencies to re-evaluate any rules that have been published but have not yet taken effect.

Given the breadth of the Memorandum and the Executive Order (collectively, the Directives) and their similarity to executive actions under the Biden Administration targeting oil and gas production that were halted in court, we anticipate that many elements of the Directives will be litigated soon. The following is an overview of the most significant elements of the Directives and a brief discussion of some of the many questions that will need to be answered in the days, weeks, and months to come.

Offshore Wind Presidential Memorandum and Onshore Permitting Impacts

- **Offshore Wind Leasing**: The Memorandum directed the "temporary" withdrawal of all areas within the Outer Continental Shelf (OCS)^[1] from wind energy leasing, from January 21, 2025, until the directive is revoked. Notably, while the president has the power under Section 12(a) of the Outer Continental Shelf Lands Act (OCSLA) to withdraw OCS areas from leasing, reinstating those areas requires an act of Congress – revocation of the Presidential directive is not sufficient.^[2]
- **Potential Revocation of Existing Leases**: While existing leases are not yet affected, the Memorandum instructs the Secretary of the Interior to review the necessity of terminating or amending them. The Secretary of

the Interior is directed, in consultation with the Attorney General, to “conduct a comprehensive review of the ecological, economic, and environmental necessity of terminating or amending any existing wind energy leases, identifying any legal basis for such removal, and submit[ing] a report with recommendations to the President.” Although issuance of these leases each required a NEPA review, and approval of a construction and operations plan to develop the leases would require additional and more extensive NEPA review, this provision explicitly directs the Secretary of the Interior to identify any legal basis to terminate or amend those leases.

Pause on Offshore and Onshore Wind Permitting:

- The Memorandum calls for a “temporary cessation and immediate review” of federal wind leasing and permitting—including for offshore and onshore wind. This directive covers “new or renewed approvals, rights of way, permits, leases, or loans for onshore or offshore wind projects,” although these terms are subject to interpretation, and it is unclear which subject areas are covered.
- The Memorandum states that this permitting pause is warranted due to various “alleged legal deficiencies” in federal wind leasing and permitting, including “potential inadequacies in various environmental reviews required by the National Environmental Policy Act [‘NEPA’]”—and cites potential “negative impacts on navigational safety interests, transportation interests, national security interests, commercial interests, and marine mammals.” The Memorandum does not provide any detail on the nature of those deficiencies or support for the allegation.
- According to the Memorandum, the pause will last until “the completion of a comprehensive assessment and review of federal wind leasing and permitting practices,” to be led by the Secretary of the Interior in consultation with several other agencies which shall focus on wildlife impacts, economic costs of wind energy generation, and the “effect of subsidies on the viability of the wind industry.”
- ***Unanswered Questions:*** The Memorandum does not provide a time limitation for the Secretary of the Interior to complete its review. It also does not provide any guidance on the alleged deficiencies in the NEPA process that are to be addressed. The Secretary of the Interior is already charged under the species statutes to review impacts to birds and marine mammals (particularly in the context of issuing Incidental Take Permits under the ESA and Incidental Take Authorizations under the Marine Mammal Protection Act). It is unclear whether and if the Memorandum is intended to alter this review. Finally, the Memorandum also raises uncertainty regarding whether any types of review and determinations may be exempt from the approval freeze—for example, self-implementing permits such as general permits for incidental take of eagles under the Bald and Golden Eagle Protection Act, or Army Corps of Engineers’ Nationwide Permits under Section 404 of the Clean Water Act.

Energy Emergency Executive Order and Environmental Review

Under this Executive Order, the federal agencies must use all relevant lawful emergency authorities to expedite the completion of authorized infrastructure, energy, environmental, and natural resources projects, including

evaluating the following:

- **Emergency Regulations and Permits:**

Agencies and the Secretary of the Army must identify actions to facilitate energy supply subject to emergency treatment under the Clean Water Act and other statutes, including by utilizing nationwide permits.

- **ESA Emergency Consultation and Exemptions:**

Agencies must identify actions to facilitate energy supply subject to ESA emergency consultation regulations.

Agencies are directed to use ESA emergency regulations to the maximum extent permissible.

Convene the ESA Committee (or “God squad”) to quarterly review applications and exemptions from ESA obligations.

- ***Unanswered Questions:*** The permitting “streamlining” contemplated by the Executive Order is intended to provide approval efficiencies for energy projects, including electric or thermal generation. The Executive Order does not define ‘energy’ to exclude wind energy. Many of its requirements seem to be inconsistent with the Memorandum, raising a number of legal and administrative questions regarding its implementation. There may be some lag as federal agencies determine how to implement the Directives, and there are some clear legal vulnerabilities to the extent the Directives would require agencies to disregard their statutory obligations under NEPA, the ESA, or other implicated statutes.

Implications for the Wind Industry

While the offshore wind industry had been anticipating a pause in new leasing and potentially in permitting for existing leases, the Memorandum goes further than what most in the industry anticipated, and we anticipate that it will be challenged in court. The call for a review of existing leases appears to signal that the Trump Administration is looking for justifications to cancel existing leases, putting billions of dollars in investment at risk. However, the extension of the permitting freeze to onshore wind projects may be the most unexpected and surprising aspect of the Memorandum. Wind developers in both the offshore and onshore industries should think carefully about the impact of the Memorandum on their business and consider consulting with legal counsel regarding how to protect their projects and defend their interests.

[1] The Memorandum erroneously referred to the ocean between 3 and 200 miles off the coast of the United States as the “Offshore Continental Shelf.”

[2] *League of Conservation Voters v. Trump*, 363 F. Supp. 3d 1013 (D. Alaska 2019).

RELATED INDUSTRIES + PRACTICES

- Environmental + Natural Resources
- Renewable Energy