Divided Government, Divided Risk: What the 2026 Midterms Mean for U.S. Oil and Gas and Deep-Sea Mining

By Louise Woods, Elena Guillet | November 5, 2026

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The Democratic victory in the 2026 midterm elections may change the political conditions for U.S. extractive industries, but it does not reverse the Trump administration's resource agenda nor the legal basis on which U.S. extractive projects are authorised. Leases, permits and licenses already issued remain valid, and the president keeps the executive authority over leasing, permitting and agency rulemaking. When the new Congress sits in January 2027, its main tools will be oversight and investigations, appropriations, Senate confirmations and legislation. Any legislation that the administration opposes would face a presidential veto, which can only be overridden by a two-thirds majority in both chambers.

The immediate effect of the midterm elections is not a change in the law but a change in the risk attached to decisions made under it. We suggest that companies evaluate three questions now. First, will their approval records withstand closer congressional scrutiny and litigation? Second, could federal funding or agency capacity their projects rely on be constrained through the budget process? Third, do their contracts allocate the risk of delay, added permit conditions or changes in law in a way they can accept? The answers will vary by sector, and exposure is likely to be greatest for projects still awaiting key approvals.

Oil and Gas: More Political Risk, but Production is not About to Reverse

Producing assets are relatively insulated, because Congress cannot cancel issued leases, revoke granted permits or reverse agency decisions by majority vote. The more meaningful exposure lies in pending and future authorisations.

Oversight is the most likely near-term development. Before the election, **S&P Global** anticipated that Democratic control would bring closer scrutiny of federal leasing and of energy companies' relationships with the administration. Committee inquiries into lease sales, offshore and Arctic programs or LNG approvals are a realistic prospect, although their scope will depend on committee priorities and resources. Companies should be ready to respond to document requests or subpoenas. That means identifying likely document custodians, confirming that preservation measures are in place and reviewing how communications with agencies would read if made public. Congressional committees have generally taken the position that they are not bound by common-law privileges, so companies should not assume that privilege will protect sensitive material.

Material produced through oversight can also find its way into challenges to agency decisions under NEPA and the Administrative Procedure Act. Companies with near-term leasing, right-of-way or LNG approvals should review the record supporting their authorization now, rather than after a potential challenge is filed. For LNG, Department of Energy authorizations for exports to non-free-trade-agreement countries rest on a public-interest determination, in which environmental effects

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and domestic price impacts can be relevant. These are the issues most likely to draw congressional attention, and applications should address them fully. Sponsors should also test the conditions precedent and long-stop dates in their offtake and financing agreements against realistic, rather than best-case, approval timelines.

Critical Minerals: The Strategic Case Survives, but the Terms Change

Critical minerals continue to enjoy bipartisan support on supply-chain and national security grounds, and we see little indication that a Democratic Congress would oppose domestic mining as such. The legal focus is more likely to fall on the terms of federal support. The administration has increasingly used federal financing, offtake arrangements and government equity stakes to back projects. These arrangements may attract oversight, particularly where questions arise about award processes, conflicts of interest or value for taxpayers, and funding for some programs could be revisited through appropriations.

Recipients of federal support should review the documentation and process behind their awards, and identify which elements depend on future appropriations rather than committed funds. Financing and equity documents should be checked for provisions triggered by changes in government policy or funding, such as termination rights, step-in rights and reporting obligations. For projects on federal lands, environmental assessments, water management plans and consultation with Indigenous communities should be documented to a standard that can withstand both judicial review and political scrutiny.

Deep-Sea Mining: A Supportive Framework, With New Factors to Manage

The legal framework for deep-sea mining remains in place. Under the Deep Seabed Hard Mineral Resources Act (DSHMRA), U.S. citizens can apply for a NOAA exploration license or commercial recovery permit to explore for or recover seabed minerals beyond national jurisdiction. On 24 April 2025, President Trump signed Executive Order 14285, directing agencies to accelerate offshore critical-mineral development, and NOAA has since streamlined its process so that applicants can seek an exploration license and a commercial recovery permit at the same time. The midterms do not change that framework, existing applications will not be cancelled automatically, and an outright federal ban appears unlikely while the veto stands. Applicants should nonetheless evaluate the following four issues:

- **The first is environmental review.** Licensing and permitting decisions under DSHMRA are subject to environmental review, and oversight is likely to concentrate on seabed habitats and biodiversity, sediment plumes, noise and the adequacy of baseline data. Applicants have considerable control here. A robust, well-evidenced environmental record is the strongest answer to both congressional and judicial scrutiny, and it can distinguish a well-prepared applicant from its competitors.

- **The second is appropriations and agency capacity.** Even without new legislation, Congress could seek to influence the pace of NOAA's work through funding levels or riders restricting the use of funds. These measures would still need to pass both chambers and be signed into law, but must-pass spending bills are the route to monitor most closely.

- **The third is legislation.** The Congressional Research Service has identified proposals that could restrict or halt NOAA's authority, including **H.R. 664**, which would prohibit NOAA from authorising specified seabed-mining activities, and **H.R. 663**, which would promote an

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international moratorium. Neither has become law and their prospects remain uncertain, but Democratic control may give them more committee attention.

- **The fourth is international law.** The United States is not a party to UNCLOS. The International Seabed Authority (ISA) has not finalised its exploitation regulations, and several states contest the U.S. DSHMRA regime as unilateral recovery in areas beyond national jurisdiction. A Democratic Congress may encourage closer engagement with the ISA or stronger environmental standards. UNCLOS accession, however, would require the advice and consent of two-thirds of the Senate and appears unlikely. These questions bear on where recovered nodules can be processed and sold, on counterparty appetite and on the protection available if a foreign state takes measures affecting a project (either directly through an ISA licence or indirectly via measures impacting companies incorporated within its jurisdiction).

In practical terms, applicants should build realistic timelines into financing and offtake documents, including long-stop dates, conditions precedent and extension mechanisms. They should check whether change-in-law, force majeure and termination provisions cover regulatory delay or added permit conditions, because many contracts do not treat regulatory delay as force majeure unless they say so expressly. They should map processing and sales routes against jurisdictions that may not recognize U.S.-licensed recovery. They should also consider whether their corporate structure and dispute resolution provisions preserve access to international arbitration and investment-treaty protection.

Practical Implications for Industry

Divided government brings more political and legal scrutiny to the U.S. extractive sector rather than a wholesale change of policy. Congress's power over budgets, executive-branch oversight, new legislation and certain confirmations will shape how durable long-term investment programs prove to be. However, the executive framework supporting domestic resource development remains in place.

Oil and gas companies should expect production to continue, with closer scrutiny of new leasing, offshore and Arctic expansion, and LNG approvals. Coal faces more political and regulatory pressure. Terrestrial critical-minerals projects keep their strategic support, though public financing and environmental performance will receive closer examination. Deep-sea mining stakeholders keep a supportive executive framework and a strong strategic case. They should, however, plan for closer oversight, more demanding environmental review and possible additional conditions, both in the United States and internationally.

For all stakeholders, the priorities are clear and achievable. Approval records should be built to withstand judicial and congressional review. Change-in-law, stabilization and termination protections in offtake, financing and joint-venture agreements should be tested against the factors set out above. Contracting structures should keep appropriate dispute resolution and investment-protection options available. Demand for critical minerals will continue, and the projects that prepare now will be best placed to meet it.

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