The Transboundary Hydrocarbon Agreement: International Legal Issues

by

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• Completed after 10 continuous years of negotiations
• Extraordinarily important because:
  – Involved every nation on earth
  – Decisions were made based on consensus
  – Created instantaneous customary law (with a few exceptions)

166 nations are parties to UNCLOS
Mexico ratified Convention in 1983
U.S. refused to become party but accepts most of treaty as customary law
Entered into force in Nov. 1994 without U.S.
Marine Juridical Zones

• UNCLOS creates marine juridical zones from land seaward into the oceans
• The coastal nation has the most legal rights close to shore and the least legal rights farther out to sea
• These zones begin at the low-tide baseline
The Gulf of Mexico contains two areas of submerged continental shelf that extend beyond the 200-nautical-mile exclusive economic zones (EEZ) of Mexico and the United States—the “western gap” and the “eastern gap.” The U.S. and Mexico signed a treaty in June 2000 that divides the area of extended continental shelf within the “western gap” between the two nations.
International Legal Rules Regarding Transboundary Resources

- **Rule Under International Customary Law:**
  - Nations must negotiate in good faith to reach an agreement on the exploration and exploitation of transboundary deposits.
  - In the absence of such an agreement neither party may unilaterally exploit the resource to the detriment of the sharing party.
  - This doctrine of *mutual restraint* is supported in int’l tribunal decisions and UNCLOS.
    - Arts. 81, 78, and 56 = exclusive rights to exploitation
    - Arts. 122-123 = cooperation in semi-enclosed seas
    - Art. 300 = good faith and no abuse of right
2012 U.S. Transboundary Treaty
And the Mexican Energy Reform

TWO KEY POINTS

1) THREE REGULATORY REGIMES ARE PRESENT IN THE REGION, EACH WITH DIFFERENT LEVELS OF RISK AND COMPLEXITY

2) TREATY IS A POSSITIVE STEP, BUT HAS MANY PENDING ISSUES AND CONTRADICTS SOME OF THE INTERNATIONAL PRACTICE
2012 Transboundary Treaty
Key Elements

Obligation to Report from both sides, Share information

Allocation of resources by expert obligatory

Fosters unitization agreements between licensees, but allows unilateral exploitation if they can't reach it

Each licensee has its own fiscal regime with U.S. or Mexican authorities

Private Company or Associations

Private investors or associations of private/public companies

Borderline

Creates a Joint Commission

Arbitration

Expert

BOEM

SENER
Mexican Energy Reform
Two types of contractual relations

Assignments

Service contracts in cash with private parties
E&P Contracts

Contracts and Blocks

Private investors or associations of private/public companies

Tender process and signing

Royalties and Taxes
E&P Contracts

- **Service contracts**
  - Cash Considerations
    - Exploration fee
    - Royalty
    - Percentage of profit to be determined through tender

- **Profit sharing contracts**
  - Bonus on execution
  - Percentage of the value of production

- **Production sharing contracts**

- **License contracts**
  - Adjustment mechanism
Contractual relationships in the borderline

Private Company or Associations

Borderline Joint Commission

Private investors or associations of private/public companies

<20%

Expert

BOEM

CNH

SHCP

SENER

Center for U.S. and Mexican Law
No Unitization Agreement

Private Company or Associations

Expert

Private investors or associations of private/public companies

30%

Borderline

BOEM

Comisión Nacional de Hidrocarburos

SHCP

CNH

PEMEX

SECRETARIA DE ENERGIA

SECRETARIA DE HACIENDA Y CREDITO PUBLICO

CENTER FOR U.S. AND MEXICAN LAW
U.S. Gulf of Mexico

BOEM Gulf of Mexico OCS Region
Blocks and Active Leases by Planning Area
September 2, 2014

<table>
<thead>
<tr>
<th>Planning Areas</th>
<th>Total Blocks</th>
<th>Total Acres</th>
<th>Number of Leases</th>
<th>Acres Leased</th>
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</thead>
<tbody>
<tr>
<td>Western</td>
<td>5,240</td>
<td>28,576,813</td>
<td>1,216</td>
<td>6,928,759</td>
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<tr>
<td>Central</td>
<td>12,499</td>
<td>66,446,351</td>
<td>4,191</td>
<td>22,248,047</td>
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<tr>
<td>Eastern</td>
<td>11,526</td>
<td>64,583,679</td>
<td>106</td>
<td>567,104</td>
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<tr>
<td><strong>Sub-Total</strong></td>
<td><strong>29,175</strong></td>
<td><strong>159,586,843</strong></td>
<td><strong>5,513</strong></td>
<td><strong>29,743,910</strong></td>
</tr>
<tr>
<td>CPA/EPA Shared Blocks*</td>
<td>(96)</td>
<td>(9)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>29,089</strong></td>
<td><strong>159,586,843</strong></td>
<td><strong>5,504</strong></td>
<td><strong>29,743,910</strong></td>
</tr>
</tbody>
</table>

* CPA and EPA contain 26 shared blocks of which 24 are leased. These blocks are given both a CPA and EPA designation in the Gulf where accounts for a higher block total.
Mexican Gulf of Mexico

Simbología
- R1 Explotación
- R1 Exploración
- Asociaciones Pemex
- Contratos Pemex (CIEPS-COPFS)