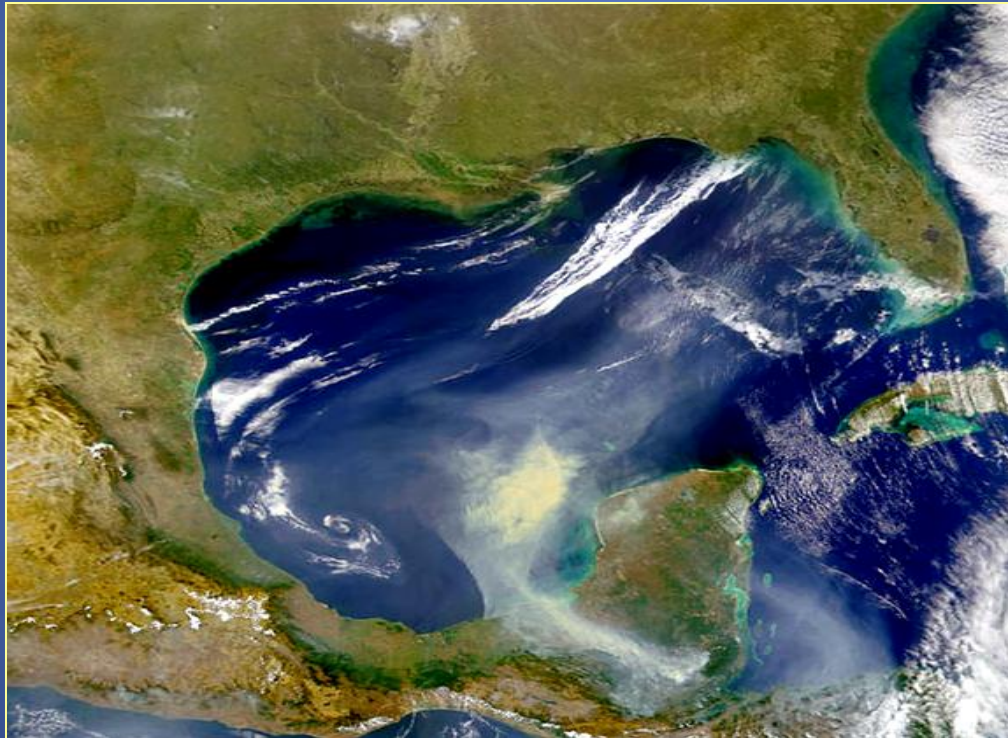


# The Transboundary Hydrocarbon Agreement: International Legal Issues



*by*

Richard J. McLaughlin and Guillermo J. Garcia

CENTER FOR U.S. AND  
MEXICAN LAW



# 1982 United Nations Law of the Sea Convention

- 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

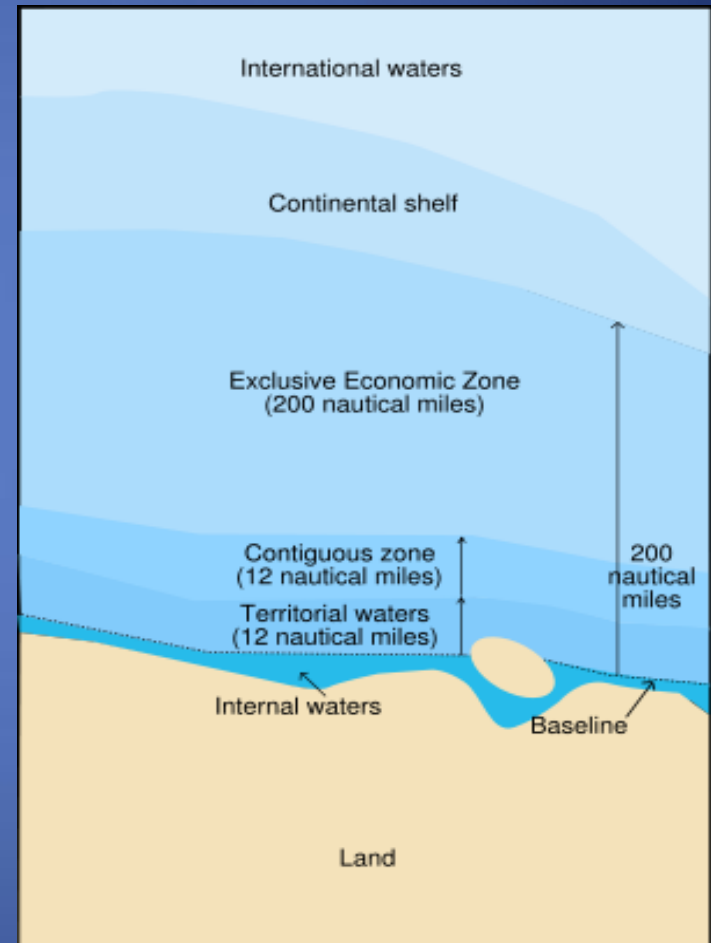
Mexico ratified Convention in 1983

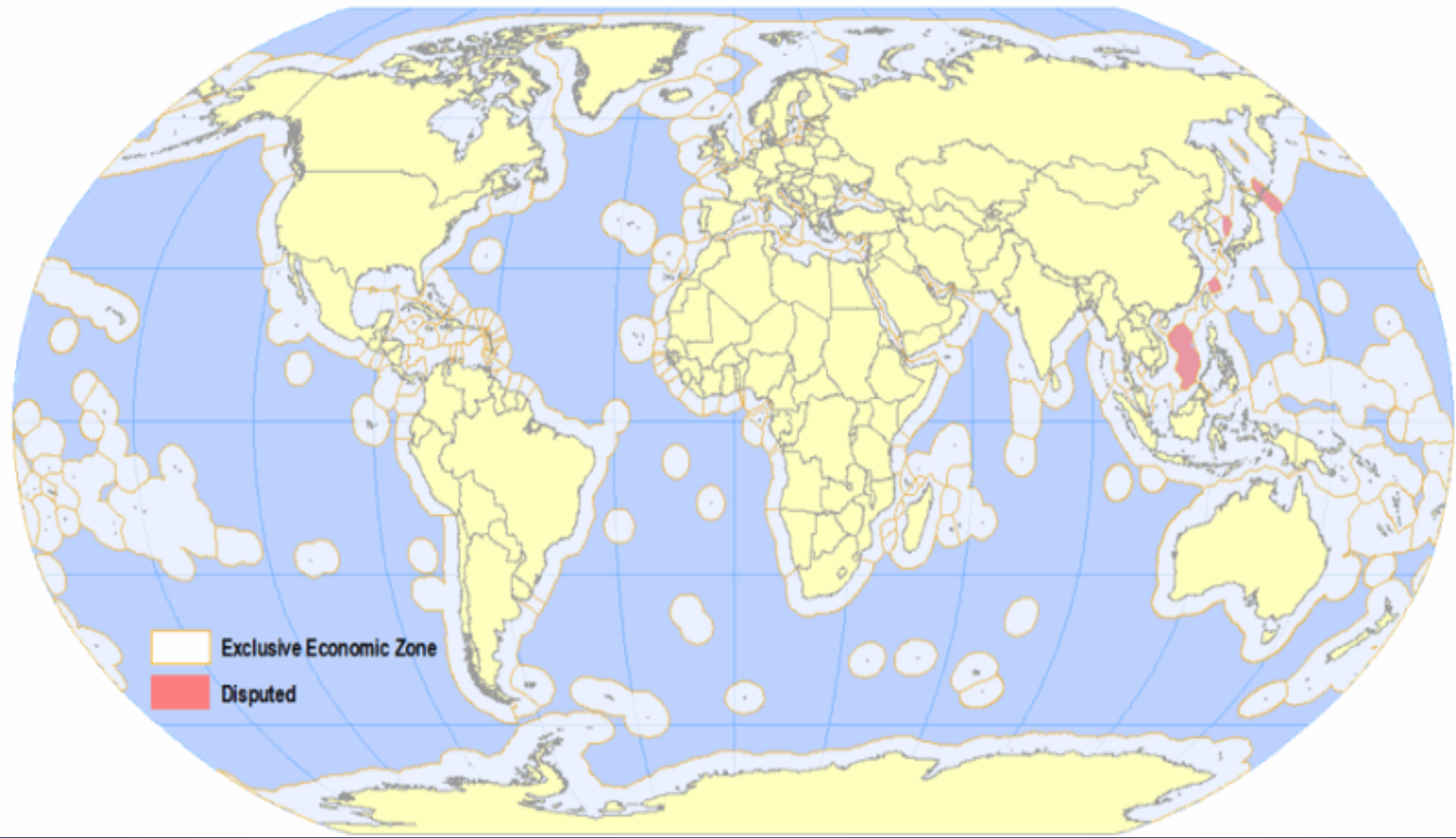
U.S. refused to become party but accepts most of treaty as customary law

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

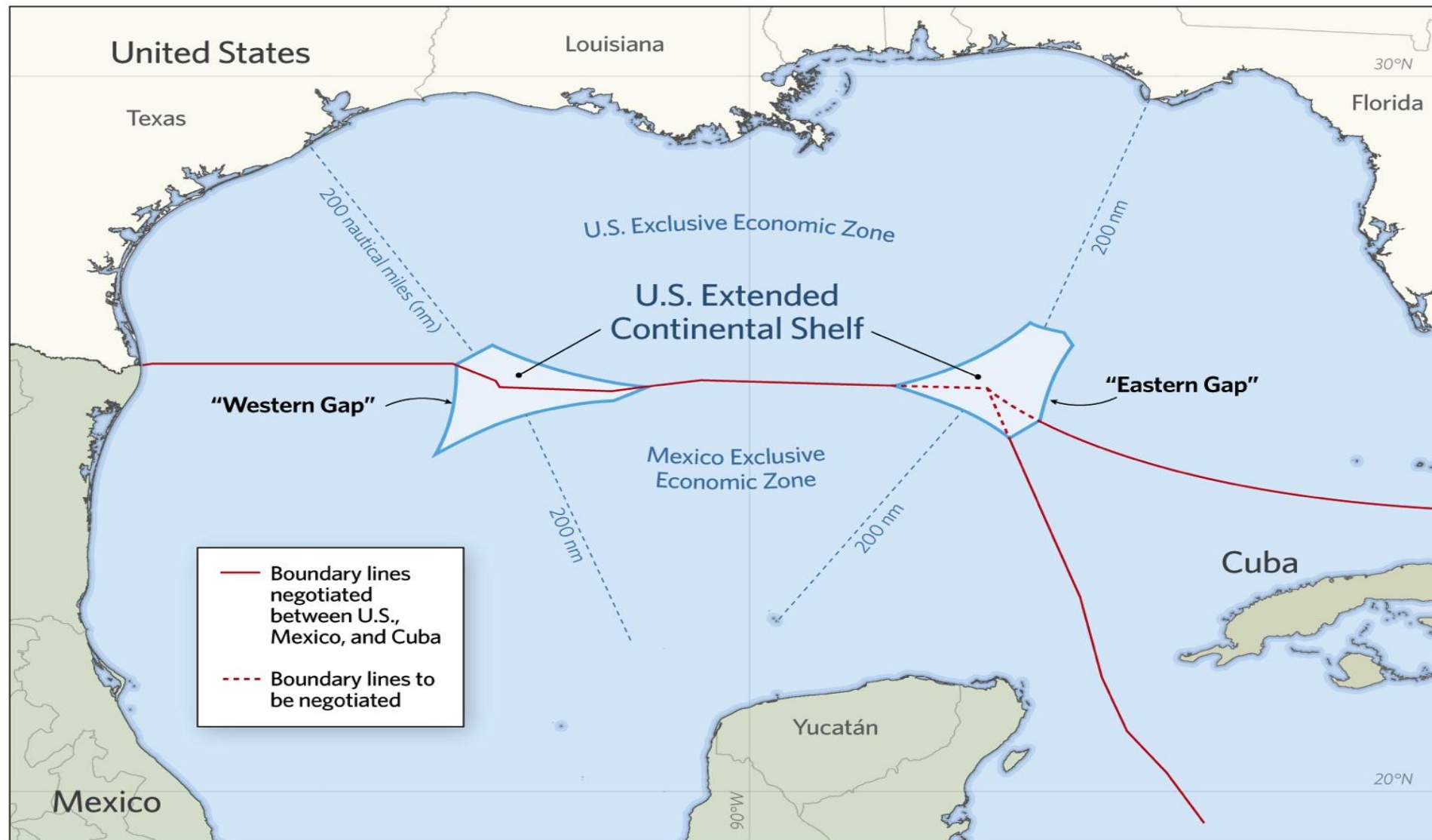




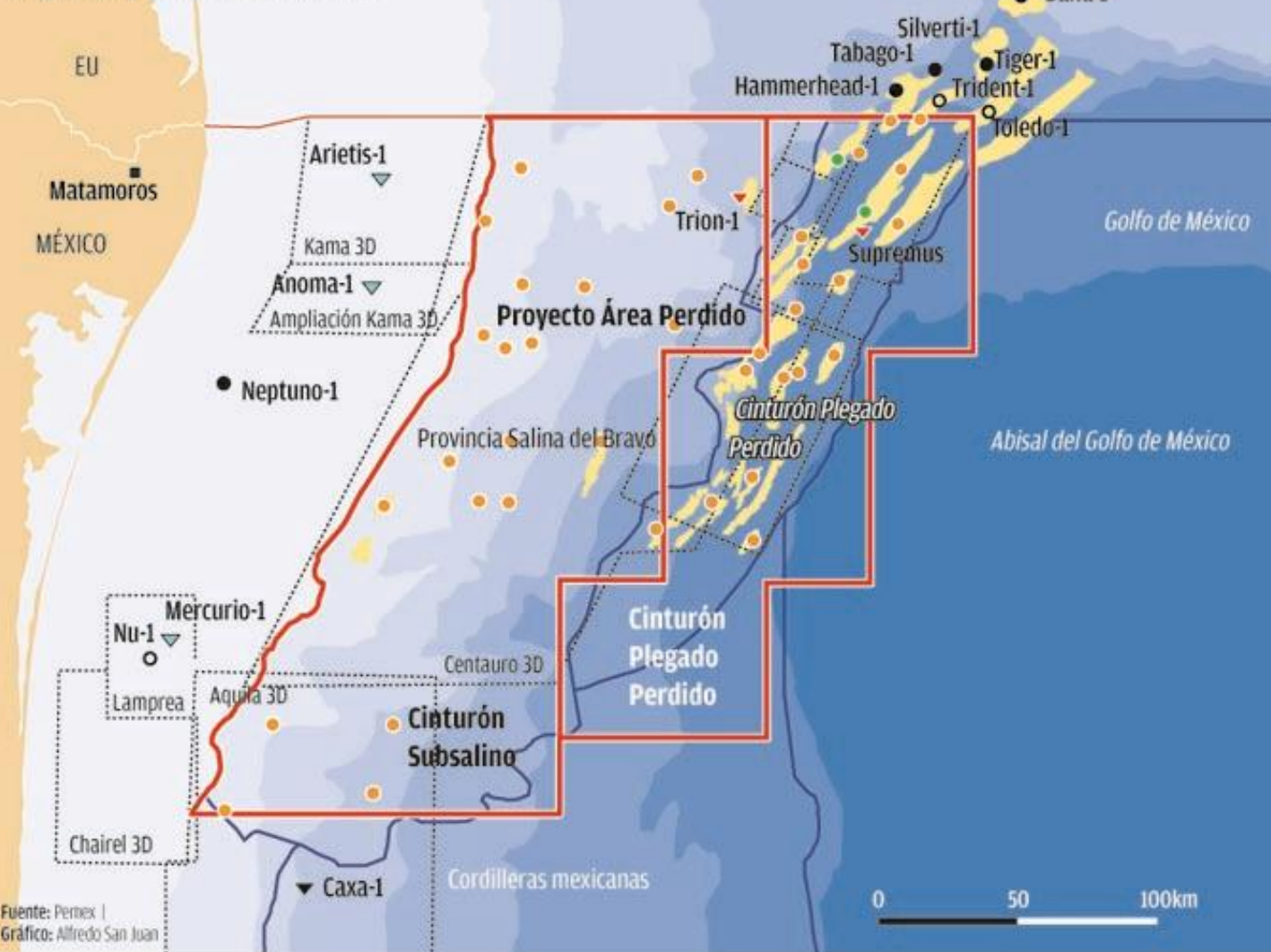
- Map of Exclusive Economic Zones

## U.S. Extended Continental Shelf in Gulf of Mexico

*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.*



# NUEVO YACIMIENTO



## BDOE 2012

- Localizaciones
- Oportunidades
- Pozos**
- ▼ Improductivo seco
- ▽ Improductivo, invadido de agua salada
- ▼ En perforación
- Productor de gas seco
- Taponado por accidente mecánico durante la perforación
- Proyecto Área Perdido
- Provincias geológicas
- Sísmica realizada
- Estructuras geológicas



Fuente: Pemex | Gráfico: Alfredo San Juan

Source: PEMEX

# 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

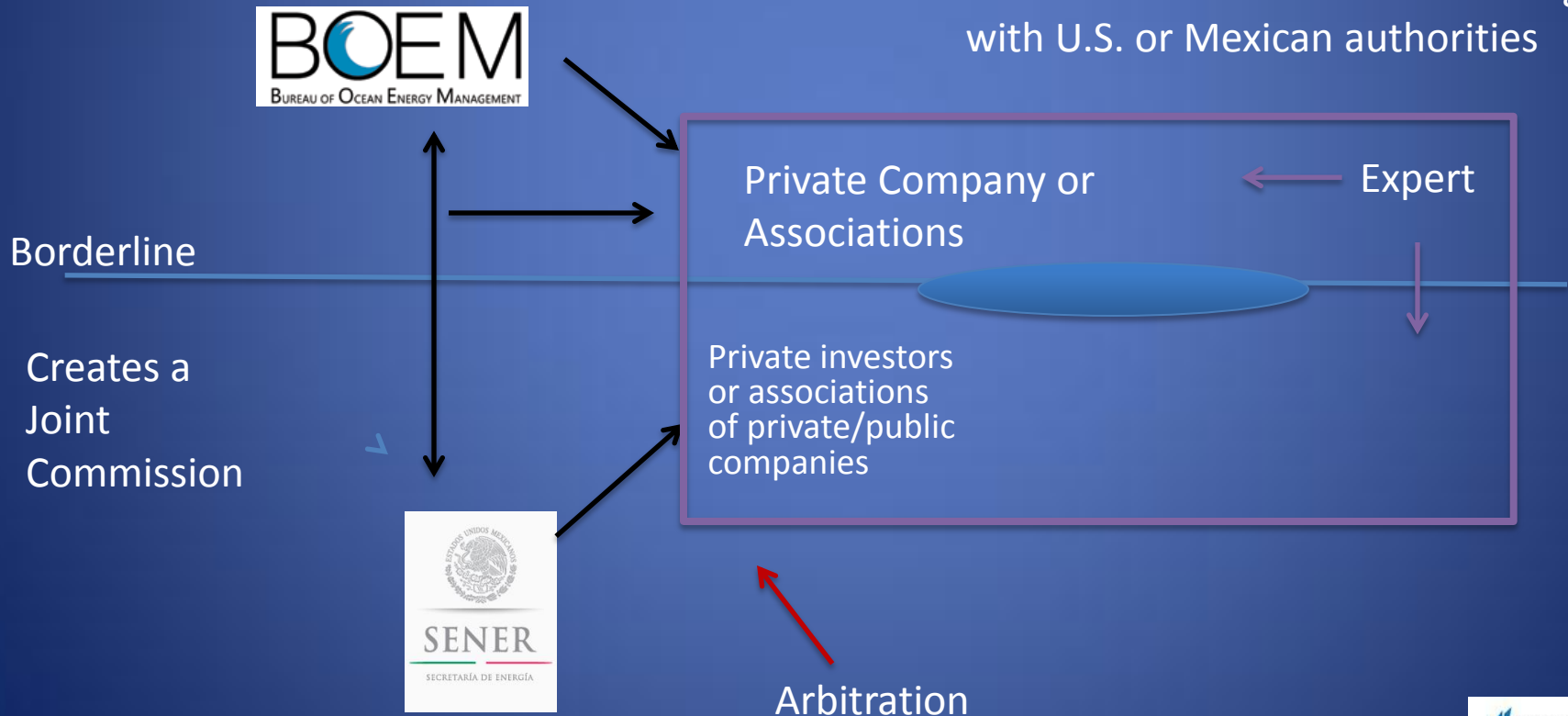
## Key Elements

Obligation to Report from both sides,  
Share information

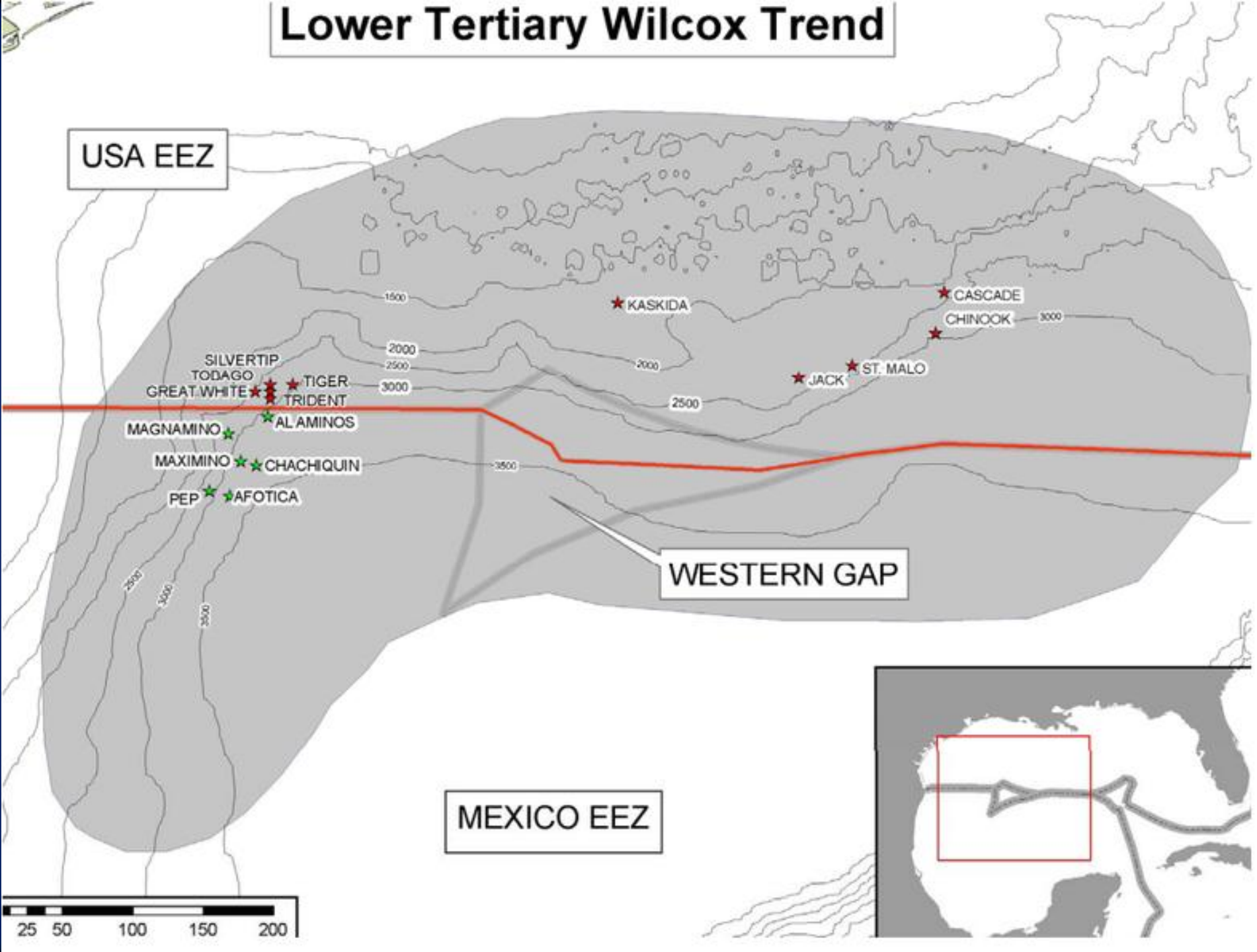
Fosters unitization agreements  
between licensees, but allows  
unilateral exploitation if they cant reach  
it

Allocation of resources by expert  
obligatory

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



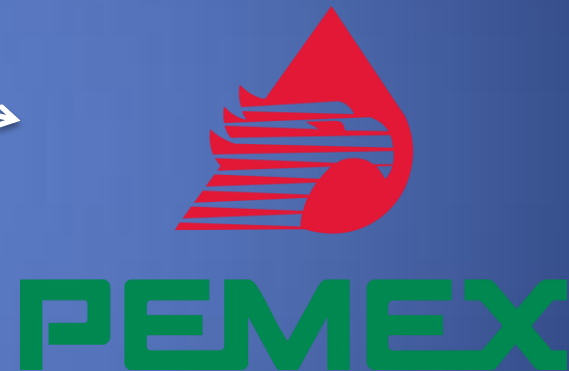
# Lower Tertiary Wilcox Trend



# Mexican Energy Reform

## Two types of contractual relations

### Assignments



Service contracts in cash  
with private parties

# E&P Contracts

Contracts and  
Blocks



Tender  
process and  
signing



Private investors  
or associations  
of private/public  
companies



Royalties  
and Taxes

# E&P Contracts

## – Service contracts

Cash Considerations

## – Profit sharing contracts

Exploration fee

Royalty

Percentage of profit to be determined through tender

## – Production sharing contracts

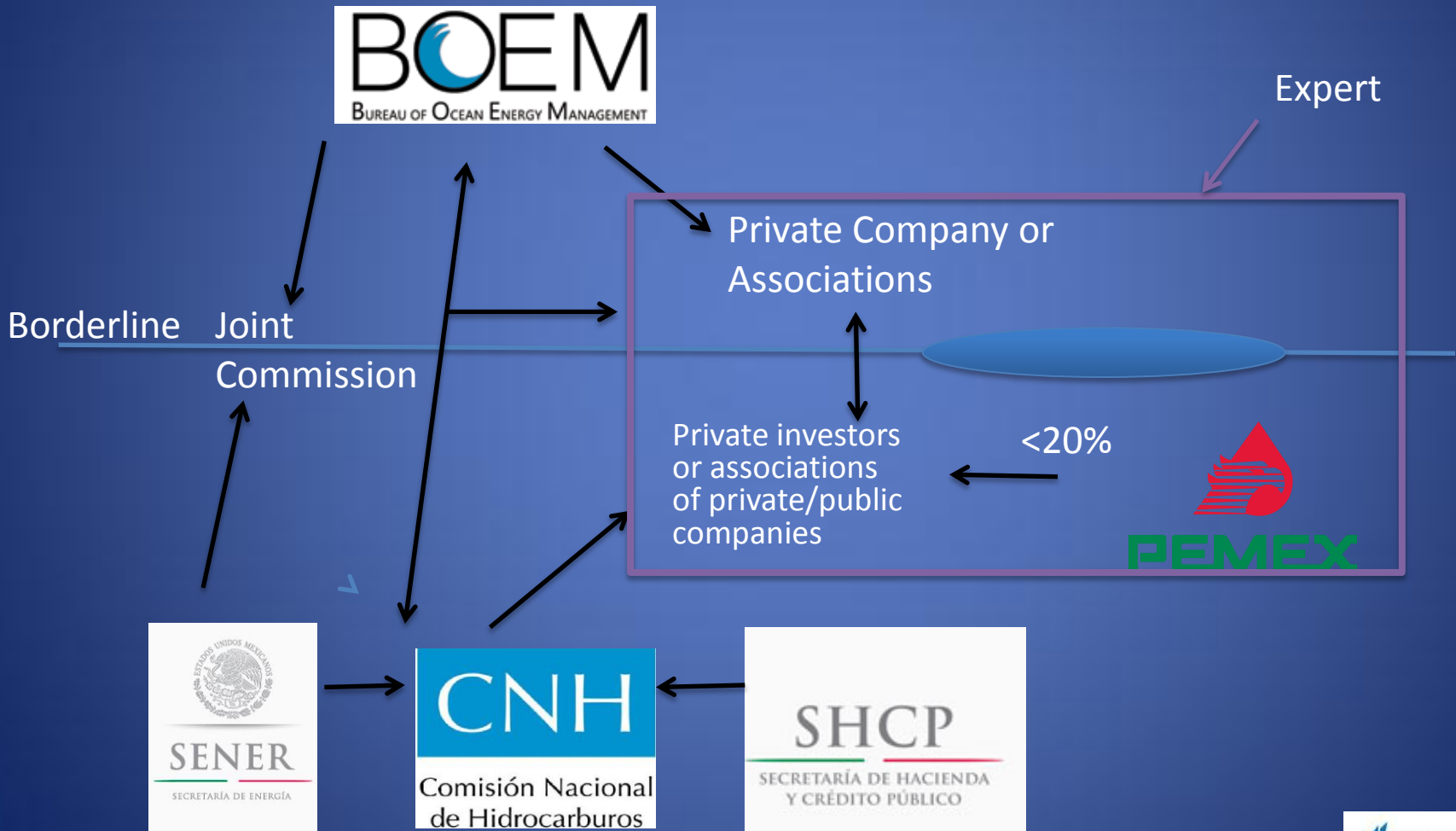
Bonus on execution

Percentage of the value of production

## – License contracts

Adjustment mechanism

# Contractual relationships in the borderline



# No Unitization Agreement



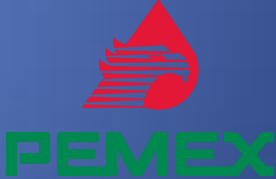
Private Company or Associations

Expert

Borderline

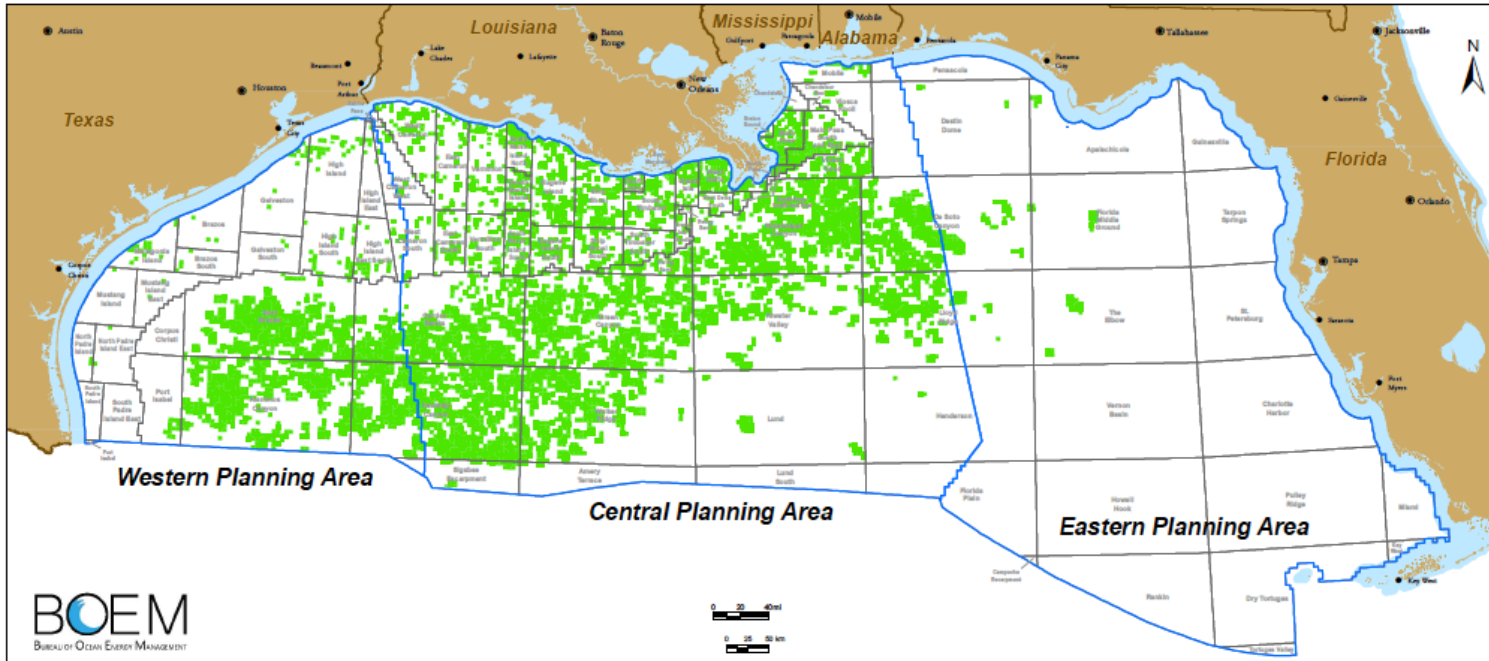
Private investors or associations of private/public companies

30%



# U.S. Gulf of Mexico

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



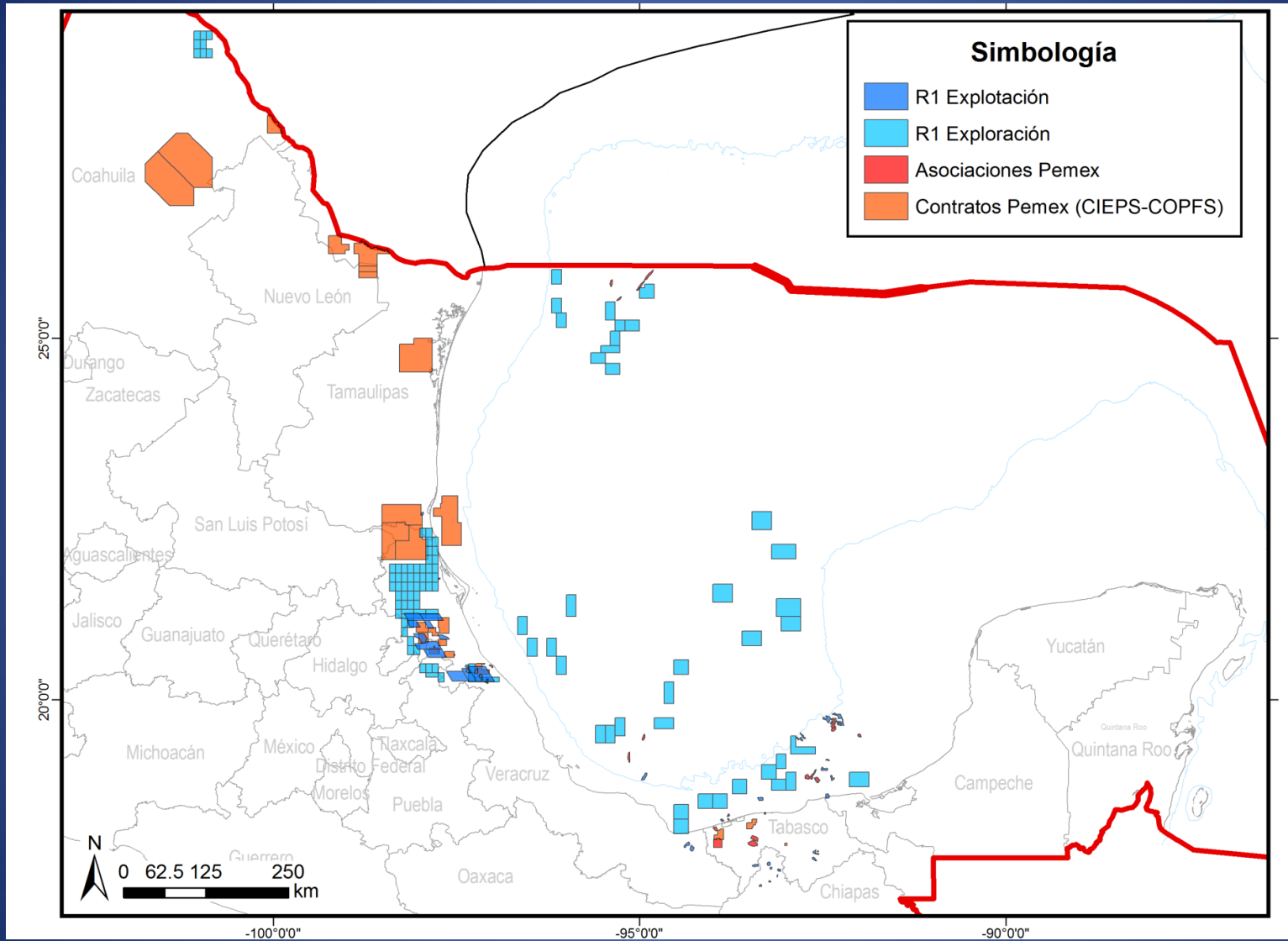
Planning Areas	Total Blocks	Total Acres	Number of Leases	Acres Leased
Western	5,240	28,576,813	1,216	6,928,759
Central	12,409	66,446,351	4,191	22,248,047
Eastern	11,526	64,563,679	106	567,104
Sub-Totals	29,175	159,586,843	5,513	29,743,910
CPA / EPA Shared Blocks*	(86)		(9)	
<b>Totals</b>	<b>29,089</b>	<b>159,586,843</b>	<b>5,504</b>	<b>29,743,910</b>

Active Leases  
 Planning Area Boundary

\* CPA and EPA contain 86 shared blocks of which 9 are leased. These blocks are given both a CPA and EPA designation in the data which accounts for a higher block total.



# Mexican Gulf of Mexico



# Mexican Round 1

