Royalty Relief Act Spurs Oil and Gas Exploration in Deep Waters of Gulf of Mexico: United States Ratifies Maritime Boundary Treaty with Mexico

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Editor
ROYALTY RELIEF ACT SPURS OIL AND GAS EXPLORATION IN DEEP WATERS OF GULF OF MEXICO: UNITED STATES RATIFIES MARITIME BOUNDARY TREATY WITH MEXICO

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Overview

On October 23, 1997, the United States Senate ratified a maritime boundary treaty with Mexico that had lain in limbo for nineteen years. The two countries signed the Treaty on Maritime Boundaries between the United States of America and the United Mexican States ("Treaty") in 1978. Mexico ratified the Treaty a year later. However, the U.S. Senate was satisfied to leave the treaty signed but unratified.

The recent Senate action means that the Treaty's heretofore provisional maritime boundary formally comes into force between the two nations. The agreement draws a line through much of the western and central Gulf of Mexico where claims of the two countries might have otherwise overlapped. While allocating most of the western and central gulf areas to one or the other of the two nations, the boundary line leaves an opening ("western gap") where the 200 mile claims of neither side reaches (see illustration on page 62). The two nations may soon begin negotiations regarding oil and gas development in that area.

The Treaty will allow each nation to lease valuable oil and gas areas to production companies without fear of territorial dispute claims by the other nation. In September, members of the Clinton Administration along with oil and gas industry representatives advocated treaty ratification before a subcommittee of the Senate Foreign Relations Committee. The administration and the industries lauded the treaty as a means of removing uncertainty over ownership of large expanses of valuable submerged lands. With no formal opposition, the Treaty ran its course through the Foreign Relations Committee to the full Senate for a ratification vote soon after the hearings.

Background

Vast oil and gas reserves located below the submerged lands of the gulf constitute enormous wealth for the nations who hold legal claim to the lands. However as late as 1952, state of the art technology limited drilling to one hundred feet of water. Eventually offshore barge drilling - allowed for oil and gas extraction in water depths up to 300 feet. Drilling at 300 foot-plus depths required floating drillships with stabilizing equipment that could withstand wind and currents and compensate for the roll and pitch of a surging sea.

Exploration in one thousand-foot-plus depths required another quantum leap in engineering technology. Dynamic stationing, an anchorless method of mooring, uses position referencing systems to feed information to a drillship's thrusters to maintain a ship's location relative to the sea floor. By 1970, the technology
of water and actual exploratory drilling was taking place at 1,400 feet.\textsuperscript{5}

Until recently, oil and gas development was prohibitively costly in the deep waters of the gulf in proximity of the provisional maritime division between the countries. After a century of engineering improvements, those areas have recently become potentially profitable sites for oil and gas development. In 1995, the United States amended its federal laws governing the royalty payment system on offshore oil and gas production and in so doing lowered the economic hurdle that had kept the technological advances on the blackboards and off the oceans. The recent surge in oil and gas exploration in the Gulf is due in large part to the Outer Continental Shelf Deep Water Royalty Relief Act.\textsuperscript{6}

The royalty relief provisions in 1995 are relatively straightforward. They are designed to "promote development or increased production" on existing lease tracts and to "encourage production of marginal resources" on existing and as yet unleased tracts in the deepwater areas of the Gulf of Mexico.\textsuperscript{7} They do so by removing the initial royalty payments for a tiered level of production based on the depth from which oil and gas are recovered. As a result, oil and gas companies which would otherwise forego production in certain may now reduce their costs of production.

The Act succeeded in spurring interest in leasing deepwater tracts of the western and central regions of the Gulf of Mexico. In 1995, the last year in which lease sales occurred without the Royalty Relief Act in place, high bids for OCS leases in the Gulf of Mexico totaled $306 million.\textsuperscript{8} Two leases sales in 1996 brought in over $850 million.\textsuperscript{9} And 1997 lease sales in the Gulf garnered over $1 billion.\textsuperscript{10} The financial attractiveness of the new deepwater royalty relief provisions is illustrated by the fact that over half of the tracts leased since the Act went into effect are in deepwater areas, i.e. 200 meters depth or greater.

The Maritime Boundary Delimitation and the Western Gap

In the 1970's a number of nations made claims of extended ocean jurisdiction. In 1976 Mexico claimed a 200 nautical mile Exclusive Economic Zone (EEZ) while the United States extended its fisheries jurisdiction to 200 nautical miles (which would eventually be claimed as a U.S. EEZ in 1983).\textsuperscript{11} A potential conflict arose since the extended jurisdictions overlapped in those areas of the Gulf where the distance between the landward baselines was less than the 400 nautical miles necessary to accommodate each state's full claim. The two nations agreed to provisional maritime boundaries on November 24, 1976.\textsuperscript{12} Subsequently, they entered into negotiations that led to the 1978 Treaty.

The Treaty employs an equidistant method of calculating a boundary line to reach an equitable delimitation between the nations. Due to the geography of the Gulf of Mexico and the two states there exists a gap roughly triangular in shape in the western Gulf of Mexico where the respective EEZ's do not meet.
That western gap was left open for future negotiations since either state might make some claim to the submerged lands lying thereunder pursuant to the principles employed in claiming appurtenant continental shelf areas.

In 1979 Mexico ratified the treaty. On January 23, 1979, the President of the United States transmitted the Treaty to the United States Senate to gain the necessary advice and consent via the domestic ratification process. While the United States Senate’s Foreign Relations Committee held hearings and favorably reported the Treaty to the full Senate for its advice and consent in 1980, the Senate declined to ratify it. While no apparent reasons existed to object to Treaty ratification, neither was there a perception that boundary delimitation in the area was of any high priority. A number of Senators requested that a comprehensive study be initiated on the resources that might be obtained from the gulf. As a result, the Treaty lingered in limbo for another seventeen years.

Deepwater Leasing Near Boundary and Western Gap

The increased exploration and leasing activity that has taken place in the Gulf of Mexico as a result of the Deepwater Royalty Relief Act raised concerns in the energy production industries over the certainty of the territorial boundary between the U.S. and Mexico as well as the jurisdiction over the western gap.

Oil and gas producers were looking at prospective drilling sites which came close to or straddled a legally uncertain boundary line. They also indicated interest in potential lease sites within the western gap. In 1997, the U.S. Minerals Management Service, the agency with authority to solicit, accept, and administer lease tract bids, announced that it would offer offshore leases for tracts in the western gap contingent upon a successful agreement between the two nations on that area. The Government of Mexico indicated that no agreement on the gap could be considered until the U.S. first ratified the boundary treaty. The increased interest in the deep waters of the Gulf of Mexico prompted the U.S. Senate Foreign Relations Committee to hold hearings in September of 1997 regarding the maritime boundary in the Gulf.

Witnesses who addressed the Committee unanimously endorsed expedient ratification of the Treaty. Testifying on behalf of the U.S. Department of State, Deputy Assistant Secretary Mary Beth West indicated that deepwater oil and gas exploration in the Gulf of Mexico made prompt Treaty ratification an essential step in establishing a mutually recognized boundary line that would constitute the certainty sought by commercial industries.

Senator Frank Murkowski, Chairman of the Senate Committee on Energy and Natural Resources, urged the Foreign Relations Committee to promptly and favorably report the Treaty to the full Senate in an effort to have it ratified before the adjournment of Congress in 1997. He noted the “tremendous positive impact” of the Deepwater Royalty Relief Act and urged Treaty ratification as a
means of "settling a permanent boundary between the U.S. and Mexico." Ratification, posited Murkowski, would enable "the orderly acquisition and development of oil and gas leases along the U.S. side of the international line."  

The Senator also envisioned a ratified Treaty as a step towards an amicable agreement that would allow for the allocation of lease sites in the western gap. "We are hopeful that resolution of the permanent boundary will facilitate agreement over division of that area of such great promise," noted Murkowski.  

Oil and gas industries lined up in support of the Treaty. In a written statement submitted during the Committee hearings oil and gas interests joined together to advocate quick ratification as a means of providing territorial stability upon which sound commercial planning could be based. The oil and gas industry reiterated the importance of ratification as a vital element to allow negotiations to take place between the two countries regarding the western gap.

Presidential Praise for Treaty

The Foreign Relations Committee favorably reported the Treaty to the Senate shortly after the hearings. The full Senate voted to ratify the treaty on October 23, 1997. And the two countries' leaders made specific reference to the final formalization during a visit by Mexico's President Ernesto Zedillo to Washington in mid-November. In a joint declaration issued from the White House, Presidents Clinton and Zedillo emphasized the "ratification of our Maritime Boundary Treaty as an important step to fully demarcate our common maritime border."  

Endnotes


3. Id. at 231.

4. Id. at 234.

5. Id.

6. 43 U.S.C. 1337 (a); see also Law and Technology Spur Deepwater Oil and Gas Exploration in Gulf of Mexico, 17:1 WATER LOG, 1.


9. Id.

10. Id.


12. Maritime Boundaries Agreement Between the United States and Mexico - Effected by Exchange of Notes, signed at Tlaltetco and Mexico, November 24, 1976 TIAS 8805.


15. Id.

16. Id.

17. Id.

18. Id. (written statement of the American Petroleum Institute, the Domestic Petroleum Council, the Independent Petroleum Association of America, the International Association of Drilling Contractors, the Mid-Continent Oil and Gas Association, and the National Ocean Industries Association).

19. Id.


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Maritime Boundary Line
Based on the Treaty on Maritime Boundaries Between Mexico and the U.S.

DREITY RECEIPTS FROM PRODUCE RIGNED AS EXTRACTION DESPITE
OIL AND GAS TRACT LEASING

SEA LEVEL
-500 meters deep
-1000-500 meters deep
-600-1000 meters deep
-1500-1500 meters deep
-2300 meters deep

*Unless leased at oil equivalent