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A B O G A D O S / A T T O R N E Y S A T L A W

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## Mexican Government publishes U.S. and Mexico agreement for transboundary waters on the Gulf of Mexico

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Mexico's Energy Reform passed by the Congress in 2008 was the first step towards a revitalization of the energy sector. Amendments to the Regulatory Law of Constitutional Article 27 for the Oil Sector (*Ley Reglamentaria del Artículo 27 Constitucional en el Ramo del Petróleo*), embodied new elements with respect to transboundary hydrocarbons reservoirs. The energy reform opened a small window for joint exploration and exploitation of transboundary reservoirs by foreign entities provided that the same is conducted in terms of the treaties entered by the President and approved by the Senate.



Under such new legal framework and following the Joint Statement adopted by Presidents Calderon and Obama at the conclusion of President Calderon's State Visit to Washington

back in 2010 through which both heads of the Executive branch committed to reach an agreement to jointly develop transboundary reservoirs, on February 20, 2012, President Calderón met U.S. Secretary of the Interior, Mr. Ken Salazar, and Secretary of State, Mrs. Hillary Clinton, in order to execute the Agreement between Mexico and US on Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico (the "Agreement").

The Agreement, published today at the Federal Register (*Diario Oficial de la Federación*), establishes the foundations for a cooperative exploration and exploitation of hydrocarbon resources crossing the Mexico – United States maritime boundary in the Gulf of Mexico, though specific rules for project development and share of benefits for both countries.

As a result of the Agreement, nearly 1.5 million acres (about 607,000 hectares) of the U.S. Outer Continental Shelf will become more accessible for exploration and production activities, representing approximately 172 million barrels of oil and 304 billion cubic feet of natural gas.<sup>1</sup> Moreover, the Agreement is intended to stop the current delay on oil exploration and production in the Western Gap portion of the Gulf of Mexico (*Polígono Occidental*).

The Agreement establishes a cooperative procedure between the two States for managing the maritime boundary region, and promotes joint use of transboundary reservoirs through exploration and exploitation of hydrocarbon geological structures and sites that extend across the delimitation line.<sup>2</sup>

Mexican executive branch is confident that this instrument will provide a complete legal framework for both countries, removing uncertainties that have affected the development of transboundary resources in the Gulf of Mexico, and establishing statutory incentives for U.S. offshore oil and gas companies and Mexico's Petroleos Mexicanos to voluntarily enter into joint agreements to develop transboundary reservoirs. Nevertheless, the Agreement allow as a final recourse the unilateral production by each side of the border, up to the amount of hydrocarbons that exist on its side of the boundary.

While protecting each nation's interests and resources, the Agreement “*provides a carefully calibrated mechanism to resolve disputes regarding the development of specific reservoirs and also establishes a system of joint inspections. Each side would regulate activity on its side of the boundary, but would also have the ability, under an inspection system to be developed, to inspect activity that takes place under the Agreement on the other side of the boundary*”, declared the U.S. Department of Interior, opinion shared by its Mexican counterpart.

Once the Agreement becomes effective,<sup>3</sup> both governments will have to work internally in order to adapt their internal legal framework to such instrument and, most importantly, to put it into practice on the field.

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<sup>1</sup> Estimation from the United States Interior Department's Bureau of Ocean Energy Management.

<sup>2</sup> These sites and structures are located beyond nine nautical miles from the coast. Such limit results from the fact that the U.S. Federal Government has no jurisdiction over seabed resources found in the margin, which sovereignty over them is under the State of Texas, with which, although it is not possible to subscribe a treaty, Mexico will seek cooperative arrangements similar to those contained in the federal-level agreement.

<sup>3</sup> Pursuant to the Agreement, both countries shall notify each other the completion of their internal procedures to adopt the same, in the understanding that the Agreement will become effective 60 days following the date of delivery of the last notice.

The legal certainty created by the Agreement will allow U.S. companies to explore new business opportunities and carry out cooperative projects with PEMEX.

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