

CONGRESSIONAL TESTIMONY

Hearing before the
United States House of Representatives
Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
on

**U.S.-Mexico Transboundary Hydrocarbon Agreement and
Steps Needed for Implementation**

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10:00 A.M.

Mr. Chairman and members of the Committee:

Thank you for inviting me to testify before you today regarding the Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico (the “Transboundary Agreement”) and H.R. 1613, the legislation that has been introduced to implement the Agreement.

Developing hydrocarbon resources in the Gulf of Mexico along the international boundary with Mexico, including along the boundary within the “Western Gap” area on the extended continental shelf, is in the national interest of the United States. A successful implementation of the Transboundary Agreement advances that interest, and does so without entangling the United States in a deeply-flawed international convention adopted more than 30 years ago—the United Nations Convention on the Law of the Sea (UNCLOS).

Proponents of U.S. ratification of UNCLOS claim that unless the United States joins the convention, it will be unable to develop the hydrocarbon resources in the Western Gap, including presumably any transboundary reservoirs. They claim that international recognition of the U.S. extended continental shelf (ECS), which is the continental shelf that extends beyond 200 nautical miles from the coast, is absolutely conditional upon U.S. accession.

However, that claim lacks basis in fact or law. The United States regularly demarcates the limits of its continental shelf and declares the extent of its maritime boundaries with presidential proclamations, acts of Congress, and bilateral treaties with neighboring countries. As a result of bilateral treaties between the United States and Mexico, the Department of the Interior’s Bureau of Ocean Energy Management (BOEM) currently leases areas of the U.S. ECS in the Western Gap to American and foreign oil and gas companies for exploration and development. Indeed, BOEM has leased an area that sits directly on the international boundary within the Western Gap to Eni Petroleum, an Italian multinational oil and gas company.

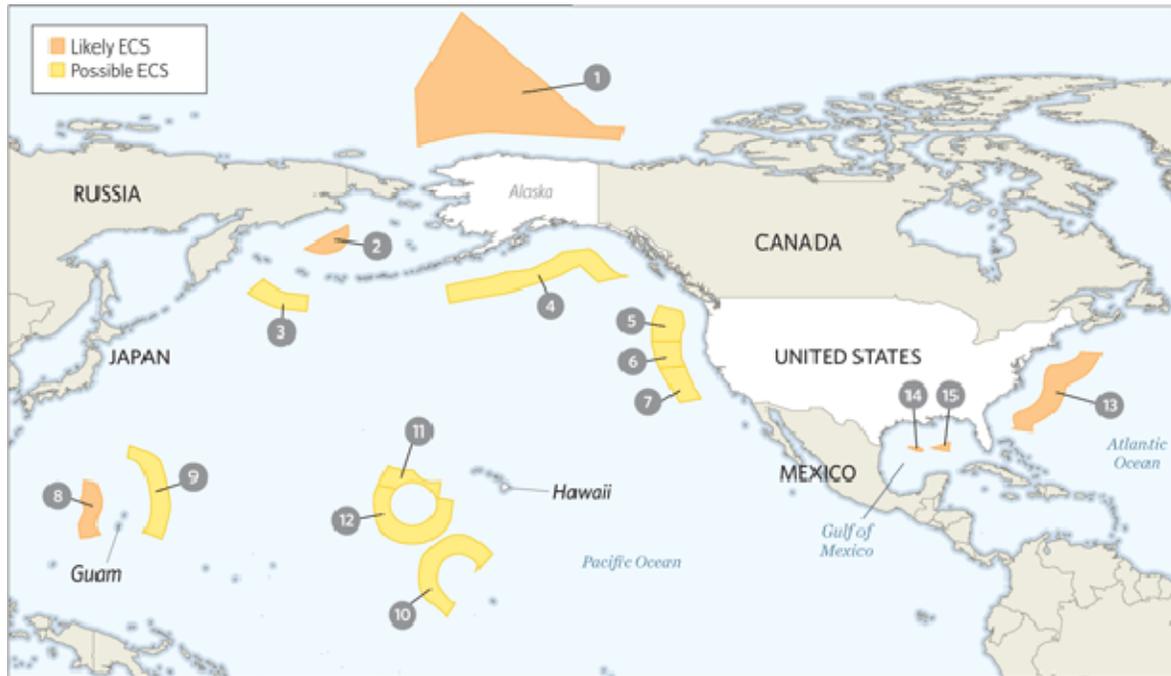
The United States should take every action necessary—including the implementation of the Transboundary Agreement—to develop its hydrocarbon resources located on its ECS in the Gulf of Mexico. The United States can accomplish this end while acting as a sovereign nation rather than by joining UNCLOS and seeking the approval of the Commission on the Limits of the Continental Shelf (CLCS), an international committee of geologists and hydrographers located at U.N. headquarters in New York City.

The U.S. Extended Continental Shelf

Since 2003, in an effort to define the outer limit of the U.S. continental shelf, the United States has collected bathymetric and seismic mapping data on the outer margins of its continental shelf in the Arctic Ocean, Gulf of Alaska, Gulf of Mexico, and Bering Sea; along the Atlantic and Pacific Coasts; and off the Northern Mariana Islands, Kingman Reef, Palmyra Atoll, Guam, and Hawaii. The U.S. Extended Continental Shelf Task Force, an interagency project, is conducting this data collection.¹ To date, the ECS Task Force has identified six areas that “likely” contain submerged continental shelf and qualify as ECS and nine areas that “possibly” qualify. One area that likely contains ECS is the Western Gap, designated in Map 1 (below) as area #14.

¹U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service, “Extended Continental Shelf Project,” revised August 25, 2011, <http://continentalshelf.gov> (accessed April 17, 2012).

U.S. Extended Continental Shelf (ECS)



- | | | |
|--------------------|-------------------------------------|---------------------------------|
| 1 Arctic Ocean | 6 Mendocino Ridge | 11 Necker Ridge |
| 2 Bering Sea | 7 California Coast | 12 Johnson Atoll |
| 3 Aleutian Islands | 8 Northern Marianas and Guam (West) | 13 Atlantic East Coast |
| 4 Gulf of Alaska | 9 Northern Marianas and Guam (East) | 14 Gulf of Mexico (Western Gap) |
| 5 Northwest Coast | 10 Kingman Reef and Palmyra Atoll | 15 Gulf of Mexico (Eastern Gap) |

Source: U.S. Extended Continental Shelf Project, "Establishing the Full Extent of the Continental Shelf of the United States," <http://continentalshef.gov/media/ECSposterDec2010.pdf> (accessed May 8, 2012).

The value of the hydrocarbon deposits lying beneath the entirety of the U.S. ECS is difficult to estimate, but it is likely substantial. According to the ECS Task Force, "Given the size of the U.S. continental shelf, the resources we might find there may be worth many billions if not trillions of dollars."²

“International Recognition” of the U.S. ECS

Historical experience has repeatedly debunked the notion that achieving “international recognition” of U.S. maritime boundary and continental shelf claims requires UNCLOS membership. The United States has had no difficulty whatsoever in achieving recognition of such claims in the past. Since 1945, U.S. Presidents have issued proclamations and Congress has enacted laws on U.S. maritime claims and boundaries. None of these have been challenged by any nation, any group of nations, or the “international community” as a whole.

²U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service, “About the Extended Continental Shelf Project,” <http://continentalshef.gov/about.html> (accessed April 17, 2012).

Proponents of UNCLOS offer no evidence that any foreign nation has not recognized or will not recognize the unilateral proclamations made by the United States. Yet the same proponents contend that the United States cannot hope to gain recognition of its ECS or assert jurisdiction and control over it unless and until it joins the convention. Law of the sea experts such as Ted McDorman at the University of Victoria disagree with that position:

It can be asked whether a non-party to the LOS Convention can legally exercise jurisdiction over its adjacent continental margin beyond 200 nautical miles or whether this entitlement is only available to parties to the LOS Convention. The answer is that there appears to exist sufficient state practice...to support the view that, as a matter of customary international law, states can legally exercise jurisdiction over the continental margin beyond 200 nautical miles *irrespective of the State's status as a LOS Convention ratifier*.³

No evidence suggests that membership in UNCLOS is necessary, much less essential, either to gain international recognition of the U.S.'s ECS boundaries or to claim, legally and legitimately, jurisdiction and control over its ECS resources. It is telling that proponents of U.S. accession to UNCLOS do *not* claim that international recognition of the U.S. territorial sea, contiguous zone, or exclusive economic zone (EEZ) is contingent upon U.S. accession to the convention, yet they assert that accession is the *sine qua non* for international recognition of the U.S. ECS.⁴

There is no magic ritual for achieving international recognition of maritime and continental shelf boundaries. Foreign nations recognize and respect U.S. maritime claims and boundaries, and vice versa, as long as those claims and boundaries conform to widely accepted international law, including the various provisions of customary international law that are reflected in UNCLOS.

Like its other maritime claims, the United States will demarcate the limits of its ECS in a manner that conforms to international law. In November 1987, a U.S. government interagency group issued a policy statement declaring its intent to delimit the U.S. ECS in conformity with Article 76 of UNCLOS, which provides a formula for measuring the extent of a coastal state's ECS. The pertinent part of the policy statement reads:

[T]he Interagency Group on Ocean Policy and Law of the Sea has determined that the proper definition and means of delimitation in international law are reflected in Article 76 of [UNCLOS]. *The United States has exercised and shall continue to exercise jurisdiction over its continental shelf in accordance with and to the full extent permitted by international law as reflected in Article 76, paragraphs (1), (2) and (3). At such time in the future that it is determined desirable to delimit the outer limit of the continental shelf of the United States beyond two hundred nautical miles...such delimitation shall be*

³Ted L. McDorman, "The Entry into Force of the 1982 LOS Convention and the Article 76 Outer Continental Shelf Regime," *The International Journal of Marine and Coastal Law*, Vol. 10, No. 2 (1995), p. 167 (emphasis added). McDorman cites evidence of actual state practice under the 1958 Convention on the Continental Shelf and UNCLOS Article 76 to support his conclusion.

⁴Besides the United States, other UNCLOS non-parties, including Cambodia, Colombia, El Salvador, Syria, Turkey, the United Arab Emirates, and Venezuela, delimit their maritime boundaries (e.g., 12 nm territorial sea, 24 nm contiguous zone, and/or 200 nm EEZ) in conformity with the convention without objection from other nations. See U.S. Department of Defense, Under Secretary of Defense for Policy, *Maritime Claims Reference Manual*, June 23, 2005, http://www.jag.navy.mil/organization/code_10_mcrm.htm (accessed April 17, 2012).

carried out in accordance with paragraphs (4), (5), (6) and (7).⁵

Despite the claims of UNCLOS proponents, the United States can successfully pursue its national interests regarding its ECS—particularly hydrocarbon exploitation—without first gaining universal international recognition of its outer limits. While such recognition may be a worthy achievement, it is of no consequence to U.S. national interests whether the 195 nations of the world affirmatively recognize America’s jurisdiction over its ECS in the Gulf of Mexico.

U.S. ECS in the Gulf of Mexico

International cooperation on the delimitation of maritime boundaries is necessary in resource-rich areas such as the Gulf of Mexico. Since the 1970s, the United States and Mexico have negotiated a series of bilateral treaties to delimit their maritime and continental shelf boundaries, including areas of their abutting ECS in the Western Gap:

- In November 1970, the U.S. and Mexico signed a treaty to maintain the Rio Grande and Colorado River as the agreed international boundary between the two nations. As part of the treaty, the two nations demarcated their maritime boundaries in the Gulf of Mexico and the Pacific Ocean out to 12 nm.⁶ The treaty entered into force on April 18, 1972.
- In May 1978, building on the 1970 treaty, the two nations signed a treaty delimiting their maritime boundaries in the Gulf and in the Pacific out to 200 nm.⁷ The treaty demarcated boundary lines in the Gulf where their respective 200 nm EEZ abutted, leaving a “doughnut hole” of approximately 5,092 square nm (the Western Gap) where their 200 nm boundary lines did not meet. A second doughnut hole was created in the eastern Gulf where the EEZs of the U.S., Mexico, and Cuba fail to intersect (the “Eastern Gap”). The treaty entered into force on November 13, 1997.
- In June 2000, the U.S. and Mexico signed a treaty dividing the area of ECS within the Western Gap. Of the 5,092 square nm of ECS in the Western Gap, 1,913 (38 percent) went to the United States and 3,179 (62 percent) went to Mexico.⁸ The treaty established a drilling moratorium over a narrow strip along the international boundary within the Western Gap due to the possibility that transboundary hydrocarbon reservoirs are located along the boundary. The treaty entered into force on January 17, 2001.

Collectively, these treaties between the United States and Mexico, particularly the June 2000 ECS delimitation treaty, demarcated an area of U.S. ECS—the 1,913 square nm of

⁵“United States Policy Governing the Continental Shelf of the United States of America,” November 17, 1987, reprinted in J. Ashley Roach and Robert W. Smith, *U.S. Responses to Excessive Maritime Claims*, 2nd ed. (The Hague: Martinus Nijhoff Publishers, 1996), pp. 201–202 (emphasis added).

⁶“Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary,” November 23, 1970, <http://faolex.fao.org/docs/pdf/bi-51757.pdf> (accessed April 17, 2012).

⁷“Treaty on Maritime Boundaries Between the United Mexican States and the United States of America,” May 4, 1978, http://www.boem.gov/uploadedFiles/BOEM/Regulations/Treaties/1978_0504-Treaty-MaritimeBoundariesMexicoandUS.pdf (accessed April 17, 2012).

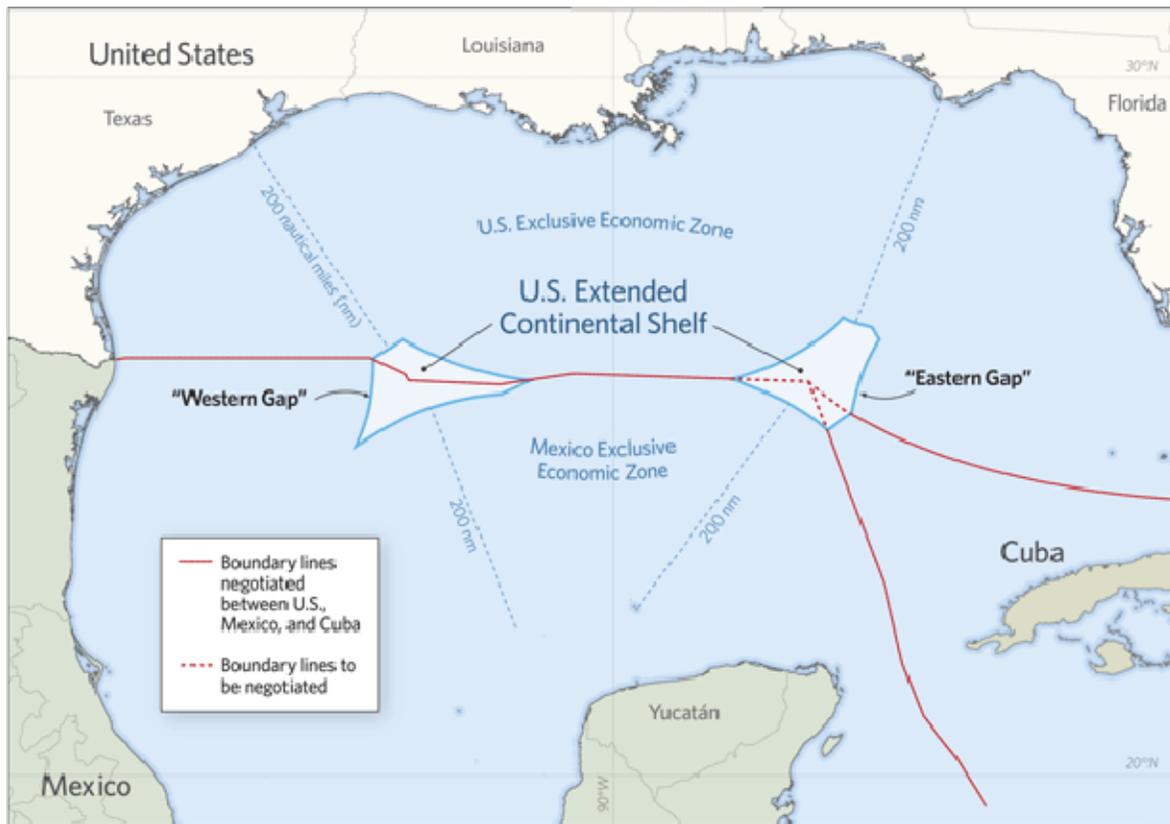
⁸“Treaty Between the Government of the United States of America and the Government of the United Mexican States on the Delimitation of the Continental Shelf in the Western Gulf of Mexico Beyond 200 Nautical Miles,” June 9, 2000, http://www.boem.gov/uploadedFiles/BOEM/Regulations/Treaties/2000_0609-Treaty-OCSinWGOMBeyond200nm.pdf (accessed April 17, 2012), and news release, “MMS Lauds U.S. and Mexico Continental Shelf Boundary Treaty Agreement,” U.S. Department of the Interior, Minerals Management Service, June 13, 2000, <http://www.gomr.boemre.gov/homepg/whatsnew/newsreal/2000/000713.html> (accessed April 17, 2012).

submerged continental shelf in the northern portion of the Western Gap. There is no evidence that any nation, any group of nations, or the international community as a whole does not or will not recognize the ECS in the northern portion of the Western Gap as subject to the jurisdiction and control of the United States.

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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 with in the “western gap” between the two nations.



Sources: U.S. Department of the Interior, Bureau of Ocean Energy Management, “Treaty on Maritime Boundaries Between the United Mexican States and the United States of America,” Mar. 8, 1978, http://www.boem.gov/loadedFiles/BOEM/Regulations/Treaties/1978_OSOM_Treaty_MaritimeBoundaries_MexicoandUS.pdf (accessed April 15, 2012); U.S. State Department, “Maritime Boundary Agreement Between the United States of America and the Republic of Cuba,” December 16, 1977, <http://www.state.gov/documents/organization/125289.pdf> (accessed May 8, 2012); and United Nations, “Executive Summary: A Partial Submission of Data and Information on the Outer Limits of the Continental Shelf of the United Mexican States Pursuant to Part VI of and Annex II to the United Nations Convention on the Law of the Sea,” December 2000, http://www.un.org/depts/los/convention_agreements/convention_treaties/submissions_files/med07/part_1_executive_summary.pdf (accessed May 8, 2012).

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Yet UNCLOS proponents commonly claim that U.S. companies will lack the “certainty” they require to develop the hydrocarbon resources located on the ECS unless the United States accedes to UNCLOS and receives the approval of the Commission on the Limits of the Continental Shelf (CLCS). For example, in 2007, former Deputy Secretary of State John Negroponte stated, “In the absence of such international recognition and legal certainty, U.S. companies are unlikely to secure the necessary financing and insurance to exploit energy resources on the extended shelf.” Another prominent advocate of U.S. accession has argued that

U.S. failure to join the convention “could result in a loss of thousands of square kilometers of resource-rich...continental shelf.”⁹

Reality tells a different story. The ECS area on the U.S. portion of the Western Gap has been available for development since August 2001. Specifically, BOEM offered the northern portion of the Western Gap for lease almost immediately after the 2000 U.S.–Mexico ECS delimitation treaty was ratified. That treaty entered into force on January 17, 2001. Seven months later, on August 22, BOEM offered the area of U.S. ECS in the Western Gap in Lease Sale 180. In that lease sale, three U.S. companies (Texaco, Hess, and Burlington Resources Offshore) and one foreign company (Brazil’s Petrobras) submitted successful bids totaling more than \$2 million for seven lease blocks in the Western Gap.¹⁰

U.S. Leasing Activity in the Western Gap

BOEM has offered the ECS blocks in the Western Gap in more than 20 lease sales between August 2001 (Lease Sale 180) and March 2013 (Lease Sale 227). In connection with those sales, seven U.S. companies (Burlington, Chevron, Devon Energy, Hess, Mariner Energy, NARCA Corporation, and Texaco) submitted bids to lease blocks in the Western Gap. Five foreign companies—BP, Eni Petroleum (Italy), Maersk Oil (Denmark), Petrobras, and Total (France)—also bid on Western Gap ECS blocks during those sales. BOEM collected more than \$50 million in bonus bids in connection with lease sales on those blocks.

Of the approximate 320 blocks located in whole or in part on the Western Gap ECS, 67 (approximately 20 percent) are currently held under active leases by nine U.S. and foreign oil exploration companies.¹¹

The successful delimitation and subsequent leasing of areas in the Western Gap demonstrate that the United States does not need to achieve universal international recognition of its ECS. The United States identified and demarcated areas of ECS in the Western Gap in cooperation with the only other relevant nation, Mexico, and that area was subsequently offered for development to U.S. and foreign oil and gas companies. All of this was achieved without U.S. accession to UNCLOS or CLCS approval.

Even though approximately 20 percent of the U.S. ECS that has been made available for lease by BOEM is currently under an active lease, the U.S. oil and gas industry has supported and will likely continue to support U.S. accession to UNCLOS in order to achieve even greater “certainty.”¹² That is their prerogative, of course, and achieving a maximum amount of certainty is a legitimate and desirable goal for a capital-intensive commercial enterprise. However, the successful delimitation of the ECS in the Western Gap would appear to have provided the certainty necessary for several major U.S. and foreign oil companies to contemplate the

⁹John Norton Moore, written testimony, in hearings, *The U.N. Convention on the Law of the Sea (Treaty Doc. 103–39)*, Committee on Foreign Relations, U.S. Senate, 108th Cong., 2nd Sess., October 14, 2003, p. 56, <http://www.foreign.senate.gov/download/?id=564DC8D7-F536-4CCB-B0CE-3FD8A1C7CC6C> (accessed April 17, 2012).

¹⁰U.S. Department of the Interior, Bureau of Ocean Energy Management, Regulation and Enforcement, “Western Gulf of Mexico Lease Sale 180 Information,” updated August 30, 2010, <http://www.gomr.boemre.gov/homepg/lseale/180/wgom180.html> (accessed April 17, 2012).

¹¹U.S. Department of the Interior, Bureau of Ocean Energy Management, “Lease Sale Information,” <http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Regional-Leasing/Gulf-of-Mexico-Region/GOMR-Historical-Lease-Sale-Information.aspx> (accessed April 17, 2012).

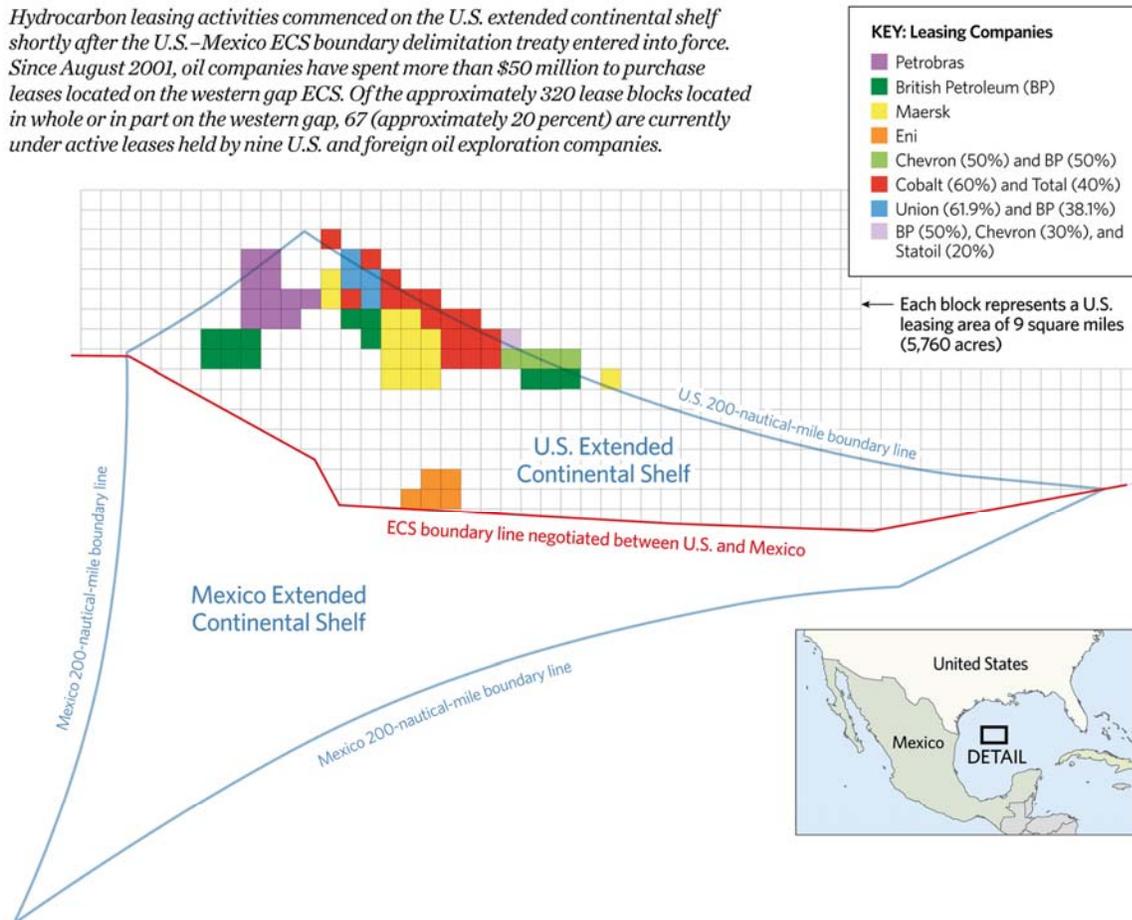
¹²Paul Kelly, statement, in hearings, *The U.N. Convention on the Law of the Sea (Treaty Doc. 103–39)*, pp. 113–116.

development hydrocarbon resources on the Gulf ECS, including along the international boundary in the Western Gap.

MAP 3

Active Hydrocarbon Leases on U.S. Extended Continental Shelf in the “Western Gap”

Hydrocarbon leasing activities commenced on the U.S. extended continental shelf shortly after the U.S.–Mexico ECS boundary delimitation treaty entered into force. Since August 2001, oil companies have spent more than \$50 million to purchase leases located on the western gap ECS. Of the approximately 320 lease blocks located in whole or in part on the western gap, 67 (approximately 20 percent) are currently under active leases held by nine U.S. and foreign oil exploration companies.



Sources: U.S. Department of the Interior, Bureau of Ocean Energy Management, “Lease Sale Information,” <http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Regional-Leasing/Gulf-of-Mexico-Region/GOMR-Historical-Lease-Sale-Information.aspx> (accessed April 18, 2013), and “Treaty Between the Government of the United States of America and the Government of the United Mexican States on the Delimitation of the Continental Shelf in the Western Gulf of Mexico Beyond 200 Nautical Miles,” June 9, 2000, http://www.boem.gov/uploadedFiles/BOEM/Regulations/Treaties/2000_0609-Treaty-OCSinWGOMbeyond200nm.pdf (accessed April 18, 2013).

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The United States is unlikely to accede to UNCLOS in the near term, or perhaps ever. However, this does not mean that the United States should not take every action necessary—including implementation of the Transboundary Agreement—to secure oil and gas resources on its ECS in the Gulf of Mexico. The United States can accomplish this end while acting as a sovereign nation, continuing the tradition of American Presidents in proclaiming the nation’s maritime and resource rights, and without acceding to a deeply flawed treaty or seeking the approval of an international commission of experts housed at the United Nations.

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